



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 7 DECEMBER 2011 AT GREYMOUTH**

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**COMMISSION RESUMES ON WEDNESDAY 7 DECEMBER 2011 AT
9.30 AM**

JOHN ALAN STUART DOW (RE-SWORN)

5 CROSS-EXAMINATION CONTINUES: MR MOUNT

Q. Good morning Mr Dow.

A. Morning.

Q. You will recall yesterday I asked you where Pike River's risk management policy was contained, and your answer yesterday was that
10 it was in the safety management plan and the environmental management plan. Do you recall that?

A. Yes.

Q. If we could refer please to DAO.002.06332. It will just take a moment to come up on the screen Mr Dow.

15 WITNESS REFERRED TO DOCUMENT DAO.002.06332

Q. Perhaps while it is coming up, it is a document that is entitled *Corporate Risk Management Policy*. Were you aware of that document?

A. You'd have to refresh my memory.

0933

20 Q. I'll do that in just a moment when it's able to come up on screen. I'm sorry for the slight delay. You'll see it's a document entitled, "Corporate risk management policy." If we move to page 2 just to orient you to the date. In the bottom left-hand corner of page 2 it says that, the next review of the document is scheduled for 30 January 2010. Sorry it's a
25 bit small, a bit hard to see at the bottom left-hand corner?

A. Yeah I see the words yes.

Q. Which would suggest that it is a document that may have been created in 2009 perhaps towards the beginning of the year in 2009.

A. I can't tell from the document when it was created, there's no date on it.

30 Q. Had you seen it before?

A. You know, I can't say that I have, I probably have but I don't remember when it would've been. It looks like a fairly generic document, it also looks like a document for the Chief Executive officer.

5 Q. If we go back to the first page we see that the document deals with a statement of principles, risk management expectations and then towards the bottom of the page, organisational risk management roles and responsibilities?

A. Yeah.

10 Q. And just above the heading, "Risk management expectations," is the statement, "Risk management is the key in how things are done to ensure Pike River Coal's success."

A. Yes.

Q. Was that a view that the board held, that risk management was the key in how things were done at Pike River?

15 A. Yes I would say that was fair.

0936

20 Q. At the bottom of the page under the roles and responsibilities section, the first statement is that, the board of directors is responsible for approving and authorising the policy, then monitoring the management of risks in the company.

A. Yes.

Q. Were those the responsibilities of the board?

A. Yes.

Q. Was this policy approved and authorised by the board?

25 A. It would've been.

Q. When you say, "It would've been," you're just not sure, is that right?

A. Documents like this look as though they would've been approved by the board. I just don't recall them, myriad of other documents, this one particularly.

30 Q. And the function of monitoring the management of risks in the company is a topic that we discussed yesterday.

A. Yes.

Q. But I take it you would accept that it is a function of the board to monitor the management of risk.

A. Monitor the management, yes.

5 Q. If we turn to page 2, at the top of the page one of the responsibilities of the chief executive officer was to oversee the development, administration and annual review of this policy for approval by the board. To your knowledge was there an annual review of the policy by the board?

10 A. I don't recall it being formally reviewed, this particular document, no. I don't recall.

Q. Then the next paragraph deals with responsibilities for the chief executive GMM which I take to be general manager mines?

A. Yes.

15 Q. Chief financial officer and company secretary, they together are said to comprise a risk management committee. Are you aware whether there in fact was a risk management committee within the company?

A. I'm not aware that it was formally organised. Those individual members of staff have each got separate areas of the risk profile or company to manage.

20 Q. Given the board's role in monitoring the management of risks, would it not have been appropriate to ensure that there was a functioning risk management committee?

25 A. The board discharged its obligations in a variety of ways. As I said yesterday there were four committees of the board charged with managing – sorry with monitoring the management of risk. I don't think the addition of an additional risk management committee would've added much to the work that was already being done.

0939

30 Q. If that was a view held by the board that a risk management committee would not have added anything, presumably that is a matter that could have been addressed when this policy was reviewed by the board and approved by the board?

A. It could have been.

Q. It does not appear to have been?

A. You are asking me a hypothetical question but it could have been, yes.

Q. I suppose what I'm asking is whether this document reflected the reality of Pike River or whether it was just a piece of paper?

5 A. The reality of Pike River was that the board had four committees that individually managed the spectrum of risks that the company faced in running its business. That was a reality.

Q. And no risk management committee?

A. I've said that, yes.

10 Q. The fourth bullet point under the responsibilities of the individuals and the committee is to prepare risk reports for their respective areas of responsibility for review by the board on a regular basis.

A. Yes. And I think if you look at the four committees that I mentioned that was done.

15 Q. The specific reference to risk reports for review by the board, did you review any risk reports?

A. Let me give you an example. The audit committee reviews financial risk. Those risks are reported to the board on a regular basis, so the answer is yes that's what the board does. There are a wide variety of
20 risks that are reported to the board. That's an example.

Q. Did the board review any risk reports dealing with matters of operational safety or mining risk?

A. The review of the safety management plan contains the standard operating procedures that reflect the variety of operating risks the
25 company faces. The health and safety committee reviewed those on a regular basis. Remembering also that Mr Ward, the chief executive, was a regular attender at weekly operations meetings on site. They were a member of the board as well as the chief executive was actively involved on a weekly basis in reviewing ongoing operational issues.

30 Q. What appears to be contemplated by this fourth bullet point is that specific risk reports would be prepared for review by the board on a regular basis, not by the committee but by the board. My question is

whether there were any risk reports reviewed by the board dealing with issues of mining safety?

A. I think I've answered the question.

Q. Is the answer no?

5 A. The reviews by the health and safety committee are reported back to the board. That's the purpose of that committee. Opportunities for review of health and safety on site was delegated to that committee.

10 Q. So beyond the activities of the health and safety committee that we have seen, there was no further review of risk reports or indeed any review of risk reports by the board as a whole?

A. The reports to the board were provided by Mr Rockhouse at meetings of the health and safety committee. Those are the reports that I think you're referring to.

15 Q. So your understanding is that the board's mechanism for reviewing operational mining risk was to delegate it to the committee and receive information from Mr Rockhouse, is that what you're saying?

A. On the safety aspects yes, health and safety.

Q. Did the committee at any stage make any recommendations back to the board based on its meetings with Mr Rockhouse or anyone else?

20 A. The minutes of those meetings would indicate whether there were recommendations made. I don't remember any specifically, no.

0944

25 Q. At the bottom of the page there is a statement that unless otherwise noted in the policy any exceptions to the policy require approval of the executive team and these will be reported to the next regularly scheduled meeting of the board, were there any notifications of departure from the policy made to the board?

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

30 Q. Yesterday we discussed the Hawcroft recommendation for a broad-brush risk assessment across the operation and you will recall late yesterday that in answer to one of the questions you said that there had been an earlier broad-brush risk assessment across the entire operation including health and safety?

A. That was my understanding, yes. I think it happened in 2005 before I joined the board.

Q. I just want to go back to what was said about that in the Hawcroft report, so if we go back to DAO.005.04284 at page 94?

5 **WITNESS REFERRED TO DOCUMENT DAO.005.04284**

Q. You'll see in the first paragraph after the heading, "11.1," the second sentence, "A whole of site risk assessment was carried out facilitated by external consultants but his only covers risks associated with the project impact on the environment." I just want to ask you whether that is
10 correct that in fact the broad-brush risk assessment that was carried some years ago was the one carried out by URS which dealt with environment issues?

A. Well reading that I can't tell when the broad-brush risk assessment that they refer to was done.

15 Q. Well if we move to page 31 of the Hawcroft report which dealt with this issue of risk management. You'll see under the heading, "High risk management," the first sentence is, "A broad-brush risk assessment for the operation has not been conducted," and then the mine's response further down in paragraph beginning, "Further, it should be noted that
20 the response following the 2009 report committed to a broad-brush risk assessment as the mine entered the next phase of operations." It goes on to say that, "That exercise will be conducted for the whole operation following the initial extraction of the first panel."

A. I see that, yes.

25 Q. Do you accept that there is no suggestion in the mine's response that Hawcroft had got anything wrong when they said that no broad-brush risk assessment had been carried out for the whole operation yet?

A. I still think it's ambiguous. The knowledge that the response from site
30 indicates that a broad-brush risk assessment of the whole site was contemplated. I don't see that it's clear that the site wide review that I was aware of or had been advised of, that was done in 2005, wasn't a complete review of all of the sites, activities in prospect ahead of the commencement of tunnelling. So it would appear from this report says

that there hadn't been one done since operations commenced, I accept that and it's clear from this report that one was contemplated once the first panel of hydro was completed, which of course wasn't, the completion of the first panel of hydro wasn't.

5 0949

Q. Mr Dow are you saying that there was a broad-brush risk assessment in 2005 that looked at all risks including health and safety and mining risks.

A. By understanding it was done in prospect, it was my understanding.

Q. Did you see that document?

10 A. No.

Q. Where does your understanding come from that such a document exists?

A. I believe I was advised when we were talking about the anticipation of risks that had already been an early review of what those risks might be and in order to plan the sort of things we needed to be prepared for, but I didn't see the document. It was part of understanding work that had been done prior to my joining the board.

15 Q. If such a comprehensive review of the operations risks including safety risks had been conducted in 2005, would you not have wanted to see it.

20 A. No, because the events subsequent to that had overtaken. That's the sort of thing you do as part of a feasibility or pre-feasibility study.

Q. When we looked at this Hawcroft report yesterday you said that you were aware of it, but I think you said that it was the first time you'd actually seen the report yesterday, is that correct?

25 A. That's correct, yes.

Q. When you say you were, "Aware of it," can you just help us with in what sense you were aware of the report?

A. Yes the renewal of the company's annual insurance is a matter that gets reported to the board. It would have been handled by primarily Mr Ward and with the assistance of Mr Whittall the board was aware that the insurance brokers were on site, that they were doing their preparations for the annual renewal of the company's various insurances and that the Hawcroft report would have been a product of that work, which would

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have been a document attached to the proposal to renew the company's business interruption and other insurances. So we were broadly aware that the work was being done. It's a site activity, so the responsibility of site management to do these things. The Chief Executive would've been leading that. So the board would've been informed by him that that was happening. That's how I'm aware of it.

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Q. Did the company's insurance premiums increase following this report?

A. I don't know the details to that. I'm not aware of any change.

Q. And accepting you didn't see the report itself, did you have any briefing on any of the matters raised in the report?

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A. No, I think that this would have been the circumstance where if issues had come out of the insurance review it would have been brought to the board's attention, more for information, but I don't recall any specific concerns that were reported back to the board by management.

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Q. I'll turn now to some of the specific meetings of Health Safety Act environment committee, trying not to repeat any of the detail that was covered yesterday. I don't think you mentioned yesterday the first meeting of the committee on the 26th and 27th of September 2006.

A. I didn't mention that, no.

20

Q. We'll just refer to that very briefly to make sure that the picture is complete. Our record of that meeting is NZOG0049?

WITNESS REFERRED TO DOCUMENT NZOG0049

Q. And we see from those minutes that this was a meeting obviously before you joined the company and those present were Mr Duncan and Mr Meyer?

25

A. Yes, that's what I understand.

Q. If we look on page 3 half-way down the page there's a reference to a question having been asked about steps taken to develop an occupational health and safety culture for Pike River, and that this was being promoted through a variety of means.

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A. Yes I see that.

0954

Q. Was that interest in the occupational health and safety culture of Pike River something that continued during your membership of the committee?

5 A. No, culture is something that you develop, you don't set out specifically to develop a culture, you set out to do things that make sense. Culture is what follows.

Q. Can you tell us then what your understanding of an occupational health and safety for Pike River is, or at least what it would be hoped to be?

10 A. Yes. It's at a variety of levels, it's making sure your staff are appropriately trained. It's making sure that management fully embraces the principles and the spirit of safety first. It means walking the talk. It means culture comes from what leaders of the company do.

Q. Was the health, safety and environment committee interested to know whether such a culture in fact existed at Pike?

15 A. I don't think you set out to look for a culture. You set out to set an example. You set out to make sure that people are well trained with the appropriately trained people that are in place. You don't set out to develop a culture. A culture is what comes from what you do.

20 Q. Was the committee interested to take any steps to assess the state of the culture?

25 A. Again, the evidence of the existence of a culture or the absence of it, is a function of other sites. If the safety record for example deteriorated, you might say, "Why is that? Do we have the appropriate safety steps in place?" That might be evidence of a diminution of a culture, but the culture is how you describe the outcomes. You don't set out to look for or create the culture and you don't really set out to measure it. You measure other things and whether there is or isn't a culture comes as a consequence of your interpretation of that information, or would be in my opinion.

30 Q. You will have heard Mr Houlden's evidence yesterday?

A. Mhm.

Q. What was your reaction to the things he said about his experiences at Pike?

A. Which particular experiences would you like me to comment on?

Q. He gave a description of what could broadly be termed the culture at Pike in terms of the – a range of different aspects of that culture. As a member of the health, safety and environment committee, were there
5 any aspects of his evidence that you had any response to?

A. No. He described a very careful learning process in the UK and compared that to what he found in New Zealand, but I didn't think the comparisons were direct enough to warrant a comment that you're seeking now. If you'd like to refer me to something specific I'll have a go
10 at responding to it.

Q. At any stage did the committee contemplate a process that would have seen those at the mine interviewed or spoken to about the safety culture in the mine?

A. Not necessarily. If you were concerned then that might be an issue to
15 ask the question, but if you're not concerned there wouldn't be the need to answer the question. I did testify yesterday that when Mr McCracken raised the question of some cultural issues that I immediately took follow-up action to find out what that was about. But that was the only time anybody had raised a question of culture or perhaps a difficult
20 aspect of it.

Q. That was of course the process that resulted in Mr Stewart carrying out his inspections or audits at Pike, is that right?

A. That's right yes.

Q. Did the committee receive the reports prepared by Mr Stewart?

25 A. No.

Q. Why not?

A. Mr Stewart was engaged to help the management team deal with the issues. He was engaged by them, the reports went to them. I didn't consider that it was necessary for them to come to me as well and
30 Mr Stewart testified that he didn't expect them to come to me either. I had a subsequent oral conversation with him to ask how it had gone, but his reports were to management. as management had engaged him. I prompted it, they employed him.

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Q. You said a moment ago that Mr McCracken had raised questions about cultural issues at Pike?

A. Yes.

5 Q. Was that not a prompting that might have led the committee to seek a report in any form dealing with the culture, the safety culture at Pike?

A. No, I don't believe Mr McCracken was referring to safety culture. He was referring to the fact that we had staff from different ethnic backgrounds and different mining experiences and so it was a cultural
10 issue on a nationality basis not a safety culture.

Q. So I take it for whatever reason the bottom line is that the committee did not seek or receive any feedback on the safety culture at the mine?

A. No.

Q. The next three meetings of the health, safety and environment committee, if the six monthly minimum schedule had been followed,
15 would have been March '07, September '07 and March '08, is that correct?

A. Do you mean following on from the first meeting in September '06, yes.

Q. And you've told us yesterday about a visit in 2007 to regulatory
20 agencies here in Greymouth?

A. Mhm, that's right.

Q. But no minutes were taken or?

A. No formal minutes no. It was a field trip by the health, safety and environment committee rather than the formal, formally convened
25 meeting.

Q. So on one view, the next three meetings of the health, safety and environment committee did not happen?

A. On that view, yes.

Q. And to be fair, you explained yesterday that part of the reasoning for that was that the project largely consisted of a tunnel project and
30 McConnell Dowell were clearly very heavily involved in that?

A. That's correct. They had site responsibility for it.

Q. With the benefit of hindsight do you think that the health, safety and environment committee should have kept to its minimum six monthly cycle?

A. No.

5 Q. Do you not think that there would have been valuable work for the committee to have done during that period when the project was experiencing delays in making sure that the health and safety systems for Pike River were being set up with the appropriate resources and structure?

10 A. It might have been but at the time it was judged that the first meeting needed to happen before we were making the transition to site control.

Q. If those meetings had occurred the committee would have been better placed, do you agree, to make an assessment of the appropriate level of resources for the health and safety department of Pike River?

15 A. No, I don't agree with that.

Q. It would also perhaps Mr Dow have been a visible commitment by the board to health and safety issues at the mine?

A. It might have been but the judgement at the time was not that.

20 Q. But even with the benefit of hindsight you don't think that there was any point of having a meeting?

A. No.

25 Q. The next two meetings have already been covered. I won't go over them again. They were the 11th of September '08 and the 26th of March '09, but you may just be able to help us clear up something about the next meeting on 5 October 2009. If we could look at DAO.007.11909. Is it the case that the minutes for that October '09 meeting were created in April 2011? Sorry, the email I was wanting to refer to is DAO.007.11902.

WITNESS REFERRED TO DOCUMENT DAO.007.11902

30 1005

Q. This is an email from you to Mr Whittall on the 8th of April 2011 attaching draft minutes of the 5 October '09 health and safety environment

committee meeting. Can you just help us with why it was that the minutes for that October 2009 meeting were created in April 2011?

A. Well it would appear from the email that the original had got lost and they've had to be re-created. That's what it appears from this email.

5 Q. Were you the person who created those minutes in April this year?

A. I was the secretary of the committee and created the minutes, yes.

Q. Tell us about how you went about doing that?

A. I made extensive notes during the committee meetings.

10 Q. Were those notes kept for all of the various committee meetings or just this particular meeting in October '09?

A. No, they were kept for all meetings.

Q. Do you know whether those original notes have been produced to the Commission?

15 A. I don't know, I'd seek guidance on that. I imagine they – if they haven't been, they could be, I don't know. There's a lot of documents been submitted to the Commission, all kinds of stuff. I'd have to ask my lawyer.

Q. There's no reason why those original notes can't be produced to the Commission?

20 A. No I don't see any reason why not, no.

25 Q. There is a matter that arose yesterday, the reason I'm asking this is that there is a difference between two versions of these minutes that we have received and if we could have the two different versions side by side, they're DAO.007.11909 and DAO.020.00004 and the difference as emerged yesterday is just on the question of whether Mr Rockhouse was or was not present at the meeting.

WITNESS REFERRED TO DOCUMENT DAO.007.11909/DAO.020.00004

Q. Are you able to help us with why there is that difference between the two versions?

30 A. No I'd have to look at them in detail. Just looking at them on the screen I can't tell you why there's a difference. The wording looks the same but I don't know the answer to that question.

Q. Do you know at whose instigation the status of Mr Rockhouse was changed from someone at the meeting to giving apologies?

A. Sorry I'm not sure what the question was.

5 Q. Do you know why Mr Rockhouse is shown on one version as being there and on the other version as not being there?

A. No, no I can't enlighten you there.

Q. If we turn to the second page of the document on the left of the screen, the DAO.00711909, the second page, at the top of the page the numbered list items 7 and 8 relate to secondary egress from the mine.

10 A. Yes.

1010

Q. I think yesterday you said you couldn't recall any discussion on those two issues?

A. I'm reminded.

15 Q. Can you tell us whether the health safety and environment committee was interested in the second egress?

A. Yes.

Q. At any stage did you consider receiving advice as to whether the mine complied with the requirements in terms of the secondary egress?

20 A. I recall, as I recall we were advised that the secondary egress plans did comply. We were advised that the Department of Labour inspectors had been to site. My recollection is that this was a question that the committee had considered and that we'd been assured that the plans the company had were compliant and I think we've had testimony to that
25 affect already at this Commission.

Q. Who gave you that assurance, or who told you that?

A. It would have come from site management, probably Mr Whittall. I don't remember exactly who, but it would have been management report to the committee at this meeting.

30 Q. It doesn't appear to be any record in any of the minutes of that issue. Are you aware of any record of discussion about the inspectorate's view of the secondary egress?

A. I'm aware of it, yes.

Q. Is there any record?

A. I don't know. I believe there was testimony to that affect earlier in the Commission.

5 Q. Yes, I'm not asking about the evidence in the Commission, rather about the approach that committee took to this issue. Did the committee consider seeking a formal view from the Department of Labour about the secondary egress?

A. No

Q. Or any other external advice about the appropriateness of that egress?

10 A. No.

Q. The next scheduled meeting for the committee would have been March 2010 if the six month minimum was being observed, is that right?

A. Yes.

Q. But there was no meeting in the first half of 2010 was there?

15 A. That's correct.

Q. Why not?

A. As I testified yesterday, the board of Pike was taking increasing interest in the issues of health and safety and environment, in its regular monthly board meetings and the issues that the health and safety committee would perhaps have considered were being considered by the whole board on a much more regular basis than every six months.

20

Q. Of course that's not the process that the charter set out and required the committee to follow is it?

A. No, that's right.

25 Q. Is there any record of a formal decision by the board to depart from the process in the charter of six monthly meeting?

A. No, there's not.

Q. The next time that these matters were separately dealt with was at the meeting on the 15th of November 2010, correct?

30 A. That's right.

Q. And we have the minutes of that meeting at DAO.015.02544.

WITNESS REFERRED TO DOCUMENT DAO.015.02544

Q. And just if we look at the first page of those minutes there is one matter that you said yesterday and it may have just been a slip of the tongue, but you were asked about the process at meetings and you said at page 3902 that, "It's become international best practice for mining companies...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 its board meetings and its operations reports in that way."

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A. I said that, that's right.

Q. There's no doubt Mr Dow that safety was the first item on the operations report, you saw that yesterday?

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A. Yes.

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Q. There's no doubt Mr Dow that safety was the first item in the operations report, we saw that yesterday?

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A. Yes.

Q. But it's not the case, is it, that the board considered safety issues of the first item of the board agenda, is it?

A. The first item on the board agenda was usually the approval of the minutes of the previous meeting. The first substantive item on the agenda was usually the operations report and the first matter in that report was health and safety. It was a practice, it wasn't an inviolable rule.

20

Q. Perhaps if we just take a look at six consecutive board reports and their agendas, just to check and we won't go through this in detail, but just very quickly. If we begin with DAO.007.25280.

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WITNESS REFERRED TO DOCUMENT DAO.007.25280

Q. This is August '09 and it seems that the first issues were financing, coal sales contracts and then mine development and if we look at the next DAO.007.25394.

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WITNESS REFERRED TO DOCUMENT DAO.007.25394

Q. September '09, first item is debt financing.

WITNESS REFERRED TO DOCUMENT DAO.007.25920

Q. November '09, equity funding was the first item.

WITNESS REFERRED TO DOCUMENT DAO.007.26087

Q. December '09, continuous miners and then funding.

WITNESS REFERRED TO DOCUMENT DAO.007.26275

Q. Funding again first item on the agenda.

5 **WITNESS REFERRED TO DOCUMENT DAO.007.26498**

Q. First item, fund raising. Now those were literally plucked out at random Mr Dow to look at six consecutive board meetings. It's certainly not the case that safety was the first item on the board agenda, is it?

A. Safety was the first item on the operations report.

10 Q. Correct.

A. It would be interesting to see where the operations report came in those agendas, but yes, health and safety was the first item in the operations report and obviously in these meetings there were other things that were considered before the operations report. The important thing I think to see is what else was on those agendas and that in fact health and safety was appropriately considered. I can see that in those meetings other things may have been considered first on those occasions.

15

Q. If we turn to the consideration given to health and safety on the 15th of November last year, it's dealt with on page 3 of the minutes DAO.015.02544.

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WITNESS REFERRED TO DOCUMENT DAO.015.02544

Q. The first paragraph records a statement from you that it was timely to focus on the health, safety and environment section of the operations report, why was it timely, at that point on the 15th of November, to focus on that?

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A. Well I think the reference to timeliness is that this particular board meeting would spend more time on those issues than would otherwise be the case and because we were at the point where the hydromining had just started and there were other issues relating to the commencement of the mining method that would ultimately be Pike's main mining method. The board focussed on those issues and particularly issues around the gas monitoring and management.

30

Q. With the benefit of hindsight, would it not have been timely to focus on health and safety issues before hydromining began, rather than after?

5 A. Well there was – there clearly was a focus on those issues at earlier board meetings. This particular meeting was focusing on gas monitoring and management. It was a more specific focus on a piece of it.

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10 Q. The second paragraph records Mr White's comments that from a mining perspective risk mitigation practices were very advanced, following Queensland recommendations rather than New Zealand, that Queensland being more stringent. Had the board or committee known about that decision to follow Queensland recommendations before this meeting?

15 A. It wasn't a question of following Queensland recommendations per se. Mr White's experiences of deputy chief inspector of mines in Queensland meant that he was very informed on the way mines were regulated there and I think his view was that there were some aspects of the New Zealand regulations that were not as stringent as they were in Queensland and he was setting higher standards. It wasn't a question
20 of deviating from New Zealand's standards except where it was to make things better and I think that's a laudable decision for him to have taken too.

Q. Was this the first time that the committee had been advised of any decision to follow Queensland recommendations?

25 A. No, there had been general conversations about it on previous occasions.

Q. When?

A. On visits to the mine site, informal comments about the standards here and the standards in Queensland.

30 Q. Did you at any stage ask for details as to which aspects of Queensland practice were being adopted at the mine?

A. No. Mr White was an expert. I couldn't second-guess his decisions there. He was after all the deputy chief inspector of mines in Queensland or had been.

5 Q. Half way down the page there's a record of a question you appear to have asked. Mr Dow asked, "What was done to give the workforce confidence and knowledge of what to do in emergency conditions?" and Mr White advised, "That frequent desktop exercises were undertaken, aimed at providing and understanding of the hazards." What use would desktop exercises be to men underground?

10 A. Well it helps them to understand what they're supposed to do, were to teach and train.

Q. Did you have any understanding of what was done to communicate to the men underground the results of any desktop exercises?

A. Not in detail, no. That would be a task for the site management team.

15 Q. In terms of the assertion that risk mitigation practices were very well advanced, did the committee do anything to actually see for itself?

A. No. As I said several times, Mr White was our resident expert. I think we took his views there at face value.

20 Q. I want to take you now to a risk assessment document to ask you whether, in your view, it met the standards that you would expect to have seen at Pike. This risk assessment is DAO.01123424.

WITNESS REFERRED TO DOCUMENT DAO.01123424

25 Q. You'll see that it's dated the 7th of September 2010, 12 days before hydromining commenced at Pike, dealing with the topics of ventilation and gas monitoring. Obviously you would agree this is a very important risk assessment?

A. Yes.

Q. Have you seen it before?

A. No.

30 Q. Is it not the type of risk assessment that the committee should have seen?

A. No.

1025

- Q. If we move to page 2 we can see that the objectives and scope of the exercise were to identify the hazards that might be presented in ventilation and gas management in the mine and to identify and implement required controls and also to look at ventilation structures in the development of hydro-panels, and there are a list of participants. You'll notice that Mr Nishioka's name is not there as having participated in the risk assessment. Given that he was at Pike at the time would have expected that he would've been involved in this?
- 5
- A. Not necessarily.
- 10 Q. And there's no indication on this document that the risk assessment was externally facilitated by someone with particular experience in that?
- A. It does not appear to be the case.
- Q. If we turn to page 12 we see the risk assessment matrix and then on the next page there's a risk assessment action plan. Would it be your expectation that following a risk assessment there would be an action plan identifying particular steps to be taken?
- 15
- A. I'm not familiar in detail with the process so I can't really comment.
- Q. Was it not a matter of interest to the committee to be familiar with the risk assessment process?
- 20 A. No these are site related activities. Management on site undertake these risk assessments, they undertake them, they know how to do them, they prepare these assessments. This is entirely consistent with the responsibility for site management to manage the operations and to manage the hazards and the risks associated. The board and the health and safety committee does not get involved in this level of detail on site.
- 25
- Q. If you turn to page 16 of the document you will see a final approval process and a section to deal with unresolved matters. Would it be your expectation that a risk assessment of this importance would be approved any unresolved matters would be recorded?
- 30
- A. It would be my expectation just looking at it from a common sense perspective, but as I've said this is not something that I was directly involved with, the board would not be directly involved with. I can't offer

anything more than that. I think you're asking me something that's way too close to the details for the board to have been expected to have been involved with.

5 Q. The next page, "Management verification," again would it be your expectation on the committee that there would have been verification as stated in the document that, "The risk assessment was acceptable, achievable and sustainable."

A. Oh those are worthy goals, absolutely.

10 Q. Is it at all concerning to you that those sections do not appear to have been completed in this document?

A. Without knowing how the documents were prepared and what other things were still underway, I can't express an opinion on it. You're asking me to comment about something that I had no direct involvement with.

15 Q. I'll just quickly turn to two particular matters in the assessment without wanting to get too much into the detail, but if we look on page 4 towards the bottom of the page, one of the hazards identified was methane outbursts, do you see that?

A. Yes.

20 Q. And do you understand what methane outburst is?

A. Broadly, yes.

Q. You'll see that the existing control referred to was propensity testing.

A. Yes I see that.

25 Q. Were you aware of any reports received at the mine dealing with the topic of outburst potential and propensity testing?

A. No.

1030

Q. If we can look at document DAO.001.04909.

WITNESS REFERRED TO DOCUMENT DAO.001.04909

30 Q. This is a report from Drive Mining Limited, dated 22 July 2010. Gas Management Primary Report. Were you aware of this report having been received?

A. This particular report, no. I was aware that the company had engaged external consultants for these kinds of gas management evaluations and guidance. This particular report no, but broadly I was aware that we had engaged external consultants.

5 Q. Would it not have been appropriate for the health and safety committee to see an external report on a topic as important as gas management at Pike?

A. I don't believe so.

10 Q. If we turn to page 28 of that document, it deals with the topic of outburst coring, and the report writer says that, "A recent core sample has highlighted the need to understand the outburst properties that are seen." And it's noted that, "The result of particular sample falls just below the outburst threshold for the renowned bulli seam in Australia." And then in the second paragraph it's noted, "If ever the DRI900 limit is
15 exceeded then development must not mine this area until drainage has occurred and a new core sample has been taken and found to be below this value. As Pike River is approaching outburst threshold limits additional drilling should be conducted." Were you aware of that series of comments made in the report in July 2010?

20 A. No.

Q. Should you have been?

A. No, I think the recommendation to management is clear. The recommendation for what should be done is clear and the recommendation is to site management to take action.

25 Q. If we look at DAO.001.04870.

WITNESS REFERRED TO DOCUMENT DAO.001.04870

Q. And this is a follow up report dated 20 September 2010, Gas Management Primary Report Number 2, were you made aware of this report?

30 A. No.

Q. If we turn to page 11 and the heading number 17, Outburst Management, perhaps if we zoom in on that. The comment was made, "In September 2010 this topic is still of great concern. There has been

no outburst threshold value set for this mine. Ongoing coring and data transfer with geo gas is a must. It is impossible to estimate what the DRI900 level will be. Once the labs are reporting the DRI900 level correctly then an outburst management plan can be created. The final value could lay between 6 and 10.5. The recent 8.3 alongside panel 1 was of concern.” Were you made aware of those comments in September 2010?

A. No, I was not.

Q. Given that the report writer was referring to matters that had been raised in July, and still referred to as of great concern in September 2010 relating to outburst management do you not think the Health Safety and Environment committee should have been made aware of these comments?

A. No, again as I said before, the reports are to executive management highlighting issues to be dealt with by the management team.

Q. If we come back to the risk assessment, we were looking at a moment ago DAO.011.23424 at page 4.

WITNESS REFERRED TO DOCUMENT DAO.011.23424

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Q. This was the September risk assessment dealing with ventilation and gas monitoring. When we look at the identified hazard of methane outbursts and the existing control of propensity testing, having seen what the external consultants were saying about outburst management, is it your view that this risk assessment did not appropriately deal with that topic?

A. I'm not qualified to answer that question Mr Mount. You're asking me about technical details that are outside my area of expertise.

Q. If you had been aware of these matters at the time, would you have sought further steps to be taken by management on this issue?

A. If management weren't dealing with it, if management weren't taking the steps that were recommended and I was aware of that; that would be one thing. But as I've said, the reports are to management, they're recommendations for what management should do and at the point of

these reports being prepared I see no evidence that management was not doing what had been recommended by their consultant.

5 Q. If we look at the previous page on this risk assessment and I'm not going to go through it line-by-line or anything like that. The last matter on page 3 of the risk assessment is dealing with the hazard of – is dealing with the topic of inundation of peoples by gas. And do you see that the existing control identified begins with ventilation?

A. Yes I see that.

10 Q. Have you seen the document that has been displayed in this Commission CAC0112 showing repeated spikes of methane in the ventilation system during the month of October 2010?

A. I've heard it described, I haven't seen the document.

Q. Were you aware that there were frequent spikes of methane in the ventilation return?

15 A. I was aware of it from testimony, but not before that. From other people's testimony.

Q. Had the health, safety and environment committee taken any steps to assure itself that the ventilation system was in fact operating correctly?

A. Not independently of reports from management, no.

20 Q. Another existing control identified for the risk of inundation of peoples by gas was the windblast risk assessment and low probability of windblast. Did the committee take any steps to assure itself about the level of risk of windblast?

A. Not separately from comments from management, no.

25 Q. Was it considered important?

A. I imagine management considered it to be important. There were a lot of things that the committee was reviewing, but the issues of importance were the things that were reported by management.

1040

30 Q. Given your comment at the 15 November meeting, that it was timely focus on health and safety issues. Would it not have been appropriate for the committee to see a document like this risk assessment?

- 5 A. I think the issue was to have the site management explain to the board what steps they were taking to appropriately manage, monitor and mitigate these risks. The opportunity was there if the management team had concerns about their ability to handle it. To raise those issues with the board, but in fact you'll see from those minutes that no such concern was raised. In fact, Mr White considered the issues to be under control. I forget the exact words he used but it's pretty clear from the minutes that he was comfortable that the issues appeared to be under control and the opportunity for him to report areas of his concern would have been at that meeting. It wasn't the obligation of the board to probe into matters of high technical detail. The opportunity was for him to report what steps he'd taken and to reassure the board that he had the management, monitoring and mitigation of gas under control. Those are the questions that the board asked Mr White and the minutes record his replies.
- 10
- 15 Q. Yesterday you accepted that the board had some responsibility to verify that appropriate steps had been taken by management?
- A. Yes.
- 20 Q. Given that it's appropriate for the board or for the committee to verify that the appropriate steps had been taken, do you not think it would have been desirable to see some of the key documents like that risk assessment?
- A. No I don't think so.
- 25 Q. Is it not itself problematic to rely on an oral assurance at a full board meeting from Mr White without asking to see any of the underlying documents?
- A. No. As I've said several times, Mr White was our resident expert. He knew more about that than anybody on the board and it was appropriate for us to ask the question and it was up to the board to judge whether an oral reply was sufficient or not and I think the board would have been comforted by Mr White's responses.
- 30 Q. I want to ask you now about certain particular risks at Pike and the committee's approach to them, and the first develops the topic we've

been talking about, ventilation. If we can look very quickly at the ventilation management plan, DAO.02500595.

WITNESS REFERRED TO DOCUMENT DAO.02500595

5 Q. This is a document dated 2008. Was that ever seen by the committee or the board?

A. I don't know to what extent other directors might have seen it, but no it wasn't normally the sort of document that would get circulated to directors.

Q. Did you see it at any stage?

10 A. I really don't recall. I saw a lot of documents with cover pages like that. Don't remember this one specifically. I may have.

Q. It is a very comprehensive document, stretching to 79 pages and dealing comprehensively with the topic of ventilation at Pike. Would you agree that it's an important document as Pike risk management at the mine?

15 A. Yes. Yes.

Q. There was a requirement on page 54 of the management plan for the mine manager to appoint a ventilation engineer to carry out the requirements of the plan. Were you aware of Pike's documented requirement for a ventilation engineer to be appointed?

20 A. I wasn't aware of a documented requirement but I was aware that we had one, that is a ventilation engineer, as opposed to a requirement.

Q. Who in your view was the ventilation engineer?

A. Mr White was acting in that capacity.

25 1045

Q. If we turn to pages 56 and 57, we'll see some of the requirements for the ventilation engineer including at paragraph 104, "An annual ventilation audit," and at 106, "Ensuring that all remote monitoring systems are marked on the ventilation plan and updated at regular intervals," 117, "Preparing a report and submitting it to the mine manager detailing any defects or causes for concern with the ventilation structures." And the further on at 146, "A requirement to prepare a weekly ventilation report detailing all ventilation incidents, the

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performance of the gas drainage system and gas chromatograph readings.” So quite a comprehensive series of requirements on the ventilation in general?

A. Yeah, I see those words, yes.

5 Q. One method for the health and safety committee to have monitored risk at Pike would have been to ask to see those weekly reports and evidence of the other matters dealt with in the ventilation management plan, correct?

A. That’s one of the things yes that could've been done.

10 Q. Was that considered?

A. No.

Q. Why not?

A. Well reading the paragraphs that you've just referred to, these are internal onsite activities by the ventilation engineer and requirements for him to report to the mine manager and these are examples of onsite activities. There will be dozens of these kinds of things that happen on a daily basis on the mine site.

Q. Were you aware that the ventilation management plan required Pike to have a tube-bundle system?

20 A. I wasn't aware that it required it, I know that there was a plan to install one.

Q. Was it a matter of interest to the committee whether Pike in fact had the monitoring system that was required in the ventilation management plan?

25 A. You'd have to remind me when it was required to being introduced.

Q. Well if we look at pages 33 to 35, on page 33 paragraph 6.1, “It appears to be contemplated that this was something – sorry if we look at 6.1 page 33, “It was contemplated that this was something that did exist at Pike,” in other words that it was an immediate feature of the system at Pike?”

30

A. Where does it say that?

Q. 6.1, the last sentence, "The primary RAMS, which is remote atmospheric monitoring systems, are a tube-bundle system and a real time monitoring system."

5 A. Yes I see that and the real time monitoring system had been installed and my understanding was that the tube-bundling system was the Rider for in the 2010/2011 capital budget.

Q. If we turn to page 35 and under 6.3.2, it was said, "The real time monitoring system shall operate continuously." So do you agree Mr Dow that the plan appears to contemplate that tube-bundling is a requirement and shall operate continuously?

10 A. The paragraph you referred me to is the real time monitoring system, not the tube-bundling system.

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Q. My apologies if that's my mistake Mr Dow. I think you are correct about that. If we go back to 6.2 the tube-bundle system on page 34, at the top of page 34, paragraph 6.2.1.1 "The tube-bundle system shall operate continuously."

15 A. Yes I see that.

Q. So do you agree that the report does contemplate that both tube-bundle is a feature of the Pike system and that it shall operate continuously?

20 A. Yes I accept that and as I say the plan for the introduction of tube-bundling was part of the 2010/2011 capital budget. The tube-bundling system was planned to be installed in the second half of that financial year. it might've had a real-time monitoring system that was installed at the beginning and the tube-bundling system was not far away from being added to the system which existed. I should also add that Pike's mine was at a very early stage of development and the real benefits of tube-bundling would come when the mine had greater complexity and roadway development. From what I understand.

25 30 Q. If we look at page 2 of this document we will see that it was signed off in November 2008.

A. Yes I see that.

Q. Was the committee aware that requirements of a plan signed off in 2008 had not yet been implemented in 2010?

A. Not the specific things that you've referred to, but the committee was aware that the tube-bundling system was coming.

5 Q. In hindsight, do you accept that the committee should have exercised supervision to make sure that the things reflected in the written policy were in fact happening at Pike?

A. No I don't accept that.

10 Q. If we move on to gas monitoring, we've referred already to Mr Stewart's audits underground in 2010 and you've told us that you didn't receive his reports, but I want to refer to two of the matters he identified in February 2010. If we can look at STE0004, page 3.

WITNESS REFERRED TO DOCUMENT STE0004

15 Q. Top left-hand box, "Real-time and remote monitoring sensors are generally inadequately located around the mine to continuously monitor the air entering and leaving working places and sections. Would you expect that observation to have been drawn to your attention on the committee?

20 A. No I had a follow up, oral conversation, with Mr Stewart in I think it was May 2010 and asked how his work had gone at Pike and were there any issues and he didn't raise any concerns that he had with me then. This is a report to site management, these are issues for site management to deal with. As I've said on a number of occasions, not appropriate in my view for these things to be coming to the board.

25 Q. Page 4 of this document, the third box down, "Remote monitoring needs more strategically placed sensor locations to ensure this regulation relating to underground atmospheric monitoring is complied with at all times, particularly relating to spontaneous combustion and early detection." I take it your answer is the same, you weren't aware of this and you don't think you should have been?

30 A. No, as I say, no I do not think it's something that should've communication to the board. These are sensible recommendations,

shows Mr Stewart's experience. They're recommendations to site management to deal with.

Q. The next risk I want to ask you about is, the risk that arose from this mine being a single entry drift or a single drift.

5 A. Yes.

1055

Q. Was it the view of the health safety and environment committee that Pike should prioritise development to a second egress to achieve that as soon as possible?

10 A. Yes, and I believe that was what was going to happen.

Q. I'm not sure if you would have had an opportunity to see Mr Cave's statement to the Commission, CAV004 at page 23?

WITNESS REFERRED TO DOCUMENT CAV004

15 Q. Where in paragraph 81 his analysis he says establishes that, "Pike could have reached the second egress prior to November 2010 if the company had focused in accessing the trial mining panel rather than put in the roadways required for maximising early extraction."

A. I see that paragraph yes.

20 Q. At any stage did the board or the committee undertake an analysis of the effect on development to a second egress of commencing extraction from the bridging panel?

25 A. What Pike was doing was both things at once. Where we were working on the extraction panel and we were working on driving roadways out towards the area where the long-term secondary egress would eventually be developed. It wasn't a case of one or the other, they were both being done.

Q. Did the board or the committee call for any analysis to assure the committee or board that focusing on the bridging panel would not detract from the project of creating a second egress?

30 A. Not specifically, no.

Q. Are you in any position one way or another to comment on Mr Cave's analysis in paragraph 81 of his statement?

A. No, he's expressed an opinion. It's easy to express an opinion.

Q. The next specific risk I want to ask you about is the risk of an underground explosion. Did the board or the committee ever call for a specific risk analysis on the risk of underground explosion of Pike?

A. You mean a catastrophic explosion?

5 Q. Yes.

A. Not specifically. I think the board was keenly aware that the management of methane underground is a principal hazard in coal mines, has been ever since men went underground. The risk management and mitigation processes in place were focused with that as a primary understanding. It's a risk that's ever present every day.

10

Q. In hind sight would it have been desirable for the board to have called for a specific risk assessment of the risk of underground explosion?

A. I don't think in addition to all the other steps that were being taken, no.

Q. To what extent did the board consider the risk of underground explosion was something that could happen at Pike?

15

A. That's a very difficult question to answer. When you've got a methane, an environment producing methane all the time, and the priority at all times is to monitor and manage it. I mean that's what people do every day.

20

Q. Was there a specific management plan to deal with the risk of underground explosion?

A. A specific plan dealing with catastrophic explosion, I don't know, I don't believe so.

Q. The next topic is the underground fan. Are you aware of any other mines in the world where the main fan is located underground?

25

A. I'm not aware, no.

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Q. Given how unusual it is to have a main fan underground, what consideration did the board give or the health, safety and environment committee give to particular consideration of the risks that would create?

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A. Well, it's an assertion that you make that it's unusual but I'll accept it, and the question then was how can the fan and its location be in a proposition but itself doesn't contribute to additional risk, and if you look

at the design of the fan and this was made, explained to the committee on a number of occasions, the electrical parts of the fan are sealed from the return airways so that effectively the fan is flameproof as I understand its design.

5 Q. Was it your understanding that the underground fan was flameproof?

A. Designed in a way that separated the electrical part of the fan from the return airways.

Q. Was it a matter of particular concern for the committee to review the risks associated with having a main fan underground?

10 A. Not specifically. The question obviously arose. It was probably in a board meeting rather than in the health and safety committee meeting. I remember conversations about the design of the fan and why it was located where it was and steps that had been taken to have been, to isolate the electrical and mechanical parts of the fan from the airways and for obvious reasons, but beyond that this was a matter of design,
15 installation and safety.

Q. The last specific risk I want to ask you about is the set of risks that arise from hydromining. Was the committee aware that the commencement of hydromining even on a trial basis, would generate a particular set of
20 risks needing to be managed?

A. Yes. Broadly aware with the change of mining technique. You've got a change in risks to be managed, yes.

Q. Did the committee insist on any process to ensure that this new activity could be commenced safely?

25 A. The committee didn't insist on it but site management did.

Q. If I can show you another document, DAO.00308875, Operation preparedness gap analysis.

WITNESS REFERRED TO DOCUMENT DAO.00308875

Q. Have you seen this before?

30 A. No.

Q. It's not dated but appears from various entries on it to have been generated around mid-August 2010, and to identify a number of steps that need to be undertaken prior to hydromining?

A. Yes.

Q. Again I take it that in your view that is not the sort of matter that you would expect the committee to be aware of?

5 A. No. You can see the people that are assigned to follow up, they are all site-based people, they're all operations people.

Q. And I take it your view of the committee's oversight function is that it does not extend to reviewing any matters of this sort?

A. Not to this level of detail, no.

10 Q. We'll turn to a new topic now, which is the reporting to the health and safety committee and the appropriate metrics or appropriate indicators to be reported to them, to the committee?

A. Yes.

Q. You will be aware of Dr Callaghan's evidence to the Commission?

A. Yes, broadly aware.

15 Q. I want to refer briefly to one of the papers that she attached to her statement, FAM0004208, which is a paper developing process safety indicators produced in the United Kingdom. Are you aware of this document or aware of the matters it discusses at all?

A. I'm not aware of this particular document.

20 1105

Q. Are you aware of the term, "Process safety."

A. Process safety, not specifically.

25 Q. If we can just look at a couple of paragraphs from the paper to get a flavour of the recommendations I want to ask you about the extent to which your committee considered these matters. On page 5 of the document paragraph 4 it is said, "Too many organisations rely heavily on failure data to monitor performance. The consequence of this is that improvements or changes are only determined after something has gone wrong. Often the difference between whether a system failure results in minor or catastrophic outcome is purely down to chance. Effective management of major hazards requires a proactive approach to risk management so information to confirm critical systems are operating as intended is essential. Switching the emphasis of leading

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indicators to confirm that risk controls continue to operate is an important step in the management of major risk hazards.”

A. Yes I see that paragraph.

Q. Do you agree with that?

5 A. There's a lot of sense in the statement.

Q. Did the committee at any stage turn its mind to the question whether it was receiving the right information that would allow it to be satisfied of the level of risk at the mine?

10 A. Are you asking whether or not we thought the metrics that were being reported were acceptable or adequate?

Q. Well did the committee turn its mind to what information it needed in order to be satisfied about the level of risk?

15 A. I think the measurement of lag indicators as I testified yesterday was a set of metrics that the committee considered were appropriate to the circumstances. The committee was aware of the other lead indicators in health and safety that can be employed but I think the committee's view was that measuring lag indicators gave us a better sense of what was happening. You can do all kinds of lead indicator measurements but at the end of the day you still have to measure what actually happened and so lag indicators are important. I think the committee was comfortable that the metrics that we were getting were appropriate for the circumstances.

20 Q. If we perhaps zoom in on the next paragraph, paragraph 5 and I won't read it all out but you will see the opinion of the report writers that directors and senior managers need to monitor the effectiveness of internal controls.

25 A. I see that yes.

30 Q. And further on, “Many organisations don't have good information to show how well they are managing major hazard risks because information tends to be limited to measuring failures. Discovering weaknesses by having a major incident is too late and too costly.” The emphasis in this report is on directors and senior managers knowing that process risks are effectively controlled in advance.

A. I see that yes.

Q. Had the committee turned its mind to those issues?

A. Not specifically, no.

5 Q. In reading the statement now and with the benefit of hindsight, do you think the committee would have benefited from a greater approach on process safety as it is described in this document?

1110

10 A. No, hindsight's a wonderful thing. No I, you know, the committee did – took steps, made decisions, acted according to best information at the time. I think it's very easy to look back in hindsight and I'm sure that it helps much.

15 Q. If I could just refer you to page 12 of the document, paragraph 29 at the bottom of the page, there's specific reference to directors and senior managers. The active control of business risks by directors and senior managers is an essential part of corporate governance. Now we have discussed at some length the split between governance and management functions, but I'm just interested before the break to ask you whether, again with the benefit of hindsight, the Pike experience would indicate to you that greater oversight by the directors would have
20 been desirable?

25 A. You can always improve your performance, but I look at these things in the context of what happened at the time and the information that was available at the time. This is a statement that I wouldn't disagree with and I think that having directors and senior managers actively control business risks is exactly what business requires and I would suggest that that was what Pike was doing.

COMMISSION ADJOURNS: 11.12 AM

COMMISSION RESUMES: 11.30 AM**CROSS-EXAMINATION CONTINUES: MR MOUNT**

5 Q. Mr Dow I would like to ask you about some indicators that the health and safety committee could have asked for. Did you ask for any information to reassure you that the gas monitoring system was correctly operating at Pike?

A. Not specifically, no.

Q. Did you ask for confirmation that gas detectors were correctly calibrated and installed?

10 A. No.

Q. Confirmation that underground electrical systems were correctly installed and safe?

A. No.

15 Q. Did you have any mechanism to require the reporting of high potential incidents to the committee?

A. We required the management team to report them as part of their regular monthly management reports. You'll see references to them in the monthly management reports that are attached to board papers.

20 Q. I want to take you through some particular high potential incidents at Pike to ask you whether you were aware of them or believe that you should have been aware of them. Now in think in front of you you've got a couple of schedules prepared by the Commission. The first I'll refer you to is called, it's in the top right-hand corner, CAC0115.

WITNESS REFERRED TO DOCUMENT CAC0115

25 Q. "The summary of Pike River Coal Mine Deputy Statutory Reports."

A. Yes I have that document.

Q. Now presumably you were aware that methane becomes explosive when greater than 5% in the atmosphere or between five and 15%?

A. Yes.

30 Q. And presumably therefore any recording of 5% methane in the general body of air would indicate a high potential incident in the mine?

A. Yes.

- Q. Just, I won't take you through all of these schedules, but just to take you through some. If we begin on page 17, do you see an incident recorded on the 18th of October 2010 where there was greater than 5% methane recorded at A1/B1?
- 5 A. Yes I see that.
- Q. If you turn one page back to page 16, you'll see three such incidents on the 20th of October 2010, first the top line 5% A heading?
- A. I see that.
- Q. And then three lines down, in the next column, powered up a F005 degassed heading on arrival, A heading 5CTR 6CTR gassed out 5%.
10 Do you see that one for the 20th of October?
- A. Yes I see that, yes.
- Q. And then another three rows down on the 20th of October there's a record of two further 5% methane readings on A heading and C heading
15 at the ABM?
- A. Yes I see that.
- Q. And then if you turn back one more page to page 15, on the 22nd of October, six rows down, greater than 5% of the A heading ABM?
- A. Yes I see that.
- 20 1135
- Q. And three lines from the bottom, "21st of October, again greater than 5% at A1, B1 across C"
- A. Yes I see that too.
- Q. Those records would indicate six examples of flammable quantities of methane over a five day period in October 2010 at Pike?
25
- A. Yes I see that.
- Q. Would you agree that that is a matter of great concern?
- A. Operationally, yes.
- Q. Did the committee have any process to require that it be notified of such
30 a serious matter?
- A. Not specifically except that I would have, I would have expected that the next meeting of the board or the next management report would have recorded those incidents. I would have expected that.

Q. What did you do to make sure that you were?

A. The committee relied on management to report these kinds of incidents, that was part of the reporting process. Actually it wasn't the committee, it was the board because the board was getting monthly summaries of health and safety events and also environmental and safety exceedences.

5

Q. The information coming to the board recorded medical treatment injuries didn't it?

A. Yes, it was one of the lag indicators, yes.

10

Q. Now these six examples of flammable methane within just a few days, nobody had to go to a doctor and so as a result of they were not reported to you?

A. The medical treatment injuries and loss time injury frequency, with loss time injury occurrences, were reported to the health and safety committee and they were also reported as part of the monthly management reporting. So it wasn't just MTI indicators. I would have expected these to have been reported in the next month's report.

15

Q. Now that you have seen just that small cluster of gas incidents over five days, is it apparent that a process would have been desirable for the committee to have ensured that someone was auditing those reports and reporting on HPIS, High Potential Incidents?

20

A. Are you asking whether or not the board would have expected them to have been advised in between board meetings that something like this was happening?

25

Q. I'm asking with the benefit of hindsight whether your view is that the committee should have had a process to make sure that it was aware of these things?

A. I don't accept that. You are pointing to a series of operational incidents that are very much the prerogative of the onsite management team. The fact that the deputies are reporting these incidents is evidence that the process is working, that management is being made aware that there have been these periods of gassing out of the various headings.

30

In due course I would expect the board to have been advised at its next meeting, but not at the time. That's not what I would expect.

Q. These incidents occurred in October 2010?

A. Yes.

5 Q. The board met on 15 November 2010 at the mine site. I take it you would have expected the board to be made aware of those incidents?

A. I would have expected these high potential incidences to have been at least commented on. Now you've drawn attention to the exceedences. You didn't talk about what happened next. Didn't talk about what
10 management did. So the existence of high potential incidents is obvious, but it's a management judgement and we had very experienced managers on site to judge how to deal with these kinds of incidents.

1140

15 Q. On that basis are you comfortable that you did not receive information about those incidents?

A. I'm comfortable this is a matter for site management experts to deal with, yes.

Q. If we look at another of the schedules, which you should have in front of
20 you CAC0114 "Summary of reports of certain incidents and accidents," again I'll just refer to some of those. Firstly on page 15 a matter on the 30th of August 2009, referring to gas drainage holes producing large amounts of methane and plugging them, requiring people to work in an explosive atmosphere and a need for better planning to avoid repeats of
25 the situation.

A. Yes I see that.

Q. Was that a matter reported to the health, safety and environment committee?

A. I don't recall if it was reported to the health, safety and environment
30 committee, it would probably have been reported in normal monthly management reports. But, I don't recall exactly in which way it would've been reported, but it's an unsafe act and it would've been reported.

- Q. Page 11 of the schedule, 23 June 2010, referring to a stopping with a higher pressure in the return causing re-circulation and the hazard of potentially flammable mixture of gas in the presence of an electrical substation.
- 5 A. Sorry, can you just remind me which date it was?
- Q. Yes 23 June 2010. It's the top left-hand corner.
- A. Yes I see that.
- Q. Again the type of matter that you would expect to be reported to the health, safety and environment committee?
- 10 A. Or to the board in a management report, yes.
- Q. You'll see further along the top line of that report, "Ventilation engineer required."
- A. Yes I see that.
- Q. And a note that the author requires immediate feedback or he will write a formal letter to the mines inspector. Were you made aware of concern at that level within the organisation?
- 15 A. No, but I think the comment is appropriate, but I wasn't aware of that, no.
- Q. The stated causes you'll see include inadequate ventilation, inadequate leadership and supervision, inadequate engineering, inadequate maintenance, safety rules not enforced. Vary inadequate ventilation, poor stoppings.
- 20 A. I see that.
- Q. Would you expect that to have been specifically reported to the health, safety and environment committee?
- 25 A. Not specifically those comments because they may well have been immediately remedied. The incident itself may have been, but the details of it not necessarily.
- Q. Would the committee not have wanted to verify for itself whether those matters had been remedied or not?
- 30 A. No as I've said on a number of occasions these are operational issues at site. The deputies reporting identifies the issue and that's a system

that's clearly working in these circumstances, it alerts management to the need to take action, but it's a management issue to follow up.

5 Q. Page 20 of the same document, refers to an incident on the 14th of October 2010, top line of page 20, "During the prestart of the machine it was found that the safety system hose had been removed and crimped off meaning that the machine would not have shut down if the engine overheated. The remedial action was a safety alert communicated to all crews and a toolbox talk." Given that that was a high potential incident would you have expected it to be reported to your committee?

10 A. Yes I guess that would've been something that we should have been alerted to. Obviously the right action was taken, so it might well have been that they decided they'd taken the right action in site but as I said on a number of occasions these are the kinds of things management deals with. These are part of the daily life.

15 1145

Q. Over the page, page 21, 2nd of March last year you'll see a record that the methane valve has been broken to allow the system to be bypassed, and there was a request, you'll see, "ASAP attempts to find out how and why and stop people from overriding safety circuits please." It says?

20 A. Yes, I see that.

Q. And the final assessment was, "Unable to locate operator involved toolbox talk and more substantial locking mechanism being sourced." Were you notified of that incident?

25 A. I don't recall the details, but it's pretty serious and pretty dumb thing to do.

Q. And then finally under this heading page 22, 17th of August 2009, you'll see the reference to, "Fan left in bypass mode which effectively took the road header out of sequence. If area gassed out fan would shut down, but leave the road header powered. Also found DCB power and continuous miner placed with methane sensor bypassed." And the note, "These are incredibly bad practices."

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A. I'm not sure that I've got the right page, what page was it on please?

THE COMMISSION ADDRESSES THE WITNESS – PAGE 22**CROSS-EXAMINATION CONTINUES: MR MOUNT**

A. Bottom of page 22, okay I see it, yep. Yep, I see it.

5 Q. And you'll see in terms of the final assessment that a meeting was held in town with statutory officials to address this?

A. Yes.

Q. Accepting your answer that these are primarily management issues for the site, would you not expect to have been aware that there was clearly an issue with the bypassing of safety devices in time?

10 A. I would've expected the management team to have reported this to the board in the next monthly management, yes, serious incidents like this should have been reported.

Q. Were you aware that safety systems were being bypassed in the mine?

A. Absolutely not.

15 Q. Given that these matters were all recorded in paperwork at the mine do you accept it would have been relatively straightforward for the committee to have allocated somebody this specific task of reviewing the paperwork to look for high potential incidents?

20 A. No, I think the management team was well aware of what they needed to do and of their obligation to keep the board informed on these kinds of issues. Don't think the board needs to do more than what was already in place to be done.

Q. Did you ask management to keep you informed of what high potential incidents?

25 A. Yes that was the, our expectation that they would be reported in the monthly management meetings.

Q. Who did you ask to do that?

30 A. I don't recall the details, but I would've expected my manager, site management to have reported those in the monthly management reports.

Q. How was that expectation communicated?

A. I don't remember the details of all the oral conversations I had with people on site. But there would have been a clear expectation.

1150

5 Q. Did the committee ever take steps in writing to request advice of high potential incidents?

A. No and I should add that the company's Chief Executive was attending weekly site management meetings when these issues would've been discussed and on their agenda, so the opportunity for the board to be immediately informed if there were issues of ongoing concern was clearly there for Mr Ward in his weekly visits to site to report back on things that he'd learned or discovered, especially some of these things to the board at its next meeting or earlier if it was deemed important.

10 Q. If we put Mr Ward to one side for a moment, given there was a specific committee to deal with health and safety, with hindsight shouldn't the committee have put in place a strict process to make sure you were advised of high potential incidents?

15 A. No, I believe the processes we had in place to keep the board informed were appropriate. As I've said, you can't put Mr Ward aside, he was the company's Chief Executive officer and he was attending weekly meetings at site.

20 Q. Having seen reference to these various incidents in the schedules, do you accept that the system clearly did not work?

A. No I don't accept that at all, the system was designed to identify when things like this happened and the deputies were reporting things that were going on that shouldn't have or should've been alerted to or needed to be fixed and the follow-up for these incident reports is for management need to take action so I don't accept the system wasn't working. I would say the system was working, the system you're reporting and understanding was clearly there to identify and alert management to these kinds of incidents.

25

30

Q. You are comfortable with the fact you did not know about these?

A. From a governance perspective I've already indicated that I've been comfortable with the way in which the board established its connection with management on matters like this.

5 Q. One of the main ways that the board communicates its priorities to senior management is with key performance indicators.

A. Yes.

Q. What emphasis was given to safety in KPIs for senior managers at Pike?

10 A. Well the KPIs for managers below Mr Whittall were all set by Mr Whittall and he's department heads and so those details I'm not familiar with. Mr Ward and Mr Whittall had other KPIs that related to their performance but the board didn't set safety KPIs for site management staff.

Q. If we look at TR0013255.

15 **WITNESS REFERRED TO DOCUMENT TR.001.3255**

Q. This is a document recording Mr Whittall's KPIs in the year to 30 June 2010. Perhaps if we zoom in on the top half of the page. Is it correct that only 10% of Mr Whittall's performance bonus related to health and safety matters?

20 A. Yes that's what it appears to be.

Q. And the primary measurement for that was the number of medically treated injuries?

A. It's the proxy for performance, that's right.

25 Q. And in comparison budget or production matters had a 75% weighting, is that right?

A. Yes.

Q. Did that reflect the board's view of the relevant significance of those issues in 2010?

A. Yes.

30 1155

Q. Finally in terms of the measurement of health and safety issues on the committee, I want to refer you to a particular statement by Mr Rockhouse in his statement at page 61, paragraph 226. Now it's the

- top paragraph on the screen, "I used to send emails and safety newsflashes to John Dow, he was included in the group email address. I was taken to task by Mr Whittall about sending those directly to Mr Dow. Mr Whittall told me to stop doing it even though Mr Dow was actively involved with the committee as its chair." Is it correct that you did at one time receive safety newsflashes and other emails from Mr Rockhouse?
- 5 A. Yes I would've had conversations, email contact with Mr Rockhouse from time to time.
- 10 Q. Including safety newsflashes?
- A. I believe so, I'm not sure how long for, but yes I believe so.
- Q. Did at some point those safety newsflashes, those emails, stop coming to you as far as you're aware?
- A. They must of, yes.
- 15 Q. You may have already answered this, but was there any process to complete exit interviews of staff at Pike?
- A. I'm not aware exactly whether there were or not. It would've been good practice to do so, but I do not know if that was done and again that is a management issue. A site management issue.
- 20 Q. Just thinking about the health, safety and environment committee, is it not correct that one way the committee could have reviewed the safety culture at the company would've been to ask for exit interviews of departing staff to check that there were no safety concerns leading to people leaving Pike?
- 25 A. Yes that would've been something that could've been done. I don't know that it wasn't done. It may very well have been.
- Q. You're not aware of the committee ever receiving feedback from departing employees on safety issues?
- A. Nope.
- 30 Q. I'll move to a new topic now which is the topic of production pressure over-promising as its been described already.
- A. Yes.

Q. You have accepted that the company did over-promise and under-deliver?

A. I have accepted that, yes.

5 Q. So I don't want to dwell on that, but I do want to ask you in particular about the position that confronted the company in 2010. We know from your Phase One statement that there had been two capital raisings already by November 2010, is that right?

A. There'd been, I think there'd been four capital raisings. The IPO and three subsequent ones.

10 Q. Yes I'm just asking about 2010. There was a \$10 million share placement in April and a \$40 million rights issue in May. Is that right?

A. That's right yes.

Q. And I think you've told us already that the company was about to engage in a third capital raising for the year in November, is that right?

15 A. That's right.

Q. That was the \$70 million process.

A. That's right. That was virtually settled, about to be announced.

Q. During the course of 2010, did you also have a number of other financial issues to deal with on the board?

20 A. Other than the need for raising capital?

Q. Well other than those capital raisings as we've referred to them, I'm thinking in particular of the refinancing of the Liberty Harbour bond?

A. Yes, okay, those are all part and parcel of the same process.

25 Q. And were there ongoing discussions with New Zealand Oil and Gas during 2010 about access to funding?

A. Yes, yes, there were.

Q. We have evidence from Mr Jones at New Zealand Oil and Gas, reference NZOG0069, page 13.

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30 **WITNESS REFERRED TO DOCUMENT NZOG0069, PAGE 13**

Q. That he was advised in July 2010 that Pike was forecasting a \$5.8 million shortfall by January 2011. Does that sound correct for that period?

A. It broadly sounds correct, yes.

Q. Can you tell us about the requirements for cash funding from the NZOG as they developed after that in the second half of 2010?

5 A. There was an ongoing process of ensuring the adequacy of access to capital. The development programmes had been going slower than had been forecast when previous capital had been raised and there were ongoing discussions both at the board level and within the finance committee about the best ways to seek reliable access to capital. We had contemplated a variety of other activities in the public capital
10 markets. We had approached New Zealand Oil and Gas as our largest shareholder about the possibility for some short-term funding and we had been in conversations with our existing lenders and financiers as to the state of the company's financial picture. So yes there was a, this was a continuous and ongoing process that was happening with in the Wellington office mostly.
15

Q. Mr Jones in his statement at paragraph 61 says that, "By the middle of November last year the Pike advised that the cash shortfall for December had risen to \$54 million," is that correct?

20 A. You'd have to show me documents Mr Mount, I don't remember the specific details but I won't argue with you, but I'm sure you're looking at something that gives you that information. But, yeah it would be consistent with the need to raise additional capital which I said we had sought and was about to be announced.

25 Q. Are you able to say how bad the position had become for Pike by the middle of November 2010, leaving aside the \$70 million capital raising? In other words, if that had not happened how much cash did the company have available in the middle of November 2010?

30 A. At the time of the board meeting on the 15th I believe we had \$12 million in the bank, contrary to reports in the media overnight and the company was fully funded. It clearly needed additional capital but we had put in place the capital raising that I referred to earlier, to a total value of \$70 million and we'd been working on that for quite a while, so that the announcement of it was imminent. As a company with \$12 million in the

bank we had clearly the ability to continue the company's develop programme and we – because we knew that the \$70 million would be realised the following week. The issue was fully underwritten, that's why I can say we would be sure of it.

5 Q. On average are you able to say what the company's operating costs were per month?

A. Yes, I believe they were about \$4 million a month.

Q. So the position in November 2010 was that you had about three months of available funding leaving aside the further capital raising, is that correct?

10

A. Yes, and the proof of capital raising would've carried us through until the third quarter of 2011, by which time we expected to be in steady state hydromining.

Q. With all of the need to focus on financial issues during 2010 was there ever a sense that the board was in crisis mode?

15

A. No I don't believe so.

1205

Q. If I can just refer you to TR.001.3151

WITNESS REFERRED TO DOCUMENT TR.001.3151

20 Q. This is an email from you to Mr Radford and Mr Natrass on the 26th of August last year and in the fourth paragraph of your email you say, "Dipak you commented that we always seem to be in crisis mode and that key decisions are always left to the last minute," among other things. And there at the top of the page, there's a reply from Mr Meyer,

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"Thanks for this, Dipak's comments are spot on." Was there a view within the board that you always seemed to be in crisis mode?

A. No I think that was Mr Agarwalla's view. I wouldn't have described it like that. We were actively involved in fund raising. I think his reference is more to the fact that Mr Ward often left dealing with some of these issues until the last minute but I don't believe the board itself was in

30

Q. Madam Registrar, if I could pass this document to Mr Dow. Mr Dow, I'll just show you an email dated 20 August 2010 which raises potential

privacy issues and so I don't propose to put it on the screen but I'll give you a moment to read it. For the record it's DAO.008.13774.

WITNESS REFERRED TO DOCUMENT DAO.008.13774

5 THE COMMISSIONER ADDRESSES MR MOUNT – EMAIL

WITNESS:

And I'm prepared to answer your questions.

CROSS-EXAMINATION CONTINUES: MR MOUNT

- 10 Q. Yes, Mr Dow you would've seen that the email does raise the question of potential burnout of the staff in the Wellington office.
- A. Yes it does.
- Q. Was that something you were aware of?
- A. Yes it was.
- 15 Q. And again I won't put this document on the screen but Mr Rockhouse's statement in paragraph 5 refers to, "Significant stress for all employees at all levels in the company. A significant drop in levels of employee morale, several resignations and in one case an emotional breakdown due to stress."
- 20 A. I don't see any reference to Mr Rockhouse here.
- Q. That's in Mr Rockhouse's statement to the Commission. Without putting that on the screen, can I ask you whether you were aware of any issues at the mine site relating to stress, burnout and low morale?
- A. I was aware of one of the senior managers who was suffering from
- 25 stress, work overload, yes.
- Q. Were you aware of any more general issues relating to morale, stress or burnout at the mine site?
- A. Not specifically. I was aware of the issue that you've alluded to in the
- 30 [suppressed name] was suffering from stress at work. I wasn't aware of it being more broadly than that.

Q. I'm just wondering in light of the utter irrelevance of the individuals' identity whether we might suppress [suppressed name] name. It's of no particular significance who the individual was.

A. Okay, I'm sorry if I've volunteered that.

5

THE COMMISSION ADDRESSES WITNESS

SUPPRESSION ORDER – NAME OF INDIVIDUAL

CROSS-EXAMINATION CONTINUES: MR MOUNT

10 Q. Just in terms of the focus during 2010 among senior managers, do you recall that is a matter that was commented on by BDA in their 2010 report?

A. I'm of course familiar with the BDA report. There were comments on personnel, I don't recall comments on pressures on managers.

15 Q. No, sorry moving on from the issue of "pressure" on to "focus" so if we look at NZOG0064 page 7, bottom paragraph on that page. You'll see a comment about the experience of the board and executive management team, but it is the second sentence, the impression correct or otherwise is that there does seem to be more of a focus on the market than the project and there is a lot of effort being expended on the project to the
20 broking community as per presentations.

A. Yes I see that.

Q. In your view is that a fair statement about the focus for some of the senior management team, perhaps Mr Whittall and Mr Ward in
25 particular?

A. It's a comment by a consultant who had come to site to review a wide range of other activities. It's an impression, you can't argue with people's impression, the fact is that a lot of things were happening in Pike, obviously we were developing the mine at the same time we were
30 raising capital. It may have been the impression of the person, author of this report, that that was happening, but it's not my view. These things

were all happening at the same time. Senior managers get to where they are by being able to handle lots of things at once.

5 Q. If we move on to the next page of the BDA report, again at the bottom of the page if we highlight the last two paragraphs, "Comment was made, current senior management has not been able to deliver the Pike River Coal project on schedule or budget in part due to decisions described above and in BDA's opinion this level of performance may be expected to continue unless there is a change in senior management direction." Obviously you were aware of that opinion?

10 A. Yes.

Q. Did you consider it was correct?

15 A. There were a number of aspects in this report that you haven't referred to and haven't highlighted that I agreed with and there were some other things which I definitely did not agree with. The consultant writing this report has spent I think a total of one day onsite and so judgement of people's performance, skills and aptitude for the task is necessarily limited to the amount of time that they actually had onsite exposure with those people. So, the consultant is obviously entitled to draw conclusion based on what he sees and does, but I think there are the observations that are reported elsewhere in this report that lead to this conclusion, however it was some of which I didn't not actually agree with. I didn't think they'd had a balanced view of it.

20 Q. What I think I was asking is whether you shared that particular opinion that the level of performance of senior management could be expected to continue unless there was a change in senior management direction?

25 A. Well you know, when things are not going well then the question is what are you going do about it, and so if you expect a different outcome with the same people then you might be saying what are they going to do differently to make a different outcome. So you'd have to first accept the conclusions that they drew about the people to agree with the conclusion that they'd made about what should happen next. And as I've said some of the conclusions they drew about the people I didn't agree with because I didn't believe they had enough exposure or a

30

balanced opportunity to reach the conclusions that they drew. So if you were to take the general comment out of this context then of course I would agree with you, but I happen to know in this particular case that the recommendations relate to other things in this report that we haven't talked about with which I do not agree.

5

Q. Perhaps in fairness, we'll just turn the page to page 9, to deal with some of the other recommendations of BDA which might be considered more favourable to project management. Recommendation 2 was to retain the current project management. Was that the recommendation you agreed with?

10

A. Yep, broadly as the recommendation goes on to say would be counterproductive to institute major changes in the management team at that time, so yes I do agree with that.

Q. Leaving that page on the screen for a moment, are there any of the other recommendations for that report that you particularly wish to comment on.

15

A. No, I thought otherwise the report was helpful. It was done of course for NZOG not for Pike, and so this was not a Pike Commissioned report and it was delivered as I understand it to NZOG without the benefit of Pike management commentary. But no, by and large the BDA had been onsite at Pike on a number of occasions. They were familiar with the project and as I testified earlier they are competent people so no, the report's basically okay.

20

Q. If we turn the page to page 10, did you agree with the recommendation to review senior management performance and capability?

25

A. I believe that is the part of the recommendation that I was alluding to earlier. There is a part of the report and it maybe isn't this one, that mentions individual managers by name.

Q. But that's not this report.

30

A. No, okay.

Q. The last recommendation to consider hiring an underground contractor did that surprise you given that in effect that would've replaced Pike with an entirely outside contractor to carry out the mining?

A. It did, and we didn't consider it to be really a viable alternative either. And you can see the report goes on to say it's a relatively uncommon event and there are only two in Australia so we didn't consider that to be as useful a suggestion as some of the other suggestions that were made.

5

Q. I want to ask you now about some comments by Mr Salisbury in his statement to the Commission NZOG0068, page 35, paragraph 137.

WITNESS REFERRED TO DOCUMENT NZOG0068

Q. And this is a matter that you have filed a statement on, some months ago with the Commission.

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A. Yes.

1220

Q. And in particular is it correct that your supplementary statement deals with the issue of possible loss of confidence in Mr Whittall and am I right that you don't recall any such comment being made at this time?

15

A. That's correct, I testified to the effect that I believed Mr Salisbury's comments in respect to Mr Whittall were incorrect.

Q. Was it suggested to you at that stage that you consider taking an executive role within Pike River?

20

A. It was suggested, yes.

Q. Is it also correct you did not want to do that?

A. That's correct.

Q. Why was that?

25

A. I had retired from full-time executive life and I didn't want to go back to taking on a full-time role, apart from that I had other commitments in a consultancy business that wouldn't have allowed me to do it.

Q. And do the other comments in that paragraph accurately reflect the position in August last year?

30

A. There's quite a lot of things there, which particular pieces because some of it I've said I didn't agree with and some of it I do so I think the bit that I was most concerned about was the comment that Mr Salisbury made in his testimony about his confidence in Mr Whittall, which I've testified to the contrary on. I think the rest of it is probably accurate enough.

Q. Obviously we know that Mr Whittall was appointed the Chief Executive. I want to ask you now about some comments he made in the press after he was appointed. If we can have TR0010314.

WITNESS REFERRED TO DOCUMENT TR0010314

5 Q. On page 2, this is a newspaper report from 23 October 2010, you'll recall this article no doubt?

A. Yes, yes I recall it.

Q. It begins by stating that, "Pike River Coal's new Chief Executive is bringing a more conservative style to its forecasts." And if we turn to
10 page 3, the second paragraph has a recorded comment or attributed comment to Mr Whittall that Pike had probably only a 10% chance of meeting the previous forecast?

A. Yes I see that.

Q. Were you aware that Mr Whittall had a view that Pike only had a
15 10% chance of meeting its previous forecast?

A. I testified yesterday that the site management team had prepared a range of likely development rates of progress, rates of coal production and roadway development and that range was supplied provided to Mr Ward in order for him to develop plans that went to the board and
20 comments that would be made to the media and to shareholders. I also testified that Mr Ward's tendency was to take outcomes at the higher end of the range and that was clearly leading Pike into areas of over promising and under delivering. So the issue of exactly where the outcomes fitted in Mr Whittall's own perception of achievability wasn't
25 the issue so much as a generating awareness that Mr Whittall was at, that Mr Ward was using the higher end of the range of alternatives in his public statements.

Q. Had you ever been told that Mr Whittall's view was that the previous forecasts were that unattainable on your 10% chance?

30 A. Not that it was only a 10% chance, there were conversations between Mr Ward, Mr Whittall and myself about why we always seemed to be making forecasts of development rates and coal production that we couldn't achieve and Mr Ward's view always was well technically these

are achievable so why shouldn't we push for them. But the issue of where Mr Whittall thought the outcomes would appear on a probability scale weren't the issue. I mean judgements are made here as to what you think can be achieved and then eventually you have to decide whether the judgements are accurate or not.

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Q. As between Mr Ward and Mr Whittall, it was Mr Whittall who had the mining knowledge?

A. Yes.

10

Q. And you'll see further down page 3, that Mr Whittall is recorded as having accepted that he produced the forecasts for the previous board and management who tended, he said, to choose the upper end scenario to go with?

A. Yep.

15

Q. And then there are some further recorded comments by Mr Whittall, but my question for you is, was whether from a board perspective there is any acceptance that the board could have done more to test and assure itself that the production forecasts were realistic?

A. No the board relies on the chief executive to do that, that's his job. And the chief executive's performance then determines whether he stands or falls by his ability to make sound judgements.

20

Q. If we can turn back to page 1 of this email chain, at the bottom of the page we see reference to the fact that Mr Radford took exception to a possible implication in Mr Whittall's reported comments. And you are recorded here as saying, "Directors may well feel that if anyone could've brought Gordon's expectations down to a more realistic level, then you were the one to do so, making it sound like a choice of the board is far from the reality?"

25

A. Yes I see that.

30

Q. Was that your view that really Mr Whittall was well placed to ensure that the production estimates were actually realistic?

A. I guess the issue from his perspective and you should probably ask him directly this, but my sense was that he had presented a range of

alternatives for the board to consider, or sorry, for Mr Ward to consider and that Mr Ward then made judgements as to the achievability of it and my comment in this email was because as the media had reported what Peter had said, it appeared as though the board had made the choices when in fact it was the chief executive that had done it.

5

Q. Does the board itself accept any responsibility for the over estimates of likely production?

A. You know you accept the performance of your CEO until it's clear that you shouldn't have further confidence in his ability and so this is the beginning of a process that had other outcomes, but at the time the board was relying on Mr Ward as the CEO to marshal the facts, to understand the issues, to know what the site could do, to make a judgement based on what the company should be striving for and those were the projections that Mr Ward made to the market. Now if the board is to second guess the chief executive then that implies the board has lost confidence in the chief executive to get the job done. That's eventually what happened, but it wasn't the case at this point.

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15

Q. Given that Pike had never met any of its production targets, are you able to help us when the board did lose confidence in Mr Ward?

A. Well it's a process and it probably started prior to the review of Mr Ward's performance for the 2009-10 year which the board reviewed in confidence I believe it was late May, early June, and then at –

20

1230

Q. Of 2010?

25

A. Yes, yes. And then it would've culminated in a performance through annual performance review that I gave to Mr Ward as the chairman, which led to a number of recommendations from the board for improvement in his performance. So that's when it would have, that's about the time that the board would've started to be asking itself those questions.

30

Q. It wasn't until the middle of 2010 in other words?

A. That's right.

Q. And in light of any obligations you might have, are you able to tell us the reasons for Mr Ward's departure?

A. I'm bound by the confidentiality of his separation agreement with the company not to comment on the details.

5 Q. I want to ask you now about the overall functioning of the board. Was it your view that the board functioned effectively in overall terms?

A. Yes.

Q. I want to ask you in particular about an email from October last year, DAO.014.10936.

10 **WITNESS REFERRED TO DOCUMENT DAO.014.10936**

Q. And start at page 2 of the document. It's down the bottom of page 2 you can see this is an email from Mr Roulston, the company's secretary to you copied into Mr Natrass, Mr Radford, Mr Meyer and Mr Whittall?

15 A. The page I'm looking at is a email from me, a letter from me. I'm not sure who it's to, 'cos I've only got the second page.

Q. Yes, I'm looking at the bottom of that page and it will continue onto the next page.

A. The one that says, "Draft minutes from 18 October."

Q. Correct.

20 A. Attached for comment, yes.

Q. Correct. So this is an email from the company secretary to you copied into other directors plus Mr Whittall?

A. Yes.

25 Q. If we move onto the next page to see the body of that email it refers to the attendance of the Indian directors and/or their alternates?

A. Yes, I see that.

Q. And it refers to, in the second paragraph one of the directors attending five out of 12 scheduled monthly meetings and the other in the next paragraph two out of 12 scheduled monthly meetings?

30 A. I see that.

Q. If we go back to page 1 of this document. At the bottom of the page your response to the company's secretary was, "I agree with your

conclusion that those two directors probably don't fully appreciate their corporate governance obligations."

A. Yes I see that.

Q. Was that your view?

5 A. Yes, yes it was.

Q. How are you then able to say the board was functioning effectively?

A. It would function fine. We had two directors who weren't functioning very well but the board itself was not, I believe was not impaired. Shouldn't have had directors that had that sort of a attendance record, but the activities of the board I do not believe were impaired nonetheless.

10

Q. I move on now to the topic of the hydro-bonus in 2010. In light of the various missed production targets is it fair to say that achieving hydro production September 2010 or earlier was quite critical to the company's credibility?

15

1235

A. Yes I think that's fair to say, we'd missed a number of previous targets so the revised targets that Mr Whittall had set out were more realistic and yes I would say it was important to Pike.

20

Q. There was discussion of a hydro-bonus at the meeting on 24 June 2010, DAO.007.05902.

WITNESS REFERRED TO DAO.007.05902

Q. On page 3, see that record there?

A. Yes, I see it.

25

Q. There doesn't appear to have been any discussion at the meeting about any risks that might result from this hydro-bonus in terms of dangerous incentives on those working at the mine?

A. No, that's right.

Q. Was that matter considered by the board at all?

30

A. I think the issue of the hydro-bonus needs to be put in the context of what in fact we were expecting to do. The targets themselves were modest enough and readily achievable. A concern that the board had as reported by mine management was that these were issues more of

productivity than of doing the same job harder or faster and therefore by implication what you're insinuating. As I testified yesterday, part of these issues were about making sure people were thoughtful before they came to work, that as they took their machines underground they were fully fuelled up so they didn't have to go back down the tunnel half-shift and refuel. There was an emphasis on being more careful with machinery. There was also an emphasis on showing up for work. So these were things that were really you could say were more in the area of productivity improvements. I don't think the board considered there was any additional activity or additional risk that would be incurred by in sending people to do their job and come to work.

5
10
Q. In reaching that view did the board ask for or see any specific risk assessment of hydromining to understand what particular risks it might create?

15 A. You mean in addition to what was already in place?

Q. (no audible answer 12:37:57)

A. No.

Q. Mr Nishioka's comments about the bonus, page 3620 of the transcript were as follows, "I don't think that it was a way to improve," and I'll edit the English slightly just to keep the sense of it, "To improve safety concerns. What we have to be careful is, whilst we introduce bonus system people tend to forget safety concerns and they just want to push tonnage." Do you understand that view?

20
A. I understand the view, yes.

25 Q. What steps did the board take to satisfy yourselves, that this bonus would not result in the disregarding of safety concerns in favour of tonnage or production?

A. Well as I've said already, we didn't consider that the introduction of a hydro-bonus would introduce other activities into the operation that would require or that might engender greater levels of risk. So I've said already, these were more about productivity improvements.

30
Q. If I can refer again to a couple of comments by Mr Rockhouse in his statement ROCK0002, page 10, paragraph 17 of his statement he says,

“It is my view that for the 14 months or so prior to the explosion, if there were competing claims for resources between production and safety then production would win hands down every time.” Were you aware of that view?

- 5 A. No I wasn't and I would've expected that if that was a concern that Mr Rockhouse had, at the time he would've reported it.

1240

- 10 Q. So I take it that you would disagree with the proposition that the focus on production in the year ahead of the explosion was a matter that created a risk at the mine that staff would prioritise production over safety?

- 15 A. No I don't accept that either. Every single coal mine has goals set for staff and I don't think the introduction of a hydro bonus added significantly to the risk. As I've said, this was about improving productivity.

- 20 Q. If we look at page 8 of Mr Rockhouse's statement, paragraph 8, Mr Rockhouse's view, you'll see about five or six lines down, “The company developed a culture of over-promising then under-delivering to its shareholders with a major emphasis being placed on attaining the original production targets that had been set in the early days of Pike River Coal...” and further on he says, “... I asked some undermanagers why they were not attending training sessions and the response was they were too busy and production had a priority over training when they were short of staff.” Were you concerned about any risks of that type existing at Pike?

- 25 A. No, no, I wasn't. I would've expected if Mr Rockhouse had that concern he would've reported it and should have.

- Q. I want to ask you about a particular email DAO.007.26633 from February 2010, from you to Mr Radford.

30 **WITNESS REFERRED TO DOCUMENT DAO.007.26633**

- Q. Third paragraph of that email, “My concern is that site staff are being told what they are expected to achieve rather than asked what is realistically possible given the various levels of operational uncertainty

we have experienced to date. Some pressure is appropriate but the risk is that management only gets told what it wants to hear which we can ill-afford.”

A. I see that yes.

5 Q. Are you able to elaborate on what prompted you to make those comments?

A. Well I think its – the answer is in the next paragraph is it not? I think the next paragraph answers the question.

Q. Go on.

10 A. Well you want me to read it?

Q. Well perhaps you can explain whether you did have a concern that management would just be told what they wanted to hear as a result of the pressure being placed on onsite staff?

15 A. I see. It's difficult to comment on that. It's possible, but, you know, the dilemma is it's hard to know.

Q. You obviously were alive to the risk that when production pressures increased staff will just tell managers what they want to hear?

A. That's one of the things they can do, yes. It's kind of a cop out.

Q. It's also human nature, isn't it?

20 A. Yes.

Q. Given that aspect of human nature, was it particularly incumbent on this health, safety and environment committee to go out and speak to those at the coalface and reassure yourselves that safety was being given the appropriate treatment?

25 A. Well this email doesn't refer in any way to safety issues or concerns, if people felt that safety was being compromised because of the issues raised in this email then I would've expected it to have come directly in a safety context. This was really about the way which management was interacting with Mr Ward.

30 1245

Q. I want to ask you now about a period in the second half of 2010 where you took an advisory role at Pike in addition to your role as a director.

A. Yes.

Q. Your agreement is DAO.013.07356.

WITNESS REFERRED TO DOCUMENT DAO.013.07356

5 Q. And we see in the paragraph beginning, "Advisory services," that your role was to assist the company during the critical ramp up to hydromining and steady state coal production, including various matters and regular site visits and onsite discussion and advice to the chief executive general manager mines?

A. Yes.

Q. How many times did you go onsite during this period?

10 A. I'd have to consult my diaries, but I know I definitely went in the middle of August and I believe again later in August. A lot of the contact was over the phone or in Wellington, but otherwise it was onsite on those occasions.

15 Q. What was your focus as part of this agreement or part of these services?

A. The focus was very much on as I testified yesterday, on executive coaching, mentoring of Mr Ward. The board had become concerned that he wasn't fully appreciating the difficulties that were coming to the company by adopting aggressive development schedules. And it was important for him to understand that so my role having been a CEO myself earlier in my career I understood the position, the differences between what he was doing and what I was needing. So I was able to go back into a CEO coaching role and help him to see what those issues were, to understand the implications and the consequences of always seemed to be, seeming to be electing at the higher end of likely outcomes. The reason for going to site was to independently understand the issues that were driving the development schedules and production rates independently for myself so they'd had a sense of where we were really coming from or should be coming from. But my role was more appropriately described as mentor or executive coach.

20

25

30

Q. Did you have any focus on the question whether hydromining could be commenced safely?

A. No, that wasn't the purpose of the advisory role.

Q. Did you speak to Mr Nishioka at all about hydromining?

A. No.

Q. Turn to a new topic now which is the company's preparedness for a crisis. If we can look DAO.003.08346?

5 **WITNESS REFERRED TO DOCUMENT DAO.003.08346**

Q. Which is the company's corporate crisis response management plan. Had you seen that document?

A. Yes I believe so.

Q. When had you first seen it?

10 A. I don't remember when.

Q. What was its status?

A. I don't recall.

Q. Did you have a copy available to you in November 2010?

15 A. In November 2010, are you talking about before the 19th or after the 19th?

Q. On the 19th.

A. I didn't have a copy in my hand. I was in Wellington and that, it was available onsite. And Mr Whittall would've had a copy with him in Wellington.

20 Q. Did you have a hardcopy of this document yourself anywhere?

A. No.

1250

Q. When you first were made aware of the incident at the mine on the 19th, did you consider implementing this corporate crisis management plan?

25 A. Mr Whittall and I talked about it, yes.

Q. And what did you discuss?

A. Oh I don't remember the details, we didn't at the time we spoke, the information coming from the mine site was quite sketchy. It would be fair to say at the beginning we weren't even sure what had happened.
30 Nobody knew in the first little while what had happened.

Q. What did you conclude about whether to implement the corporate crisis plan?

A. Oh it was clear we needed to. Whatever had happened, whatever the incident was it was important to do that.

Q. So in your view was this plan implemented?

A. I believe it was. I believe it was implemented from a Pike perspective.

5 It was overtaken by a lot of other things shortly thereafter.

Q. If we can turn to page 12 we'll see the structure and reporting that's contemplated by this plan, 4.1.1, "A corporate crisis management team." Was such a team formed?

A. You mean after news of the incident?

10 Q. Yes.

A. Well to the extent that Peter Whittall was in Wellington and gave it his full attention and to the extent that Doug white onsite immediately introduced it, I think you could say yes.

Q. You see the second paragraph it says that, "The core corporate crisis management team consists of the chair, crisis co-ordinator, a company spokesperson, a communications co-ordinator, HR co-ordinator," and so on.

15 A. Yes.

Q. Can you tell us who filled those roles for the company?

20 A. You mean on the 19th or...

Q. On the 19th and -

A. It's nominated in advance of any crisis happening?

Q. I mean on the 19th and in the days subsequently.

A. Well I know that Mr White assumed responsibility onsite. I know that
25 Mr Whittall was aware and co-ordinating but travelling to site overnight on the 19th. As chair I was made aware within minutes of Mr Whittall being aware, so those three members of the team were engaged. My understanding of what I subsequently learned when I got to Greymouth was that the company's crisis management response was implemented,
30 that duty cards were handed out to various people who knew that this would be something that they would do.

1253

Q. You said a moment ago that this plan was implemented to your knowledge?

A. Yes.

Q. It does contemplate specific roles and responsibilities.

5 A. Yes.

Q. Are you able to tell us who filled those various responsibilities?

A. I can't tell you exactly, but I know or believe that Mr White instigated the management plan onsite and allocated those tasks to various people that were available onsite, various members of the senior management team.

10

Q. You understand Mr Dow there's a difference between the emergency response management plan onsite and the corporate crisis management plan?

A. I would've thought this would've been a case of both the corporate and site being immediately involved.

15

Q. Were you aware that there were two separate documents, one corporate crisis management plan and one emergency response management plan?

A. Yes I guess I was broadly aware of the issues, I'm not quite sure why you would draw such a fine distinction when something like what happened happened, it's very clear that the site needs to respond and the corporate head office needs to be involved and respond as well.

20

Q. If we move on to page 14. You'll see that there are quite specific roles contemplated for the individuals under the corporate crisis management plan, can you tell us who filled the role of chair?

25

A. Well I'm not quite sure where you're going with this Mr Mount, the chair if I read it correctly on the previous page refers to the chairman of the company. You might want to just roll the page back and refresh my memory on – if that was other –

30

Q. Yes we can have the previous page side by side, go back to page 12.

A. Yeah I see the reference.

Q. So who filled the role of chair of the corporate crisis management team?

A. Well Mr White was leading the charge onsite. So I would assume under the definitions that you're showing me in this document that that was appropriate given that Mr Whittall was in transit to site during the first hours.

5 Q. Perhaps if we just have on screen DAO.001.00096.

WITNESS REFERRED TO DOCUMENT DAO.001.00096

Q. This is the emergency response management plan for Pike. Had you seen this document before?

A. Yes I believe so.

10 Q. And if we have side by side with it the corporate crisis response management plan, DAO.003.08346 you'll see they are two separate documents?

A. Yes.

15 Q. Had you turned your mind to the way in which those two documents would operate side by side?

A. Not specifically, I think the emergency response looks like a site-based activity and the corporate response would be involving activities that might have a wider corporate implication.

20 Q. Had the company, at any stage, gone through an exercise to rehearse or simulate the response that the company would have in the event of an emergency?

1258

25 A. There had been mine evacuation exercises. But that would have been a site based activity. Had we as a corporation been through a simulation of a major event affecting the whole company, no.

Q. Had you or any of the corporate staff been involved in any rehearsal of how the corporate crisis management plan would be invoked?

A. Not specifically, no.

Q. How carefully had you read the document before 19 November?

30 A. I was broadly aware of its contents, but if I was to sit a test I'd remember some of the details.

Q. Once the incident occurred on the 19th what thought was given to the most role for each of the individuals that you had at your disposal?

- 5 A. Well the most of the individuals at our disposal were onsite. Mr White immediately assumed control onsite. Duty cards were handed out to senior company staff onsite. And the response plan was initiated almost immediately. Now the allocation of tasks and adequacy of the people being assigned those tasks was a judgment made by Mr White at the time.

COMMISSION ADJOURNS: 1.00 PM

COMMISSION RESUMES: 2.00 PM**CROSS-EXAMINATION CONTINUES: MR MOUNT**

Q. Mr Dow, if we look at pages 14 and 15 of the corporate crisis response management plan, there are eight separate roles contemplated.

5 A. Yes.

Q. Was any thought given to who would most appropriately take the role of spokesperson, and that's number 4.

A. Yes and perhaps before lunch I may have confused you with my response between the two plans, but this is the corporate one. The
10 decision to have Peter Whittall do that, was a decision that he and I made together.

Q. Was any thought given to whether Mr Whittall's experience and skills were best deployed as spokesperson rather than assisting at the mine site with the incident management team?

15 A. No I believe that Mr White as the site statutory manager was appropriate to do that.

Q. There was obviously a need for more than one person to be incident controller, given the 24 hour nature of the response.

A. Yes.

20 Q. Was any thought given to Mr Whittall's capacity to assist at that level at the incident management team?

A. I think Mr Whittall had been in Wellington in the corporate office for
25 10 months prior to that time. He hadn't been onsite or actively involved in site management. It was entirely appropriate for Mr White to take the lead and then for Mr Ellis to share the 24/7 duties.

1403

Q. In his evidence to Phase Two Mr White said at paragraph 130 of his statement, WHI001.1, he said, "To the best of his recollection there was
30 no direct discussion between the agencies including the police about who was in charge of the incident?"

A. Mmm.

Q. From the company's perspective, did you give consideration to who should be leading the incident management team at the mine site?

5 A. From the company's perspective we felt we should be, but my understanding of what happened pretty soon after the police arrived on site, that they made it pretty clear that they would be doing it.

Q. Did you take any steps to discuss with police at any level the appropriate division of responsibility as between the company and the police?

10 A. Not specifically. I don't think that was a conversation that they were frankly interested in having.

Q. Did you raise the topic at all with any police officer?

A. I didn't specifically, I believe Peter Whittall did and I believe Doug White did too.

15 Q. Just remind us looking at the screen, which role you fulfilled in the crisis response?

A. Me personally?

Q. Yes.

20 A. I was chairing the corporate piece of it and was in Greymouth for most of three weeks immediately afterwards co-ordinating a wide range of other corporate activities that were running in parallel with the incident management activity that Mr White and Mr Ellis were running in conjunction with Mines Rescue and the police at the mine site.

Q. So in terms of the plan that we see on the screen, you filled the role of chair, is that right?

25 A. Yes.

Q. We see in paragraph 4.2.1 that the responsibility of the chair during the crisis is to be primarily responsible for managing the company's overall crisis response?

A. Yes.

30 Q. Did you not find it necessary at any stage to raise with police or any other agency the structure of the incident management team?

A. No because the, response at site was an incident management response at site and was specifically dealing with site issues. There

were a large number of other things that were happening in parallel, the company still had to function. We had to decide who was going to keep the company running at the Wellington end. We had to decide who was going to say, what they were going to say. Obviously the question of the \$70 million capital raise that I'd mentioned before the luncheon adjournment, that was suddenly off the table and the company had other things as well as all of the things happening onsite to deal with. So it was appropriate for me to do those things here in Greymouth and to leave the site experts to deal with incident, and issues at the site.

10 1406

Q. As chair of the company's response, were you comfortable that the incident was being managed appropriately?

A. At the time I was. Subsequently in earlier phases of this Royal Commission how we've heard testimony from other people about what was happening and who was being told and who was being communicated with, that I was not aware of at the time, which would have been a more concern to me at the time, had I known that was the case.

15
20 Q. At the time of the incident did anyone within the company raise with you the concern that the incident management team was not structured in the best way?

A. No. No there was interagency issues if you like, with lots of people onsite, mines rescue there as well. It would not be unreasonable to assume with all the experts that had mobilised to the site that we had the best brains and the best experience working to help. The fact that perhaps wasn't as co-ordinated onsite as smoothly as you would have expected was disappointing, but none of that lack of co-ordination was evident to me at the time. Nor was it reported other than it being obvious that there were a lot of people there with a vested interest and a willingness to help.

25
30

Q. Mr Dow reflecting on the events from the 19th of November onwards, and on the other matters that we've covered in evidence today, can you

indicate whether looking forwards you believe there are any matters that the board might have done better?

5 A. You can always learn from these kinds of experiences. And I suspect that night only Pike River but a number of other people round New Zealand will be learning from these experiences. As I said earlier hind sight is a wonderful thing, and I've always taken the view that you make decisions at the time based on information available to you at the time. But yes there've been a lot of learnings from this process and I'm sure I will and I'm sure a lot of other people will take those learnings on board.

10 Q. Such as?

15 A. There are some issues developing in the area of a safety management that are not yet widely adopted within mining companies. The British report that you referred me to this morning, and it seems that I haven't read it, but it seems like a body of work that I think boards and directors and mining companies should take a look at. It's interesting to ask why that kind of research has not yet been more widely embraced by the wider mining industry and when it seems to have application in the chemicals industry and other industries that were referred to in that document and without reading it I don't know to what extent it's able to be practically implemented. But it does appear that those kinds of bodies of research are working in the areas of risk management and you can always learn from new ideas and new experiences and new perspectives.

20 Q. Are there any other matters you'd like to suggest now in hindsight that could or should have been done in a different way?

25 A. No I don't want to get into that at this point.

1410

CROSS-EXAMINATION: MR RAPLEY

30 Q. Mr Dow, I'd just like to ask you a few questions, my name's James Rapley and I represent Mr Rockhouse. You were asked some questions about the health and safety and environment committee that

you were a member of and I want to ask you some questions about that now. My learned friend Mr Mount asked you about a risk assessment document, a ventilation and gas monitoring document, took you through that and asked you whether you'd seen that before, do you remember that?

5

A. Yes.

Q. And I recall you saying you hadn't seen that, is that right?

A. Had not?

Q. Yes.

10

A. Yes.

Q. Have you ever seen a risk assessment document on ventilation at all?

A. I don't believe I've seen one, no.

Q. Has one been talked about in these health and safety meetings with you?

15

A. Yes, yes the fact that the process happens and that the risk assessments are done and they lead to standard operating practices, yes I'm clearly aware of that.

Q. Did Mr Kobus Louw at one of these meeting specifically come in to the meeting and talk to you about that ventilation report when it was in its draft form?

20

A. He may well have, it was a long time ago.

Q. The health and safety committee meeting of 11 September 2008 which is DAO.020.00017, was a report I think you were shown either from my learned friend Mr Mount or from my learned friend Ms Shortall and that shows Mr Louw's present.

25

A. Yes.

Q. Do you remember that?

A. I remember the first meeting in September that he was there, yes.

Q. And I've read through the document and Mr Louw is there for part of the meeting it says in the document.

30

A. Yes.

Q. But a reading of the document doesn't really record what role he played. He doesn't seem to feature as speaking or tabling anything. Do you

accept that during that meeting when Mr Rockhouse was present that this ventilation report, a draft one was tabled and spoken about by Mr Louw?

5 A. I don't recall it and if that had happened I'm sure it would've been in the minutes.

Q. Is it possible that happened on that day?

A. It's clearly possible.

Q. You're the minute taker you've told us?

A. Yes, yes.

10 Q. And you're writing these down by hand?

A. Yes.

Q. And these are the handwritten notes that you then used to create the typed document, is that –

A. That's correct yes.

15 Q. And are the handwritten notes written out as full as we see there or are they your bullet points?

A. No of course in a meeting notes are recorded and then the minutes themselves, a prose goes around the bullet points and the phrases, so no you haven't got time in a meeting like this to put it in this sort of
20 format but the essence of it and the details would all be written down and then the minutes constructed from the notes.

Q. Ventilation draft risk assessment isn't recorded in that document but that aside, is it possible that you just didn't record it accidentally or for whatever reason?

25 A. Well I would imagine that something like that would've been if there was a presentation by Mr Louw, I would be pretty sure it would've been recorded in the minutes to that effect.

1415

Q. What was his purpose in attending that meeting?

30 A. Well he was the mine manager at the site and given that this was the first of what was to become a series of meetings, my recollection was that he was there as much to understand what was happening as anything.

Q. And he was there for just of the meeting?

A. Yes that's right. I should also say that these minutes are circulated to all members of the committee and attendees for them to add their comments and further elucidation if the minutes didn't fully reflect what it was they were – they wanted to say, so if Mr Kobus Louw had made a presentation as you suggest, my sense would've been that as he saw the minutes coming to him for approval, he would've said you've missed out a piece. So, if they're not in the minutes then it's because I didn't write it down and all other members that were present didn't think it was said or done, so...

Q. I want to talk to you about another minute now and that's the one for the meeting of 5 October 2009 which, my learned friend Mr Mount took you to as well and you gave evidence on that in chief. You referred to and produced a document recording the minutes which you'd signed, didn't you?

A. Yes I believe so.

Q. And that document doesn't have a date and your signature, does it?

A. I don't recall.

Q. Let's have a look at it, it's DAO.020.00004.

20 WITNESS REFERRED TO DOCUMENT DAO.020.00004

Q. That's the one that says Mr Rockhouse is in attendance?

A. Yes I see that.

Q. And if we go to the last page please, I'm not sure how many pages there are. That will have your signature on the last page, do you see that?

25 A. Yes I see that.

Q. So when did you sign that?

A. I don't recall the date of when it was signed.

Q. Would it have been signed in April this year?

A. I wouldn't of thought so, but I don't recall when I signed the minutes.

30 Q. Just going back to the first page please, so do you see safety review reporting and it's got Mr Whittall advised and point 5, Mr Whittall advised that the current ACC process, safety audits, Mr Whittall reported?

A. Yes.

Q. Do you see that?

A. Yes I do.

Q. Have you seen the other minutes where Mr Rockhouse was present has a slightly different format saying Mr Rockhouse tabled or Mr Rockhouse
5 advised?

A. Yes.

Q. You notice the difference?

A. Yes.

Q. And you were shown the draft which is DAO.007.11909, perhaps we
10 can have the two of them up side by side if that's all right?

WITNESS REFERRED TO DOCUMENT DAO.007.11909

Q. And do you see that document on the right, is exactly the same except it has apologies Mr Neville Rockhouse taken?

A. Yes I see that.

15 Q. Which has been – which is not on the document on the left, which has got your signature on it, right?

A. I see that, yes.

1420

Q. And do I take it from the email that you sent to Mr Whittall dated
20 8 April 2011 and that's DAO.007.11902?

WITNESS REFERRED TO DOCUMENT DAO.007.11902

Q. Which says, "Attached are draft minutes held for 5 October 2009," So that's one's we've been looking at, "Please review them. Have to recreate them. Can't from my notes." So do I take it you'd sent him a
25 draft unsigned typed minutes?

A. Well you wouldn't sign draft minutes.

Q. So they're unsigned?

A. They would have been sent by email, yeah.

Q. And so after hearing from Mr Whittall you then signed the document
30 we've just been looking at?

A. The dilemma was that the original minutes could not be located and the reason why we were looking at them in April this year was because we'd had a request from the Commission for all kinds of company documents

to be supplied. Minutes of meetings, minutes of health and safety committee meetings and things like that and in producing copies of documents it would appear that the minutes, the original minutes of the 5th of October meeting could not be located and so the recreation of them happened in response to a request from the Commission earlier this year. I understand that the original minutes were subsequently located in Pike files and that the document that Ms Shortall showed yesterday were in fact the original minutes. That's my understanding. The question of Mr Rockhouse's attendance or participation I did check with Professor Meyer and his notes and his recollection was that Mr Rockhouse was at that meeting, that originally he was scheduled to be overseas when the meeting was originally called, but Professor Meyer was ill and couldn't make the earlier date and when the meeting was rescheduled and Mr Rockhouse was back from his trip and able to attend. That's my understanding.

Q. So did you sign the document we've been looking at in April 2011 after you'd heard back from Mr Whittall and checked them or not?

A. The documents would have been signed once I was satisfied with the content.

Q. And was that April 2011?

A. Well the only documents that I could find and sign were the documents that needed to be provided for the Commission.

Q. So was it April 2011?

A. Yes it would have been, yes, based on what you've told me, yes.

Q. No, based on your email?

A. Yes, well it would have been. The recreated minutes would have been signed after they'd been reproduced, yes.

Q. And that's 'cos you couldn't find the original minutes, so you did it from your handwritten notes?

A. My handwritten notes, yes.

Q. Which you can make available to us?

A. Yes.

Q. And they are, you said, bullet points?

A. They are notes of the meeting in sufficient detail that you can create minutes from them, yes.

Q. But not verbatim like we just went through with that meeting with Kobus Louw, they're bullet points, aren't they?

5 A. That's right, yes.

Q. Are you aware that the unsigned one that I just took you to before and the signed one are word perfect except for the change with Mr Rockhouse's attendance?

A. I haven't had a chance to compare them.

10 Q. Well let's compare them?

A. Okay.

Q. So that's DAO.007.11909 against DAO.020.0004?

**WITNESS REFERRED TO DOCUMENTS DAO.007.11909 AND
DAO.020.0004**

15 Q. Just look under matters arising and just compare the two?

A. Yes.

1425

Q. Replica?

A. Yes that looks like the same wording, yeah.

20 Q. Check under reporting and scan the two paragraphs or the paragraphs that are under that heading please.

A. Yes they look similar.

Q. Well identical aren't they?

A. From what I've seen, yes.

25 Q. So did you sit down with this one on the left which is the unsigned one and chop and change it on a Word document or do you stick to your evidence that you created the document on the right from your handwritten notes?

30 A. The email attached to the minutes that were sent to Mr Whittall stated that I created them from my handwritten notes and I would've done that.

Q. So in 2011 – let's rephrase that. Your practice must have been to create the typed minutes not long after the meeting I would presume?

- A. Yeah, fairly shortly afterwards, yes. I'm not sure exactly when I did it but...
- Q. And you couldn't find that typed copy hence you sending the email to Mr Whittall and having to re-create it as you've told us from your handwritten notes, right?
- 5 A. Yes.
- Q. So coincidentally your handwritten notes produced a word perfect replica of the earlier unsigned version?
- A. That's something that I'm looking at now and I'm struggling to understand it myself, yes.
- 10 Q. Because let's look at the next page because this is a three or four page document. Look at all the information on that.
- A. Yep.
- Q. Word perfect isn't it?
- 15 A. Yes it seems to be like that, yes.
- Q. And let's look at the next page. Have a wee look at it.
- A. I don't understand why the format's different, the wording seems to be the same.
- Q. Well does it suggest that you used a Word document and then doing some editing?
- 20 A. No I – why would I do that, when I couldn't find the notes, why would I take a document and change it, if I could find them I would've just submitted them. It doesn't make sense to do them again.
- Q. Well do you still say that Mr Rockhouse was at that meeting?
- 25 A. Yes that's my recollection and that was the recollection of Professor Meyer when I asked him.
- Q. Well remember I took you to the health and safety part which is a couple of pages back on the first and the second one.
- A. Yeah.
- 30 Q. And if we go to that you'll see that Mr Whittall's reporting throughout on those health and safety topics isn't he?
- A. Yes, I see that.
- Q. Doesn't that suggest that Mr Rockhouse is not present?

A. That's one way you could look at it.

Q. Because the next page Ms Basher, would you kindly put that on –

THE COMMISSION ADDRESSES MR RAPLEY – POINT MADE
5 SELF-EVIDENT FROM DOCUMENT

CROSS-EXAMINATION CONTINUES: MR RAPLEY

Q. Now that health and safety committee meetings you said would last did I take your evidence as up to a day?

A. It would comprise most of the day, that would include getting to site and getting back to Greymouth again but several hours during the middle of the day, yes.

Q. Mr Rockhouse's involvement in the meetings would only encompass an hour, hour and a half, wouldn't it?

A. Generally when the environmental piece was being done he wouldn't necessarily need to be there and similarly when the health and safety piece is being done Mr Liddell would not necessarily need to be there. The meeting itself would be at the site and would take the substantial part of a day and then people would come in and out depending on their involvement in the agenda.

20 1430

Q. Mr Whittall would be there throughout?

A. Usually, not always, but usually.

Q. But Mr Rockhouse would only be there for an hour or so?

A. Sometimes he was there for the whole meeting, other times he had other things to do and came in when he was doing his piece of the agenda.

Q. And he would sometimes give presentations and table documents and speak to those wouldn't he?

A. Yes, yes.

30 Q. For example, ROCK0025 if I can just get that up?

WITNESS REFERRED TO DOCUMENT ROCK0025

Q. Safety statistics, do you remember seeing something like that?

A. Yes.

Q. And then if we just quickly move through some of the pages just to let everyone know what we're talking about. And that would list the information we can see there, for example, incidents by type and then bar graphs and things like that?

5

A. Yes.

Q. Is that right?

A. Yes.

Q. And he talked to you about, you know, some of the other systems he was producing such as these SOPs and JSEAs and I am Safe?

10

A. Yes.

Q. And show them to you?

A. Yes.

Q. And one such meeting he produced, gave copy of and spoke about the document control?

15

A. Yes.

Q. And if we can just have ROCK0026 up please?

WITNESS REFERRED TO ROCK0026

Q. That's a spreadsheet listing all the documents, it's a Pike River spreadsheet.

20

A. Yep.

Q. And you can see just on the first page, for example, who the department is that's sort of charged with looking after that subject sort of document, for example, the first line there's a TARP?

25

A. Yep.

Q. Trigger action response, and then what it is and whether it's been signed off or not?

A. Yep.

Q. Do you remember seeing things like this?

30

A. It would've been part of the documentation that Neville would've presented, yes.

Q. This document was emailed to, you know, the managers and was available, it lists all the documents as I said SOPs and management plans and the like, did you see that the majority of them are in draft?

A. Yeah, I see that yes.

5 Q. If we move through from page 1, because that's a lot were actually assigned, but if we go on to sort of page 2, just lists various things there and page 3 again we've got draft, for example, the emergency communication action sheet, that's something that's listed. Was that drawn to your attention the fact that a lot of the documents are still in
10 draft form?

A. I'm not sure quite when this document was produced to the committee, but there's a lot of paperwork there and a lot of stuff being developed and I imagine that quite a lot of them would've been in draft form. Draft form until they're signed off I think.

15 Q. My learned friend Mr Mount took you to that comment from Mr Rockhouse about him emailing you documents?

A. Yes. Was this about the newsflashes?

1435

20 Q. That's right and other information you were sort of on the group email list of what everyone got about safety things from Neville Rockhouse, weren't you?

A. I saw that email, yes.

Q. And there were emails coming to you when they went to sort of everyone, it also went to you?

25 A. Yeah, not a lot, but I'm not sure how long I was getting them for so not a lot. It wouldn't have been for very long, but yes, I do remember the email that was referred to this morning, yes.

30 Q. Well Mr Rockhouse's position is that there were a few emails that went out to you at least, and others of course with safety information updates, new SOPs or whatever it might be, newsflashes and things?

A. Yeah.

Q. And did this stop sort of late 2008, mid 2009, does that sound about right to you?

A. No, I don't recall when they stopped but I'll take your word for that.

Q. But you certainly confirm that you were getting some emails and then they stopped?

A. That's my recollection, yes.

5 Q. And Mr Rockhouse's position is that he was told to stop sending them to you by Mr Whittall. Are you aware of that?

A. I wasn't aware of that 'til I read his testimony.

Q. Had you wanted to receive that sort of information?

10 A. I hadn't specifically asked for it and so when they came it was good to get. When they stopped I didn't know whether or not he'd stopped doing them. I didn't know the reason why they weren't coming, so it wasn't all that surprising. They were coming to me with a lot of other people.

Q. Did you ask not to get any more?

15 A. No.

Q. The number of times you actually met Mr Rockhouse would be a dozen times or so at the most, wouldn't it?

20 A. I've recorded in my evidence yesterday on a number of occasions that I was at site for meetings of either the board or the safety health and environment committee. I was onsite on a number of other occasions for other reasons other than board meetings for health and safety committee meetings and so there would have been opportunities to meet with Neville then, but over a three or four year period I would meet with him on a regular basis.

25 Q. And that would have been about a dozen times in total?

A. Twelve or 15 times, yes.

Q. And never though did you have any one-on-one meetings with him?

A. I can't remember whether I had one on meetings with him but I certainly had a number of quite substantive meetings with him.

30 Q. These were the health and safety ones you're telling us about?

A. Yes, but also socially.

Q. So they're meetings, the social ones?

A. Yeah, social opportunities, yes. They're not formal meetings they are opportunities for board members to meet with members of the senior management team which is another part of the communication process.

Q. So these might be a dinner or something?

5 A. Dinner or something like that, barbecue at the mine site.

CROSS-EXAMINATION: MR DAVIDSON

Q. Mr Dow good afternoon?

A. Afternoon.

10 Q. The matters that you've just been taken through by Mr Mount include the email from Peter Whittall to Ray Meyer on the 7th of April regarding the minutes of the health and safety environment meetings, the minutes you've just been discussing with Mr Mount?

A. Yes.

1440

15 Q. I'd ask Ms Basher to bring up on the screen please DAO.008.13994/1. I can go to something else if necessary. Well I'm going to ask you about this Mr Dow and I'll make sure a copy comes and we get it into the system, it is logged in but not on the system to bring up.

A. Okay.

20 Q. On the 6th of April Professor Meyer sent you an email at 1.16 am as the chairman and he sent you some attachments and he said, "John," and the attachments were minutes of the health and safety environment meeting on the 26th of September 2006 that was the first attachment. And the second and third attachments were minutes of the health and safety and environment meetings on 11 September 2008 and
25 26 March 2009. And he says in this and this is at 13994/2, "Minutes for the 6th of October 2009 meeting are being produced by you" which you've acknowledged.

A. Mhm.

30 Q. He then says, "Attachment 5," he says, "HS&E Policy document, attachment 6 is the health and safety environment charter for the committee." And finally he says this, "You will need to sign all sets of

minutes as well the policy document and send to Peter.” That last sentence, you as chair to sign four sets of minutes and send to Peter. Now do you recall that being the way things were?

5 A. I see the email from Professor Meyer, I’m not quite sure why he was sending me documents to sign because some of them would already have been signed. It may have been that the documents that he had were unsigned and he might’ve thought that I didn’t have copies to supply to the Commission.

10 Q. Well of course had there been signed minutes there’d be no need to request you to sign anything would there?

A. If he had signed minutes, that’s right.

Q. Well I’ve understood your evidence so far to be that there was one set of minutes missing which you recreated from your notes.

A. Yes.

15 Q. And therefore the other minutes were in existence and presumably had been signed?

A. They were in existence and had been – if you look at the minutes of each of those meetings, the first item of the agenda of the subsequent meeting is the approval of the meeting for the minutes of the previous meeting for approval by the members of the committee and signing.

20 Q. My question is simply this, based on that email is it the case that the minutes had not been signed on the previous occasions?

A. I think the policy document may not have been signed, but I don’t recall exactly when that, because that document was part of the original charter and I think that the charter was attached to the minutes of the meeting that happened in September 2008, because that was the first meeting that occurred after the health and safety committee was established and the charter document had been approved but it hadn’t been signed and that meeting authorised me to sign it.

25 Q. Yes but why would you be signing the policy document at this stage in April 2011?

30 A. Well I’m not sure that they were being signed then for the first time. I’m not quite sure where you’re coming from with your question.

Q. Well I'm just asking you why you would be signing off what is an important document as you've acknowledged in 2011 if it had previously been signed off?

5 A. Well I'm suggesting to you that Professor Meyer may have had unsigned copies of the documents and that other ones had been signed. I can't answer the question more accurately than that.

Q. That will do. Now Mr Dow, before I get into some of the few documents I want to refer you to, it is clear from your evidence and I suppose as a matter of general principle, that the absolute top priority for a board is the safety of its workers?

10 A. Yes.

Q. It stands out above financial performance and success or failure. It's your primary obligation?

A. If it isn't worth doing safely it's not worth doing.

15 Q. And before lunch you were dealing with performance of the CEO?

A. Yes.

Q. And I took it that you were really referring also to senior management generally when you said, "You essentially retained confidence in such a person until it becomes clear you need to do something about it."

20 A. I was speaking with specific reference to Mr Ward.

1445

MR DAVIDSON ADDRESSES THE COMMISSION

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

25 Q. So Mr Dow the point I was making, trying to make with you, was that the point comes where you have lost confidence or begin to lose confidence in a, in this case a CEO, and at that stage you're already bound as a board to do something?

A. Yes.

30 Q. And you've said on a couple of occasions in the last day and a half that essentially and what you call the church and state separation between governance and management that you are really leaving it to people in whom you have confidence to carry out their expert work until the point

comes where something is necessarily back before the board. Is that a fair summation of your position?

5 A. That's broadly right. The point at which the board loses confidence in its CEO is a gradual process and I think it would be fair to say that for otherwise talented and hardworking and capable individuals the opportunity to provide remedial guidance, mentoring and coaching is probably the first thought that enters the board's mind. Which is what we did.

10 Q. Now you cut your answer back to my question to saying per se that the proposition with regard to confidence is applied to the CEO. What about your other senior management?

15 A. The issue from the board's perspective is more particularly with the CEO. Confidence in other line management employees, rests with their immediate supervisor. So for example, if there was somebody at the mine site that worked for Doug White or worked for Peter Whittall it would be their primary responsibility to make sure they were doing their job. It wouldn't be the board's involvement below the level of the CEO.

20 Q. So if your CEO has a number of line reports to him and those reporters are not carrying out their function correctly, you would expect the CEO to identify that and fix it?

A. I would.

Q. And if he couldn't fix it to bring it to the board?

A. I would.

25 Q. And if the CEO is failing in some respect, that would emerge through information you get from the way the CEO generally is reporting to the board?

A. That's right.

Q. So if the CEO is not reporting things to the board, you don't know?

A. That would be right.

30 1450

Q. Now let's stick with the church and state division. On that principle you've described if you have a CEO who's failing in some respect, for example, in achieving the production that's required because it's just

beyond him for example, and you're pushing for production, failing, forecast not met and so forth, the point comes where as a board you've got to address it, and if necessary, as you say, improve the performance or if necessary remove that person.

5 A. Yes.

Q. You can fix it. It may have cost you money but you can either fix it. You can fix it in one way or another can't you?

A. That's correct, yes.

10 Q. Now in its health and safety terms when you're dealing with people's lives, if there are failings which are occurring of consequence and putting those men at risk, you can't use the same analogy can you? Because by the time events emerge which would require action by a board, they could as here have been catastrophic?

15 A. Yes, the issues that the board had with Mr Wall were in areas of operational and financial performance. They weren't in the areas of health and safety.

20 Q. And that's my point. You can, the company could go broke. Shareholders could lose their investment and so on and in a sense that's what happens in business if there's been a failure in that regard of consequence. But when there's a health and safety failure of, or failures of consequence, in a potentially catastrophic situation men lose their lives. There's no second chance is there?

A. No, I'm not quite sure where you're getting to with this, but yes so far I'm with you.

25 Q. What I'm putting to you Mr Dow is that there's no room for a board as here in a health and safety situation of such consequence where lives are at stake to rely on the fact that things are being done they way you think they should be done. Do you accept that?

30 A. The board gets its information from lots of different sources, not just from the CEO. But he's a primary conduit of information, that's correct.

Q. You see just going straight to the point, you were taken by Mr Mount this morning to a document that's been assembled by the Commission and which sets out from deputies' reports a whole ream of incidents, one in

particular which were shown to you and which you recognised as a very serious matter?

A. Yes.

5 Q. The kind of thing which you immediately acknowledged you should have known about it?

A. Yes.

Q. And I've got this thing behind me, I'm not going to go into it in detail yet, but have you actually been through that document?

A. Which document are you referring to?

10 Q. This is the bundle of documents.

THE COMMISSION:

Q. The ones you've got to your left?

A. These ones here?

15 **CROSS-EXAMINATION CONTINUES: MR DAVIDSON**

Q. Yes, have you read this?

A. I read them this morning, yes.

Q. You've been right through them?

A. No I haven't, no.

20 Q. Well just for a moment take it from me that you were shown one serious incident of the kind you'd like to have known about?

A. Yes.

Q. And there are scores of incidents descriptive in themselves of such seriousness?

25 A. Yes.

Q. Now doesn't that tell you something right now that this board was not armed with the information it should have had in addressing health and safety?

30 A. I don't accept that. I think the board was getting monthly reports from management on some of the incidents that are in this report and was aware that there was an incident reporting process, and that the purpose of those incident reports was to alert management to

deficiencies of behaviour or equipment or the wide range of things happening underground so that it could be fixed. The process was working to alert management to the existence of those exceedences in the case of methane levels and things like that. So I don't accept that the board wasn't getting that information, the system was designed to provide it.

5

Q. Well I'm going to put to you Mr Dow that you didn't know about that incident that was described to you this morning.

A. I did not know about the methane exceeds, that's right.

10

Q. Did you know of other incidents where men were said to have bypassed the safety devices on machines?

A. I did not know that until the Royal Commission's testimony.

Q. Isn't that the very kind of thing as a board that would have had your hair standing up on end?

15

A. Indeed it would.

1455

Q. Doesn't that tell you now that these are things that should've come to you but didn't under the system you operated?

20

A. What I would say to that is there were people onsite who were aware of these issues or must have been because they're written down, why didn't they raise them appropriately to the board with those concerns.

25

Q. We've gone past the why they didn't Mr Dow, we're trying to look forward as well. You've already said in hindsight you wouldn't have done things differently to this Commission in evidence, but being fair to the people whose families of the men who died, can you not see now that when you're acknowledging there were things here that should have come to the board and didn't, that it's no answer to say, "There were people in place who should've been dealing with those things?"

30

A. I'm asking myself why people who were charged with that responsibility at the mine site did not raise them in monthly report, did not raise them when the board was onsite and did not consider them to be sufficiently serious to tell me or Professor Meyer or other members of the board they were going on.

Q. And that's a fair question, because you're saying why didn't we know, but what I'm putting to you is that we know now that you didn't know.

A. Yes.

Q. The board didn't know.

5 A. Yes.

Q. And I have a whole lot of things I can put to you – maybe I can cut this short. Had you known you would have intervened in any number of ways, would you not?

A. I would have, yes.

10 Q. You'd have known men's' lives were at risk?

A. I would have known and I wouldn't have tolerated it.

Q. So the system failed in terms of getting the information off to the board?

A. Yes, it would appear to have been the case.

15 Q. Now before I come to what the board said it was going to do, you were a director if I'm right, through to the explosion on the 19th of November for three years nine months and I think – three years five months or four months, six months you were chairman. How many times did you go into the mine?

20 A. Not every visit for every board meeting, but many or most of them. I don't know exactly how many, but I was regularly underground.

Q. Did you for example, know there was a camera at the portal?

A. I did not know that.

Q. So neither you nor Mr Whittall knew there was a camera there?

A. I've learned a lot of things after the fact.

25 Q. Did you know where the underground gas sensors were placed for recording and reporting to the control room?

30 A. Not specifically. I knew there were processes in place to measure and monitor but I didn't know exactly where they were and I believe they probably moved. I knew that all the vehicles had methane detectors. I knew what the process broadly was to understand how we were measuring methane in the mine. I didn't know exactly in which room or in which stub the sensors might've been located close to, no.

Q. I mean I don't know your whole history but you are called DowGold, aren't you, DowGold Consultants?

A. That's correct.

5 Q. So where else did you have experience in the operations of a gassy coal mine?

A. Pike was my first coal mine experience.

Q. Did you have an understanding of the refuges – so called refuges in the mine?

A. Broadly yes, but not in detail.

10 Q. You see the media is not always actually recording of course what is said, but this can be checked I just want to see whether what you're reported as having said is acknowledged by you. And this is a passage that comes from the New Zealand Herald site on Saturday, November the 20th, but this is how it's reported, "Mr Dow said the miners
15 might have made their way to one of several safety refuges where extra air supplies were available."

A. Yes.

Q. Is that what you said?

A. It's close, yes, close enough to what I said, yes.

20 Q. Where were those several safety refuges?

A. Well I believe the main one was the fresh air base.

Q. Where were the others?

A. I don't know exactly where they were located, I was advised of the fact of the existence of safety refuges and of the fresh air base.

25 Q. Just a simple question, did you think, well, there was more than one safety refuge with fresh air?

A. Obviously at the time I used the plural term, yes.

1500

Q. And that's what you thought.

30 A. Mmm.

Q. Now Mr Dow I want to just move now to look at the proposition I put to you with regard to the board getting knowledge?

A. Yep.

Q. You plainly felt that the responsibility for health and safety as it were down the line would rest with the health and safety manager as you came to coal?

A. Yes.

5 Q. So if we bring up please Ms Basher PW22?

WITNESS REFERRED TO DOCUMENT PW22

Q. You're familiar with this but the striking feature I think you'll agree of continuity is that we've got Mr Whittall as the general manager of mines from 2005 right through to October 2010, you see that?

10 A. Yes.

Q. And the other striking feature is Mr Ward from 2007 through to the same date as the CEO?

A. Yes.

15 Q. And prior to that of course he was general manager of New Zealand Oil and Gas?

A. Yes.

Q. And very much his baby I think, not your words but mine?

A. No I said that too.

Q. Yes, Mr Wards. So these are the two of continuity in this chart?

20 A. Yes.

Q. And those, therefore that would have the longest historical knowledge about the mine?

A. Yes.

25 Q. And you'd fit in actually quite a long way back on that grid wouldn't you in early 2007?

A. Yes.

30 Q. But when you come to the statutory mine managers that we've just been mentioning here, we can see that from 2008 when the mine became a gassy mine through to the 19th of November 2010, we've got six statutory managers?

A. Yes.

Q. And although I can't work it out exactly from this, no one's there it seems more than about five or six months?

A. That's what it looks like, yes.

Q. Now these are the people who carry out the responsibility in your eyes for health and safety compliance along with the general manager of mines?

5 A. And the health and safety manager.

Q. Yes. but the health and safety manager has to report of course, there's a direct report by the health and safety manager isn't there?

A. Yes he is.

Q. And what you said in your evidence –

10 A. He's the mine manager responsible for those functions.

Q. – and what you thought was that the statutory manager, this is your evidence, would supervise health and safety issues?

A. Yes he has onsite responsibility in a statutory capacity.

Q. Now that of itself must have concerned you as an experienced board member and share that in this very significant position we've got such a turnover, a churn of the statutory managers?

15 A. If I can draw your attention to the bottom line, if you're talking about continuity, I see Neville Rockhouse from late in 2006 to the present day or until the end of this chart and his role was to be responsible for health and safety issues specifically at the mine site and he was there for four and a bit years.

20 Q. Mr Dow, please come back to my question. I'm talking about the statutory mine managers. I'm well aware of Mr Rockhouse.

A. Yes.

25 Q. To whom did he report?

A. To whom, you mean the statutory manager?

Q. To whom did Mr Rockhouse report?

A. Oh he reported to the statutory manager.

Q. Right and hence the person who had that overall responsibility was churning over six times in two years and a bit?

30 A. It could be argued that Mr Rockhouse held the corporate knowledge and the site wisdom because of his –

Q. It could be argued but it's not my question. Now are you familiar with the evidence of Michelle Gillman before this Commission?

A. I'm not, no.

Q. You haven't read it?

5 A. No.

Q. Ms Basher could you bring up please GIL001/1?

WITNESS REFERRED TO DOCUMENT GIL001/1

Q. Do you know who she is?

A. I do not.

10 1505

Q. Ms Gillman reported to Mr Rockhouse as a contractor at Pike River Coal and her job was formatting recording and controlling of safety management system documents and the planning and presentation of safety materials. Still not ring a bell with you?

15 A. I accept that.

Q. Now she came on board in July 2008 and she worked what were part days, but the equivalent of 188 full days before she stopped work – before the November 2010. And what she says, Ms Basher if we could bring up page 4, in paragraph 13, she records what we know is that
20 Mr Couchman who had been in the department training and safety together, he was spit off and became a training co-ordinator reporting to Mr Knapp?

A. Yes.

Q. So there was no one left to perform the safety audit functions that he'd
25 been carrying out, paragraph 14, of the Mr Rockhouse who was heavily – already heavily overcommitted, you see that?

A. I see that yes.

Q. She also says that while she was there, her own observation, is that he consistently sought additional funding for personnel to assist in these
30 areas. Did you know that?

A. Not specifically.

Q. Now she then says at paragraph 17, this is her proposition so I don't ask for a reply, but I'll put it in because it's what she is going to say. "Given

the level of staffing at the mine in late 2010, I did not believe the commitment to health, safety and training functions were adequate. The reasons for my belief is contained in this statement.” She then draws on her knowledge of Stockton Alliance and Ms Basher if we could go to page 5, and while we do so that’s a much bigger operation, a thousand people work there?

5

A. Yes.

Q. Whereas what would have had something less than 300 miners and contractors?

10

A. About 180.

Q. 180. What she says at paragraph 23, you can read it for yourself but I’ll just lead the question. “The safety department operated under extreme pressure. Little time to complete any task and the paperwork and administration alone meant Mr Rockhouse was severely constrained in terms of going underground.” Now that’s her observation. If you go to the next page Ms Basher, page 6, paragraph 24, she talks about the extremely long hours he worked and gives an example on the email times, communications with her. Do you see that?

15

A. Yes.

20

Q. And you’re obviously not going to contest the fact that he was working in the way she describes?

A. No.

Q. You weren’t aware as she says at paragraph 25 that he intended to resign on a number of occasions because of pressure of work.

25

A. No.

Q. You weren’t aware of that?

A. No.

Q. You made no observation of him which suggested stress or strain?

30

A. He was working hard I knew that. I didn’t see evidence of him being overworked and he certainly never raised it with me at all.

Q. Did it ever concern you that he may have been kind of a one man band in safety after Mr Couchman was split away?

A. No not really.

Q. Isn't that your responsibility as a board to go and check on the wellbeing of your senior employees?

A. It's not the board's direct responsibility to go out and do that. It's the responsibility of the person's immediate supervisor to look out for the people that they report to.

5

Q. So are you saying that provided you hear nothing you assume all is well?

A. No I'm not saying that either. I said I'm saying that I had a number of meetings with Mr Rockhouse and that at no stage did he ever indicate to me that this was the case, that he was overworked, under-resourced or any of those things. I've read them subsequently, but I was not aware of those at the time and I'm kind of disappointed that he didn't raise it with me.

10

Q. Well we can be disappointed of course Mr Dow but there's other reasons for disappointment in this room.

15

A. Yes, I appreciate that.

Q. And if we look at paragraph 26, you see how serious the situation was, Mr van Rooyen talked to Mr Rockhouse out of resigning on one occasion. There was another intervention and Ms Gillman did not endeavour to talk him out of resigning on any occasion because I really was concerned for his health. In fact I supported any opportunity that I thought would get Neville out of Pike River. I thought he was at great risk of heart attack or breakdown because of the stress he was under. Now that's heavy duty comment isn't it Mr Dow?

20

25 1510

A. Yes it is.

Q. And this is your health and safety manager?

A. Yes.

Q. If that person isolated is working under that degree of stress you would surely see now the very high-risk of something going wrong through that process?

30

A. It was appropriate for that to have been reported to me, yes. Other people must surely have noticed.

Q. Well Ms Gillman did want him to leave?

A. Yes I see that.

5 Q. Now something in what you were shown by Mr Mount appealed to robbery commonsense earlier when you were shown some of the leading indicators who are now part of the process safety signs. And plainly from your response you understood the significance of people being under massive stress, or fatigued or unfamiliar with equipment?

A. Yes.

10 Q. This is the very kind of thing if you saw on your board you would have to intervene on isn't it?

A. Yes, I believe so.

15 Q. And when we look at just, you know, on the ground what was happening look at paragraph 28. Mr Rockhouse goes to a meeting, comes back with 30 new action points, the white board was full of tasks already in the tiniest writing. She said, "Where you going to fit those?" And she photographed them because she couldn't believe he could add any more to what he had to do. I know it's more of the same, but it's pretty stuff isn't it?

20 A. Yes, his immediate supervisor should have been doing more than was being done, clearly.

Q. And this is the point Mr Dow, you know as you said hind sight is a wonderful thing. Foresight is an even better thing here isn't it? Foresight to anticipate the things that are going wrong?

A. Yes.

25 Q. And had you known this, it's a fair bet you would have been into this in some way wouldn't you?

A. Yeah, if I'd known it we would've done something about it, yes.

Q. But no one told you?

A. That's correct.

30 Q. Look at 31. Mr Rockhouse wanted a trainer assessor on each crew to train and perform systems based audits, which I'll come to in a moment. Mr Bevan, the mine manager at the time one in that list of rotating,

revolving door agreed but he was replaced by Mr Slonker who never supported it. That's not something you ever found out about is it?

A. No.

5 Q. Now it's quite clear from the health and safety committee, health and safety environment committee minutes we've seen, there are three, that have been concentrated on here you know, before November. There were three earlier ones, and you've described that committee as the second primary means of addressing health and safety issues. The first being the people you've employed?

10 A. Yes.

Q. And right from the start looking at those minutes and I'm not going to go to them for a second or two, you were aware plainly that Mr Rockhouse was looking at a safety management plan and plans?

A. Mhm.

15 Q. And a safety management system?

A. Yes.

20 Q. Now what Ms Gillman says and this is, sorry Ms Basher it's gone, it's page 7 I'm after again that, "October 2010 she was document controlling," this is paragraph 33, "Safety management system documents and there were 386 documents including management plans, SOPs, TARPs, risk assessments, JSEAs, forms and process flowcharts in a controlled environment. There were many other documents such as JCAs and risk assessments which were not controlled and were not being submitted by the partners." She then has
25 the management plans and look at paragraph 34, "Of the 17 management plans in the system only three were signed off by department managers. The very systems based approach which we see in the health and safety and environment minutes." I'll take you to it if you want me to, but that's what we've already got. It came up on the
30 screen yesterday?

A. Yes.

1515

Q. That's the heart of the safety system, the safety management plan and the safety management plans that we see here?

A. Yes, that's right.

Q. So all this time later we have three signed off. Did you know that?

5 A. I knew that some of them were signed and some of them were not signed. I knew that some of the ones that weren't signed were being implemented nonetheless.

10 Q. But we've been into coal now for two years. We've got three out of 17. Things that Mr Rockhouse is preparing, has prepared, only got three done so my question is, did you know that?

A. What I was aware of the number of the documents that weren't signed off or nonetheless being implemented. I mean if you're saying that they weren't signed therefore they weren't being used then I don't think that was the case.

15 Q. Well I just don't know that but what I'm putting to you is that this was said to be in your health and safety environment committee minutes, the heart of the system?

A. Yes.

20 Q. Well if it was the heart of the system you should have driven as a committee to make sure these plans were completed and signed off shouldn't you?

25 A. I would point out once again that Mr Rockhouse was a vital member of the health and safety committee meetings. One of the reasons was for him to be there to explain to the committee what his department was doing. If this was an issue of concern for him, why didn't he raise it?

Q. Now we've just had a look at Mr Rockhouse and you've acknowledged and I think very fairly, you can see from the description by Ms Gilman just how stressed he was?

A. Yes I can see that.

30 Q. So when such a critical element of the safety processes as the plans, the safety management plans were not being completed, what I'm putting to you is that whether he told you or not, you should have found out.

A. Well that's your assertion.

Q. Well I'm putting it to you, can you not even now see?

5 A. I can understand where you're coming from. I think the question of whether or not the documents were signed, or not, is a function of whether or not the content of them had been completed. If they'd been completed and just hadn't been signed that's one thing. If they'd been completed and they were being implemented unsigned, that might be a problem too.

Q. Fair question but you'd want to find out wouldn't you?

10 A. I would expect if this was an issue, a fundamental safety significance to the health and safety manager, that would be a big point of his presentation to the health and safety committee. We can either ask for the information or it can be submitted voluntarily.

15 Q. I'm not going over that again with you Mr Dow. Look at paragraph 35. Of the 92 SOPs in the system only 27 were signed off by department managers by the 19th of November 2010 and over the page of the 37 risk assessments in the system, only 16 were signed off by department managers by 19th November. And then look at the next paragraph 37, "Neville was continually pressing the managers for the completion and signoff of documents," and she knows this because she was the one completing emails on his behalf. That tells you another story doesn't it that things were not being done down the line that should've been done?

20 A. Yeah I see that now from one of his employee's testimony. I don't understand why Mr Rockhouse didn't draw this to my attention himself.

25 Q. Perhaps we could just make that a blanket answer if you're going to say that every time. What I'm putting to you is that these are things, yes maybe he should've done this but what I'm putting to you, is that you as the chairman and on that health and safety committee knowing that the safety management plans and systems were the core of your system, should have been enquiring to make sure they were all in place. Do you not see that now?

30

A. Well I guess the question is should we have been pushing or should they have been submitted but I see where you're coming from.

5 Q. Now I'm just going to refer very briefly to those minutes for two propositions. Firstly, the first week we know that on this committee which you saw as you say the second primary tool you had in safety terms, this committee, this is the link, the board committee, this is how you describe in your evidence?

A. Yes and of course the chief executive's regular attendance at the weekly management meetings is also an important point of contact.

10 1520

Q. And just for the record and we don't need to have it up, in the minutes of 11 September 2008 there is a reference at page 2 which says, "This corporate safety management system will ultimately govern all aspects of safety management and operation on the site." That's the point I've just been putting to you, now it's in the record.

15

A. Yeah.

Q. The same meeting as Mr Mount raised with you yesterday, addressed the fact that safety KPIs for other members of the management team were still under development and expected to be completed by year end 2008. Do you remember that?

20

A. Yes.

Q. You were shown that yesterday?

A. Yep.

Q. Now that's September 2008, and if we go to 26th of March 2009 and we can see Ms Basher if you could bring up please DAO.020.00001.

25

WITNESS REFERRED TO DAO.020.00001

Q. You have see in roman two, in the centre of that page, safety KPIs are outstanding and Mr Whittall had committed to get this done by May 2009, do you see that?

30

A. Yes.

Q. Safety KPIs are clearly of consequence, there were to this committee?

A. Yes.

Q. And then he's raised this at roman three, in the centre of the page, independent third party audits, management is still discussing the benefits of doing this. They are aware of the value of implementing third party audits, but have not yet decided whether is added value for PRC at this stage." And you say, "Mr Dow emphasised the importance of continually setting high standards."

5

A. Mhm.

Q. Now clearly the whole question of independent third party audits was right on the table for this committee. What was your view?

10 A. It was me that was proposing them.

Q. So you thought they should come into play?

A. Yes.

Q. Now can we cut this a bit short by acknowledging that they didn't come into play?

15 A. They did not come into play, no.

Q. And isn't it the case that the management actually put the position to you, which is referred to in your evidence, that in fact they were not needed?

A. No that's not what they said.

20 Q. Tell us what they said.

A. They said – what they said was that the real benefit of a third party audit would come after the safety management systems were fully in place and running. The point of that exercise being that they would get a third party expert to come and look at your entire system as it was running. So it wasn't that they wasn't going to be done because the minutes also indicate that both the safety department and the environmental department were preparing for third party audits.

25

Q. Well now we start to join the two dots together because when we go to the 5th October meeting, which is DAO.020.00004, we can see firstly in the centre of the page under "Matters arising, "the safety KPIs remain to be finalised." Do you see that?

30

A. Yes.

1523

Q. Third party well it's still the goal, "The safety environmental systems have been set up in anticipation of third party audits but the audit work is not yet happening?"

A. Mmm.

5 Q. Well you can now see why it couldn't be happening at that stage because those systems, those management plans, had not been signed off. They hadn't been completed had they?

A. That's one of the reasons why they weren't ready for it, but I think the – going out of third party audits is an important part of the process but the value comes when you've got the complete system able to be audited.

10

Q. Yes, and that's the very point Mr Dow. Surely I don't have to go through this again. These plans that were at the heart of the safety system, the management plans, had not been completed even at the 15th of November 2010, 19th of November 2010?

15 A. I see that a number of them had not been signed, yes, signed off on.

Q. Well, Ms Basher can we go to page 2 of these minutes. And we can see another what I put to you is a cornerstone element of safe practice at paragraph 3 at the top of the page. "The safety incidents had been reported back to the safety committee so they could check that the recommended remedial action is being taken as recommended. It's important to close to the reporting loop with staff who initiate safety reports."

20

A. Yes.

Q. And that's an absolute fundament isn't it of safety, of all the mines you have worked in –

25

A. There is no point in having a reporting system if you don't close it off, that's right.

30

Q. Yes. And if you look at the document to your left, it has been raised with you already but just please take my word for it for a moment. It is literally littered with references to action not being concluded, no sign of it. It's studded throughout?

A. Some of them were activities for other people to complete. You referred to Mr Rockhouse, but we are also talking Mr Whittall's KPIs. I take the point you're making here.

5 Q. The point I'm making as you know is that when you have incidents of consequence which are reported and the whole thrust in a dangerous or hazardous situation is to get the men to report isn't it?

A. Yes.

Q. Whether they be the men working at whatever level in the hierarchy or the seniors to report?

10 A. It's an important part of the process.

Q. To report?

A. Yes.

1526

15 Q. And when they report the loop has got to be completed. It's got to come back, like a reward or response is that the company says, "We take this seriously."

A. Yes.

Q. "And we'll come back with this recommendation, or change in practice or training or education" something like that?

20 A. Yep.

Q. Now you know from the evidence you've heard and you heard Mr Couchman give evidence that these things became so far out of date and unprocessed and particularly in the engineering department but others as well that there'd be a sweep every now and then that this will
25 be signed off and start all over. You heard that evidence?

A. No.

Q. Will you take it from me that that was the tenor of his evidence?

A. I take it from you, yes.

30 Q. And I would've thought that that would absolutely horrify you Mr Dow. am I right?

A. There have been a lot of things that have come out that I've been horrified at.

Q. And all things that you would change the system to avoid ever happening again I imagine.

A. Yes.

Q. And this must be one, closing the loop in every matter that is raised?

5 A. Yes it's important, yes.

COMMISSION ADJOURNS: 3.27 PM

COMMISSION RESUMES: 3.44 PM**CROSS-EXAMINATION CONTINUES: MR DAVIDSON**

5 Q. Mr Dow thank you for the answers you gave me before we adjourned and one of the answers you gave me was that since these events and since this Commission's sat you've been horrified by a lot of what you've learnt?

A. Yes.

Q. And I suppose today that's continuing as things are being put to you from records from within the company?

10 A. Yes.

Q. I've got one or two matters more to put to you in the same vein and so I'll prep what I'm going to say or put to you by saying that I expect you won't know much about them, so I want to check that you don't. That's the purpose of my questions. Before I do that, however, I just want to pick up the point of the description you have given of the board's responsibilities under the charter and this is in your evidence at page 4 and 5 and it needn't come up. You know this charter inside out I expect. Would it help you to have DAO.037.00001/5.

WITNESS REFERRED TO DOCUMENT DAO.037.00001/5

20 Q. Now here's your description of the board responsibilities and (c) is, "Oversight of the company including its control and accountability systems."

A. Yes.

25 Q. Now that would mean different things potentially to different people, but do you accept that first of all it is oversight, an over-arching overview of the company?

A. Yes.

Q. And all its internal processes for controls of the way it does things?

A. Oversight thereof, yes.

30 Q. And the accountability meaning that things will be done as the company expects them to be done?

A. That's my reading of this clause, yes.

Q. (g) is monitoring senior management's performance and implementation of strategy. You see that?

A. Yes.

5 Q. That means that you have to have some measure of addressing not just your CEO's performance, but senior managers?

A. I'm not sure how far down the organisation the charter would expect the board's overview to go.

Q. Well senior management presumably first includes the CEO?

A. Yes.

10 Q. The general manager mines?

A. Yes.

Q. The statutory mine manager?

A. No.

1547

15 Q. So you wouldn't monitor that person's performance notwithstanding their obligations?

A. The reference is to senior managers and the structure of the company was that the board monitored the performance of the Chief Executive and the general manager of mines and the other senior managers below those people were monitored by their respective manager.

20 Q. So that respective manager didn't do the monitoring correctly and report it to the board you wouldn't know?

A. If they didn't do it properly the board wouldn't know directly but one of the people that reports to the board ought to be in that position of knowledge.

25

Q. Let's say they don't.

A. Yes.

Q. That's the point we've exposed so far I think today?

A. Yes, on the assumption that they don't, yes.

30 Q. You get a failure at different levels in the system and it never reaches the board?

A. Yes I see how that could happen.

Q. And we now see how it can happen and the answer to that apart from changing the people involved is for the board to come down by some route into the system as it says here, to monitor the management?

A. Yes.

5 Q. That's the answer isn't it?

A. Yes it is, yes.

Q. And, "H," in this charter is, "Reviewing and ratifying systems of risk management and internal compliance and control, codes of conduct, illegal compliance." So that's a review of issues such as we looked at
10 before management systems? That's part of the board's responsibility?

A. Yes.

Q. Now if we then just look at the events in the last year up to November 2010, the health and safety and environment committee which again is seen as a real plank on the board's safety performance
15 doesn't sit? It doesn't sit during a period of 13 months and when the mine is coming towards hydro-production there's a huge raft of new employees coming into the system and contractors. It's a crucial time in terms of safety for this mine is it not?

A. It is, it is yes.

20 Q. And this is not slanted at you Mr Dow, but the committee should have sat during that time, should it not?

A. Well as I've explained on a number of occasions yesterday and today, the whole board itself was taking these issues into each of its monthly meetings and if you consider the health and safety sub-committee as a
25 subset of the board and the board itself is playing closer attention to these issues then you could say that the board was taking greater interest in that area?

1550

Q. But I mean we don't have to go to the board minutes to see the kind of
30 things that we're raising in this Commission and you're acknowledging today things that horrified you. They weren't coming to the board?

A. No they weren't, no.

Q. So there's no way could it be said that the board assumed the full functions of the health and safety and environment committee?

A. No.

5 Q. That must have concerned you because this was such a desperate time for the company in terms of getting to production, raising money, keeping going, did it not concern you?

A. I'm not quite sure what you're wondering that I was concerned about.

10 Q. Well here is the company coming into a period of huge transition with a huge amount of newness about the people and processes underground, new people being taken on in numbers, recruiting significantly, setting up for a hydro panel, these are the things which create real pressure on your organisation, are they not?

A. Yes, I can understand that.

15 Q. And one of the indicators of the sort of stressors that Dr Callaghan has described so this Commission in which in Queensland in an H-facts study of Queensland mines these are the kind of things that create real threats to safety. You understand that now don't you?

A. I understand it now, yes.

20 Q. And looking at the minutes such as we've been able to read records, it's not something the board addressed in an overarching way and say, we're coming into a period where there is a threat to safety because of the so many new things and new people becoming involved. It wasn't addressed like that was it?

A. It wasn't specifically addressed like that, no.

25 Q. And am I right in thinking that one reason it wasn't addressed like that was that the board stood off some of the very big understands that are needed for safe operations in a mine, such as ventilation. You didn't as a board get into the detail of ventilation did you?

A. As a board, no.

30 Q. And the reason is therefore that explains why you didn't read that ventilation report that was shown to you earlier, that's right?

A. You're probably right, yes.

1553

Q. But in the same way today and yesterday other big topics in gassy mines have come up. Yesterday the question of wind blast was referred to. Wind blast from a roof fall, do you remember that?

A. Yes.

5 Q. Did you ever understand the risks that were associated with that, as a board member?

A. I'm broadly aware of the impact for wind blasts and other operations, but not specifically it was not, it was not an issue that the board specifically considered at Pike.

10 Q. In the same way this morning Mr Mount took you to a report which referred to the risk of outburst. You saw that?

A. Yes.

Q. Now, you know the history of West Coast mines and the disasters that have taken place here?

15 A. Again I'm broadly familiar, yes.

Q. You're aware Mt Davy had a very serious outburst in the '90s which led to two fatalities?

A. I'm broadly aware, yes.

20 Q. All I'm trying to get from you Mr Dow is the extent to which the board addressed the big risk items in this mine.

A. Yes. Well the board clearly did not address them as specifically as a board as you have indicated.

Q. And that was because it was left to what you thought were very experienced and competent people?

25 A. Indeed.

Q. And more than once in your evidence it is clear that what you really thought was if there's a problem it will come to us.

30 A. I expected with the experience and the seniority and the competence of the people that were employed to run the day to day operations that those matters would come to the board from them, yes.

Q. So now we see these things which have so horrified you, all I want to put to you very shortly and only briefly. You realise they didn't get to

you and do you understand there has to be a way of prising them out don't you?

A. Yes.

5 Q. Have you read Mr Harry Bell's evidence when he talked about his extreme concerns as he had his professional conversations with Australian deputies when they –

A. I read some of Mr Bell's testimony. I don't remember that particular piece.

10 Q. I just want to put it to you. He had discussions with Australian deputies and he had professional conversations and also these people wrote reports on what they made of Pike River. I can go there if we need to but it's etched in the Commission record and these things concerned him to such a degree in 2009 that he rang Mr Whittall and he did so in the presence of an administration secretary to hear the conversation on the phone so there was no disputing it. To point out his extreme concerns about a series of issues to do with gas and behavioural issues underground, from Australian deputies, experienced people. Now his evidence is that Mr Whittall took the call and said, "Sometimes your officials let you down." You'd been chairman for two years at this time, did Mr Whittall speak to you about that?

15

A. No he did not.

1556

Q. You now realise what a significant intervention that was by Mr Bell to do this?

25 A. Yes.

Q. And his evidence is that he asked that he not be named, but it turned out he was named as the source of this?

A. Yes I read that yes.

30 Q. But, as you know he said, "Well for the greater good so be it." And that's the problem here I'm putting to you Mr Dow that whatever the board thinks is going to happen it won't necessarily be the case. We now know that, don't we?

A. There have been a number of things that I have wished I'd been informed about sooner, yes.

5 Q. The evidence of Mr Couchman is in some detail, on a whole lot of fronts, but I'm just going to take you to two or three of the points he makes. As you know he was split away to training and you've heard the evidence from people such as Mr Wylie, Steve Wylie who didn't get trained and do the job he was asked to do as a deputy on the hydro. Did you hear that evidence?

A. I saw, yeah, I've heard of it yes. I think I read it in the transcript. Yeah.

10 Q. There is a great deal of evidence that I needn't put to you, but which in essence is a complaint by men that they were asked to do things that they were not trained to do and rushed into the position. That too would be of great concern to you?

15 A. Yes I understood that the gentleman you're referring to had worked for some time on hydro at Spring Creek.

Q. Yes, that's right, but training to work in this particular as a deputy is another issue isn't it?

A. It comes with experience in the hydro process.

20 Q. Quite. Now Mr Couchman amongst one of the many things he says and I'm just going to refer to the paragraph of his evidence here and this is at paragraph 33 and I don't need it up, that very few of the matters that were the subject of incident reporting came back and that Mr Rockhouse chased these things up. He chased them hard but didn't get the answers back. You can accept that evidence I take it?

25 A. Yep.

30 Q. And Mr Couchman also makes the observation at his paragraph 73 that it was different or difficult for contractors to meet the safety standards that apply in mines, uniformly because they don't have the same depth of experience usually in the coalmining industry. And that's true too, isn't it?

A. I read that testimony, yes.

Q. Well you know at Pike were people who came from carpentry that sort of contracting area?

A. Yes.

Q. And for the first time were working underground. So training is a big issue, it's something that was referred to in the Gunningham and Neal report when a comment was made to those reporters that the training
5 was deficient in terms of the contractors. Do you recall that?

A. I believe that was Nigel Slonker's testimony.

1600

Q. That's right. That too, a matter of concern to you as a board?

A. When I read it, yes.

10 Q. But again, not something that was apparent to you at the time, it's not in the record anywhere is it?

A. No.

Q. Mr Dow I'm just pausing for a moment here, am I right in thinking that this whole Commission process is revealing to you on a whole series of
15 fronts significant issues of safety which you now recognise should have been addressed differently while this mine was operating?

A. Yes I think that's fair to say and I think it's also fair to say that the level of reporting and communication of the issues has been in a large part retrospective

20 Q. If reported at all?

A. Well we've heard a lot of things that people were concerned about and I'm concerned about the issues that other people have been concerned about. I just wish if they were that concerned, it didn't come up at the time.

25 Q. Now I just want to then explore with you why that's the case. I mean you would regard yourself as an approachable person Mr Dow?

A. Yes.

Q. Senior and very experienced in your industry?

A. If you say so, yes.

30 Q. Well don't be modest, you are.

A. Yes.

Q. I just want to ask you an open question now, did you have any insight into why this sort of information about things going so wrong and so

dangerously in this mine never got to you? Can you offer an insight to the Commission and I might say to the families?

5 A. Yes I wish I could offer something that was meaningful. I've been reflecting on it but I'm not sure that I could give you much more than speculation and I'm not ready, I don't think this is the place to do that.

Q. No and I'm not asking you to speculate. All right, we'll pass that on for a moment. Have you read Mr Matthews' brief?

A. You'll have to refresh my memory.

Q. We'll bring it out, MAT001/1?

10 **WITNESS REFERRED TO DOCUMENT MAT001/1**

Q. "Mr Matthews..." and we look to page 3 Ms Basher, "...has had 23 years experience in mining" as you'll see from paragraph 2, "and the last 10 and a half years health and safety in mining and is a health and safety manager." And he was engaged at Pike River as you can see at the bottom, first of all taken on by the polytech to provide safety and training advice and he began as a training assessor at Pike in June 2009 and then moved to audits above and below ground, okay?

15 A. I see that, yes.

Q. He says a lot of things and I'm going to cut this short, but one of the things he says is right from the start of paragraph 10 at page 4, he goes to do his training, he was there to do some training, he was there to do his induction and he was told he didn't need to do inductions because the area he was working in had nothing to do with the mine, so it's a small point but do you understand the significance of that? This is a health and safety man?

20 A. Yes.

Q. Saying I should be inducted.

A. Yes I do understand that. Where in the mine was he going to be working? Was he only just being at the office?

30 Q. Well initially he did an audit from the gate to the portal and made 140 recommendations as he says and he never heard a thing about them, so that was his first task. But now I just want to raise another couple of points he makes. Firstly, at page 7 at paragraph 35 he says this

compliment if you like to the company or Mr Rockhouse, both. "The company's health and safety and induction manuals in health and safety resource material were excellent, probably the best I'd ever seen, however there was not really a health and safety culture out in the field. Health and safety was not being put out in the mine." Now you could immediately see from that the disjunct between having a great looking record and performance, can't you?

A. Yes.

1605

10 Q. And in a sense now you would see that's what you too had in front of you, what seemed to be okay but beneath the surface was seriously compromised?

A. I would accept that.

15 Q. Now I'm not talking about the board, we're talking about management. If we go to page 8, at paragraph 45, he says, he didn't really get the impression that Pike River management was committed to safety. "Neville and Adrian were clearly committed but I developed an impression of token management commitment to safety. This view is supported by the non-compliance issues allowed to occur as outlined in the statement." And he goes on to say, "Mr Rockhouse sought extra assistance," at paragraph 46. But his request was turned down. Now I put that to you in the context of the fact that money was never an object?

A. Safety, that's right.

25 Q. Well look at the paragraph 46. Mr Rockhouse wanted this man, Mr Matthews, full-time?

A. Yes.

Q. But he couldn't get support from Mr Whittall for it?

A. It appeared to be the case, yes.

30 Q. That would concern you because money was no object?

A. It would concern me indeed.

Q. Go to page 9 please Ms Basher. At the top of paragraph 49, "We know it was Mr Rockhouse's job to develop the health and safety systems but

it was made clear that the departmental managers had the responsibility to implement the systems and ensure compliance. The health and safety department did not have the resources to engage in ensuring compliance.”

5 A. Yes.

Q. That was down the line wasn't it to get compliance?

A. Yes, do other departments should take responsibility for their own departments' health and safety after the policies were dealt with, yes.

10 Q. Now this is relevant to the question of management. Look at paragraph 50, “Mr Whittall was not receptive to comments from health and safety and training personnel including me in relation to safety issues. He gave me the impression he would not support our views on health and safety issues.” This man's experience Mr Dow that would concern you?

A. Yes.

15 Q. Look at the next paragraph, 51. I'm going to read it. “He was very aggressive and had a very unusual management manner as far as communications were concerned. On occasions he was quite aggressively abusive to Neville and Adrian in front of me. Cancellation of training was a regular feature. Cancellation arose from various issues. The commitment of managers to production rather than safety is one of the reasons. Another reason unreliability of plant and machinery, which is frequently inoperable.” Going on two lines, “An additional reason was absenteeism. Often they had the bare minimum of staff to operate underground and could not spare staff for training.”

20 That is a terribly tense situation Mr Dow isn't it?

A. Yes it is.

Q. Production is driving with all these other factors?

A. Well I mean we're assuming that this is an accurate view of the circumstances, but I take the testimony and I understand at face value that's concerning.

30 Q. I'll leave Mr Matthews with this last point, in his paragraph 52 at the same page, “One incident stands out.” 53. “He gets,” and I'll paraphrase this for you before I ask the question, “He was approached

by the miner with an Norda Tech methane detector in his hand. Was told it was a methane detector found down the mine off a juggernaut. Found in the McDowell work area. He was told Mr Matthews it'd been cut off the machine the previous night and bypassed to keep the machine operating. Told it had been taken off rather than knocked off because it was actually bypassed. Now one of the days following I spoke to the miner who handed me the methane detector. I asked him what he'd done. He said they'd raise it at the next pre-start meeting and the outcome was that staff were told they should not be taking these off machines. I said that's what I would've done was shut the mine down, find out who'd done it and dismiss them on the spot." And I guess although you're the board not the management in principle you would endorse the strongest action for someone who would take steps of that kind?

5
10
15 A. Yes indeed and in fact the board had given Mr Whittall strong advice to that effect that safety management was to be taken seriously, that's what you needed to do.

1610

Q. You didn't know about that did you?

20 A. I didn't know about that one, no.

Q. Another horrifying incident?

A. Yep.

Q. Now there's one last one I need to put to you because it comes up in several witnesses' evidence. It's at page 11 Ms Basher. It's at paragraph 68. "Another occasion involving the reporting of incidents concern me." Before I read on, Mr Bell refers to this too because he became aware of it. "I was approached by a deputy, 25 February 2010 he told me two men were feeling nauseous in his crew. He said the ventilation had shut down, staff at McDowell and appreciates working with some machines and some maintenance people doing some work with machines. They had five machines working with no ventilation and it appears that this deputy's men had been overcome by fumes from machinery." When Mr Matthews, paragraph 69, asked how long the

25
30

men had been there he was told it was something like 40 minutes without the ventilation working. He hadn't gone underground that day. The deputy came back to Mr Matthews at the surface. He advised him to write out an incident form and report it. "He came back the following
5 day and said he'd got into trouble big time for bringing the incident up. I recorded this in my diary." There is the antithesis of a culture which encourages reporting is it not?

A. It's unacceptable behaviour.

Q. Now Mr Dow, just a couple of matters I want to raise with you. Firstly,
10 Mr Stewart came to the mine, to Pike River as a result of a discussion you had with Mr McCracken in Queenstown?

A. Queenstown.

Q. In Queenstown, yes. And he's given evidence in a statement, which is STE0001/4, and as I understand your evidence yesterday you didn't
15 actually read his report?

A. No, it didn't come to me. It was a report to mine management.

Q. See, he raised a whole series of issues, and perhaps the quickest way is to deal with it in this way. He pointed, as you knew, to a problem with morale and the turnover of men and the difficulties in meeting the
20 production targets. Yet, that's really what you raised with him wasn't it?

A. That and other things, training underground particularly yes.

Q. He reported that stoppings in doors were inadequate and were leaking. You don't know this because you haven't read it I take it?

A. I've read his testimony subsequently. I did speak to Mr Stewart after
25 he'd done his audit work. I think it would have been in May the following year, it would have been May 2010. So I did have an oral follow-up to his underground audit work, but I didn't see his report. It went to mine management.

Q. Well perhaps it's enough to say that what it told you was, and you heard
30 about it at least indirectly or in that form orally in 2010? Here -

A. What?

Q. Sorry?

A. When I spoke to him in May 2010 I asked him how the audit had gone.

Q. Yeah.

A. And he raised no particular concerns with me then. He said he'd reported to management a number of things that he'd recommended and he, I think he said something like he assumed that they were being
5 taken care of but I had the follow-up conversation with him.

Q. Right, well the Commission has this evidence anyway. You read his evidence. He identified a whole series of issues that needed to be addressed didn't he?

A. Yeah he did, yes.

10 Q. And in terms of their being addressed successfully and completed, you really don't know what was done do you?

A. He said some of them were done while he was there, others were going to be done, yeah. And then I him after that and he didn't express any concern.

15 Q. Well again you don't know what the management actually did do you?

A. I don't know that, no.

1615

Q. Now I've got to deal with another couple of issues here. First of all again from the media records, I just want to understand this, your role
20 continued of course after the 19th of November and you are recorded as having reported I should say as having said I think on Monday, the 22nd, "The Pike River chairman John Dow told Radio New Zealand this morning that there had definitely been a fire inside the mine, but it was not clear if it was still burning." Do you remember saying that because
25 this can be traced if we need to verify it?

A. No I'm not disputing it.

Q. Where did you get your information from when you made statements such as that?

A. At the time we were meeting regularly with Gary Knowles. I had made
30 visits to the mine site, if that's Monday the 22nd, I was at the mine site that day with the Prime Minister.

Q. So who in the company was there when you received information about there being a fire, definitely being a fire?

A. I don't recall exactly who was there. There were a number of meetings with a number of different people. I mean I went to the mine site with the Prime Minister, we visited the Mines Rescue people. Went to the control room, I think I had a meeting with Inspector Gary Knowles the same day. Lots of people, lots of meetings.

5

Q. Was Mr Whittall with you?

A. He would've been, he would've been at some of them if not all of them. He wasn't with me when I went to the mine site with the PM, but, yep.

Q. But you were told about the fire in a form of briefing at some stage as well?

10

A. It would – yes.

Q. You were?

A. Yes, somebody would've told me. Yep.

Q. And that would've been part of the information resourced from the company and from the police?

15

A. It would've probably come from the police.

Q. Now I want to – Ms Basher could you bring up please, I hope it's in the system – I'm just going to refer to the Commission's reference number which is DAO.028.00220/1 and it's the document that I'm holding here. It's a set of handwritten notes and I'm just going to ask Madam Registrar, could Mr Dow be shown this please?

20

WITNESS REFERRED TO DOCUMENT DAO.028.00220

Q. And as this happens it's headed, "Sunday 21st November 2010." Now firstly have you ever seen it before?

25

A. Haven't seen this particular document, I think I know what it is, but I haven't seen the document itself. If you can just refresh my memory where it's come from.

Q. During the rescue and recovery period isn't it the case that the company employed, I'm not sure whether it's Katrina or Catriona –

30

A. Catriona, yes.

Q. Catriona Bayliss?

A. Yes.

Q. And Denise Weir?

A. Yes.

Q. To take notes of all the movements that took place, in particular Mr Whittall's movements, meetings and briefings.

A. That's correct, yes. It's a diary of events. Yes.

5 Q. Have you got your own version of that somewhere?

A. I've got my own notes at the time, yes.

Q. But your own version of that document which is kept by secretaries?

A. No I haven't got a copy. I do not have a copy of this document, no.

10 Q. Now you were present, obviously, at many of the meetings where these secretaries or assistants took these handwritten notes, weren't you?

A. That's correct yes.

Q. And during Phase Two of these hearings in this Commission you heard Mr Whittall make reference to the fact that such notes were taken, I take it? You were here weren't you, I remember you being here?

15 A. Yes.

1620

20 Q. For the record we haven't seen these notes until just the last day or so we didn't have them in Phase Two, but now you look at them, just take your time here, just have a look at them. Have you actually been through those notes ever?

A. No.

Q. But you have your own set of notes?

A. I haven't got a copy of this document.

Q. No, but you have your own handwritten notes do you?

25 A. I have my own handwritten notes that were made at the same time, yes.

Q. You understood the purpose of these notes with these assistants handwriting them was to have an accurate record of events?

A. That's correct, as they occurred.

30 Q. Yes, now maybe you can't answer this but because in a sense it's a company document, this was created by the company for the company using company people, I just want to put to you that what we see in these notes are chunks which are redacted for three reasons. The first is legal professional privilege, the second is commercial sensitivity and

the third is sensitivity. Are you aware of any decisions being made about that?

A. About which bits were redacted?

Q. Yes, redacted for those three reasons.

5 A. No.

Q. So it's never come to you as the chair?

A. No.

Q. You've never instructed that to happen?

A. No.

10 Q. Were you aware of any consultation? I don't want the answer, consultation of lawyers about those notes?

A. No I can't say I was.

15 Q. From your perspective if these are simply a record of all the things that occurred from what has been the Phase Two enquiry, I take it given your very vocal strong support for a public inquiry you would be from your part content that the notes come into the record in full?

A. There would've been a reason for the redactions. There were matters of company business, there were issues relating to continuing funding of the company, there were all kinds of things discussed at these meetings as well as the issues relating to the immediate emergency response. If I saw the bits that had been redacted, I'd understand better why they might've been redacted.

20 Q. Just as an example, if Ms Basher you could bring up page 8. There's a redacted for legal professional privilege there you'll see?

25 A. Yes I see that.

Q. So not something about which you had knowledge. Page 10 Ms Basher, go on for commercial sensitivity. What now could be commercially sensitive about events through this period?

A. Well I'd have to look and see what it was.

30

THE COMMISSIONER ADDRESSES MR DAVIDSON – CANNOT ANSWER QUESTION

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

5 Q. Mr Dow, finally there are many other matters I could put to you and I think you're aware of it because you would have read evidence of people like Mr Silke, Mr Houlden and others, you'd have read this evidence about what happened underground?

A. The evidence of whom?

Q. Mr Silke as an example?

A. No.

Q. So you haven't read the evidence of – in this inquiry?

10 A. I've read some of the transcripts, I haven't read all of it..

1625

15 Q. I want to thank you for your candour in the way you've answered the questions here and recognise that the serious risks that lay in this mine about which you would prefer to have known long ago. But, I just want to conclude with this. The church and state division that began your evidence which in effect here has constituted the board placing a great deal of trust in people and you would recognise now that for whatever reason stress, competence, lack of training, cultural, whatever, it was misplaced, and yet the information did not find its way back to you. You can see that now can't you?

20 A. I can see that, yes.

25 Q. And so when you said earlier today that with the benefit of hind sight things might change initially said that things wouldn't have been done differently, I think now that you can see that they would have to have been done very differently?

A. I think it's fair to say that in the passage of time and the benefit of the testimony that we've heard, that we can all learn some lessons from it.

CROSS-EXAMINATION: MR HAMPTON

30 Q. Mr Dow just the board during your time, your experience basically was in gold?

A. And base metals, yes.

- Q. And base metals. Mr Radford came from NZOG and his background was in what?
- A. Business, commerce, oil and gas.
- Q. Not underground coal?
- 5 A. No.
- Q. Professor Meyer, NZOG, he was a mechanical engineer, if I've got that right?
- A. He was an engineer, that's right.
- Q. Not a mining engineer?
- 10 A. No.
- Q. So no underground coal experience?
- A. Not that I'm aware of, no.
- Q. Mr Natrass, his background is wool and meat and being a professional director is it?
- 15 A. No he's got banking experience.
- Q. Banking?
- A. International banking.
- Q. Not underground coal?
- A. No.
- 20 Q. Mr Ward came via NZOG, what was his background, what's his professional experience?
- A. He's an accountant by professional training.
- Q. No underground coal?
- A. No.
- 25 Q. Then we get the two Indian gentlemen, those two corporations, Mr Agarwalla?
- A. Yes.
- Q. Coke producing company?
- A. Yes, been in the coke and coal business all his life, but as a coke
- 30 producer, and a coal buyer.
- Q. The last comment I didn't catch, sorry? A coke producer?
- A. A coke producer and a buyer of coal.
- Q. Not experienced as an underground coal miner?

A. Not to my knowledge.

Q. And his alternate, was he experienced in underground coal?

A. I don't think so.

Q. And Mr Jagatramka?

5 A. Mr Jagatramka is the chief executive of Gujarat NRE which is a coal mining company in New South Wales and a coal mining and coke producing company in India.

Q. His background, do you know was he an underground miner himself?

10 A. I don't believe he's ever been an underground miner but he and his family have been in the coal business most of his life.

Q. And his alternate, do you know what his alternate experience was in underground coal?

A. I believe he was a lawyer.

15 Q. Well I know haven't got any so I assume not a lot of lawyers would but anyway?

A. Fair assumption.

20 Q. And then given the lack of attendance by the Indian director which Mr Mount has discussed with you earlier on today that lack of underground mining experience is rather ups the anti for you to as a board to make sure that you're getting proper information from your management systems doesn't it?

A. Yes you could argue that, yes.

Q. I'm sorry?

A. Yes, you could argue that, yes.

25 Q. Well you could argue it, do you accept it?

A. I accept that the board needed to get the information that it needed.

1630

Q. When did you last speak to Mr Ward?

A. I spoke to Mr Ward on the day he left Pike River.

30 Q. Ms Basher, could I have up please TR.001.3151.

WITNESS REFERRED TO DOCUMENT TR.001.3151

Q. The first paragraph. This is an email from Ray Meyer to you and to Tony Radford and Stuart Nattrass of the 26th of August 2010. Am I right?

A. The first few lines at the top are from Professor Meyer, yes.

5 Q. And then half way down we have the quote, "On August 26th 2010 at 9.09 pm John Dow wrote 'Gents, for your info I have had separate telecoms tonight with Arun and Dipak on yesterday's decision to terminate Gordon's position with Pike.'" Is that you writing about that?

A. Yes.

10 Q. And this is setting in motion the procedures that led to Mr Ward's departure at the end of September is it?

A. That's correct.

Q. Both from the company and from the board?

A. Yes.

15 Q. Ms Basher, can I have a look alongside that if I can please, NZOG0068/35, which is the page of evidence from Mr Salisbury's evidence which was earlier on today?

A. Mhm.

WITNESS REFERRED TO DOCUMENT NZOG0068/35

20 Q. What I want to particularly turn to is paragraph 137. The 23rd of August which is 2010, which is three days before the email I've just looked at with you, your email. "I also," he says "attended a meeting with Mr Dow and Mr Radford, where Radford and I combined NZOG's loss of confidence in both Ward and Whittall. I suggested Mr Dow consider
25 taking an executive role."

A. Yes.

Q. Discussed that?

A. Yes, I see that, yeah.

Q. You didn't want to take? Now the next one, the next sentence I'm
30 interested in. "Mr Dow did not agree that there was a need to remove Mr Ward." Did you say that to Mr Salisbury?

A. I provided supplementary testimony that elucidated this particular meeting with respect to Mr Salisbury's comments on confidence or the

loss of confidence with Mr Ward and Mr Whittall. The, I'm not sure of the context in which Mr Salisbury is relating this comment that he's reported me as having said.

5 Q. Did you make any comment to Mr Salisbury along the lines that you did not agree that there was a need to remove Mr Ward?

A. Given this is the 23rd of August and I'm not sure whether that was just before or just after the board meeting that happened about that time, and I need to be reminded specifically about the dates but it was at the time the board was actively considering whether or not Mr Ward should
10 continue as the chief executive. There's a lot of conversation leading up to it. There was a board meeting about that time and I don't recall the exact dates but somebody can remind me of that.

THE COMMISSION:

Q. It was the 25th of August Mr Dow. There was a meeting at Atarau.

15 A. Thank you, Your Honour.

1635

CROSS-EXAMINATION CONTINUES: MR HAMPTON

A. So these are meetings in Wellington leading up to the board meeting that happened two days later at the mine site and it was after that, on
20 the 26th that I was in the process of communicating the board's decision to other directors who were not in attendance.

Q. Well paragraph 138 where we move on to the 10th of September, I was advised by Mr Dow that Mr Ward was no longer chief executive officer. Not told the reasons. The suddenness of the decision surprised me
25 given that Mr Dow had only recently supported retaining Mr Ward in the role. Is Mr Salisbury wrong in his recollection of these?

A. I would suggest that that's not the way it happened. If that's his recollection that's fine I accept that, but that's not my recollection.

Q. Can I ask you if I could have up please Ms Basher some evidence from
30 your statement at Phase One of the Commission of Inquiry, DAO.001.00003/46 please?

WITNESS REFERRED TO DOCUMENT DAO.001.00003/46

- Q. If I could get you to highlight please Ms Basher 305, paragraph 305 sorry where it says, "George Mason an experienced undermanager from Queensland also commenced with PRC in September 2010 in the role of hydro-co-ordinator."
- 5 A. Is this from my testimony in Phase One?
- Q. This is from your testimony at Phase One. Do you want the first page to make sure that I've got the right document?
- A. I trust you Mr Hampton.
- Q. Thank you Mr Dow. Your knowledge of Mr Mason being employed in
10 the role of hydro-co-ordinator was what?
- A. Just that he had been.
- Q. How was that reported to you please?
- A. I don't recall when I first learned it.
- Q. Before the explosion or after the explosion?
- 15 A. I honestly can't say.
- Q. Where would you have got the expression, "an experienced undermanager from Queensland," from?
- A. Well if I could remember when I heard it I might be able to answer the question.
- 20 Q. Did you hear any of the evidence from a couple of weeks back, including Mr Mason's evidence, that in fact he didn't hold any certificates, current certificates of competence and hadn't since 1996 from memory?
- A. I was aware that he'd had a time out of the industry and that he was
25 coming back into it when he came to Pike.
- Q. Who had made you aware of that please?
- A. I met Mr Mason onsite shortly after he arrived.
- Q. Well if you were aware that he'd been out of the industry for a while and was coming back, did you make enquiry of him or of anybody else in the
30 management team who were employing him as to whether he had relevant tickets or not?
- A. No, because a lot of people that came needed to get their tickets upgraded or updated. So that wasn't an issue for the chairman. I just

happened to be onsite two or three days after he arrived and I was introduced to him in a social function.

Q. Did you know at any time that he was undermanager in charge in Moura 2 when it exploded?

5 A. I did. I did know that, yes, he told me.

Q. Did you know that he had been an undermanager approximately decade earlier when Moura 4 had exploded?

A. I was familiar with Mr Mason's experience because he told me himself.

10 Q. Did that raise concerns with you as to whether this man was appropriately being employed in the role of hydro-co-ordinator?

A. Not particularly, no.

Q. Did you raise that issue with, say, Mr White or Mr Whittall?

1640

A. No it was Mr Whittall that introduced me to him.

15 Q. The paragraph above 305, 304 Ms Basher if you could highlight for me please which is Mr Ellis. What knowledge did you have as chair of the board about Mr Ellis' employment?

A. Well again he was introduced to me at a visit to the mine site.

Q. Introduced by whom?

20 A. It wasn't the chairman's job to interview or recruit these guys, they were recruited by my management team?

Q. Do you know who introduced him to you?

A. Not specifically, no.

25 Q. You say in that paragraph that you knew he didn't have a valid New Zealand qualification. Did you know that he had sat and failed three times to get the Queensland first class mine manager's certificate?

A. I learned that subsequently, yes.

30 Q. If you had known that at the time that you were introduced to him would that have been some concern to you that he was being put up for this role?

A. I'm not sure how to answer that. I would've assumed that whoever had employed him was well aware of those facts.

- Q. If you'd known that at the time that he didn't have certificate but that he sat and failed three times in Queensland, would that have concerned you that he was being promoted into the role hopefully of statutory mine manager here?
- 5 A. Well he still had to get appropriate qualifications in New Zealand, that still had to happen.
- Q. A couple of matters about underground, you were underground quite a number of times then from what you've said in Pike?
- A. Yes.
- 10 Q. Ever difficulties about having transport available to you to take you down into the mine, down to the face, the working faces?
- A. No I walked in on a number of occasions, walked out on a number of occasions.
- Q. Because of lack of transport available?
- 15 A. Not always.
- Q. Did you ever make any observations yourself about the state of maintenance of the roadways when you were walking down there?
- A. There were times when they weren't in the best shape but there are a lot of mines that have that situation from time to time.
- 20 Q. Did you make note of the presence or absence or state of maintenance of smoke lines for example underground?
- A. No.
- Q. What about fire hoses lying around not coiled up? Did you ever make any observations of those sorts of things?
- 25 A. No I can't say I ever saw that circumstance.
- Q. Did you ever look at the fresh air base at all, the new fresh air base at the base of the Slimline shaft?
- A. It was pointed out to me, I don't believe I ever went into it.
- Q. Were you aware it only had a roll down brattice door?
- 30 A. I wasn't aware at the time, I've learned that subsequently.
- Q. Would that, if you'd known it before the explosion, if you'd known that that was the only so called refuge chamber, would that have been of

concern to you that this wasn't a sealable chamber that people could in fact use as a place of refuge?

A. When the question of the fresh air base was discussed it was discussed in the context of that being adequate and fit for purpose. I had no reason to question its description to me in those terms.

5

1645

Q. There was some discussion about secondary egress. You told us about that yesterday. Who was it who advised you that that complied?

A. I think I testified earlier, I don't remember who told me that, there was a discussion about it, I broadly recall a conversation that it referred to a visit from the mines inspector. Implication was that he had inspected it and found it adequate. I subsequently learned that the Department of Labour's inspectors had considered that it met minimum requirements, that was testimony to the Commission.

10

15 Q. Were you aware yourself that it was by ladder up the vent shaft?

A. Yes.

Q. Did it ever cross your mind as to the adequacy of that as a second means of egress?

A. Yes.

20 Q. Leave aside the formalities of the law and discussions about that.

A. I asked the question and I was told that people frequently went up and down it for maintenance purposes.

Q. What prompted you to ask the question?

A. Well I was curious to know.

25 Q. About what?

A. Make sure that there was a ladder going all the way up.

Q. Can I have up please Ms Basher, DAO.001.0003/32, this is extract from your Phase One evidence where you touch on the underground fan, it's paragraph 194. I wonder if we could highlight paragraph 194 please?

30 **WITNESS REFERRED TO DOCUMENT DAO.001.0003/32**

Q. In the middle part there's discussion of the risk assessment including that there were no legislative or technical barriers to locating the fans underground with engineering solutions available to resolve identified

problems. Mr Mount asked you a bit about the fan this morning and you rather avoided answering him. You accept that the fan as installed and as Commissioned just prior to this explosion was not intrinsically safe, was not flameproof?

5 A. No, and I didn't mean to imply that it was flameproof but that the electrical part of the drive was separately sealed. And that was always part of the design as I understood it.

1648

10 Q. In answer to at least one of Mr Mount's questions when he asked you about the existence or otherwise of fans in other mines, you said that it's an assumption that you make in answer to Mr Mount. Do you know of any other underground coal mines where the major ventilation fan, the major system is underground?

A. I'm not aware of others.

15 Q. Did it occur to you in considering, or the board in considering a fan underground, the possibility of some outburst, gas outburst, the force of it such as to break stoppings and for gas to come not just down returns but into the air intake of the mine and the possibilities that that might have in relation to non-flameproof electrical equipment such as this fan
20 underground?

A. Not specifically, no.

Q. Not specifically you say. Was it considered at all please?

A. I don't recall that it was considered but I, you read the evidence and you'll see there was an independent risk assessment done before the
25 proposal to have a fan underground was decided.

Q. And there were no legislative or technical barriers. What I'm interested in was consideration of safety matters in relation to such. Was there separate consideration, separate risk assessment done as to safety of such things. Not just technical and legislative?

30 A. Yeah. You'd have to look at the risk assessment to see the specific details of what was considered. I'm not aware of those details, but a quick look at the document would tell you the answer to that question.

Q. You talked yesterday about the conversation you had with Mr McCracken in August 2009 and again, then again today with Mr Stewart, and both raised concerns about training and about cultural mix and morale, those sorts of things?

5 A. Yes, correct.

Q. You took those matters back as you told them you were going to, to Mr Whittall and Mr Ward?

A. Yes.

1651

10 Q. The reaction of those men to those concerns expressed by people like McCracken and Stewart, was what?

A. The reaction to me taking –

Q. The reactions of expressed concerns of those two men, Stewart and McCracken about morale, about cultural mix, about training. What was the reaction of those two men Mr Ward and Mr Whittall?

15

A. I don't recall the details of their reaction, but my point was to tell them I wanted them to do something about the concerns that had been raised by Mr McCracken and confirmed by Mr Stewart.

Q. Yes. You told them that you wanted them to do something and their reaction to that?

20

A. I don't recall the details. It was quite a long time ago, but I know that Mr Stewart and Mr Whittall had a subsequent follow up conversation and Mr Stewart was ultimately engaged to come and work for Pike on dealing with some of the issues that had been raised by Mr McCracken in the first place.

25

Q. Well did either or both these gentleman White, sorry Ward and Whittall, did either of them say, "No we haven't got a problem with this," or did they accept there was a problem with these things?

A. Like I said I don't recall the specifics of their reaction.

30 Q. Well come on you recall conversations, casual conversations in airport lounges?

A. I made notes of those.

Q. Yes. Well surely to goodness you're going to be interested in the reaction, here you are inexperienced as to underground coalmining, you're going to be interested in the reaction of these management men on whom you rely?

5 A. Mhm.

Q. Well if you're interested, you say, "mhm," I take that as an acceptance, a yes?

A. Well the fact is Mr Stewart was subsequently engaged by Mr Whittall to do the work. I don't recall the details of their response.

10 Q. Well you don't recall anything of their response. Is that right?

A. No. That's right.

Q. I was going to ask you something about the emergency response management plan, but I won't apart from saying, you seem to accept with Mr Mount that there was nothing in there, in that plan that dealt with an explosion?

15

A. Not specifically.

Q. A catastrophic explosion?

A. Yes, yes.

Q. That would've been a document you would've had at the board, the ERMP?

20

A. We would've seen it yes.

1654

Q. Did you know that it didn't seem to have a specific plan in amongst the 153 odd plans that are detailed in it, it didn't have a specific plan for outburst?

25

A. I didn't know that.

Q. Mr White in his evidence filed for this phase of the Commission says at paragraph 7 that, "As at 14th November 2010 he'd made a decision to leave the employment of Pike River." Did you know that Mr White was unhappy?

30

A. I did not, I first read about his decision or thinking in the statement that he just filed that you just referred to.

Q. Which includes that email that's attached to his evidence where he'd emailed people looking for other employment in Australia?

A. Yes.

Q. That comes as a complete surprise to you?

5 A. It does.

Q. Yet another manager in that revolving door that Mr Davidson talked about earlier on?

A. Yes.

Q. Hydro-bonus, can I have up please DAO.013.04348?

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

Q. Can I have then alongside it – no I haven't got the right one sorry. If I could have please Ms Basher EPMU0017/3?

WITNESS REFERRED TO EPMU0017/3

15 Q. Now this is with a different reference, it's the same schedule to the letter that went to employees with the bonus arrangement 5th of July 2010.

A. Yes.

20 Q. And you said yesterday in evidence and I just want to be clear about this you made this comment, at 3935 of the transcript, last part of an answer that you gave, "There would be no reason why there'd be any relaxation in health and safety attention, no not at all." The question from Ms Shortall sorry, "What do you say in response to criticism that the hydro bonus scheme impacted health and safety at the mine?" Answer, "I don't have any reason to believe that was the case." Remember that evidence?

25 A. Yes.

1657

Q. Well a couple of things, first there's been talk and discussion about some of the inexperience of the workforce at Pike and lack of training, you've heard some of those discussions?

30 A. Yes.

Q. What do you think a hydro bonus like this would have on, in particular, inexperienced miners?

A. It's difficult to know. The issues that the bonus is introduced for, as I've said on a number of occasions already, related more to productivity than to doing what they were doing harder or faster. There were a number of growths areas of productivity that the bonus sought to overcome.

5 Q. You had hydro crews that had only one experienced and three inexperienced, might that not be a concern, a health and safety concern?

A. I can see where you might draw that conclusion, yes.

10 Q. Had you applied your mind to that before you put out this letter in this document?

A. Not specifically.

15 Q. Okay, the bottom paragraph, "This provision will apply to any day where the employee is sick or fails to report for work on time for any reason. This will not include any day which an employee has been granted pre-approved leave." Did you turn your mind to the proposition that that might invite genuinely ill people to still come along and work because they didn't want to lose the 200 a day that would otherwise be deducted from their bonus?

A. Yes that would seem to be unfair wouldn't it?

20 Q. Well you're the man who signed the letter and sent this out. Did you apply your mind to that health and safety considerations as to that?

1700

A. I guess looking at that you might conclude that I might not have?

Q. Well did you or not?

25 A. Well I obviously can't recall the specifics Mr Hampton. If I could just correct the comment that you made before, this was a bonus for getting to the start of hydro, it was not involving actual hydro activity. It was meterage drilled and roadway development so that we could start hydro and if you look the bonus was for work to achieve the commencement of hydro, not the hydro work itself.

30

Q. I wonder if I could have up please TR0011060 Ms Basher?

MR HAMPTON ADDRESSES THE COMMISSION – TIMING

**THE COMMISSION ADDRESSES COUNSEL – TIMING FOR
CROSS-EXAMINATION OF WITNESS**

1703

CROSS-EXAMINATION CONTINUES: MR HAMPTON

5 Q. We've got that email up now, the one I just referred to and it's from it would seem Mr Ward to yourself and other members of the board, you see that?

A. Yes I see it, yes.

10 Q. And it's dated the 7th of August which is – sorry 8th of July is it? Is that the way it's done, is that the American system? The 8th of July I think which might've been three days after the letter of 5th July?

A. Just looking at it I would've thought that was the 7th of August but –

15 Q. You see in the third paragraph down, I wonder if we could highlight that please Ms Basher? "There were not a lot of questions or feedback during the briefings. One interesting aspect is the focus on the \$200 deduction made for each day off sick, regardless of reason. As it transpired two staff who asked the question had just taken a sick day and wanted to know if there would be a deduction. On summary a fairly muted response." Given that feedback, did you revise or re-look at the policy?

20 A. I don't believe there was any revision done. I do not believe there were any revisions made.

25 Q. Just before I move on to the next aspect of hydro-bonus, the notes that Mr Davidson just referred you to that secretary's notes kept as you went around post Pike explosion, there's a reference at DAO.028.00220/1 and I don't think it's on the system yet, a reference to a note made on 21 November 2010 in relation to the families' visit to the mine and if we could highlight the bottom passages please, the bottom paragraph. Fourth line from the bottom it says, "Remove hydro bonus posters." Do you see that?

30

A. I see that yes.

1706

Q. Were you part of that discussion?

A. No, the diary that you're referring to was kept at all the meetings that Mr Whittall was at and I was at some of them and there's others that I was not at and looking at this the visit to the mine site would've been one that Mr Whittall had undertaken and I was not there. The diary is Mr Whittall's diary and the two ladies that you referred to went with him to all the meetings he went to, to record the issues that he was involved in.

Q. So you can't help us at all on that comment, "Remove hydro bonus posters?"

A. No I'm sorry I can't.

Q. Why that was being done?

A. No.

Q. Yesterday in talking about hydro bonus you said in answer to Ms Shortall and its page 3933 of the transcript. Question, "Did you have any understanding as to whether company management had discussed the hydro bonus proposal with the union?" And your answer, "I believe so, yes."

A. Yes I believe that was the case.

Q. Where did you get that understanding from please?

A. I don't remember exactly when Mr Hampton.

Q. Can't remember from who?

A. I don't remember when.

Q. From whom did you get the understanding?

A. No I don't remember from whom.

Q. Are you familiar with the evidence of Mr Elliott that's been filed on behalf of the union – sorry yes Mr Elliott it's been filed on behalf of the union under EPMU0014/8 please Ms Basher?

WITNESS REFERRED TO DOCUMENT EPMU0014

Q. Have you read the EPMU evidence at all in relation to this phase of the matter?

A. Was that Phase One or Phase Two?

Q. Phase Three.

A. I haven't read the more recent transcripts, no.

Q. But by and large that was a restating of what they said in Phase One. Paragraph 19, "During the negotiations I had a brief conversation with Mr Knapp during which he informed me the company would be paying a bonus to all workers as part of the new hydro operation, hydro bonus, by this time all the employees had already been informed of the bonus scheme. There was absolutely no communication or negotiation with the union around the provision or content of it. I was not given a copy of the hydro bonus. The conversation took place was brief, Dick Knapp simply told me what the company were doing. It's just another example of the company's negative attitude towards the union."

A. I see that.

Q. Do you not think that the union should have been involved in discussions about such bonus arrangements?

A. I think the manner in which it was communicated to me that that conversation happened I would've expected a more substantive discussion than what Mr Elliott has testified.

1710

Q. Have you read an email Ms Basher, at Rock, ROCK0003/1 which is an email from Mr Whittall to Neville Rockhouse at 28 November 2009, the top portion if you could highlight please Ms Basher?

WITNESS REFERRED TO DOCUMENT ROCK0003/1

Q. "Neville I agree and understand. Let's talk about it during the week. The union was never involved and does not come into any consideration. Please do not use the union in the same sentence as anything at Pike. Our relationship and the way we communicate is between us and our employees." Had you read that before today?

A. No.

Q. Are you surprised at the attitude being expressed there by Mr Whittall towards the union?

A. I'm mildly surprised, yes.

Q. Why surprised?

A. I think the tone is a little unhelpful, but that's all. I'm not familiar with the background or any of the info that led up to it so you'd need to see context. Taken cold, I'm mildly surprised.

5 Q. Well I want, and I don't want to take a lot of time on this, but I just want to know whether at Phase One because it's been a repeated Phase Three, you read the evidence of the EPMU man Mr Winter and Mr Elliot and their comments made in there about the attitude of company management, particularly Mr Whittall, and alongside Mr Whittall, Mr Knapp towards union involvement?

10 A. I recall that the transcripts from Phase One along those lines, yes.

Q. Were the matters that Messrs Winter and Elliot raised as to those two men's attitude towards the union and any involvement of the union, were they of concern to you when you read them?

A. Well it wasn't company policy.

15 Q. So would I take it they, what was expressed there by Messrs Winter and Elliot was of concern to you?

A. You'd have to refer me to the specific context. I don't want to comment on something that I haven't seen in the proper context, but if you want to talk generally then I would be concerned about that in the same way as I am about the communication that's on the screen.

20 Q. I'll try to short-circuit as much as I can, Ms Basher if I could have up EPMU0019/7 please?

WITNESS REFERRED TO DOCUMENT EPMU0019/7

25 Q. And this is at paragraph 16 where Mr Winter who was the then organiser for the EPMU over here is expressing his view of his first meeting early 2009 with Mr Whittall and saying, "Its' clear from this meeting that management and Mr Whittall in particular were not interested in forming any sort of relationship with EPMU. At the meeting Peter Whittall also mentioned that previous had a bad experience with union in Australia. The meeting was tense. I left with the impression that the company were anti union and determined to keep the EPMU at a distance." That would be of concern to you Mr Dow if you'd known that that was the attitude of management to the union?

30

A. It looks like a personal view of Mr Whittall's rather than the view of the company, but yes, I can see that.

Q. Well just on the next page, the bottom of that page he then refers to a second meeting with the company, Dick Knapp approximately three months later. Meets with Dick Knapp human resources manager?

A. Yes I see that, yes.

1715

Q. "And the meeting was not at all constructive. There was a lot of gamesmanship, I got the impression Mr Knapp thought it was some sort of game. He seemed think it was his place to inform me of what I could and couldn't do. He knew the law better than I. The main area of – sorry over to /8 please Ms Basher. "The main area of contention relate to membership meetings. He seemed to accept that a collective agreement would eventuate, however he was unwilling to be co-operative in relation to my request for an all up membership meeting. An all up meeting is where union members from a site are all able to attend the meeting at the same time," and so it goes on.

A. Yeah.

Q. That attitude of concern to you?

20 A. A little bit, it looks a bit obstructive.

Q. If you're going to have employee buy-in to health and safety you're going to have to involve something like the union aren't you, in a constructive way?

A. Yes.

25 **CROSS-EXAMINATION: MR HAIGH**

Q. Mr Dow, I want to ask you about your evidence that Mr White attended board meetings plural. Isn't the position that he only ever attended one board meeting which was on the 15th of November 2010?

A. I think that's correct, yes.

30 Q. And you suggested in your evidence I think when being asked by Mr Mount that it would've been open to him to have invited other people to come along to the meeting?

A. Yes.

Q. It's unlikely that that is something he would've thought of doing on his first board meeting?

A. Yes that's probably fair, yes.

5 Q. Now I just want to resolve one probably minor issue but Ms Basher can you put up side by side the two different copies of the minutes of the 15th of November DAO.007.29335 and DAO.015.025441?

WITNESS REFERRED TO DOCUMENT DAO.007.29335 AND DAO.015.025441

10 Q. Now what I'm not sure about Mr Dow is which of these is the actual true copy of the minutes of that meeting? Can you without reading them, going through all the detail and I can give you copies, can you identify why there are two versions or is one a draft?

15 A. I can't tell by looking, just the scan of the first page looks like they're identical.

Q. Well can you just look at these two documents if you could thanks. These are the paper versions of the document before you?

A. I take it that the version /1 has got I think you've marked, "New wording," and, "Different wording." Is that correct?

20 Q. Yes perhaps they are both /1 so let's look at –

A. That's the page number okay, well on page 3 then of the document.

Q. Which document?

25 A. That's 02544/3 has been annotated to show some words that are new in paragraph 3 and paragraph 6 and it looks like if I'm reading your writing correctly that there are words that are different in paragraph 4.

1720

30 Q. Yes precisely. Well let's get up the same paragraph in document 335 and that will be on page 3 again, and that's paragraph 2. So having given you my marked copy that of course minimising the element of surprise, but can you just tell me the one on the right-hand side is that 25443 –

A. I believe...

Q. – yes that refers to – look at paragraph 3 there and if that could be highlighted please Ms Basher and paragraph 2 on the other one.

A. Yes because they've been run together in one of the versions, that's right.

5 Q. Ms Basher can they be highlighted please. I'll just ask you this Mr Dow, one of them refers to, for example, dealing with the one 335/3.

A. Yes.

Q. That refers to the new ventilation shaft, this is fan, three lines down at paragraph 2, delivering 138 cubic metres of air per minute.

10 A. Yes.

Q. Then the average gas occurrence across the mine is three cubic metres per tonne of coal which is considered low of in the nuisance category everything cetera. If you go back to the other paragraph 3, and document 2544 on page 3, there's an additional sentence which says, or additional part of the sentence which says, "People were focused on gas management. Gas is high in the eastern area of the mine at approximately eight cubic metres per tonne of coal." So we get another change there because there's a reference to the average gas occurrence across the mine is four cubic metres, not three. So you can see there are additions added in there.

20

A. Yes.

Q. Changes, can you tell us how that occurred?

A. I imagine that the document 29335 is a draft and document 25444 is the final copy having had the benefit of input from people that were at the meeting.

25

Q. I see, so someone sent round a draft and they've amended it accordingly?

A. That would be my explanation yes.

Q. Were they ever signed off given that the explosion took place five days later?

30

A. I believe they would've been signed subsequently. It would've been signed because minutes that went to the Commission were all signed.

Whether they were signed off in the week or two after the explosion I would doubt that very much.

5 Q. Now I want to ask you about the tube-bundling system. Were you aware of – or are you aware of Doug White's evidence about the tube-bundling system that he gave in Phase Two?

A. Yes, broadly aware, yes.

Q. Pardon?

A. Broadly aware, yes.

10 Q. Broadly. Well in short without outlining all that evidence he said when he first arrived in June he initiated the tube-bundling or raised that as being desirable, another safety issue?

A. Yes.

15 Q. And that he put it in the budget for the 2011/2012 year and that he'd sorted through and obtained a breakdown of the cost and that had been received in writing from SIMTARS in Queensland about \$800,000?

A. Yep.

20 Q. And he put that in the budget for the August quarter, which would be what the first quarter during the year. And that was taken out of there and Mr Whittall made some remarks about, well they needed to talk about it. Now what I want to know firstly is, were you aware that the tube-bundling system, the purchase of a tube-bundling system had been put in the budget for August of 2010?

1725

25 A. I was aware that it was in the budget. I was aware that Mr White had requested those funds as part of the budget submission. I wasn't sure exactly when it was to be implemented. I subsequently understood that it had been scheduled to happen in the second half of that financial year which would have been in the first half of 2011. But I was not aware that it had been of the original timing, of his original timing.

30 Q. You're correct that it went into the April into the third quarter, whatever?

A. Yes.

Q. But and you gave evidence early today you said and I think yesterday that the board never compromised on safety introducing new and improved safety material?

A. Yes.

5 Q. Why didn't you approve this for going in earlier than the second quarter of 2012 when it had been sought?

A. I think you mean 2011 don't you?

Q. Yes.

10 A. The budget is approved in total for the year. The point of which those funds are actually requested is a subsequent exercise. The board would have approved the budget which included capital items for tube-bundling not when it was to be implemented. That would be a decision made on site. Mr White would've had control of that portion of the budget.

15 Q. Well he will give evidence and I think he already has that Mr Whittall has control, or had control of it. And he determined that it went into the, so far as Mr White knew, into the April quarter. Do you have any comment on that?

A. Not really, no.

20 Q. Did the board have no say as to when it was introduced, given that it was a safety issue?

A. The board would've taken recommendation from site management. The board's role would have been to have considered the worth, the value of the expenditure and approved it and then it's up to site to then specifically apply to purchase the equipment.

25 Q. Well would the minutes show the tube-bundling system came, was put before you and that management which would have been Mr Whittall recommended a date mid-2011?

A. I don't recall from the budget documents when it was recommended to be installed. But it should be a matter of record.

30 Q. Well is it a matter of record as to whether it was raised before the board and a discussion took place about when it should be implemented and what Mr Whittall had to say about it?

A. I don't think that was a matter for the board. The question would have been the capital item.

Q. So it was Mr Whittall and Mr Whittall alone would've decided when it should be implemented?

5 A. No, it wouldn't say that either. Mr White was the statutory manager. That would have been a conversation between the two of them as to when it would be best implemented.

Q. Well you don't know because Mr White will say he didn't have that conversation. Well let's put aside the purchase of a tube-bundling system. You will know from Mr White's evidence that he sought from SIMTARS once he'd been told there was no early purchase in June of 10 2010 he wrote to SIMTARS asking about a leasing arrangement, are you aware of that?

A. I think I saw that in his testimony, yes.

15 Q. Well were you aware that the, there was a to and fro as to the cost of leasing and that in the end it was squashed by Mr Whittall?

A. I was not aware of that, no.

Q. You weren't aware of that?

A. No.

20 Q. Well I don't suppose then there's any point in my showing you the email trail but let me just read you out and this, actually I'll need to produce this as an exhibit. Can you bring that up please Ms Basher? It's been referred to?

A. Yeah.

25 **EXHIBIT 42 PRODUCED – BUNDLE OF EMAILS**

Q. Now for the sake of time I'll explain start at the back the documents. You know who SIMTARS are, don't you?

A. Yes.

1730

30 Q. So SIMTARS had been asked in June by, well no, it may have been earlier, by Mr White for details as to the purchase price. In fact it was May because three or four pages in, we do have that there now on the screen, have we? If you go Ms Basher please, can you work through –

- actually I don't need to show you that. What we have is sometime in May a request be made as to the cost. Finally that comes through and then what happens is that Mr Whittall appears to have according to Mr White said, "No we can't purchase it now," so then Mr White then
- 5 seeks to introduce or obtain the lease of the same tube-bundling system and there's an exchange of emails about the cost and how sometimes they've had to refer the matter to the Bank of New Zealand who would contact the senior management of Pike River. It's page 1, which is the important one. If I could just ask you to briefly look at that?
- 10 A. Is this the email from Paul Harrison to Doug White?
Q. Correct, that's the final one. This ends the leasing proposal.
A. Yes I have read that email.
Q. As you can see, what's happened here that the SIMTARS financing department's gone to the BNZ about funding and they have gone to
- 15 Pike River and the CEO has said, "No, forget the leasing it's some way off"?
A. Yeah I see that, yes.
Q. Now would you have approved of that approach had you known about it?
- 20 A. It seems a little unorthodox.
Q. We'll it's worse than that isn't it because it's a safety issue.
A. Yes.
Q. Wouldn't have had to have the capital expenditure and you just had the leasing costs?
- 25 A. Yes I agree with that.
Q. So you would not have agreed with Mr Whittall's proposal that in fact the leasing suggestion be put off?
A. On the basis of what you've shown me, no.
Q. No. Now one incidental matter, Mr White will say in evidence that he
- 30 told you post the explosion when the search issues were still up in the air that he had intended to leave?
A. Me personally?

Q. Yes, told you personally that prior to the explosion he had been thinking about and in fact had decided to leave?

A. Yes I don't recall that but if you can refer me to the conversation then he may well have done that. I don't remember it.

5 Q. Well I can't refer you to it other than what I've put to you, but in any event the last topic I want to raise with you is this. You've seen the letter dated the 14th of November 2010 where Mr White writes to a recruitment agency in Australia and says that he's unhappy here and he wants to leave?

10 A. Yeah I saw that in his evidence, yes.

Q. And you'll see that and I'm not going to put it up because I don't think it's appropriate given the Commission's ruling about evidence which hasn't been given yet, but in that letter he says, "One of the reasons is that senior management have blamed him for a 7% drop in the share price?"

15 A. Seven cent drop in the share price.

Q. Seven cent was it? All right. Now senior management, did you know that assuming it's true, that some comment had been made to him by someone more senior to him, he will say Mr Whittall, blaming Mr White for the seven cent drop?

20 A. Yes I was aware of the incident and the circumstances.

1735

Q. And did this arise from some analysts going down into the mine, Mr White talking about production, the analysts then reporting this and the share price, Mr Whittall claims, dropped?

25 A. Yeah that's my understanding. Remember the context in which this was happening. We were about to announce a \$70 million dollar capital raise and an important component of that financing is the price at which the funds are raised. Mr White took a group of analysts underground for a visit because I suspect that they were contemplating investing in that capital raise and made a number of, what I considered to be, unguarded and relatively commercially unsophisticated comments, especially to people without coalmining background or experience. He was honest in his comment, the comments were I think a reflection off the top of his
30

head about a problem that he was having with the hardness of the coal and I believe he made a comment to the effect that, and he didn't know what to do about it. Now, was an ill-advised comment whatever he might've thought especially to analysts who might not otherwise have appreciated that this was a problem that he was dealing with. They then went back to their office and wrote a report, as I understand it, and it was followed immediately by a significant drop in Pike share price. Now a comment was made to Mr White that was not a very commercially smart thing to do. It's not about not telling the full story, just about not speculating or commenting to people that don't understand the significance in which the comment was made.

Q. Well if we put that another way, he allowed the truth to escape?

A. No I think that's not the correct way to put it. It wasn't a question of the truth to escape, if the truth was he didn't know, I don't believe and I don't think he should've speculated about his ability to solve the problem.

Q. Well we don't know whether he volunteered it or he was asked about the problem?

A. That very well may be but the comments were in judicious. In the context of what the company was doing.

Q. But truthful?

A. Not untrue, that's right.

Q. Honest?

A. Yes, I'm not saying that it wasn't the truth.

Q. But it wasn't commercial to do so?

A. It wasn't smart.

THE COMMISSION ADDRESSES MR STEVENS

QUESTIONS FROM COMMISSIONER HENRY:

Q. Mr Dow the Commission as one of its primary objectives is to try to learn lessons for the future, to ensure this doesn't happen again.

A. Yes.

- Q. And my questions are basically directed towards that, as well as some background questions. Now my understanding is that before you came back to New Zealand you had a distinguished career at senior management, director level?
- 5 A. That's correct, yes.
- Q. And you worked for a major company Newmont?
- A. Yes gold mining company, yes.
- Q. For both US and in Australia?
- A. That's right, yes.
- 10 Q. Now when you finished up before you came back to New Zealand, you were the chief executive or managing director?
- A. Managing director yes.
- Q. Managing director and chair of the board?
- A. Yes.
- 15 Q. And therefore you were combining governance functions and management functions?
- A. Yes that's correct. Yes.
- Q. And how many sites did Newmont have?
- A. The Australasian operations had nine mines in Australia and one in
- 20 New Zealand.
- Q. Did it have an internal audit function?
- A. Yes it did.
- Q. Did it have a programme evaluation function?
- A. Programme?
- 25 Q. Evaluation function.
- 1740
- A. Not quite sure what programmes you're referring to.
- Q. Did it have a function whereby independently to the management there was an examination of whether particular activities were effective or
- 30 not?
- A. Yes it did. It had extensive independent third-party auditing of a number of aspects of the company's business.

Q. And as chair/managing director what involvement did you have with health and safety?

A. It was at a fairly high level and there were health and safety audits. There were environmental audits and there were community affairs audits all done independently. Those reports would come to me as the managing director. I should point out that the chairman's role was a relatively minor one. The company was listed on the Australian stock exchange and so it had a board and it had two or three other listed subsidiaries that reported to that board. And so I was chairman of the board but my main job at Newmont was as managing director.

Q. And in regard to the health and safety involvement that you had, albeit at Chief Executive managing director level, did you have any special training in respect of health and safety issues?

A. Not specific training, no.

Q. Now in relation to Pike how many sites did Pike have?

A. Just one.

Q. One? And how many employees did it have?

A. About 180 at the, in November last year.

Q. So it was compared to Newmont it was a tiny enterprise?

A. It was, yes.

Q. Now you took on the role of health and safety committee chair as well as being chair of the board?

A. Yes, I did.

Q. Why did you take that on?

A. I took it because of my mining experience, I felt that it was important for somebody that was chairing that committee to understand the way health and safety applied at mine sites. I felt I had some experience to bring to the role.

Q. And did you, when you were at Newmont, did you have a companywide, Australia wide risk assessment framework?

A. Yes we did.

Q. And did that report, did that result in regular reports to the board?

A. Yes it did.

Q. In regard to the more significant risks?

A. Yes.

Q. How much time did you apply to be chair of Pike prior to the explosion?

5 A. In 2009 it would have been about 20% of my total time. In 2010 it would have been nearer to 40% of my total working time.

Q. So that was a substantial commitment that you took on.

A. Yes.

Q. How did you equip yourself to deal with New Zealand health and safety issues, having been overseas for so long?

10 A. I relied fairly heavily on New Zealand trained and based experts, particularly Mr Rockhouse.

Q. Mr Rockhouse as the health and safety manager, was responsible for providing the systems and tool as I understand it?

A. Yes he was.

15 Q. To the managers?

A. Yes.

Q. He wasn't responsible for health and safety per se?

A. He was the health and safety manager. He was responsible for the safety management plan, the standard operating procedures in all the risk assessments and providing those tools, yes that's right.

20

Q. He was responsible for, it was a staff position was it not?

A. Yes.

Q. Not a line position?

A. No, that's right.

25 Q. I wonder if we might just look at the charter again. It's DAO.037.0002/30?

WITNESS REFERRED TO DOCUMENT DAO.037.0002/30

Q. Can you see it there Mr Dow? This is the charter dated the 19th of June '06, of the health and safety committee?

30 A. Yes.

Q. When you took over as chair of that committee did you review that charter?

A. Yes I read it, yes, familiarised myself with what the company had committed itself to do.

1745

Q. And did you find that charter acceptable?

5 A. Broadly acceptable, yes.

Q. Broadly, were there any aspects –

A. No, no it was a good document.

Q. Good document. And it provides that it will be reviewed from time to time?

10 A. Yes.

Q. Did you carry out any review of it?

A. No I didn't see a need to review it.

Q. So you carried on as it were?

A. Yes.

15 Q. What's puzzled me a bit, to be quite frank, is that the objectives and responsibilities that you see set out there, from what you've told us, you don't seem to have followed those objectives and responsibilities? That's a question.

A. Yeah, I guess that's an observation that you've made. I believe we
20 discharged our responsibilities as the charter required.

Q. Well if we look at (c) assess the effectiveness of management. How did you discharge that responsibility?

A. Assessing the effectiveness of management came through annual performance reviews. The board of course was reviewing the
25 performance of the chief executive and the general manager of mines and other staff would be reviewed by those people.

Q. My problem is, what evidence did you have in front of you to assess the effectiveness of management in providing leadership in safety and health?

30 A. The board's concern was with the chief executive and the general manager and so if there were a variety of issues around the performance they were related to site safety performance, you would've

seen the KPIs for both of those gentleman. That was how it was done.
A relatively high level I concede.

5 Q. You mentioned that Mr Ward had a tendency to be optimistic in providing information to the board regarding, let's say production estimates –

A. And financial requirements.

Q. – and financial requirements. Did the board not require a range to be provided?

A. The board didn't require to see the range, no.

10 Q. Why not?

A. The board relied on Mr Ward's judgement.

Q. I understand, but why did it not want to see the range which led to the calculations he was putting forward?

15 A. I'm not sure why they didn't want it. I think Mr Ward's judgement was accepted.

Q. I understand but these were difficult calculations one would imagine in the situation that you were in?

20 A. Well of course once it became clearer that Mr Ward's ability to forecast and predict were not so good, then the board independently determined the circumstances itself and that's the time that I was engaged.

Q. But did you not have planning assumptions spelt out to you as to how the range of estimates were provided?

A. Yes we did, yes.

25 Q. And finally, just on lessons learnt, this is our only chance to hear from you basically as chair of the board, and as an experienced manager with a distinguished career on how we might improve things for the future. And what I've heard so far is that you've said that the industry can learn quite a bit.

A. Yes.

30 Q. For example, the differences between process safety and personal safety.

A. Yep.

Q. I think was one of the things you mentioned. That difference has been around for a long time, so that's one thing you're saying that the industry could learn, what can it learn about governance? What can we learn about governance and what do you learn personally?

5 A. Yes I think the very clear message for me here is that the carrying out of independent third party audits would've revealed a number of these things if they'd been done sooner. My experience at Newmont was that these were valuable value-add activities and they kept the management team on their toes, they provided often a warts and all commentary from
10 people that might not otherwise provide commentary. I certainly found them useful parts of my management experience in Newmont which was why I was pushing for them to be done at Pike. I think that doing them early in the process, doing them during construction and during start-up, during the ramp up, especially to new mining activities and not
15 allowing them to be deferred until the complete system was ready, which was a valid reason why they weren't done at the time, that I think with the benefit of hindsight I would say they should be done at least every year. At Newmont we did them every two years, so in the start-up operation they should be done more frequently, I think that would be a
20 valuable lesson for the industry to learn, I really do.

1750

QUESTIONS FROM COMMISSIONER BELL:

Q. You've mentioned a few times today that you were surprised that Mr Rockhouse never raised with you any of the issues that have come
25 through today.

A. Yes.

Q. Ms Basher could I get ROCK0002/35 up please?

WITNESS REFERRED TO DOCUMENT ROCK0002/35

Q. If you look at paragraphs 112, 113, if you read those, Mr Whittall in this
30 particular occasion and it's not the only place it occurs in Mr Rockhouse's testimony. Sorry did I give you the wrong page did I? So it's paragraph 112?

A. Yes I see that.

Q. It just seems to me that I'm just asking you for your opinion here, do you think Mr Rockhouse may have been intimidated by Mr Whittall?

A. Well his testimony certainly suggests that.

5 Q. And do you think that may have resulted in his reluctance perhaps to raise with you some of the issues that have come through in other parts of his evidence?

A. It very well may have.

10 Q. I have one more question, it's an issue, you may not want to answer it, but there's been a range of matters raised today through various investigations through Hawcroft where they raised ventilation fire detection, Dave Stewart raised ventilation again in the second means of egress and then drive mining did some work about outburst and talked about getting the mine to determine the DRI900. Now this was never
15 determined according to our investigation. Do you think the board should bear any responsibility for this accident?

A. I think the board is taking its decisions based on information that was available and it would appear that information wasn't available.

20 Q. But you don't think there's any responsibility to make – this has been raised a few times but it's just something as my colleague Commissioner Henry said, this is the only chance we're going to get to ask you the question.

25 A. Yes, no I appreciate why you're asking the question. I think the board, it was bound to make decisions what is available to it at the time. Now if you're asking me with the wisdom of hindsight whether this is something that we should've known about then clearly, we should have and I think if we'd known about that different things would've been done.

QUESTIONS FROM THE COMMISSION:

30 Q. Two matters I'd like to raise Mr Dow. You'll appreciate I take it that when it comes to the affairs of the board we're going to be driven back to the minutes quite a bit.

A. Yes.

Q. And am I right in understanding from what you've said already that first of all Mr Roulston, your secretary prepared the board minutes?

A. That's correct.

5 Q. And I think you've described them as accurate, him as a good minute taker and that they represent good high level summaries?

A. That's correct.

Q. So we can rely on the minutes?

A. Yes you can.

1755

10 Q. Secondly, a topic Mr Hampton raised with you a few minutes ago. This discussion that you had in August 2009 with Mr McCracken was, as I recall your evidence, the only occasion upon which anybody raised concerns about what could be called safety related matters?

A. The only occasion, yes that's correct.

15 Q. So it was a bit of a watershed event from your perspective as chairman of this board?

A. Yes indeed it is.

20 Q. And you've made the point that it was significant as well because it was somebody external coming to you and tapping you on the shoulder and telling you as you put it yesterday, some matters that you needed to know about?

A. Mr McCracken was a Pike employee. He was contracted to Pike at the time, but yes, that's right.

Q. But external to your company?

25 A. Yes.

Q. Now you've said that you spoke to Mr Ward and Mr Whittall about the matter before I presume Mr Stewart was engaged to undertake the auditing exercise which it did?

30 A. Yes, and I think my tone to them would've been this is something we're going to do rather than just think about them.

Q. But you can't recall their reaction you told Mr Haigh?

A. Not broadly no. No. I think if you ask me what I thought their reaction would be, it would've been receptive.

Q. Well what I was actually interested in was whether it was raised with the board and having looked at the minutes I can't find reference to it?

5 A. Well if it's not in the minutes then it would've been a casual or it might've been informal comment to directors, but without it being raised formally at the board level, but I was certainly going to make sure it happened.

Q. There was a health and safety committee meeting that you had a short time later on the 5th of October, so a month or so after your discussions in late August, again I can't see in your minutes and I don't know whether your minute-taking was up to that same standard, I can't see that it was discussed at that stage with Mr Rockhouse and the like?

10 A. Well if it wasn't in the minutes then the chances are it wasn't discussed.

QUESTIONS ARISING: MS SHORTALL

Q. Mr Dow you were asked several questions about minutes of the health, safety and environment committee meetings. Do you recall those questions they've come out from several lawyers today?

15 A. Yes I recall them.

Q. And I think in particular you've been asked about the minutes of a meeting held on the 5th of October 2009 and just in response to Mr Rapley, it would appear that there are potentially several versions of those minutes. Do you recall that evidence?

20 A. I recall the evidence yes.

Q. And you've referred to keeping handwritten notes and I just thought in the interests of efficiency perhaps Madam Registrar if I could have these, a copy provided to the witness and to the Commissioners. Do you recognise the document that's been provided to you Mr Dow?

25 A. Yes I do.

Q. And what is it?

A. These are my handwritten notes of the meeting of the health, safety and environment committee meeting held on the 5th of October.

30 Q. And were these notes taken contemporaneously, in other words, while you were present in the meeting?

A. Yes these minutes were written down during the course of the meeting.

1800

Q. And in the interests of time Your Honour perhaps I won't compare them other than just to have Mr Dow you confirm that to the best of your understanding are they almost verbatim what's reflected in the version
5 of the minutes that I showed to you yesterday during your evidence?

A. Yes, yes they are.

Q. And if I could just draw your attention to the first point and your handwritten notes taken at the time, could you just read to me what that says please?

10 **WITNESS REFERRED TO DOCUMENT – HANDWRITTEN NOTES**

A. Yes the first agenda item says, “No apols,” which is short for, “No apologies.”

Q. And is that consistent with your recollection that there were no apologies when Mr Rockhouse attended the meeting?

15 A. That's correct, yes.

Q. And just for the record, I'll note that to the extent that Mr Dow's handwritten notes of the meetings have not yet been produced we'll do so this week, and in the interim Your Honour perhaps I could produce this as an exhibit thank you.

20 **EXHIBIT 43 PRODUCED – HANDWRITTEN NOTES**

THE COMMISSION ADDRESSES WITNESS

WITNESS EXCUSED

COMMISSION ADJOURNS: 6.02 PM

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