

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MS HEMRAJ SC

#### HELD ON

DAY 287

9 SEPTEMBER 2014

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1 [PROCEEDINGS ON 9 SEPTEMBER 2014]  
 2 [09:18] CHAIRPERSON: The Commission resumes.  
 3 I'm sorry we're starting a bit later than we should do, but  
 4 we've been having housekeeping problems, trying to sort out  
 5 the programme as a result of certain last-minute changes  
 6 which caused us difficulties, but that's the reason. I  
 7 apologise for that.  
 8 Yesterday as you know we started on an inspection  
 9 in loco. We were not able to complete it. It's not  
 10 necessary for me to say anymore about it because what  
 11 happened is on record, but - are we not having simultaneous  
 12 translation?  
 13 MR MAHLANGU: I'm not sure. Let me just  
 14 make sure -  
 15 CHAIRPERSON: I mean we've got to have  
 16 simultaneous translation otherwise we'll never finish this  
 17 Commission.  
 18 MR MAHLANGU: Sure, let me -  
 19 CHAIRPERSON: We've wasted enough time  
 20 before by not having simultaneous translation. As I've  
 21 said, it's not necessary to say anymore what happened  
 22 yesterday because it's all on record, except for one aspect  
 23 which my colleague, Commissioner Tokota wishes to say  
 24 something about.  
 25 COMMISSIONER TOKOTA: All I want to say

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1 I don't know exactly what Mr Tip is going to say, but I  
 2 take it what you're going to say will be brief and to the  
 3 point?  
 4 MR TIP SC: Chair, there's not -  
 5 CHAIRPERSON: It's not likely to provoke  
 6 a debate?  
 7 MR TIP SC: No, no, I don't intend in any  
 8 way to provoke a debate, but I do think that it is  
 9 appropriate that although matters yesterday went on record,  
 10 that I should say today that it is a matter of great  
 11 concern to NUM that officials who attend at a public  
 12 function of the Commission should be made the subject of  
 13 intimidatory conduct. I'm not going to go into any details  
 14 whatsoever about precisely what was said and what was done,  
 15 but I do think that it's also necessary and appropriate for  
 16 me to say that after the withdrawal of the NUM team and the  
 17 NUM representatives charges were laid at the Marikana  
 18 Police Station and that the matter will therefore be  
 19 investigated through those channels.  
 20 CHAIRPERSON: I see, thank you. Yes Mr  
 21 Mpfu, I see you've got your light on after your victory in  
 22 the SCA yesterday.  
 23 MR MPOFU: Thank you, Chairperson. Yes,  
 24 I'd better start with the good news, yes, while we are  
 25 putting matters on the record, Chairperson, that the appeal

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1 is that after the judge has spoken I had to interpret  
 2 because we didn't have the services of interpreters  
 3 yesterday and then after my interpretation then the  
 4 strikers said no, they want to put certain questions and  
 5 the judge says he's not prepared to be involved in a  
 6 discussion of the matter spoken, we are leaving, and then  
 7 whilst we were leaving then we were labelled as NUM people,  
 8 that's the reason why we don't want to talk to them. We  
 9 were there to waste time and so on. So I had to tell them,  
 10 because that was said in Xhosa by the miners, I know who  
 11 they are but I'm not going to divulge their names.  
 12 MR MAHLANGU: I have been told, Mr  
 13 Chairperson, that there is simultaneous interpreting from  
 14 the other side. Thanks.  
 15 CHAIRPERSON: There is someone, I see.  
 16 So those who are listening on earphones will - obviously  
 17 it's important that they should have it available in a  
 18 language they can understand, but that is being done.  
 19 MR MAHLANGU: That is being done.  
 20 CHAIRPERSON: So we are having  
 21 simultaneous interpretation.  
 22 MR MAHLANGU: Thanks.  
 23 CHAIRPERSON: Thank you. I was told that  
 24 Mr Tip on behalf of NUM wishes to say something. I don't  
 25 propose that we should have a lengthy debate on the matter.

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1 against, lodged by the Legal Aid South Africa against the  
 2 decision to fund the strikers was dismissed yesterday. So  
 3 there's light at the end of the tunnel on that score.  
 4 CHAIRPERSON: There's light at the end of  
 5 other tunnels as well.  
 6 MR MPOFU: Thank you, Chairperson. Yes,  
 7 well Chairperson, apropos the matter that is currently on  
 8 the table, obviously because I was in Bloemfontein I was  
 9 not present, but I've been given a briefing and I've also  
 10 had a discussion with some of the clients. I just want to  
 11 say that one should not jump into conclusions. From what  
 12 I've heard already there is some history and context to the  
 13 events of yesterday, but I think like as you have already  
 14 said, I don't want to get embroiled into a debate. In fact  
 15 I'm happy if, as Mr Tip says, if charges have been laid it  
 16 means maybe hopefully one day then the matter will be  
 17 properly ventilated in an appropriate forum. Thank you,  
 18 Chairperson.  
 19 CHAIRPERSON: Thank you. I think in view  
 20 of, particularly in view of what Mr Tip has said it's  
 21 undesirable that we should say anything more because these  
 22 are matters that may well arise or be dealt with in a  
 23 court -  
 24 MR MPOFU: Yes, thank you.  
 25 CHAIRPERSON: - if the prosecution can -

<p style="text-align: right;">Page 37188</p> <p>1 MR MPOFU: Thank you very much.</p> <p>2 CHAIRPERSON: Yes, thank you. Very well,</p> <p>3 Mr Bham you are here this morning to lead another witness</p> <p>4 on behalf of Lonmin.</p> <p>5 MR BHAM SC: Yes, Mr Chairman,</p> <p>6 Commissioners. The next witness for Lonmin is Mr Albert</p> <p>7 Jameson.</p> <p>8 CHAIRPERSON: Yes, Mr Jameson, would you</p> <p>9 please rise? Are you prepared to take the oath or do you</p> <p>10 wish to affirm?</p> <p>11 MR JAMIESON: [Microphone off, inaudible]</p> <p>12 CHAIRPERSON: Would you swear that the</p> <p>13 evidence you will give before this Commission will be the</p> <p>14 truth, the whole truth, and nothing but the truth? Would</p> <p>15 you please raise your right hand and say, "I swear, so help</p> <p>16 me God."</p> <p>17 ALBERT JAMIESON: I swear.</p> <p>18 CHAIRPERSON: You may be seated. Yes, Mr</p> <p>19 Bham.</p> <p>20 EXAMINATION BY MR BHAM SC: Thank you.</p> <p>21 Mr Jameson, you have two statements in front of you. The</p> <p>22 first has a heading "Witness statement of Albert Jameson,"</p> <p>23 and the second "Supplementary statement of Albert Jameson."</p> <p>24 Do you have those in front of you?</p> <p>25 MR JAMIESON: Yes.</p>	<p style="text-align: right;">Page 37189</p> <p>1 MR BHAM SC: The first one, if you turn</p> <p>2 to page 17, that is dated 7th August 2014, and there's a</p> <p>3 signature just below the date. Is that your signature?</p> <p>4 MR JAMIESON: Yes.</p> <p>5 MR BHAM SC: And if you go to the second</p> <p>6 one, the supplementary statement, that is dated 3 September</p> <p>7 2014 and there's a signature below the date, that's on page</p> <p>8 3. Is that your signature?</p> <p>9 MR JAMIESON: Yes.</p> <p>10 CHAIRPERSON: Remind me, are these</p> <p>11 statements exhibits yet? We have a statement of Mr</p> <p>12 Jameson, I'm not sure whether it's either of these. Ms</p> <p>13 Pillay, you normally come to our aid on this score.</p> <p>14 MS PILLAY: Neither of the statements are</p> <p>15 exhibits, Chair.</p> <p>16 CHAIRPERSON: So what do we call them?</p> <p>17 MS PILLAY: Well, Chair, Lonmin has</p> <p>18 prepared a bundle of documents to be used in chief. I</p> <p>19 propose that that be marked VVVV1, the entire bundle, but</p> <p>20 not – the initial witness statement, the one dated 7 August</p> <p>21 2014 is not part of VVVV1.</p> <p>22 CHAIRPERSON: So VVVV1 then is the Lonmin</p> <p>23 bundle. So I think, is the Lonmin bundle and so VVVV1.1</p> <p>24 will be statement by Mr Jameson dated 7 August.</p> <p>25 MR BHAM SC: Mr Jameson, the first</p>
<p style="text-align: right;">Page 37190</p> <p>1 statement –</p> <p>2 CHAIRPERSON: Sorry, and the</p> <p>3 supplementary one will then be –</p> <p>4 MR BHAM SC: I just want to ask him to</p> <p>5 mark that statement as well. Could you mark the first</p> <p>6 statement VVVV1.1?</p> <p>7 MS PILLAY: No, Chair, the bundle by</p> <p>8 Lonmin is quite an extensive bundle with its own index, so</p> <p>9 if I may suggest that we keep that as VVVV1 –</p> <p>10 CHAIRPERSON: I see. Alright, okay. The</p> <p>11 copy I was given this morning doesn't contain the index,</p> <p>12 but I'm sure my status as a disadvantaged person in this</p> <p>13 regard is only temporary. It will only be temporary. I'm</p> <p>14 sure the problem will be sorted out.</p> <p>15 MR BHAM SC: We'll attend to it.</p> <p>16 CHAIRPERSON: Right, so I'm told I have</p> <p>17 got an index but it's cunningly hidden behind the first</p> <p>18 statement. I withdraw what I said; I'm no longer and never</p> <p>19 was a disadvantaged person.</p> <p>20 MR BHAM SC: Can I just –</p> <p>21 CHAIRPERSON: So VVVV1 is the bundle.</p> <p>22 The documents are numbered in the bundle and so we needn't</p> <p>23 waste any more time on housekeeping.</p> <p>24 MR BHAM SC: There's actually, if I might</p> <p>25 just draw to your attention, Mr Chair, there's the Lonmin</p>	<p style="text-align: right;">Page 37191</p> <p>1 bundle and then I think you were handed today a bundle of</p> <p>2 all of the documents which other parties intend to use in</p> <p>3 cross-examination. Or we've got that and we'll hand it up</p> <p>4 to you. So –</p> <p>5 CHAIRPERSON: That's a pleasure we can</p> <p>6 await. Let's get on with the evidence-in-chief for the</p> <p>7 moment.</p> <p>8 MR BHAM SC: If I might then, what's the</p> <p>9 number we should give to his statement?</p> <p>10 MS PILLAY: Chair, so the initial</p> <p>11 statement, the 7th of August statement is not in the Lonmin</p> <p>12 bundle. That would be VVVV2.</p> <p>13 CHAIRPERSON: Alright, we have these</p> <p>14 little poses set for solution by us as we go along. VVVV2,</p> <p>15 statement by witness dated 7 August 2014.</p> <p>16 MS PILLAY: And the supplementary</p> <p>17 statement would be VVVV3.</p> <p>18 CHAIRPERSON: And that one is not in the</p> <p>19 bundle either?</p> <p>20 MS PILLAY: It's not in the initial</p> <p>21 Lonmin bundle, no.</p> <p>22 CHAIRPERSON: There's another pose set</p> <p>23 for our solution. VVVV3 is supplementary statement by</p> <p>24 witness dated when? Dated 3rd of September?</p> <p>25 MR BHAM SC: That's the 3rd of September.</p>

<p style="text-align: right;">Page 37192</p> <p>1 CHAIRPERSON: Okay. I think we've now 2 done the housekeeping that has to be done. 3 MR BHAM SC: Thank you, Mr Chair. Mr 4 Jameson, the first statement, the one dated 7 August 2014, 5 I understand that you wish to make five amendments or 6 corrections to that. The first is in paragraph 6. Could 7 you explain the correction you wish to make in paragraph 6? 8 MR JAMIESON: That's correct. Mr 9 Chairman, on paragraph 6 on line 4 it refers to MIGDETT, if 10 you see that. I think two things; one is if you ask what 11 is MIGDETT, it's the Mining Industry Growth Development 12 Task Team. 13 CHAIRPERSON: That's not an amendment, 14 that's an elucidation. 15 MR JAMIESON: Sure, and the other point 16 about that is that the MIGDETT meetings that I attended 17 were actually a subcommittee of that called the MIGDETT 18 Platinum Task Team. So it's usually referred to as PTTT. 19 MR BHAM SC: The next correction you seek 20 to make is in paragraph 9. Could you explain the 21 correction to the Commission? 22 MR JAMIESON: On line 2 in paragraph 9 it 23 mentions "to an unlawful gathering march and unprotected 24 strike on 9th of August." The march was actually on the, 25 the unlawful gathering and march were actually on the 10th</p>	<p style="text-align: right;">Page 37193</p> <p>1 of August. 2 CHAIRPERSON: So you want me to change 9 3 in line 3 to 10? 4 MR JAMIESON: Yes. 5 MR BHAM SC: May I ask you then to go to 6 paragraph 17? Is there a correction in that paragraph you 7 wish to make as well? 8 MR JAMIESON: Yes, on, when, from 9 paragraph 17 through to paragraph, I think 18 and 19 – 10 CHAIRPERSON: The wording in line 2 of 11 para 17 should be "apprised." An appraiser is a valuer. 12 If you apprise someone of something you inform them of it. 13 MR JAMIESON: Yes. Yes, Chairman. In 14 paragraph 17 through to paragraph 19 the references to 15 conference calls should really all be on the weekend of the 16 11th and the 12th. So sometimes it says weekend of the 11th 17 and the 12th, sometimes it refers to, you'll see on line 3 18 the conference call on 10th, it should be 10th, 11th, 12th. 19 It was all over that weekend. So we had – 20 CHAIRPERSON: So line 3 of para 17 simply 21 talks about a conference call on 12 August. 22 MR JAMIESON: Yes, it should be 10, 11, 23 12. It's that whole Friday, Saturday, Sunday. 24 CHAIRPERSON: Yes, but then you can't say 25 on the conference call on.</p>
<p style="text-align: right;">Page 37194</p> <p>1 MR JAMIESON: Correct. 2 CHAIRPERSON: You're got to say on 3 conference calls – 4 MR JAMIESON: Calls, yes. So it was 5 calls over that weekend. 6 CHAIRPERSON: Yes, on conference calls 7 during period 10-12 August. 8 MR JAMIESON: That's correct, Chair. 9 MR BHAM SC: Could you then go to 10 paragraph 29? 11 MR MPOFU: Chairperson, sorry, if I could 12 just get clarity. When you say on a conference call made 13 during the weekend 10, 11, 12, is it still in the singular 14 or is it conference calls – 15 MR JAMIESON: Calls. 16 MR MPOFU: Calls? 17 MR JAMIESON: Calls, yes. 18 MR MPOFU: Thank you. 19 CHAIRPERSON: [Microphone off, inaudible] 20 I changed it to on conference calls during period 10-12 21 August. 22 MR BHAM SC: In paragraph 29, turning on 23 to page 14, you make reference to the DG of DMR. Do you 24 wish to make a correction there? 25 MR JAMIESON: Yes, on that penultimate</p>	<p style="text-align: right;">Page 37195</p> <p>1 line of paragraph 27 that should actually be the CEO of the 2 Chamber of Mines. 3 CHAIRPERSON: What paragraph number? 4 MR BHAM SC: Paragraph 29. 5 MR JAMIESON: 29. 6 CHAIRPERSON: 29. 7 MR JAMIESON: On the penultimate line. 8 There's one typo that says I had had. So that should only 9 be one had, and then where it says with the DG of the DMR – 10 CHAIRPERSON: That should be with the – 11 MR JAMIESON: - it should say with the 12 CEO of the Chamber of Mines. There was another email which 13 referenced this, but it's not this one. 14 MR BHAM SC: Mr Jameson, subject to those 15 correction do you confirm the content of the two witness 16 statements we've referred to? 17 MR JAMIESON: Yes. 18 MR BHAM SC: Thank you. May I ask you to 19 go to the first witness statement, VVVV2, that's the 7th of 20 August witness statement? In the introductory portion on 21 page 1 you deal with your position in Lonmin and your areas 22 of responsibility. Could you briefly explain to the 23 Commission what your areas of responsibility in the company 24 were? 25 MR JAMIESON: I was the chief commercial</p>

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1 officer up until January this year, Mr Chairman. The chief  
 2 commercial officer sits on the executive management  
 3 committee, references the EXCO as Lonmin, which comprises  
 4 the two executive directors of Lonmin PLC, Ian Farmer and  
 5 Simon Scott. There's five other members which comprise  
 6 Mark Munroe, EVP Mining; Natasha Viljoen, EVP Processing;  
 7 Barnard Mokwena, EVP of Human Capital and External Affairs;  
 8 Thandeka Ncube, who was Shanduka representative, and then  
 9 myself.

10 My areas of responsibility as in paragraph 3, and  
 11 I would say in order of size were marketing business  
 12 development, and then somewhat less, although I was fully  
 13 responsible but somewhat less in terms of time spent on  
 14 exploration and legal, and that was a result of some  
 15 restructuring that happened some years ago. Prior to that  
 16 I was EVP of Marketing on the EXCO.

17 MR BHAM SC: You did not sit on the main  
 18 board of Lonmin, or Western Platinum or Eastern Platinum,  
 19 did you?

20 MR JAMIESON: No, never been an executive  
 21 director of Lonmin PLC.

22 MR BHAM SC: Mr Jameson, in relation to  
 23 matters such, or from a policy perspective matters such as  
 24 the provision of housing, the financial statements, the  
 25 declaration of dividends and the like, did you have any

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1 because there was debate that this may in fact visit the  
 2 rest of the industry, particularly in the North West  
 3 province, and that what effect would that have on the  
 4 supply from South Africa, ultimately South Africa's  
 5 reputation as a reliable supplier that could supply these  
 6 industries around the world in their crucial metals, and  
 7 therefore you know I had a worry, I had a concern that  
 8 South Africa's reputation would be damaged and the  
 9 industry's reputation would be damaged if indeed what  
 10 happened at Impala went on to happen at Lonmin or Anglo, as  
 11 eventually unfortunately it did.

12 MR BHAM SC: Thank you. Mr Jameson, in  
 13 paragraph 6 you first talk about the concern, and you use  
 14 the word "worry" about the switch in substitution of the  
 15 PGM product which could cause irreparable damage. Would  
 16 you again care to elaborate upon that?

17 MR JAMIESON: Yes, as much as South  
 18 Africa enjoys a position where it supplies these metals to  
 19 the world, they're unique metals, they've got very special  
 20 properties, and they are difficult to substitute. And when  
 21 I say substitute I mean it's difficult to find other  
 22 substances or metals or compounds or minerals that will do  
 23 what they do as well as they do.

24 [09:38] But there are some and of course what happens  
 25 with auto, especially in the auto industry, they look at

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1 direct involvement in any of those matters?  
 2 MR JAMIESON: The limit of my involvement  
 3 was hearing reports at the EXCO meetings and was generally  
 4 aware of those at a, what I would loosely call an executive  
 5 level, but no direct involvement with those matters.

6 MR BHAM SC: Thank you. May I ask you to  
 7 go to paragraph 5 of your first witness statement? You  
 8 make reference in that paragraph to the Impala Platinum  
 9 strike of February and March 2012 and its concern to you,  
 10 and then you go on to state that customers were questioning  
 11 Lonmin's ability to be a reliable future supplier of the  
 12 world needs. Would you care to elaborate on what you state  
 13 there?

14 MR JAMIESON: Mr Chairman, you probably  
 15 know that South Africa is the largest supplier of platinum  
 16 and rhodium in the world and there are many industries  
 17 worldwide that are reliant on that regular supply. When  
 18 there are disruptions to that supply or threats of  
 19 disruptions generally the first people who would be on my  
 20 phone calling me would be our customers.

21 CHAIRPERSON: [Microphone off, inaudible]  
 22 MR JAMIESON: Our customers.  
 23 CHAIRPERSON: Your customers?  
 24 MR JAMIESON: Ja, and we've got two large  
 25 ones, and following the Impala strike there was a concern

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1 times of their supply, the risks to their supply and they  
 2 consider other alternatives that might be economically  
 3 better or have less risk around them from a price point of  
 4 view and of course if that happens and it happens to any  
 5 degree, it's a big threat to the industry and it's a big  
 6 threat to South Africa. PGMs were the biggest revenue  
 7 earner for South Africa, they affect the balance of  
 8 payments, they affect interest rates, they affect ratings  
 9 of ratings agencies and so when we look at the context of  
 10 this, every time that there's a disruption there's a  
 11 potential for damage, impairment of the industry and  
 12 ultimately that affects jobs, it affects all sorts of  
 13 things in the economy.

14 MR BHAM SC: Thank you, Mr Jamieson. Mr  
 15 Jamieson, the next issue you deal with in that same  
 16 paragraph is the MIGDETT platinum task team.

17 MR JAMIESON: Ja.  
 18 MR BHAM SC: Could you explain to the  
 19 Commission the nature of the task team, the issues it dealt  
 20 with and the nature of the discussions and any concerns  
 21 that may have arisen during the period 2011/2012 and your  
 22 own participation in that?

23 MR JAMIESON: Mr Chairman, the MIGDETT  
 24 offer as I would say per se, which was the mining industry  
 25 which included gold, coal, et cetera as well as platinum,

<p style="text-align: right;">Page 37200</p> <p>1 operates under NEDLAC and is a committee formed to do that.  2 What the Minister of DMR did was, acknowledging that there  3 was a crisis in the PGM industry in South Africa certainly  4 in 2011 but probably it started earlier, probably round  5 about 2010, formed the MIGDETT platinum task team which  6 consisted of her, Minister Shabangu chairing that, the DG  7 was present, members of her department, virtually all of  8 the CEOs of the platinum companies in South Africa were  9 present and attended regularly and these meetings probably  10 took place every month or every two months and the agenda  11 was very broad in terms of how do we identify the crisis in  12 the industry, how do we label it, what are its components  13 and then of course, very importantly, what do we think we  14 can do about it, how can we solve some of these problems?  15 And so the committee identified what it thought were the  16 main drivers of the crisis and identified some  17 interventions that, as a group, we could address in that.  18 So that was a forum, I wouldn't say it was a decision-  19 making forum but it was certainly a forum for exchanging  20 ideas, which had the industry in terms of the mining  21 companies, the major ones and the minor ones, the small  22 ones, it had organised labour in terms of NUM attended as  23 well as Solidarity and UASA and it also had members of the  24 DMR and it was chaired by the Minister. In the Minister's  25 absence it was chaired by the DG.</p>	<p style="text-align: right;">Page 37201</p> <p>1 MR BHAM SC: Thank you. Mr Jamieson, we  2 know from your witness statement as well as other evidence  3 placed before the Commission that in the period 10 August  4 to 15 August you were involved in a number of  5 communications with a number of different people, including  6 the Director-General, the present Vice-President Mr  7 Ramaphosa, the Minister and senior Lonmin officials. In  8 addition to those communications, can you explain to the  9 Commission what you were doing during that period, having  10 regard to your responsibilities in the company?  11 MR JAMIESON: Sorry, what dates did you  12 say, between –  13 MR BHAM SC: Between the 10th and 15th of  14 August. In other words, were you solely focused on the  15 issues you were involved in, in those various  16 communications or were there other matters that you were  17 attending to as well and, if so, to what extent were you  18 otherwise occupied as well?  19 MR JAMIESON: Understood. Yes, in my  20 two, two areas were preoccupying me. One, the biggest one  21 was a company sensitive transaction that I was working on.  22 I can elaborate on that if you need to but I think it's  23 still –  24 CHAIRPERSON: I take it it's not relevant  25 directly to our –</p>
<p style="text-align: right;">Page 37202</p> <p>1 MR JAMIESON: No.  2 CHAIRPERSON: - to what we're busy with  3 and if it's not then don't tell us.  4 MR JAMIESON: That was my preoccupation.  5 I had in fact been away in June, the latter part of June  6 and almost the entire part of July and one of the things I  7 was doing was working on that transaction with our local  8 bankers, bankers in London, legal advisers, advisers in  9 London and also the other party that we were having  10 discussions with and that was my primary preoccupation at  11 that time. Somewhat on, during that period then as I've  12 described, customers and other industry players get very  13 anxious. They'd obviously heard during that period, the  14 10th and the 15th, heard, read, saw and wanted to talk to us  15 very often, wanted to talk to me very often about what was  16 happening at Lonmin and that was a large preoccupation I  17 had. I was involved in the unprotected strike initially,  18 and my statement goes on to describe that but essentially  19 what I was asked to do by my colleagues was to escalate  20 things within the DMR, really because I had contact with  21 Thobedi who was the DG at the MIGDETT process. He was a  22 relatively new appointment and I was one of the people who  23 knew him, where others didn't.  24 MR BHAM SC: Having regard to what you've  25 just said, Mr Jamieson, if I may ask you to turn to page 5</p>	<p style="text-align: right;">Page 37203</p> <p>1 of the witness statement you're dealing with now. You'll  2 see in the middle of that page you make reference to the  3 agreement that you contact the director-general and you've  4 just explained why. At the bottom of the page, that's  5 paragraph 12, you state that you undertook to keep Lonmin's  6 then chairman, Mr Phillimore, advised of developments and  7 you go on and state in that paragraph that you also had e-  8 mail correspondence with the present Vice-President Mr  9 Ramaphosa. Could you briefly explain to the Commission why  10 it is that you undertook those tasks at that point in time?  11 MR JAMIESON: The correspondence with the  12 DG, as I've mentioned, was because as a relatively new  13 application I knew him from the MIGDETT meetings and  14 therefore I had some access to him and when I was asked to  15 escalate things within the DMR, I was the best placed  16 person to do it. That was the reason for doing it with him  17 and in terms of keeping Roger Phillimore up to date and  18 also Mr Ramaphosa, Ian Farmer on a call I had with him on  19 the 10th, the Friday, just said to me you know, keep your  20 eye on things but if you think there's anything that Roger  21 should know about, copy him on the e-mail or talk to him,  22 if there's anything that you think that Mr Ramaphosa should  23 know about, copy him on an e-mail. Just basically keep  24 people in touch, that's what he'd asked me to do.  25 CHAIRPERSON: Was this related to the</p>

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1 fact that Mr Farmer went to hospital at that time? I  
 2 understand he went to hospital and I understand he's now in  
 3 remission, so –  
 4 MR JAMIESON: Yes.  
 5 CHAIRPERSON: - is that correct?  
 6 MR JAMIESON: Yes.  
 7 CHAIRPERSON: So, but at the time he was  
 8 in hospital and obviously couldn't attend to the matters on  
 9 a full-time basis.  
 10 MR JAMIESON: No, that's not correct, Mr  
 11 Chairman.  
 12 CHAIRPERSON: What is –  
 13 MR JAMIESON: On Friday, on the 10th, 11th,  
 14 12th and 13th, Monday, he was at home and he was basically  
 15 working from home and so myself and my colleagues phoned  
 16 him I think quite regularly over that weekend. I spoke to  
 17 him, I know, on the 10th and I know I spoke to him on the  
 18 13th.  
 19 CHAIRPERSON: Perhaps I was under a  
 20 misapprehension. Did he go to hospital after that?  
 21 MR JAMIESON: He went to hospital late on  
 22 the afternoon of the 13th.  
 23 CHAIRPERSON: I see, I see. So he was –  
 24 MR JAMIESON: It was Monday, late Monday  
 25 afternoon.

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1 MR BHAM SC: Thank you. Mr Commissioner,  
 2 I have no further questions.  
 3 CHAIRPERSON: Thank you. Ms Pillay I  
 4 believe you're going to cross-examine on behalf of the  
 5 evidence leaders.  
 6 MS PILLAY: I am, Chair.  
 7 CHAIRPERSON: Mr Wesley will tell us the  
 8 time you've been allocated, how much is that?  
 9 MR WESLEY: Thank you, Chair, if I could  
 10 maybe do the allocations at this stage for everybody.  
 11 CHAIRPERSON: Yes, please.  
 12 MR WESLEY: The evidence leaders have got  
 13 120 minutes, that's two hours, the injured and arrested  
 14 have two hours, AMCU has two hours, SAPS have 60 minutes,  
 15 the Legal Resources Centre has 30 minutes and re-  
 16 examination then stands at 15. I repeat, Chair. The  
 17 evidence leaders two hours, the injured and arrested two  
 18 hours, AMCU two hours, SAPS one hour, the Legal Resources  
 19 Centre 30 minutes and re-examination 15.  
 20 CHAIRPERSON: Thank you. Yes, Ms Pillay.  
 21 CROSS-EXAMINATION BY MS PILLAY: Thank  
 22 you, Chair. Good morning, Mr Jamieson.  
 23 MR JAMIESON: Good morning.  
 24 MS PILLAY: Mr Jamieson, just to kick off  
 25 may I confirm that you attended the EXCO meeting of April

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1 CHAIRPERSON: He was in touch with things  
 2 from his home, you say.  
 3 MR JAMIESON: Yes.  
 4 CHAIRPERSON: Up until then.  
 5 MR JAMIESON: Ja.  
 6 CHAIRPERSON: I see, thank you.  
 7 MR BHAM SC: When you make reference to  
 8 his home, Mr Jamieson, where was he?  
 9 MR JAMIESON: He had two homes. He had a  
 10 home in Johannesburg, he also had a home, he has a home in  
 11 London in the UK, Mr Chairman. He was, I think, trapped in  
 12 the UK because he had a bad back for some time, what he  
 13 thought was a bad back. It didn't turn out to be as light  
 14 as that, unfortunately, and he was under doctor's orders  
 15 not to travel. He should have in fact travelled back to  
 16 South Africa, if memory serves me, right at the end of July  
 17 or you know, round about the 1st or 2nd of August but he  
 18 couldn't and the doctor had said to him, please don't  
 19 travel.  
 20 MR BHAM SC: Would it then be fair to say  
 21 that his absence from South Africa during that period was  
 22 forced by health considerations?  
 23 MR JAMIESON: I don't know if I could say  
 24 that. I can only say that his doctor told him not to  
 25 travel.

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1 2012, is that correct?  
 2 MR JAMIESON: Yes, I did.  
 3 MS PILLAY: And you also attended the  
 4 June 2012 meeting?  
 5 MR JAMIESON: Yes, I did.  
 6 MS PILLAY: And according to your  
 7 supplementary statement VVVV3, you were abroad from the 5th  
 8 of July to the 29th of July and during that time you didn't  
 9 attend any EXCO meetings but you telephoned in to the EXCO  
 10 meeting that was held on the 30th of July, is that correct?  
 11 MR JAMIESON: That's in paragraph 4.1.  
 12 MS PILLAY: That's correct, paragraph 4.1  
 13 of your supplementary statement.  
 14 MR JAMIESON: Yes, that's correct and  
 15 when I telephoned in I was actually en route to the DMR in  
 16 a car but I wasn't driving, so it was a dial-in from that  
 17 point of view.  
 18 MS PILLAY: Right, but what we do see is  
 19 that you were part of the April meeting, you were part of –  
 20 were you part of the May meeting, May 2012 meeting?  
 21 MR JAMIESON: Yes, April, May and June I  
 22 attended the monthly EXCO meetings. Very little at the end  
 23 of June on the weekly calls and very little, I don't think  
 24 if any in July, apart from the one on the 30th.  
 25 MS PILLAY: Apart from the one on the

<p style="text-align: right;">Page 37208</p> <p>1 30th.</p> <p>2 MR JAMIESON: Ja.</p> <p>3 MS PILLAY: Now you attended those</p> <p>4 meetings, those EXCO meetings in your capacity as chief</p> <p>5 commercial officer.</p> <p>6 MR JAMIESON: Yes.</p> <p>7 MS PILLAY: And even though you were</p> <p>8 appointed as acting CEO for a very brief period, a brief</p> <p>9 but crucial period, which is as I understand from the</p> <p>10 papers from the 13th of August to the 15th of August 2012,</p> <p>11 isn't that correct?</p> <p>12 MR JAMIESON: No, that's not correct.</p> <p>13 MS PILLAY: There's an e-mail from Mr</p> <p>14 Farmer which is, we see at VVVV1.11.</p> <p>15 MR JAMIESON: Yes.</p> <p>16 MS PILLAY: Indicating that he was not</p> <p>17 well and he had asked you to take over and we see that e-</p> <p>18 mail is on the 13th of August.</p> <p>19 MR JAMIESON: Yes.</p> <p>20 MS PILLAY: 2012.</p> <p>21 MR JAMIESON: That's correct.</p> <p>22 MS PILLAY: And we see a briefing note</p> <p>23 from you dated the 15th of August 2012 where you appear to</p> <p>24 hand over to Simon Scott, isn't that correct?</p> <p>25 MR JAMIESON: No, that's not correct.</p>	<p style="text-align: right;">Page 37209</p> <p>1 MS PILLAY: So when did you hand over to</p> <p>2 Mr Scott?</p> <p>3 MR JAMIESON: I never handed over to Mr</p> <p>4 Scott, I didn't have anything to hand over.</p> <p>5 MS PILLAY: Alright, but we know that you</p> <p>6 acted as CEO from the 13th.</p> <p>7 MR JAMIESON: That's incorrect.</p> <p>8 MS PILLAY: Alright, you played the role</p> <p>9 of CEO in Mr Farmer's absence.</p> <p>10 MR JAMIESON: That's incorrect as well.</p> <p>11 MS PILLAY: So can you tell us, when Mr</p> <p>12 Farmer says that he has asked you to take over for him on</p> <p>13 the 13th of August and maybe we should see that exhibit,</p> <p>14 it's VVVV1.11, it's page 11 of VVVV1. Now you see from</p> <p>15 this exhibit, Mr Jamieson, that Mr Farmer says and this is</p> <p>16 dated the 13th of August at 6:23 in the evening, he says,</p> <p>17 "Dear All, I have this evening been admitted to hospital.</p> <p>18 In the circumstances I have decided to ask Albert" – that's</p> <p>19 you, isn't that correct?</p> <p>20 MR JAMIESON: Correct.</p> <p>21 MS PILLAY: - "to act in my place and I</p> <p>22 will call him daily for an update." So when Mr Farmer, who</p> <p>23 was the CEO, says that he's asked you to act in his place,</p> <p>24 what does that mean?</p> <p>25 MR JAMIESON: It's a good question</p>
<p style="text-align: right;">Page 37210</p> <p>1 because I don't know and I still don't know. What I do</p> <p>2 know is that Roger Phillimore phoned me probably within an</p> <p>3 hour or two of that e-mail and said Simon Scott will be the</p> <p>4 acting CEO, I'm recalling him from leave and we'll be</p> <p>5 arriving in South Africa as quickly as we can. Roger's</p> <p>6 words were, quite correctly, was that Simon Scott is the</p> <p>7 ranking director and therefore he will act as CEO.</p> <p>8 MS PILLAY: Can I ask that we look at</p> <p>9 VVVV1.40? That's page 40 of VVVV1.</p> <p>10 MR JAMIESON: Mr Chair, I don't have my</p> <p>11 screen working. I don't know whether it should be,</p> <p>12 otherwise I have to keep changing glasses.</p> <p>13 CHAIRPERSON: It's not on, on the screen</p> <p>14 at the moment but the documents which have been shown are</p> <p>15 in the bundle we were given.</p> <p>16 MR JAMIESON: Yes.</p> <p>17 CHAIRPERSON: It's now on your little</p> <p>18 screen.</p> <p>19 MR JAMIESON: No, it's off.</p> <p>20 CHAIRPERSON: There's a problem then</p> <p>21 because it's on the big screen, so I would have expected it</p> <p>22 to have been on the little screen as well but it's also in</p> <p>23 the hard, there's a hard copy in the bundle page 40, so</p> <p>24 it's exactly the same document.</p> <p>25 MS PILLAY: So we see from VVVV1.40, Mr</p>	<p style="text-align: right;">Page 37211</p> <p>1 Jamieson, an e-mail from yourself to Simon Scott dated the</p> <p>2 15th of August at 11:10 in the morning, do you see that?</p> <p>3 MR JAMIESON: Yes.</p> <p>4 MS PILLAY: And the subject is "Notes"</p> <p>5 and in that e-mail you say, "Hi Simon, some notes I've kept</p> <p>6 for you the last couple of days so you'll hit the ground</p> <p>7 running and some hopefully helpful suggestions."</p> <p>8 MR JAMIESON: Yes.</p> <p>9 MS PILLAY: So we get a letter from Mr</p> <p>10 Farmer on the 13th of August saying that he's asked you to</p> <p>11 act in his place and we get a briefing note from you to Mr</p> <p>12 Scott on the 15th of August saying you're going to hit the</p> <p>13 ground running and these are some notes to assist you. So</p> <p>14 can we deduce from that, that during the period 13 to 15th</p> <p>15 of August that you were in fact acting as CEO, you were in</p> <p>16 charge of operations at Lonmin?</p> <p>17 MR JAMIESON: No, that's incorrect.</p> <p>18 CHAIRPERSON: Isn't the position actually</p> <p>19 simpler than that? It's clear from the documents and I</p> <p>20 think there's one at VVVV1.14 that Mr Scott was, you say</p> <p>21 was recalled from leave and he caught an aeroplane in</p> <p>22 London on Tuesday evening, that's the 14th, and arrived back</p> <p>23 on Wednesday morning the 15th. As it said, he hit the</p> <p>24 ground running. What happened was Mr Phillimore says in</p> <p>25 this letter at 4444, 1.14, having talked about Mr Farmer</p>



<p style="text-align: right;">Page 37212</p> <p>1 having gone on – he says, “Simon Scott is flying back to 2 South Africa tomorrow night and will act in Ian’s stead for 3 the time being.” So what it really amounts to is – it 4 sounds technical but Mr Scott was the acting CEO from the 5 time Mr Phillimore sent that e-mail which was on the 6 evening of Monday, Monday the 13th, but he was only arriving 7 in South Africa on Wednesday morning because he was only 8 flying on Tuesday night. So you were really the acting- 9 acting CEO, if one can use that expression, on the Tuesday 10 because you were minding the shop for him, if one can put 11 it that way, and that’s why you wrote the briefing note for 12 him, for him to deal with on the Wednesday morning when he 13 arrived. It’s as simple as that, isn’t it? 14 MR JAMIESON: No, Mr Chairman. 15 CHAIRPERSON: Sorry? 16 MR JAMIESON: It’s not that simple, no. 17 CHAIRPERSON: Well, you were holding – 18 no, I didn’t say he was acting CEO. I said you were the 19 acting-acting CEO, you were holding – there isn’t such a 20 thing but it’s a way of expressing what was happening. You 21 were minding the shop for him on the Tuesday. You were 22 holding the fort, to use another simile, and that’s why you 23 attended to certain things and you wrote a briefing note 24 for him so when he arrived running, as you put it, on the 25 Wednesday morning, there was this note bringing him up to</p>	<p style="text-align: right;">Page 37213</p> <p>1 speed. Isn’t that the position? 2 MR JAMIESON: No, Mr Chairman. 3 CHAIRPERSON: No? Oh well, I’m sorry, 4 you’ll have to explain it to me. I’m sorry I – 5 MR JAMIESON: I can certainly explain it 6 to you. So I took it from the call with Roger Phillimore 7 on Monday night that Simon Scott was acting CEO from the 8 time I got the call from Mr Phillimore. Also that the, you 9 know, an e-mail from the then CEO is not, doesn’t hold, he 10 has to be board appointed, you have to have a letter of 11 appointment, you have to have all these things and 12 therefore I think there’s another e-mail that you will find 13 that I replied to Simon when he was in contact. He was in 14 fact in contact with us over the weekend of the 11th and 15 12th. Being on vacation doesn’t mean much for executives 16 nowadays and also being in the country doesn’t mean much 17 for executives nowadays, so Ian Farmer for instance is 18 still CEO when he’s out of the country and I would put it 19 that anyone who is an acting CEO, whether he’s in the 20 country or out of the country is also acting CEO. I wasn’t 21 the acting CEO, Mr Phillimore told me – 22 CHAIRPERSON: I understand. I see what – 23 you were effectively doing work for the CEO, doing work for 24 the acting CEO on the Tuesday. That’s really what it 25 amounts to, hence the note on page 40.</p>
<p style="text-align: right;">Page 37214</p> <p>1 [09:58] What, when, Mr Chairman, you said that you were 2 sort of minding the shop or holding the fort, in our 3 parlance what that meant and I think you will see on my 4 latter email a stewardship that I sent to Simon is that if 5 the CEO wasn’t available for the Monday EXCO course Simon 6 Scott would chair them. If Simon Scott wasn’t available I 7 would chair them and what that meant was that you kept 8 notes and then informed the CEO or the acting CEO or 9 whoever else once you got to talk to them. 10 CHAIRPERSON: It is a terminological 11 difference which I don’t think takes things much further, I 12 suspect that Ms Pillay doesn’t need to know the exact 13 description of the position you were holding on the Tuesday 14 the 14th, but perhaps you could put it into language that 15 overcomes Mr Jamieson’s terminological difficulties. 16 MR JAMIESON: The position I was holding, 17 Mr Chair, was Chief Commercial Officer. 18 COMMISSIONER HEMRAJ: If you look at page 19 19 of the annexure set out properly there by Mr Jamieson. 20 MS PILLAY: Would that make you more 21 comfortable, Mr Jamieson, if we refer to the period between 22 the 13th and the 15th as the stewardship that you had at the 23 time, in charge of operations at Lonmin? 24 MR JAMIESON: No it wouldn’t make me any 25 more comfortable.</p>	<p style="text-align: right;">Page 37215</p> <p>1 MS PILLAY: All right I think whether you 2 were the acting CEO, the acting, acting CEO or just a 3 steward of Lonmin at the relevant time it doesn’t detract 4 from the fact, Mr Jamieson that at the time you were an 5 experienced EXCO member, isn’t that correct? 6 MR JAMIESON: I’d been on the executive 7 committee for a number of years as marketing EVP and as I 8 said one of the restructuring as being chief commercial 9 officer. 10 MS PILLAY: And we see from VVVV1.40 your 11 briefing note to Mr Scott to allow him to hit the ground 12 running – 13 MR JAMIESON: Yes. 14 MS PILLAY: That you had an in depth 15 understanding of the working of Lonmin. 16 MR JAMIESON: What I had was access to 17 the calls I was on and keeping notes on the calls I was on 18 and one of the things that I knew I would have to do 19 because I would be the first port of call if you like when 20 Roger and Simon arrived in South Africa would be that they 21 would come to the Melrose Arch office. And Roger had said 22 to me please could you prepare something so that you give 23 it an overview of the situation. And I said okay I’ll keep 24 some notes. 25 MS PILLAY: And when Mr Phillimore and Mr</p>

<p style="text-align: right;">Page 37216</p> <p>1 Scott were not present you were the person that was in a 2 sense factually in charge. 3 MR JAMIESON: No. 4 CHAIRPERSON: Mr Jamieson, we've been 5 wasting a lot of time on what is essentially a semantic 6 point. You, yourself in your email on page 19 say "My 7 stewardship extends until you arrive" that means in 8 colloquial language that you were the steward, if one can 9 call it that, performing stewardship duties until Mr Scott 10 arrived, right? That was going to be on the Wednesday 11 morning. So on the Tuesday you were the most senior man in 12 the office I take it, in Johannesburg, is that right? 13 MR JAMIESON: I was the most senior man 14 in what sense? 15 CHAIRPERSON: In terms of company 16 seniority. 17 MR JAMIESON: No, not really. 18 CHAIRPERSON: Who was the most senior 19 man? 20 MR JAMIESON: We were all equal. I mean 21 the EVPs and myself were all – 22 CHAIRPERSON: What does this phrase "My 23 stewardship" that you use in this email mean? What does it 24 cover? 25 MR JAMIESON: Ja exactly, it means</p>	<p style="text-align: right;">Page 37217</p> <p>1 exactly the same as if I have a stewardship over the Monday 2 EXCO call. I chair the call, take the notes and then 3 report back to the CEO. Nothing more than that, in terms 4 of I'm being asked to go take decisions and what have you, 5 it simply doesn't work like that. The people who – Mark, 6 Natasha, Barnard they would take their own decisions. I 7 wasn't someone who oversaw their decisions, endorsed them 8 or anything else. 9 MS PILLAY: And to your knowledge did any 10 other Lonmin official prepare briefing notes for Mr Scott? 11 MR JAMIESON: Yes, during the course of 12 Wednesday when they arrived I understand that they had 13 calls with, to the mine, with each of the EVPs and got 14 first hand updates from them. 15 MS PILLAY: All right now let's go to 16 April 2012, that's one of the first relevant EXCO meetings 17 and you were present at that EXCO meeting weren't you? 18 MR JAMIESON: Yes. 19 MS PILLAY: Now let's look at VVVV1.124 20 and you'll see, Mr Jamieson, that this is what's referred 21 to as a scenario planning document. 22 MR JAMIESON: Ah, yes. 23 MS PILLAY: VVVV1.124. Chair, I think we 24 just need a few seconds just to update the technician. Mr 25 Jamieson, you do have the hard copy before you, the hard</p>
<p style="text-align: right;">Page 37218</p> <p>1 copy of the document. 2 MR JAMIESON: Yes I do. 3 MS PILLAY: If you could go to page 124 4 of the hard copy. Do you recognise this document? 5 MR JAMIESON: Yes. 6 MS PILLAY: And this document was 7 presented apparently on the 12th of April 2012, isn't that 8 correct? 9 MR JAMIESON: Yes. 10 MS PILLAY: Now let's go to 129 of this 11 document where we see a discussion on trade unionism and 12 the implications for Lonmin, do you see that? 13 MR JAMIESON: Page 129, yes. 14 CHAIRPERSON: That's page 6 of the 15 document. 16 MS PILLAY: If you look at the first 17 bullet point on this document, on page 129 you'll see the 18 first heading is The relevance of trade unions has become 19 questionable. Do you see that? 20 MR JAMIESON: Yes. 21 MS PILLAY: And do you recall a 22 discussion in that 12th April 2012 EXCO? 23 MR JAMIESON: Not specifically I'm 24 afraid, no. 25 MS PILLAY: But you do remember –</p>	<p style="text-align: right;">Page 37219</p> <p>1 MR JAMIESON: Generally, ja. 2 MS PILLAY: And you do remember the 3 presentation? 4 MR JAMIESON: Yes. 5 MS PILLAY: Which specifically 6 highlighted that relevance of trade unions has become 7 questionable. Now let's look at the fourth bullet point 8 and it's stated there "Recognised trade unions are not 9 necessarily legitimate." Do you see that? 10 MR JAMIESON: Yes. 11 MS PILLAY: And do you recall any 12 discussion around this particular point? 13 MR JAMIESON: No. 14 MS PILLAY: If we go further down The 15 latest amendments to labour legislation will further change 16 trade union dynamics. 17 MR JAMIESON: That's at the bottom. 18 MS PILLAY: And then if can turn page 130 19 of VVVV1.124 and you'll see there a table setting out trade 20 union statistics. Do you see that? 21 MR JAMIESON: Yes. 22 MS PILLAY: And what it does it sets out 23 very graphically, particularly the decline in numbers in 24 NUM membership over a period of time from March 2011 to 25 March 2012, do you see that?</p>

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1 MR JAMIESON: Is that row 4?  
 2 MS PILLAY: That's correct, in row 4.  
 3 MR JAMIESON: Yes.  
 4 MS PILLAY: And importantly if you look  
 5 at the second last column on that page it says "No union"  
 6 and you see an increase in the number of workers who are  
 7 non-unionised over the period of time.  
 8 MR JAMIESON: Yes.  
 9 MS PILLAY: And if you look at December  
 10 2011 you'll see a steady growth in the number of workers  
 11 who have signed up for AMCU membership. Do you see that?  
 12 MR JAMIESON: Line, 1, 2?  
 13 MS PILLAY: That's the second line,  
 14 second row.  
 15 MR JAMIESON: Yes.  
 16 MS PILLAY: Now –  
 17 COMMISSIONER HEMRAJ: Before we go any  
 18 further, Mr Jamieson, who would have compiled this  
 19 document?  
 20 MR JAMIESON: Barnard Mokwena.  
 21 COMMISSIONER HEMRAJ: Thank you.  
 22 MS PILLAY: If we can then go to page 133  
 23 of this document where the implications of the statistics  
 24 which we have just very briefly looked at are discussed.  
 25 Mr Jamieson, do you see that?

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1 there's a direct correlation between the growth of AMCU and  
 2 the reduction in NUM's representation." Do you recall this  
 3 as being part of the presentation?  
 4 MR JAMIESON: Not specifically, but I can  
 5 see it.  
 6 MS PILLAY: And it states in the last  
 7 bullet point "AMCU does not seem to be targeting the non-  
 8 unionised employees except current and former NUM members."  
 9 MR JAMIESON: Correct.  
 10 MS PILLAY: If we can go to the next  
 11 stage of this presentation.  
 12 MR JAMIESON: 134?  
 13 MS PILLAY: At 134. The first bullet  
 14 point it says "NUM has historically enjoyed complete  
 15 majority, currently 49%" and the second bullet point "NUM  
 16 seems to have lost touch with their members and  
 17 importantly, their confidence." Do you see that?  
 18 MR JAMIESON: Yes.  
 19 MS PILLAY: So we see in this  
 20 presentation made already in April 2012 it being  
 21 highlighted to EXCO that there was a decline in NUM's  
 22 popularity firstly and that it seemed to have been losing  
 23 steadily the confidence of its membership. Do you see  
 24 that?  
 25 MR JAMIESON: Yes and the rise of non-

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1 MR JAMIESON: Page 133?  
 2 MS PILLAY: 133 and you'll see the first  
 3 bullet point. If we can have 133, if we can just rotate  
 4 the document on the screen. If we look at the first bullet  
 5 point you'll see that one of the first implications of the  
 6 statistics that's highlighted in this presentation is that  
 7 NUM lost 16% of its own members during the past 12 months.  
 8 Do you see that?  
 9 MR JAMIESON: Yes.  
 10 MS PILLAY: Then the next two bullet  
 11 points that refers to an increase of membership – sorry in  
 12 the first bullet point "An increase in solidarity  
 13 membership." The third bullet point "A loss in UASA's  
 14 membership. Do you see that?  
 15 MR JAMIESON: Yes.  
 16 MS PILLAY: And then the fourth bullet  
 17 point is the important one, "Non unionised group by 71%  
 18 during the same period."  
 19 MR JAMIESON: Yes.  
 20 MS PILLAY: And specifically in the fifth  
 21 bullet point it's pointed out that 31% of Lonmin employee  
 22 population is not unionised.  
 23 MR JAMIESON: Correct.  
 24 MS PILLAY: Now if I can refer you to the  
 25 second last bullet point, it's stated there "It seems that

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1 unionised.  
 2 MS PILLAY: And importantly, yes thank  
 3 you. Importantly the rise of non-unionised membership.  
 4 MR JAMIESON: Yes.  
 5 MS PILLAY: If we can go to page 140 of  
 6 that document. I'm sorry just for completion I think we  
 7 should deal with 139 first which deals specifically with  
 8 AMCU and describes the nature of AMCU. It says in the  
 9 first bullet point "AMCU is a break away union from NUM."  
 10 Second bullet point "They share the same target market with  
 11 NUM. They are very passionate about defeating NUM. They  
 12 feed on the discontent of NUM members. They position  
 13 themselves as the alternative to NUM or saviour of NUM  
 14 members. They are aggressive and disruptive in the  
 15 companies in which they operate" and on the last bullet  
 16 point "AMCU is known for its covert operations and  
 17 intimidation tactics." Do you see that?  
 18 MR JAMIESON: Yes.  
 19 MS PILLAY: Now at page 140 you see a  
 20 slide headed Management.  
 21 MR JAMIESON: Yes.  
 22 MS PILLAY: And the first bullet point  
 23 what's being dealt with is the capacity to understand and  
 24 manage the new environment. Do you see that?  
 25 MR JAMIESON: Yes.

<p style="text-align: right;">Page 37224</p> <p>1 MS PILLAY: And the following are the 2 factors which needed to be taken into account, the first is 3 "Anxiety, not knowing how to manage the use of the old tool 4 box." Second bullet point "Fear of the unknown." Third 5 bullet point "Conscious and unconscious resistance to the 6 changing landscape." Sorry then the fourth bullet point 7 "The use of familiar tools of coping." And the last bullet 8 point, the important one I wanted to highlight is that "We 9 know NUM, we prefer to mainly deal with them." 10 MR JAMIESON: Yes. 11 MS PILLAY: Do you see that? Now in 12 terms of your understanding was that a reflection of what 13 was in the minds of management at the time? 14 MR JAMIESON: My recollection is that the 15 term management here, Mr Chairman, sort of referred to our 16 middle management. 17 MS PILLAY: Right and that was consistent 18 with your understanding of the dynamic at the time, that 19 middle management preferred to deal with NUM. 20 MR JAMIESON: Well no that was how it was 21 being described. 22 MS PILLAY: By management, by middle 23 management themselves. 24 MR JAMIESON: Yes, but I don't deal with 25 NUM and I don't deal with our middle management, so I can't</p>	<p style="text-align: right;">Page 37225</p> <p>1 speak from – 2 MS PILLAY: But I understand your 3 evidence is that is how middle management is describing to 4 EXCO their perspective. 5 MR JAMIESON: No that was how the HR 6 management were describing middle management's perspective. 7 MS PILLAY: And the HR management 8 wouldn't they ordinarily form part of middle management? 9 MR JAMIESON: Some of them. This was an 10 EXCO presentation, so it was Barnard. 11 MS PILLAY: If we look at page 142 of 12 that document and in this slide what is being addressed is 13 what does all this mean and the first thing is that union 14 membership is no longer a function of grade and raise which 15 we understand. I'd like you to look at the fifth bullet 16 point. 17 MR JAMIESON: The current thresholds. 18 MS PILLAY: "The current thresholds and 19 other legal relationships are no longer relevant." So what 20 that seems to highlight is that there was a need to rethink 21 the current collective bargaining structure and the system 22 of recognition because it may no longer be relevant. Do 23 you see that? 24 MR JAMIESON: Yes. 25 MS PILLAY: And the next bullet point</p>
<p style="text-align: right;">Page 37226</p> <p>1 "Some organisational systems are geared at the old 2 framework therefore a total overhaul of organisational 3 systems, policies and procedures should be considered." 4 MR JAMIESON: Yes. 5 MS PILLAY: And if we can then go to 143, 6 New challenges and opportunities. If you look at the first 7 bullet point again we see what has now become a familiar 8 theme "NUM seems to have lost touch with its members and 9 their confidence." The second bullet point "At Impala 10 Platinum NUM is the majority trade union which entered into 11 certain agreements with the company. Importantly these 12 agreements became unenforceable during the recent strikes, 13 presumably as a result of the influence of the unrecognised 14 trade union. The current recognition agreements are based 15 on the Marikana total operations and NUM is the current 16 majority trade union for the bargaining unit it operates in 17 despite its decline impact in exerting influence over its 18 members." So in this bullet point we see it being 19 highlighted that there may be a disconnect between NUM and 20 its members even though they are technically members of 21 NUM. In other words NUM is not able to control its members 22 or exert influence over its members. Do you see that? 23 MR JAMIESON: Yes, I don't think it says 24 it can't influence, it says its declining influence. 25 MS PILLAY: It's a declining influence.</p>	<p style="text-align: right;">Page 37227</p> <p>1 MR JAMIESON: Ja it doesn't say they 2 can't have any influence – 3 MS PILLAY: I accept that, I'm happy with 4 you recognising that EXCO was aware of NUM's declining 5 influence over its own members. 6 MR JAMIESON: Right. 7 MS PILLAY: If we can then turn to the – 8 and we'll come back to these issues which EXCO was 9 specifically drawn attention to in April 2012. If we can 10 just go to June 2012 and look at what was discussed there? 11 MR JAMIESON: Not in this document is it? 12 MS PILLAY: It's not in this document 13 anymore. We can go to VVVV1.83. 14 CHAIRPERSON: [Inaudible]. 15 MS PILLAY: 1.83, Chair. 16 CHAIRPERSON: We have a problem because 17 our bundles end at 179, but there is a June document 18 starting at 169, is that the document you mean? 19 MS PILLAY: Chair it's at page 83 of the 20 bundle. 21 CHAIRPERSON: Thank you. 22 MS PILLAY: Maybe we should pick up at 23 page 81, Mr Jamieson. You'll see that this is the minutes 24 arising from the Lonmin EXCO meeting held on 19 July. 25 MR JAMIESON: Sorry, Ms Pillay, what page</p>

<p style="text-align: right;">Page 37228</p> <p>1 number is it and what reference?  2 MS PILLAY: I'm sorry, if we start at  3 page 81 of the bundle of BBBB1.  4 MR JAMIESON: BBBB1, I'll have to look  5 for it. I don't have a BBBB1.  6 Sorry that's the Lonmin bundle. The bundle we  7 were looking at now that's BBBB1. It's the same bundle  8 where the presentation was that we were dealing with, yes.  9 If you look on page 81 of that bundle. Just to orientate  10 you in terms of the document I am referring to.  11 [10:18] You will see this is the minute of the July  12 meeting.  13 MR JAMIESON: Yes.  14 MS PILLAY: Now we know that you were not  15 present at the July EXCO. Isn't that correct?  16 MR JAMIESON: That's correct.  17 MS PILLAY: The one held on the 19th of  18 July.  19 MR JAMIESON: Ja.  20 MS PILLAY: I just wanted to highlight to  21 you some of the issues that were discussed in that meeting.  22 If we go to page 83 of the document –  23 MR JAMIESON: Yes.  24 MS PILLAY: - the paragraph that appears  25 on that page, Human Capital, issues for noting, and</p>	<p style="text-align: right;">Page 37229</p> <p>1 specifically to (iii) -  2 MR JAMIESON: Yes.  3 MS PILLAY: - "There's currently a risk  4 to the retention of RDOs at Lonmin, given that RDOs are  5 paid more at both Impala and Angloplats. This risk needs  6 to be measured against the potential risk of reopening wage  7 negotiations during the current financial year if the  8 demands of RDOs are addressed separately to the rest of the  9 workplace."  10 MR JAMIESON: Yes.  11 MS PILLAY: Do you see that?  12 MR JAMIESON: Yes.  13 MS PILLAY: Now if we can just unpack  14 that a bit, Mr Jameson, to understand what's being noted by  15 EXCO here, and you see firstly that EXCO recognises in this  16 paragraph that Lonmin RDOs are being paid less than RDOs at  17 Impala and Angloplats. Do you see that?  18 MR JAMIESON: Yes, it's the first  19 sentence.  20 MS PILLAY: That's right, and that this  21 in itself posed a risk of retention –  22 MR JAMIESON: Yes.  23 MS PILLAY: - in that obviously RDOs may  24 easily be attracted to work at, either at Impala or  25 Angloplats. Do you see that?</p>
<p style="text-align: right;">Page 37230</p> <p>1 MR JAMIESON: Yes.  2 MS PILLAY: And that was identified as a  3 specific risk. You also see here that that risk, "The  4 retention risk needs to be measured against the potential  5 risk of reopening wage negotiations during the current  6 financial year."  7 MR JAMIESON: Yes.  8 MS PILLAY: So in other words at this  9 stage we see EXCO alive to the possibility, and I put it no  10 higher than that at this stage, the possibility of  11 reopening wage negotiations during the current financial  12 year.  13 MR JAMIESON: Yes.  14 MS PILLAY: And what's being highlighted  15 for noting by EXCO at this stage is that the two risks  16 needed to be weighed up. Do you accept that?  17 MR JAMIESON: Yes.  18 MS PILLAY: That's reflected in the  19 minute. And EXCO was also alive to the fact that the risk,  20 specific risk was that if the demands of the RDOs only were  21 to be addressed as opposed to the entire Lonmin workforce.  22 Do you see that?  23 MR JAMIESON: Yes.  24 MS PILLAY: That there was a risk  25 associated with only addressing the demands of the RDOs.</p>	<p style="text-align: right;">Page 37231</p> <p>1 MR JAMIESON: Yes.  2 MS PILLAY: Now can we then look at the  3 next page, page 84, which is the action items.  4 MR JAMIESON: Yes.  5 MS PILLAY: And specifically if I can ask  6 that we look at (v) on page 84.  7 MR JAMIESON: Right.  8 MS PILLAY: It states, "To prepare one of  9 the action items identified is to prepare an opinion  10 covering the operational, political and legal implications  11 in the event of various identified inter-union rivalry  12 scenarios emerging. This is to include the implication of  13 addressing the demands of RDOs at this point in time and  14 the implications in terms of potentially reopening wage  15 negotiations."  16 MR JAMIESON: Yes.  17 MS PILLAY: And in brackets, "(to provide  18 an update at the August AGM)" and the person in charge of  19 actioning this particular item is Barnard Mokwena. Do you  20 see that?  21 MR JAMIESON: The August EXCO, not AGM.  22 MS PILLAY: Sorry, I apologise, at the  23 August EXCO, but importantly the person in charge of  24 actioning this was Barnard Mokwena. Do you see that?  25 MR JAMIESON: Yes.</p>

<p style="text-align: right;">Page 37232</p> <p>1 MS PILLAY: Now just to understand what 2 it is that Mr Mokwena was asked to do, he was asked to 3 prepare an opinion on the implications of the inter-union 4 rivalry, firstly, but also to consider the implication of 5 addressing specifically the RDOs' demands. Do you see 6 that? 7 MR JAMIESON: Yes. 8 MS PILLAY: And he was also asked to 9 consider the implications of potentially reopening wage 10 negotiations. 11 MR JAMIESON: Yes. 12 MS PILLAY: So there essentially are 13 three issues that he needed to consider in this opinion 14 which was to be presented, or updated at the next EXCO 15 meeting, the August EXCO meeting. 16 MR JAMIESON: What are the three? 17 MS PILLAY: The first is the operational, 18 political and legal implications – 19 MR JAMIESON: That's three. 20 MS PILLAY: - in the event of inter-union 21 rivalry scenarios emerging. 22 MR JAMIESON: That's four. 23 MS PILLAY: Sorry? 24 MR JAMIESON: I said which are the three. 25 You've now given me four.</p>	<p style="text-align: right;">Page 37233</p> <p>1 MS PILLAY: That's the first one, as I 2 understand this paragraph. Maybe you can correct me. 3 MR JAMIESON: Well, you said operational, 4 political and legal implications, that's three. 5 MS PILLAY: Ja, I – 6 MR JAMIESON: And inter-union rivalry, 7 that's four. 8 MS PILLAY: No, it's the implications on 9 those three levels of the inter-union rivalry, so that's 10 one issue. 11 MR JAMIESON: Okay, so inter-union 12 rivalry is number 1. 13 MS PILLAY: That's right, yes. 14 MR JAMIESON: Sorry. 15 MS PILLAY: And the implications flowing 16 from inter-union rivalry. 17 MR JAMIESON: Ja. 18 MS PILLAY: The second is the implication 19 of addressing the demands of the RDOs at that particular 20 point in time. 21 MR JAMIESON: Yes. 22 MS PILLAY: That's the second issue, and 23 the third is to consider the implications of potentially 24 reopening wage negotiations – 25 MR JAMIESON: Yes.</p>
<p style="text-align: right;">Page 37234</p> <p>1 MS PILLAY: - at that particular point in 2 time. So we see in this paragraph once again EXCO being 3 alive to the possibility of reopening wage negotiations at 4 that particular point in time. 5 MR JAMIESON: Yes. 6 MS PILLAY: And EXCO needing an opinion 7 to understand the implications of doing that. 8 MR JAMIESON: Yes. 9 MS PILLAY: Specifically and also to 10 address the demands of the RDOs which had become apparent 11 at that time. 12 MR JAMIESON: Yes. 13 MS PILLAY: So until the 19th of July we 14 don't see any specific decision by EXCO that it will not 15 reopen wage negotiations at that particular point in time. 16 In fact to the contrary it seems to be open to considering 17 the possibility of reopening wage negotiations, but needed 18 to understand the implications of doing that. 19 MR JAMIESON: Yes. 20 MS PILLAY: Now are you aware - and I 21 know that you were part of the EXCO meetings from August 22 onwards – are you aware whether or not the opinion by 23 Barnard Mokwena was ever placed before EXCO, the opinion 24 dealing with the implications of these three issues? 25 MR JAMIESON: I'm not aware. I think</p>	<p style="text-align: right;">Page 37235</p> <p>1 events overtook us. 2 MS PILLAY: Now we know, Mr Jameson, 3 that, and we see it emerge as a theme starting from the 10th 4 of August onwards, and I'll take you to the evidence if 5 necessary. 6 MR JAMIESON: Right. 7 MS PILLAY: But we see a very firm stance 8 taken by Lonmin at least from the 10th of August onwards 9 that they will not enter into wage negotiation outside the 10 existing collective bargaining structure. Now do you know 11 when that decision was taken? 12 MR JAMIESON: Sorry, you said a firm 13 stance by Lonmin from the 10th – 14 MS PILLAY: That's right, from the 10th – 15 MR JAMIESON: From the 10th? 16 MS PILLAY: Onwards, and I can take you 17 to the evidence – 18 CHAIRPERSON: Remember the 10th was the 19 day – 20 MR JAMIESON: Yes, was the Friday. 21 CHAIRPERSON: - of the march. 22 MR JAMIESON: Yes, yes. 23 CHAIRPERSON: When they came and they 24 wanted to speak – 25 MR JAMIESON: Yes.</p>

<p style="text-align: right;">Page 37236</p> <p>1 CHAIRPERSON: The five representatives I 2 think it was wanted to speak to Lonmin in the main 3 building, I think it's called the LPD building. 4 MR JAMIESON: Yes. 5 CHAIRPERSON: And they were told can't 6 talk to you, you must go through the normal channels. 7 MR JAMIESON: Yes. 8 CHAIRPERSON: And the positions seems to 9 have been taken up certainly I don't know when it was taken 10 up but it was communicated to the strikers with the 11 necessary degree of firmness I suppose Lonmin would have 12 thought, on the 10th. That's correct, isn't it? 13 MR JAMIESON: I think the decision was 14 taken somewhere before that. I'm not – 15 CHAIRPERSON: Yes, yes, no, I'm not 16 saying when it was taken – 17 MR JAMIESON: I'm not sure, no. 18 CHAIRPERSON: - but I'm saying it was 19 communicated to the strikers then. 20 MR JAMIESON: No, I think it was 21 communicated by Mike Da Costa before that. 22 CHAIRPERSON: Anyway certainly what was 23 communicated unequivocally to the strikers on the 10th of 24 August was you can negotiate but only through the accepted 25 negotiation structures.</p>	<p style="text-align: right;">Page 37237</p> <p>1 MR JAMIESON: Okay. 2 CHAIRPERSON: And that position was 3 adhered to by Lonmin right until after the shooting on the 4 16th. 5 MR JAMIESON: Yes. 6 MS PILLAY: Maybe just to assist you, Mr 7 Jameson, it would be helpful to get clarity on exactly what 8 was conveyed to the strikers. Maybe we can look at the 9 witness statement of Mr Kgotle. That's exhibit OO16. It's 10 not part of your bundle, so you'll just, you can follow it 11 on the screen. Exhibit OO16, and if we can pick up from 12 paragraph 12 of this statement, paragraph 12 at page 3 of 13 the statement, we see in this paragraph that Mr Kgotle 14 deals with the events of Friday 10 August 2012 and he 15 indicates that he reported for work at approximately 8 16 o'clock in the morning and at 9 o'clock he received an 17 urgent telephone call from Mr Sinclair who advised him that 18 there was a group of people gathering near Wonderkop, and 19 he advised him that there appeared to be a planned march to 20 LPD to present demands to management. 21 Now if we can jump to paragraph 14 where Mr 22 Kgotle states, "My colleagues and I hastily convened an 23 urgent meeting at LPD to discuss this development and the 24 colleagues who attended the meeting were Mr Russo-Bello, Mr 25 Fanyana Kwadi, Mr Larry Dietrich, Poena Prinsloo and Arthur</p>
<p style="text-align: right;">Page 37238</p> <p>1 Kgatlane." Do you see that? 2 MR JAMIESON: Yes. 3 MS PILLAY: At paragraph 15, "During the 4 course of our meeting Sinclair regularly reported to us 5 about the developments vis-à-vis the strikers, kept us 6 updated as the group of workers rapidly swelled to over 7 3 000. We suspected that these were RDOs. There were 8 reports that morning that there was almost unprecedented 9 absence of RDOs on the morning shift." 10 Importantly at paragraph 16, "A short while later 11 Sinclair reported that this large group was marching in the 12 direction of LPD. As I've already indicated no 13 authorisation had been given for such a march by Lonmin. 14 We asked Sinclair to try and establish who was leading the 15 march. Meanwhile we resolved not to accept any memorandum 16 of demand from the strikers. This was because Lonmin had, 17 to the knowledge of its entire workforce, established 18 procedures for the conduct of authorised mass meetings, 19 gatherings and marches on its premises." Do you see that? 20 MR JAMIESON: Yes. 21 MS PILLAY: Now from this it appears that 22 Mr Kgotle and the colleagues that he describes took a 23 decision not even to receive the memorandum if, and we know 24 subsequently that there wasn't a memorandum, but they'd 25 already taken a meeting not to receive a memorandum.</p>	<p style="text-align: right;">Page 37239</p> <p>1 MR JAMIESON: Right. 2 MS PILLAY: Sorry, they'd already taken a 3 resolution not to receive the memorandum because it was 4 outside the established collective bargaining structures. 5 MR JAMIESON: Right. 6 MS PILLAY: You see that? 7 MR JAMIESON: Yes. 8 MS PILLAY: Now what I wanted to 9 understand, Mr Jameson, is that we see, at least by the 19th 10 of July we see EXCO being open to the possibility of 11 reopening wage negotiations and what we don't see is 12 specifically when a decision was taken to confine all 13 negotiation to the existing bargaining structures. 14 MR JAMIESON: Right. 15 MS PILLAY: Do you know when that 16 happened? 17 MR JAMIESON: I've got no direct 18 knowledge of it. When I came back into the country I was 19 to an extent playing catch-up, Mr Chairman, on all of these 20 events that had occurred while I wasn't there, so I can 21 only give you a sort of third-hand, if you like, view and 22 that was that Mark Munroe had related at some point, 23 presumably on a call, that there had been this to'ing and 24 fro'ing with rock drill operators, that he'd considered it 25 together with Barnard, together with Ian, and that they had</p>

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1 decided and communicated back the limit to which they were  
 2 prepared to go, and I understand that that was given to  
 3 Mike Da Costa to communicate back to them and Mike had told  
 4 them what the decision was and told them that if you want  
 5 to do anything further you must go through the normal  
 6 structures. That was related to me and it was after, you  
 7 know, well after the events, not even during them. I  
 8 wasn't here.

9 CHAIRPERSON: Ms Pillay, at an  
 10 appropriate stage we'll take the first comfort break. We  
 11 have some people who are coming to see us during that  
 12 break, so we may take a bit longer before we come back than  
 13 usual, but when – I just mention that if it's convenient to  
 14 take the break now, we'll do it. If you want to round off  
 15 this point first, then please go ahead.

16 MS PILLAY: Chair, this is quite a  
 17 substantial point. I think it might be convenient to take  
 18 it now and I can pick it up –

19 CHAIRPERSON: Very well. We'll take the  
 20 adjournment. These short comfort breaks are intended to  
 21 last quarter of an hour. They don't always do that, I'm  
 22 afraid. This one I'm afraid will take a little bit longer  
 23 because of these people coming to see us, but we'll  
 24 certainly come back as soon as we can.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 MR JAMIESON: Right.

2 MS PILLAY: And you'll see in paragraph 1  
 3 of this document that the purpose of this document is to  
 4 provide EXCO with an update on the key developments in the  
 5 internal and external environment since then, since the  
 6 trade union scenarios document was presented to EXCO. Now  
 7 there are just a few key issues which I'd like to highlight  
 8 and it starts at paragraph 1 of that document.

9 CHAIRPERSON: Before you do that, the  
 10 document as you say, as Ms Pillay said, is prepared by Mr  
 11 Kwadi and signed by him or has got his name at the bottom  
 12 and the next document in the bundle, which is a further  
 13 update, has also got Mr Kwadi's name on it, prepared by  
 14 him. He says in this one, "We prepared the trade union  
 15 scenarios document," that's the document we were looking at  
 16 earlier. Now you told us that Mr Mokwena did that, so do I  
 17 understand the position to be that Mr Mokwena and Mr Kwadi  
 18 are responsible for this set of documents, the trade union  
 19 scenarios document which we looked at, this document and –  
 20 which is called "Trade union scenarios update" which is  
 21 only a two page document and then the next document which  
 22 starts at page 171 is a further update, trade union  
 23 scenarios update dated 13th of July. They're all the work  
 24 of Mr Mokwena and Mr Kwadi, is that correct?

25 MR JAMIESON: Yes and, Chair, the modus

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1 [11:08] CHAIRPERSON: The Commission resumes.  
 2 There's been a bit of a crisis, I gather, that some of  
 3 those who were scheduled to cross-examine aren't prepared  
 4 to do so. I don't know why that is and I'm not going to go  
 5 there but what is going to happen is that we're giving Ms  
 6 Pillay more time to cross-examine and it may well be that,  
 7 I'm sure it certainly will be, that those who have been  
 8 allotted time and are not able to use it today may find  
 9 themselves having their time dramatically cut but it may  
 10 well be that Ms Pillay will have dealt with the topics or  
 11 some of the topics they want to cover. So in the end we'll  
 12 still be able to make a proper assessment of this witness's  
 13 evidence. You're still under oath, Mr Jamieson. Ms  
 14 Pillay?

15 ALBERT JAMIESON: (s.u.o.)

16 CROSS-EXAMINATION BY MS PILLAY (CONTD.):

17 Thank you, Chair. Mr Jamieson, just before the break we  
 18 were dealing with the 18th of July EXCO meeting and with the  
 19 possibility that was noted by EXCO of reopening wage  
 20 negotiations. Now before I come back to the 18th of July  
 21 meeting I thought, for completion, we should just deal with  
 22 the June 2012 meeting and if I could ask you to look at  
 23 VVVV1.169 which is a memorandum from Jomo Kwadi to EXCO and  
 24 what we see in this document is that it's an update on the  
 25 trade union scenario which we looked at earlier.

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1 operandi, if you like, on EXCO is that people who are not  
 2 on EXCO can prepare documents, memorandums, and have them  
 3 present it but ultimately it's the executive committee  
 4 member who presents those, that takes accountability and  
 5 responsibility for them.

6 CHAIRPERSON: And that was Mr Mokwena.

7 MR JAMIESON: In this instance, yes.

8 CHAIRPERSON: Ja. Thank you.

9 MS PILLAY: Now if I understand your  
 10 evidence, Mr Jamieson, you were part of the 26th of June  
 11 EXCO meeting.

12 MR JAMIESON: Yes, I attended.

13 MS PILLAY: Now can we go to paragraph 1  
 14 of Mr Kwadi's memorandum at VVVV1.169 and if you look at  
 15 paragraph 1 of that document it is noted there that, "AMCU  
 16 has seen phenomenal growth at Karee Mine, that membership  
 17 at Eastern and Westerns increased to 2% and 2.9%  
 18 respectively." Sorry, the percentage at Karee is 47.6%  
 19 versus 21.3%. "It is also noted that the signing of the  
 20 limited organisational rights agreement with AMCU seems to  
 21 have quenched their thirst for destabilising Karee and they  
 22 continue to work hard on recruitment of new members. It is  
 23 also pointed out that NUM has lost members and indications  
 24 are that they have reached their stability point and/or  
 25 they are likely to go into a further period of



<p style="text-align: right;">Page 37244</p> <p>1 organisational decline and decay. There does not seem to 2 be any comprehensive and concerted effort from various 3 levels of NUM to reclaim their lost ground." If I could 4 ask you to turn the page and deal with point 3 of this 5 document, that's the RDO issue and you'll see in the first 6 paragraph under paragraph, under point 3, that's on page 7 170 of the bundle –</p> <p>8 MR JAMIESON: Yes.</p> <p>9 MS PILLAY: Mr Kwadi et al are referring 10 to the strike an Impala and the unilateral increase in 11 wages which was introduced by management and that NUM had 12 indicated that they do not recognise the increase and are 13 demanding the increase as per wage agreement. "It is 14 expected that Impala will be under severe pressure to grant 15 the said increase. If this happens it will mean that the 16 RDOs at Impala would have received two wage increases 17 within less than six months. The development is likely to 18 create unhappiness amongst other categories of employees." 19 Do you see that?</p> <p>20 MR JAMIESON: Yes.</p> <p>21 MS PILLAY: And the next particular 22 you're dealing in rand amounts with the lag between Lonmin 23 wages for RDOs and that of Impala, do you see that?</p> <p>24 MR JAMIESON: Yes.</p> <p>25 MS PILLAY: And then the third paragraph</p>	<p style="text-align: right;">Page 37245</p> <p>1 is the key one I wanted to draw your attention to. In that 2 we see Mr Kwadi drawing EXCO's attention to the demand by 3 RDOs at Karee. He says, "RDOs at Karee Mine approached 4 management with a request for an increase to their 5 remuneration. They have requested a package of R12 500 per 6 month. Although there is no proof of AMCU's involvement in 7 the RDO request, suspicions are that they may be behind it 8 directly or indirectly. Of particular interest though," 9 and this is the part I'd like to highlight, "of particular 10 interest though is that the RDOs were led by one member 11 from AMCU and another one from NUM. This may suggest that 12 the RDO issue has assumed a life of its own, independent of 13 trade unions." Do you see that?</p> <p>14 MR JAMIESON: Yes.</p> <p>15 MS PILLAY: And then there are certain 16 observations and conclusions and Mr Kwadi points out that 17 it is critical that Lonmin continues to report the 18 professional handling of all unions in line with the 19 respective agreements, monitor the Impala situation, avoid 20 knee jerk reaction to pressure such as those posed by the 21 RDOs, implement a concerted communication programme to 22 mitigate the RDO and inter-union rivalry." Do you see 23 that?</p> <p>24 MR JAMIESON: Yes.</p> <p>25 MS PILLAY: Now if we can go to the last</p>
<p style="text-align: right;">Page 37246</p> <p>1 update, which is the one that the Chair pointed out, it's 2 at page 171 of that bundle and we see it's an update from 3 Mr Kwadi to EXCO dated the 13th of July 2012. The subject 4 again, "Trade union scenarios update." And in the first 5 paragraph the last line states that, "This memo further 6 seeks to outline key risks over the next three months and 7 action plans to mitigate them." And in the table in 8 paragraph 1.1 Mr Kwadi sets out current trade union 9 statistics and we see percentage membership of AMCU at 10 22.85 and of NUM at 57.11%. In paragraph 2, "Progress of 11 the contagion action plan and the following key actions 12 were implemented since the deep dive," do you know what the 13 deep dive refers to?</p> <p>14 MR JAMIESON: Mr Chair, I've got a 15 recollection of Ian Farmer saying somewhere that we need to 16 do a deep dive. A deep dive is when a group of people, not 17 necessarily EXCO but amongst EXCO people, get together on a 18 specific topic and I can remember, I have a recollection of 19 something happening on a deep dive, I'm not quite sure 20 what.</p> <p>21 MS PILLAY: And you weren't part –</p> <p>22 MR JAMIESON: There was something there –</p> <p>23 MS PILLAY: You weren't part of that get 24 together?</p> <p>25 MR JAMIESON: No, I don't think so.</p>	<p style="text-align: right;">Page 37247</p> <p>1 COMMISSIONER HEMRAJ: Sorry, can I just 2 ask clarity in case I've missed it, the contagion, in what 3 context is that used, contagion action plan?</p> <p>4 MR JAMIESON: Where does it say that, 5 Commissioner, sorry?</p> <p>6 COMMISSIONER HEMRAJ: Paragraph 2 – 7 progress of the contagion action plan.</p> <p>8 MR JAMIESON: Oh, in the title?</p> <p>9 COMMISSIONER HEMRAJ: Yes.</p> <p>10 MR JAMIESON: I think the worry around 11 that time was that there would be contagion from Impala to 12 Lonmin, which indeed happened, and I'm not sure of – by the 13 date that the incident had happened at Aquarius Mine also.</p> <p>14 COMMISSIONER HEMRAJ: Yes. Thank you, Mr 15 Jamieson.</p> <p>16 MR BHAM SC: The context to that, it 17 first appears on the previous page, paragraph 1 where 18 you'll see that it bears the heading "Context" and the 19 contagion scenario is dealt with in that context in the 20 light of the discussion on the extended Impala strike. So 21 under "Context" the fourth line there's talk of a contagion 22 scenario and it appears in the discussion on Impala.</p> <p>23 CHAIRPERSON: It also refers back to the 24 earlier document, the trade union scenarios document where 25 various scenarios are set out and one of them is the</p>

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1 contagion scenario.

2 MR BHAM SC: That's absolutely correct.

3 MS PILLAY: And the trade union scenarios

4 document dealt specifically with Lonmin. That's correct,

5 isn't it?

6 MR JAMIESON: The large first document –

7 MS PILLAY: That's correct.

8 MR JAMIESON: It was a PowerPoint one,

9 yes, yes.

10 MS PILLAY: Yes. And at paragraph 2 on

11 page 172, which is where we were, you'll see that what's

12 being referred to is limited organisational rights being

13 conferred on AMCU, do you see that, an agreement being

14 concluded with AMCU conferring limited organisational

15 rights and the response of NUM and other unions to that

16 situation.

17 MR JAMIESON: Yes, in bullet 2.

18 MS PILLAY: Yes, and at paragraph 3 we

19 see reference to the contagion scenario again and it says,

20 "It has evolved from a threat of industrial action

21 characterised by violent action to one in which the short

22 term would be about strategic remuneration issues." It

23 refers to "the recent demand by Karee RDOs to increase

24 their wages to R12 500 per month as being a further

25 indication of the significance of the threat caused by the

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1 correctly said it's really the Implats scenario and what

2 you say appears to be, in fact is, supported by the passage

3 I referred to, page 148.

4 MR JAMIESON: Okay.

5 CHAIRPERSON: And then it's expanded

6 further in the following.

7 MR JAMIESON: Yes, ja.

8 MS PILLAY: Now if we can turn to page

9 174 of the document, Mr Jamieson, at 4.2 – I'm sorry, at

10 4.3 the document sets out the risk profile and at 4.3.1 one

11 of the risks identified is the detention of RDOs, we've

12 already discussed that. At 4.3.2 the demands from other

13 job categories for wage increases, so the ripple effect of

14 granting increases to one identified group.

15 MR JAMIESON: Yes.

16 MS PILLAY: At 4.3.3 the lack of

17 discipline and control by unions leadership and in the

18 first bullet point under that risk identified it's

19 indicated that the direct engagement between the RDOs and

20 the non-unions representatives at Karee Mine with

21 management may serve to undermine current recognition

22 agreements with existing unions. Do you see that?

23 MR JAMIESON: Yes.

24 MS PILLAY: And the second bullet point,

25 "This may also be seen by the unions as an attempt by

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1 strategic remuneration issue." So in other words the lag

2 which we've heard about.

3 MR JAMIESON: Yes.

4 MS PILLAY: And that that poses a –

5 MR JAMIESON: A risk.

6 MS PILLAY: - a strategic risk. Table 1

7 then sets out the lag in detail and if you turn the page at

8 173 we have a table which sets out the remuneration picture

9 post-October '12 proposed wage increases and ultimately you

10 see that after the proposed October 2012 wage increases,

11 the gap between Lonmin and Impala would narrow to R300 per

12 month, do you see that?

13 MR JAMIESON: Yes.

14 CHAIRPERSON: May I just say that in the

15 original document, the trade union scenarios document, the

16 section on the contagion is at page 148, page 25 of that

17 document. A number of scenarios are listed, there are four

18 of them in fact on page 147 which is page 24 of the

19 document. The first one is "The Implats scenario (the

20 contagion)."

21 MR JAMIESON: Do you want me to look at

22 that, Chair?

23 CHAIRPERSON: Well, we can. I didn't

24 mean to interrupt Ms Pillay but inasmuch as reference is

25 made to the contagion, what exactly is meant by that, you

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1 management to undermine unions and to divide and rule

2 them." Now the key strategic question that is posed

3 immediately after that is whether Lonmin wants the

4 historical majoritarian trade union environment and the

5 question is posed whether Lonmin can conceive of a future

6 of multi-union trade union environment in which multiple

7 unions share significant representation. Do you see that?

8 MR JAMIESON: Yes.

9 MS PILLAY: Now may I ask whether this

10 key strategic question that is posed in this document,

11 whether this question was ever fully considered by EXCO?

12 MR JAMIESON: No, I can't recall us

13 having a great debate on it. Two things I can recall which

14 might help, in 4.3.3 whether there's a reference to

15 undermine current recognition agreements, I can recall that

16 Barnard and Mark Munro had a discussion where Barnard was

17 quite concerned about this issue and made it clear that,

18 you know, we mustn't be negotiating in these discussions

19 that Mike da Costa is having with the RDOs, we mustn't be

20 giving any indication that bargaining units are going to be

21 reopened or negotiations are going to be reopened, not to

22 say that we might not but we shouldn't be raising

23 expectations and he had a concern. Mark answered that by

24 saying no, this is absolutely just consultation and Mike is

25 doing what he should be doing in talking to his employees

<p style="text-align: right;">Page 37252</p> <p>1 and trying to ascertain exactly what it is they want and 2 why. That I recall from 4.3.3, so you've got those two 3 bullet points there and I think that was a valid concern on 4 there. The key strategic questions don't have, I don't 5 have a recollection of a debate on that. If there was I 6 don't think I was participating in it.</p> <p>7 MS PILLAY: Alright, we'll come back to 8 the discussions of consultations between Mr Da Costa and 9 the RDOs. I just wanted us to then go back to the 10 discussion we had just before the tea break and that was, 11 we left off at page 84 of the bundle.</p> <p>12 CHAIRPERSON: Before you do that, can I 13 raise a matter which – I'm going to indicate what it is and 14 if it's going to trespass on your territory, just let me 15 know and I won't proceed with it. Various scenarios which 16 are described as October 2012 scenarios are set out just 17 below paragraph 4.3.3 on page 175 through some of the pages 18 thereafter. It appears to end at 178, but what appears 19 from the document is that Lonmin appears, Lonmin as far as 20 one can see, wanted what it called the advantage of some 21 stability and certainty in the company and that is 22 discussed in sub-paragraph (d) at page 177 on the scenario 23 of AMCU reaching the 35% threshold requirement. And there 24 it says if AMCU reaches this threshold requirement then 25 they'd have to enjoy all the benefits of recognition.</p>	<p style="text-align: right;">Page 37253</p> <p>1 Under risk, there's no risk and under operational it said, 2 "The full legal integration of AMCU into the unions 3 structures at Lonmin would have the advantage of bringing 4 some stability and certainty in the company." And then it 5 says that, the next one under "Political," "NUM would still 6 resist the integration of AMCU into the unions structures 7 at Lonmin but - this political stance by NUM would not have 8 any legal basis." Now was this aspect of the matter 9 discussed? Was it discussed that it would actually be an 10 advantage to Lonmin if AMCU could reach the 35% threshold 11 because then there would be what I think is discussed 12 elsewhere as being a multi-union approach and that this 13 would bring stability, to some extent. Was that discussed 14 at all?</p> <p>15 MR JAMIESON: I can't, can't remember 16 that, Mr Chairman, no. Sorry.</p> <p>17 CHAIRPERSON: Yes.</p> <p>18 MS PILLAY: Thank you, Chair. If we can 19 then go back to page 84, Mr Jamieson, just to pick up where 20 we were after the 18th of July EXCO meeting so even though 21 I've unfortunately just taken you to June, the last point 22 on the timeline where we were is in July 2012.</p> <p>23 MR JAMIESON: Yes.</p> <p>24 [11:28] MS PILLAY: And we know that exco left it 25 on the basis that Barnard Mokwena is to prepare an opinion</p>
<p style="text-align: right;">Page 37254</p> <p>1 on the implications of the three issues which we discussed 2 earlier, namely the inter-union rivalry and the 3 implications of that, the implications of addressing the 4 demands of the RDOs at that point in time, and the 5 implications of potentially reopening wage negotiations. 6 Do you recall that?</p> <p>7 MR JAMIESON: Yes.</p> <p>8 MS PILLAY: Now just to summarise where 9 we, what we have traversed thus far, I'm going to put 10 certain propositions to you just to conclude and then we'll 11 move on in the timeline. The first, Mr Jameson, is what we 12 see from the period of April to 18 July 2012, is the 13 following. Firstly an appreciation by EXCO that Lonmin 14 RDOs are paid significantly less than RDOs at Implats and 15 Amplats. Do you see that? And Anglo.</p> <p>16 MR JAMIESON: Yes.</p> <p>17 MS PILLAY: We also see an appreciation 18 by EXCO that NUM was fast losing support and that they may 19 not, or may no longer be the legitimate voice of the 20 workers of Lonmin. That's correct, isn't it?</p> <p>21 MR JAMIESON: Yes.</p> <p>22 MS PILLAY: We see an appreciation that 23 the collective bargaining system and the collective 24 bargaining structures may be - and these are the words of 25 the scenario planning documents that we've dealt with - no</p>	<p style="text-align: right;">Page 37255</p> <p>1 longer relevant because of the change in circumstances and 2 that it did not cater for scenarios where increasing 3 numbers of workers were either non-unionised or had lost 4 confidence in the recognised majority union. That's 5 correct, isn't it?</p> <p>6 MR JAMIESON: Yes, just to check what you 7 said, you said something about legal agreements? I didn't 8 catch the first bit.</p> <p>9 MS PILLAY: No, I said that the 10 collective bargaining system or structure that was in 11 place –</p> <p>12 MR JAMIESON: Yes.</p> <p>13 MS PILLAY: - at Lonmin at the time, in 14 the words of the scenario planning document –</p> <p>15 MR JAMIESON: Ja.</p> <p>16 MS PILLAY: - it may no longer be 17 relevant in a situation where you had increasing number of 18 workers –</p> <p>19 MR JAMIESON: Right, that was the –</p> <p>20 MS PILLAY: - who were either non- 21 unionised –</p> <p>22 MR JAMIESON: - so the system.</p> <p>23 MS PILLAY: Yes, the system –</p> <p>24 MR JAMIESON: And the system was 25 basically the bargaining agreement.</p>

<p style="text-align: right;">Page 37256</p> <p>1 MS PILLAY: That's correct.</p> <p>2 MR JAMIESON: Okay.</p> <p>3 MS PILLAY: It was no longer relevant.</p> <p>4 It did not cater for a situation where you had increasing</p> <p>5 numbers of workers who were either non-unionised or had</p> <p>6 lost confidence in the recognise majority union.</p> <p>7 MR JAMIESON: Yes.</p> <p>8 MS PILLAY: We see an appreciation that</p> <p>9 the demand for 12 500 was made by a collection of workers</p> <p>10 who at that stage could not be said to belong to a</p> <p>11 particular union. In fact as Mr Kwadi recognised the</p> <p>12 demand was brought to Mr Da Costa by workers from both AMCU</p> <p>13 and NUM. So at that stage it could not be said to be a</p> <p>14 demand advanced by a particular union.</p> <p>15 MR JAMIESON: Agreed.</p> <p>16 MS PILLAY: Now despite this, despite the</p> <p>17 appreciation of the facts that I've just outlined to you</p> <p>18 thus far, at no stage prior to the run-up – sorry, at no</p> <p>19 stage in the run-up to the tragedy of the 16th of August do</p> <p>20 we see Lonmin actively negotiating, and we'll deal with Mr</p> <p>21 Da Costa's discussions on the allowance, the RDO allowance</p> <p>22 later. We don't see them admittedly entering into</p> <p>23 discussions with the strikers around their remuneration –</p> <p>24 MR JAMIESON: Correct.</p> <p>25 MS PILLAY: - despite an appreciation of the flaws</p>	<p style="text-align: right;">Page 37257</p> <p>1 in the system, as it were.</p> <p>2 MR JAMIESON: Correct.</p> <p>3 MS PILLAY: And we've seen, Mr Jameson,</p> <p>4 that at least by the 18th of July EXCO was open to</p> <p>5 considering the possibility of reopening wage negotiations</p> <p>6 and it specifically mandated Mr Mokwena to produce an</p> <p>7 opinion dealing with the implications of doing so. Now I'd</p> <p>8 like to refer you to exhibit XX3, which is one of the</p> <p>9 internal communiqué, we've given you a copy of it.</p> <p>10 MR JAMIESON: These three?</p> <p>11 MS PILLAY: Yes. Now I earlier posed a</p> <p>12 question to you that on the 18th of July we see EXCO being</p> <p>13 open to the possibility of opening wage negotiations and I</p> <p>14 asked the question when was a decision taken that Lonmin</p> <p>15 would only negotiate through existing bargaining</p> <p>16 structures. Do you recall that?</p> <p>17 MR JAMIESON: Yes.</p> <p>18 MS PILLAY: Now I want you to look at the</p> <p>19 internal communiqué of the 20th of July 2012 and you'll see</p> <p>20 this is a communiqué prepared by Mr Mokwena and in that</p> <p>21 communiqué Mr Mokwena says, and this is two days after the</p> <p>22 Lonmin EXCO meeting, Mr Mokwena says in paragraph 1 –</p> <p>23 CHAIRPERSON: Sorry, what is this exhibit</p> <p>24 number?</p> <p>25 MS PILLAY: It's XX3, Chair.</p>
<p style="text-align: right;">Page 37258</p> <p>1 CHAIRPERSON: Thank you.</p> <p>2 MS PILLAY: Mr Mokwena says in paragraph</p> <p>3 1, "We have noted with great concern the recent demands for</p> <p>4 increases to wages both within Lonmin and neighbouring</p> <p>5 mining houses, which have in some instance been accompanied</p> <p>6 by work stoppages. Management strongly condemns such</p> <p>7 actions." Do you see that, Mr Jameson?</p> <p>8 MR JAMIESON: Yes. Yes, I see it all.</p> <p>9 MS PILLAY: Yes, now that comes two days</p> <p>10 after - we know that EXCO asked Mr Mokwena to produce an</p> <p>11 opinion dealing with, amongst others, the implications of</p> <p>12 the RDO demand.</p> <p>13 MR JAMIESON: Correct.</p> <p>14 MS PILLAY: And yet two days later we see</p> <p>15 an internal communiqué by Mr Mokwena being released,</p> <p>16 stating that management strongly condemns the RDO demand.</p> <p>17 MR JAMIESON: It says management strongly</p> <p>18 condemns such actions.</p> <p>19 MS PILLAY: Ja, let's look at what the</p> <p>20 actions are. "We have noted with great concern the recent</p> <p>21 demand for increases to wages both within Lonmin and</p> <p>22 neighbouring mining houses, which have in some instances</p> <p>23 been accompanied by work stoppages."</p> <p>24 MR JAMIESON: So that's two actions.</p> <p>25 MS PILLAY: Alright, so when he says that</p>	<p style="text-align: right;">Page 37259</p> <p>1 management strongly condemns such actions –</p> <p>2 MR JAMIESON: Yes.</p> <p>3 MS PILLAY: - it's not specific to</p> <p>4 whether it's referring to the work stoppage or the demands,</p> <p>5 and it seems to –</p> <p>6 MR JAMIESON: Both, I would say.</p> <p>7 MS PILLAY: Absolutely.</p> <p>8 MR JAMIESON: Yes.</p> <p>9 MS PILLAY: It seems to encompass both.</p> <p>10 MR JAMIESON: Yes.</p> <p>11 MS PILLAY: So do you have an explanation</p> <p>12 for why two days after EXCO asks Mr Mokwena to prepare an</p> <p>13 opinion dealing with the implications of the RDO demand?</p> <p>14 Let's start there. That's one of the items which he was</p> <p>15 meant to deal with. Why two days later you see a</p> <p>16 communiqué condemning the RDO demand?</p> <p>17 MR JAMIESON: I can offer an explanation,</p> <p>18 my explanation.</p> <p>19 MS PILLAY: Yes.</p> <p>20 MR JAMIESON: I'm not sure whether it's</p> <p>21 Mr Mokwena's explanation.</p> <p>22 MS PILLAY: No, we'd be grateful for your</p> <p>23 explanation.</p> <p>24 MR JAMIESON: This represents a default</p> <p>25 position which is we have structures in place, processes in</p>

<p style="text-align: right;">Page 37260</p> <p>1 place which we don't go outside of. That's the default 2 position. So it's not as if you take a decision to either 3 go outside of those structures or don't. The default is 4 you don't and I think this is a clear communiqué that say 5 these structures are in place and these are the ones we 6 will follow. If there's a thinking process going on 7 amongst EXCO at the time of should we or shouldn't we, I 8 don't think that would be communicated. So this represents 9 I think the position of the signed agreements and it is not 10 a decision in that that only Lonmin or its EXCO can take 11 because there's other parties to those, I would have 12 thought, therefore there's UASA, Solidarity, NUM and any 13 decision that was contemplated, not taken, would first have 14 to be discussed with them, I would have thought. So that 15 would be my take on this.</p> <p>16 MS PILLAY: Did EXCO ever specifically 17 decide that the default position would be strongly 18 communicated to workers?</p> <p>19 MR JAMIESON: No, this is a communication 20 that is not agreed at EXCO. This is something that, you 21 know, Barnard would do on his own, and he's quite entitled 22 to do that.</p> <p>23 MS PILLAY: And where Mr Mokwena reflects 24 that management strongly condemns such actions, does that 25 reflect the view of EXCO that they considered the RDO</p>	<p style="text-align: right;">Page 37261</p> <p>1 demand and condemned the RDO demand? 2 MR JAMIESON: I would put more emphasis 3 on the work stoppage personally. That was what would be 4 condemned because, you know, that's, can't be condoned. On 5 the demands for increases I think less. I think what he's 6 really saying is being condemned is the approach outside of 7 structures. However, you know, Mike did I think what he 8 should have done, which is talk to his employees.</p> <p>9 MS PILLAY: And as at 20th of July were 10 there work stoppages at Lonmin?</p> <p>11 MR JAMIESON: It says here there were, 12 but I'm not specifically aware of them, but then as I said 13 I wasn't there in July. So I would have been playing 14 catch-up and I can't remember that anyone highlighted one 15 to me while I was away or it was in an email I would have 16 read.</p> <p>17 MS PILLAY: And if there weren't work 18 stoppages in July 2012 then it's quite clear that what was 19 being condemned in this communiqué was the demand –</p> <p>20 MR JAMIESON: Sure.</p> <p>21 MS PILLAY: - and not the accompanying 22 work stoppage.</p> <p>23 MR JAMIESON: Yeah, I can't talk 24 firsthand about it, sorry.</p> <p>25 MS PILLAY: And just for completion if I</p>
<p style="text-align: right;">Page 37262</p> <p>1 can refer you to XX4, which is a communiqué dated the 31st 2 of July 2012 –</p> <p>3 MR JAMIESON: Yes.</p> <p>4 MS PILLAY: - where Mr Mokwena points out 5 that Lonmin notes, or "We note with great concern the 6 continuing trend of certain groups of employees who insist 7 on engaging management on separate wage negotiations. We 8 at Lonmin have a set practice of wage negotiations, which 9 include working through applicable bargaining structures. 10 We wish to reiterate that changes to terms and conditions 11 of employment, including wages, are negotiated centrally 12 through the existing bargaining structures. In terms of 13 our current wage agreement we'll pay wage increases ranging 14 from 8 to 10% on the 1st of October 2012. Any demands will 15 therefore not be tolerated. These unreasonable demands 16 create unnecessary tension in the workplace, pose a serious 17 threat to the stability of our operations and may lead to 18 employee job losses. We therefore caution employees 19 against any attempt to embark upon unprotected industrial 20 action and intimidation. Any illegal work stoppages and 21 intimidation due to these unreasonable demands for wage 22 increases will be dealt with decisively through normal 23 disciplinary processes. During this difficult time in the 24 platinum industry it is critical for all stakeholders to 25 pull together in ensuring the viable future of our</p>	<p style="text-align: right;">Page 37263</p> <p>1 company." Now we know that the EXCO meeting on the 30th of 2 July –</p> <p>3 MR JAMIESON: The call.</p> <p>4 MS PILLAY: Yes, the one where you called 5 in.</p> <p>6 MR JAMIESON: Yes.</p> <p>7 MS PILLAY: That was the critical meeting 8 where the decision was taken to grant the so-called RDO 9 allowance of R750.</p> <p>10 MR JAMIESON: Right.</p> <p>11 MS PILLAY: And that decision was taken 12 by EXCO a day before Mr Mokwena released this internal 13 communiqué.</p> <p>14 MR JAMIESON: Correct.</p> <p>15 MS PILLAY: And yet we don't see anywhere 16 in this communiqué where Mr Mokwena deals with the RDO 17 allowance. In fact he focuses on entrenching the existing 18 bargaining structures and doesn't address at all the 19 decision taken by EXCO the previous day to grant an RDO 20 allowance of R750.</p> <p>21 MR JAMIESON: Correct.</p> <p>22 MS PILLAY: Do you have an explanation 23 for why? I mean I know that it's not your communiqué, but 24 you were part of EXCO.</p> <p>25 MR JAMIESON: I, the bits that come to me</p>

<p style="text-align: right;">Page 37264</p> <p>1 out of the last sentence, Mr Chairman, that resonates with  2 me because of the MIGDETT Platinum Task Team discussions.  3 So number 1, absolutely the platinum industry was in  4 crisis, in distress, and number 2, the explanation there  5 that, you know, part of this is because of increasing  6 costs, and I think that goes between XX3 and XX4, is it?  7 One of the key drivers identified at MIGDETT was that input  8 costs were spiralling above inflation, productivity was  9 falling, and therefore the focus by Barnard on the, we  10 have, you know, wage agreements in place that will be  11 granted, additional costs on top of that are, you know,  12 will hurt the business, I think was very fair.  13 The other part was that MIGDETT, if it was  14 discussed once particularly by the DRM people, the Minister  15 and the DG, it was a continuing theme at MIGDETT to  16 absolutely work to your bargaining structures, your  17 agreements, the LRA, and they asked all of the companies to  18 sign up to that, particularly because at that point there  19 was job losses on the horizon, and that was a, as I said  20 before it wasn't a decision-making forum but it was  21 continually and continually emphasised by the Minister of  22 the DRM and organised unions there present, and I think  23 there was a plenary session shortly before this, one where  24 CEOs went, so I deputised in, when Ian couldn't make it or  25 Simon couldn't make it I would go to the meeting, and there</p>	<p style="text-align: right;">Page 37265</p> <p>1 was one shortly before this that said, you know, for  2 goodness sake, you know, we're lost if we start to operate  3 outside – and that was very forcibly put by the people  4 there and there was, I would say unanimous agreement by all  5 of the CEOs present there to do so. So I guess we had this  6 pressure on us not to do that, and so I think this was  7 responsible.  8 In terms of saying the RDOs were not specifically  9 mentioned, I think there's an, they're alluded to, certain  10 groups of employees. I mean to whoever read this it might  11 not be apparent but certainly to me it is.  12 MS PILLAY: Well, you're correct in the  13 sense that he alludes to the demand by RDOs. That's quite  14 clear. But what I'm putting to you, and what's not dealt  15 with in the communiqué is the result of that demand.  16 MR JAMIESON: Yes, my –  17 MS PILLAY: The RDOs made a specific  18 demand to management, that management considered the  19 demand, and that management reverted with an allowance of  20 R750.  21 MR JAMIESON: Yes, it reads –  22 MS PILLAY: That is not dealt with in the  23 communiqué.  24 MR JAMIESON: My understanding –  25 MS PILLAY: In other words that the</p>
<p style="text-align: right;">Page 37266</p> <p>1 demand – can I just finish the question?  2 MR JAMIESON: Sorry.  3 MS PILLAY: In other words that the  4 demand by the RDOs outside of the existing bargaining  5 structures, that it bore fruit and resulted in the  6 allowance.  7 MR JAMIESON: My understanding, and again  8 it was playing catch-up when I got back, so this was  9 anecdotal conversations with Mark or Barnard or someone  10 else who was there, was that that had been communicated  11 back – and I know you said we're going to go there, but  12 back through Mike Da Costa specifically. This was a  13 communiqué to the general workforce saying, you know, we  14 reinforce the processes we have and please adhere to them,  15 and the industry is in trouble and we're in trouble, so you  16 know, please bear that in mind. That's, if I read the  17 whole thing, not just certain paragraphs –  18 MS PILLAY: So was Lonmin hoping to keep  19 from the general worker population that it had given in to  20 the RDO demand for more money?  21 MR JAMIESON: No, I don't think we would,  22 I don't think we were and I don't think we could. Once  23 something like that happens it's general knowledge within  24 five minutes, I would think.  25 MS PILLAY: Now let's deal with the RDO</p>	<p style="text-align: right;">Page 37267</p> <p>1 allowance and as we understand the evidence the purpose of  2 the allowance was twofold. It was firstly to address the  3 differential between Lonmin RDO salaries and those of  4 Implats and Anglo. We've already covered that. That's  5 correct, isn't it? That's one of the reasons for the  6 special allowance, for the RDO allowance.  7 MR JAMIESON: Go on.  8 MS PILLAY: No, if you can confirm the  9 first reason.  10 MR JAMIESON: Okay, just say that again,  11 sorry.  12 MS PILLAY: It was to make up the lag  13 between Lonmin RDO wages and that of Implats and Anglo.  14 MR JAMIESON: When you say "make up"  15 what –  16 MS PILLAY: There was a lag between –  17 MR JAMIESON: Yes, yes, I understand, but  18 when you say "make up," I mean I haven't, I can't recall  19 the numbers.  20 MS PILLAY: It was to increase the wages  21 of Lonmin RDOs –  22 MR JAMIESON: Yes.  23 MS PILLAY: - in order to bring it closer  24 to the wages paid by Implats and Anglo.  25 MR JAMIESON: Yes, I can't truly say</p>

<p style="text-align: right;">Page 37268</p> <p>1 without looking at the numbers, but "make up," which means  2 it would have equalled, or did it close the gap or did it –  3 MS PILLAY: We know it –  4 MR JAMIESON: - was it to approximate to  5 – because these things are never exact numbers because  6 there's other considerations I think that's all –  7 MS PILLAY: We know that it didn't –  8 MR JAMIESON: Ja.  9 MS PILLAY: - result in equalisation of  10 wages. It just brought it closer to that of Implats and  11 Anglo.  12 MR JAMIESON: Yes, okay.  13 MS PILLAY: But there was a second  14 purpose, and that's the one that I want to put to you now,  15 and the second purpose was that it was to avert any  16 industrial action by Lonmin RDOs. Isn't that correct?  17 MR JAMIESON: I think the, again I'll  18 give you the best answer I can to try and help. The gap  19 was clearly a business risk of the fact that we may lose  20 RDOs. It's never been, it's not unusual for Lonmin, and in  21 my recollection they have in the past reopened wage  22 negotiations under certain conditions and those have been  23 agreed with the bargaining structures, and we've also given  24 on occasion – and my labelling of this is a market  25 adjustment, that's what I call this – a market adjustment</p>	<p style="text-align: right;">Page 37269</p> <p>1 was given to bring things in line with the market that has  2 gone out of line, and you know, I think as we all know you  3 can't be too far out of line with the market because then  4 you incur risk. So –  5 MS PILLAY: And one of the risks which  6 you would incur –  7 MR JAMIESON: Oh, yes that –  8 MS PILLAY: - is the possibility of  9 industrial action.  10 MR JAMIESON: Well, I think two things.  11 One would be that we would lose RDOs first and foremost,  12 because that would be the obvious thing if there's  13 vacancies at other mines that are paying higher, they would  14 move. If they, and a second risk if that there could be  15 industrial action around it, but then there's processes and  16 procedures for that and we would hope we wouldn't get to  17 it.  18 MS PILLAY: But both risks that you've  19 identified were significant risks for Lonmin.  20 MR JAMIESON: Yes. I mean the RDOs are  21 at your jugular vein.  22 [11:48] MS PILLAY: Now we know that the RDOs  23 were claiming, were demanding R12 500. We know that Mr Da  24 Costa recommended to EXCO that it grant an allowance of  25 R1 000 and we know that EXCO ultimately decided on a 750</p>
<p style="text-align: right;">Page 37270</p> <p>1 allowance. Now was it considered by EXCO what would happen  2 if the RDOs didn't accept the allowance of 750?  3 MR JAMIESON: To your first point, I  4 think there are three questions there, so you first said  5 Mike da Costa recommended. I think that changed to Mike  6 accepting that there needed to be some kind of study done  7 and that that would take a couple of weeks. That's what I  8 remember and coming out of that there would be some  9 conclusion. The conclusion may have been to do nothing and  10 accept the risk, the conclusion may have been to do  11 something and I think Mike was aligned with that and Mark  12 Munro I think undertook that exercise with his HR people  13 that were in his department and obviously together with our  14 own HR people and then the decision was saying, well,  15 that's all we can do. I don't think, I can't recall that  16 there was a specific mention of what happens if this is not  17 good enough because one would expect if you bring things  18 into line with the market, that should suffice. If you're  19 talking about the risk of – there's clearly another risk, I  20 think, that's underlying what you're asking me which is,  21 wasn't there a risk of people would then demand to go  22 outside of bargaining structures? There's always that  23 risk, that's a daily risk.  24 MS PILLAY: Well, we know that the RDO  25 allowance eventually decided on didn't result in a complete</p>	<p style="text-align: right;">Page 37271</p> <p>1 alignment and you accept that.  2 MR JAMIESON: Yes, yes.  3 MS PILLAY: And so in a sense EXCO was  4 taking a bit of a risk by recommend – by deciding on an RDO  5 allowance which was still lower than what was necessary to  6 equalise the wages of RDOs at Lonmin with those at Implats  7 and Anglo.  8 MR JAMIESON: No, I wouldn't say – I  9 thought we were reducing a risk, we weren't incurring a  10 risk.  11 MS PILLAY: But the risk in the sense  12 that what would have happened if RDOs didn't accept the 750  13 allowance?  14 MR JAMIESON: I don't think we were  15 asking them to accept it, we were implementing it as a  16 market adjustment.  17 MS PILLAY: And when was the allowance  18 implemented?  19 MR JAMIESON: Was it in – no, I don't  20 know the date, I'm sorry. I think it was somewhere in  21 August, in the beginning of August.  22 MS PILLAY: The evidence that we have is  23 that the RDO allowance doesn't, isn't reflected in the  24 August payslips of the RDOs.  25 MR JAMIESON: Then I'd best say I don't</p>

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1 know.

2 MS PILLAY: Now the question, Mr

3 Jamieson, is, would EXCO have considered a higher allowance

4 even if it's a marginally higher allowance, if the result

5 would have been to avert a strike by RDOs or to prevent a

6 mass exodus of RDOs to other mines?

7 MR JAMIESON: I don't know because I

8 wasn't in the detailed discussions that led up to this, so

9 I can't help you there.

10 MS PILLAY: Now what I want to put to

11 you, Mr Jamieson, is even though Lonmin had tried to be

12 technical in the sense that it proposed or decided on an

13 allowance as opposed to an increase in the wages of RDOs,

14 and obviously it did that to try and keep, at least from a

15 formal perspective, within the confines of the bargaining

16 structures, the result of Lonmin's actions was the

17 following, that RDOs made a demand to Lonmin for an

18 increase in remuneration, that Lonmin considered the

19 increase – sorry, considered the demand for an increase –

20 and ultimately decided on the payment of money, whether you

21 call it an allowance or an increase in remuneration, the

22 effect was an increase in the amount of money paid to RDOs

23 ultimately. In that scenario where you have a demand being

24 made by workers, being considered by management and

25 resulting in an increase in the money paid to those

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1 Lonmin receives the demand. The management then take that

2 demand to EXCO.

3 MR JAMIESON: Right.

4 MS PILLAY: EXCO considers that demand.

5 Clearly at that stage it completely dismisses 12.5 or

6 12 500 as an option.

7 MR JAMIESON: Yes.

8 MS PILLAY: It, however, arrives at a

9 lower amount of R750.

10 MR JAMIESON: It's not a lower amount,

11 it's a market adjustment.

12 MS PILLAY: At the end of the day it

13 amounts to more money in the hands of the RDOs.

14 MR JAMIESON: Absolutely, yes.

15 MS PILLAY: Whether it's because Lonmin

16 wished to align or because it recognised the demand as a

17 valid demand or because it wished to prevent its workers

18 from going on strike or because it wished to prevent its

19 workers from leaving, ultimately Lonmin takes the decision

20 which results in more money in the hands of the RDOs.

21 MR JAMIESON: Correct.

22 MS PILLAY: Ultimately Lonmin takes a

23 decision which results in a bigger remuneration to its

24 employees.

25 MR JAMIESON: To its RDOs.

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1 workers, doesn't that in all material respects resemble a

2 negotiation process?

3 MR JAMIESON: No, it doesn't, and I think

4 you made three points there. One is that the RDOs made a

5 demand for 12 500 and then secondly you said Lonmin

6 considered it, is that correct?

7 MS PILLAY: That's correct, yes.

8 MR JAMIESON: Lonmin, I think if it

9 considered that demand it considered it for all of a

10 millisecond. It's simply impossible to grant that. So

11 what Lonmin considered was looking at the position of

12 Lonmin's RDOs in respect of the market in the knowledge

13 that Anglo and Impala had given these increases and said,

14 what can we do that can bridge that gap or get close or do

15 something about it and the result then was a market

16 allowance, a market adjustment as I would call it, and that

17 can be granted and we granted those at any time and not

18 just to RDOs but instrument technicians, lots of other job

19 categories where we found that we're out of synch with the

20 market. So that's what we did. This is not a negotiation,

21 patently.

22 MS PILLAY: What we have, Mr Jamieson, is

23 workers coming to Lonmin management with a demand. Let's

24 forget the rand value attached to the demand. They come

25 with a demand for an increase in their remuneration.

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1 MS PILLAY: To its RDOs, I'm sorry.

2 MR JAMIESON: Yes.

3 MS PILLAY: To its RDOs, the employees

4 who make the demand. Now what in that scenario is

5 different from an ordinary negotiation process?

6 MR JAMIESON: I'm not an expert on

7 negotiations, so you're only taking my opinion and I'm not

8 involved in negotiations of remuneration for Lonmin, that's

9 not my job but as a commercial executive there are three

10 things that to me would define and again I can't say

11 whether these are general, one is you have to – to enter

12 into any negotiation, the ones that I do in my job you have

13 to have credentials, you have to be legitimate, you have to

14 represent the parties that you say you're representing.

15 Number 2, you have to have a mandate and number 3, you

16 would have to be prepared to give and take, as it were, and

17 regardless of the position of the workers who came with

18 that – and I would say it's a demand, I won't split hairs

19 and say it was a grievance, you know, there was something

20 there. Mike da Costa had none of those three things. He

21 was the manager at Karee so he did not represent the

22 bargaining unit. He didn't have the credentials and he

23 didn't represent them. Number 2, he had no mandate and

24 number 3, he had no ability to give and take. So that's my

25 take but I am not an expert.



<p style="text-align: right;">Page 37276</p> <p>1 MS PILLAY: Which is why Mr Da Costa  2 doesn't either dismiss or accede to the demand immediately.  3 Instead he says let me take this demand to my EXCO because  4 in fact that is the legitimate body to consider the demand  5 and he does in fact take the demand to EXCO, EXCO considers  6 the demand and EXCO comes back to Mr Da Costa with a  7 decision and the decision is not that this amounts to a  8 demand for increased remuneration, it has to go through the  9 normal bargaining structures. The decision is, we will  10 give you a 750 -  11 MR JAMIESON: Allowance.  12 MS PILLAY: - allowance.  13 MR JAMIESON: Yes.  14 MS PILLAY: Whether it's an allowance or  15 whether it's an increase in their wages, the net effect is  16 an increase -  17 MR MPOFU: I'm sorry, Chairperson, if the  18 witness could just be reminded to give the answer instead  19 of nodding. You know, sometimes it's tempting to do that,  20 Mr Chair.  21 CHAIRPERSON: There are TV cameras here  22 but the record that we're keeping of the proceedings is not  23 a visual one but simply a transcript of what is said.  24 MR JAMIESON: Understood.  25 CHAIRPERSON: So if you nod your head,</p>	<p style="text-align: right;">Page 37277</p> <p>1 that doesn't come on the record. So if the answer's yes,  2 it's going to be yes and if the answer is no, it's going to  3 be no. Head shaking and other things won't go on the  4 record, so they won't count.  5 MR JAMIESON: Understood.  6 MS PILLAY: And specifically from the  7 perspective, Mr Jamieson, the perspective which we're  8 looking at it from, from the perspective of workers who  9 bring the demand, who have their demand considered and who  10 get a decision on the demand which resulted in more money  11 in their hands, I'm putting to you that that, from their  12 perspective, must have resembled a negotiation in every  13 respect.  14 MR BHAM SC: Mr Chairman, I'm sorry, if I  15 might just - I've listened to it for a while. We've had a  16 number of strikers talking, we've had a number of the  17 workers who went on strike talking. What we have - and I  18 don't know of any more who are coming as witnesses - what  19 we have now is a proposition to this witness being put and  20 there have been a number of propositions put in previous  21 cross-examination as well, on a factual issue which has not  22 been backed up by any of the evidence given by any of those  23 strikers. Now I don't know at the end of the day how one  24 assesses it, but we have something being put up on what  25 would have been in the mind of the workers. That did not</p>
<p style="text-align: right;">Page 37278</p> <p>1 arise in any of the evidence given by the workers, by those  2 workers. So the proposition then goes nowhere. It's got  3 to be backed up by evidence and those parties who might  4 have given that evidence have already given that evidence  5 and they haven't stated it. For that reason, on the basis  6 that it's not supported by evidence which has already been  7 given - and I didn't take the objection in relation to  8 previous witnesses who testified for Lonmin when workers  9 were still to testify because it might have cropped up, but  10 now we know that there are no more workers coming to  11 testify and so that proposition doesn't arise.  12 CHAIRPERSON: Ms Pillay, how do you  13 respond to the objection?  14 MS PILLAY: Mr Chairperson, there are two  15 responses to it and the first is that we're dealing here  16 with a question of perception in the mind of the workers  17 but, more importantly, my recollection of the supplementary  18 statement of Mr X is that his view is that what transpired  19 on the 10th was a wage negotiation. Sorry, what transpired  20 in July was a wage negotiation but I'll get the reference  21 from my learned friend during the lunch adjournment.  22 MR BHAM SC: May I deal with it?  23 CHAIRPERSON: Yes, you may.  24 MR BHAM SC: Mr Chairman, the first is  25 what has been put to this witness is perception on the part</p>	<p style="text-align: right;">Page 37279</p> <p>1 of the workers. Now you've heard those workers testify and  2 they didn't testify to that.  3 CHAIRPERSON: Mr X was a worker.  4 MR BHAM SC: I'll come to Mr X.  5 CHAIRPERSON: Sorry.  6 MR BHAM SC: The second point is, if Mr X  7 has said that then I'd like to see the context in which he  8 said it and then we can deal with it.  9 CHAIRPERSON: In his statement, he  10 confirmed his statement. He didn't deal with it in his  11 oral evidence but it is before us as a statement, but may I  12 make a suggestion? It's 12 o'clock, things have to be  13 looked at, references have to be given and studied. It  14 seems an appropriate stage for us to take the tea  15 adjournment.  16 MR BHAM SC: Can I just then conclude the  17 point I want to make?  18 CHAIRPERSON: I thought you might like to  19 conclude it after tea when you've seen the references -  20 MR BHAM SC: No, no, I will but if I  21 might just so that it may perhaps be dealt with over the  22 tea adjournment as well, there have been - we've had  23 witnesses give evidence for different parties and amongst  24 them has been a series of witnesses who have given  25 evidence, loosely speaking, for those who were on strike at</p>

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1 that point in time. We've had propositions put to Lonmin  
 2 witnesses prior to some of those witnesses having testified  
 3 and so of course you could understand the proposition in  
 4 anticipation of what might be said, but those witnesses  
 5 have now testified and to put anything to witnesses now on  
 6 the basis of what might or might not have been perceived by  
 7 those witnesses who were involved and who gave evidence for  
 8 the striking employees without them themselves having so  
 9 testified, is an improper proposition. It's not backed up  
 10 by evidence and it will not be backed up by evidence. That  
 11 evidence is not coming now.

12 CHAIRPERSON: Well, it's a matter we can  
 13 consider after the adjournment. We'll take the tea  
 14 adjournment now.

15 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 16 [12:39] CHAIRPERSON: The Commission resumes.  
 17 Those who've been wondering why we took so long to resume,  
 18 I can let you into a secret. Adv Tokota celebrates his  
 19 birthday today and the evidence leaders and others  
 20 contributed to a splendid birthday tea. So that's why  
 21 we're back late. Those who missed out the tea, well I  
 22 think there may be some things left over for them to enjoy  
 23 too, but I can't make any promises. You're still under  
 24 oath, Mr Jameson.

25 ALBERT JAMIESON: [s.u.o.]

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1 R5 400 to R12 500." Next line, "Negotiations between VP  
 2 Mike Da Costa" – ah, there we go. "Negotiations between VP  
 3 Mike Da Costa and Tumela Nkisi and two reps from the RDOs."  
 4 So you see that, Mr Jameson, that even the –

5 CHAIRPERSON: Alright, so you know an  
 6 objection has been raised. Let's hear the answer. Mr  
 7 Bham, do you persist in your objection in the light of –

8 MR BHAM SC: I'm sure it doesn't change  
 9 the situation one bit because what was put was a perception  
 10 on the part of the workers and we still don't have any  
 11 evidence coming from the workers about their perception.  
 12 This was a recordal in an occurrence book. We're still  
 13 waiting to see where there was evidence that what has been  
 14 presented as perception by the workers was in fact so  
 15 perceived by the workers.

16 MS PILLAY: Chair, if I could just refer  
 17 to the next entry on the 23rd of July at 10 o'clock where  
 18 it's recorded that "NUM, UASA, AMCU informed and NUM not  
 19 happy that they were not involved in the negotiations."  
 20 So –

21 CHAIRPERSON: That doesn't deal with the  
 22 point Mr Bham raises, but have you got the extract from the  
 23 statement of Mr X to which you referred earlier,  
 24 supplementary statement which he confirmed under oath?

25 MS PILLAY: We do, Chair. If I can just

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1 CHAIRPERSON: Ms Pillay, you're still  
 2 cross-examining.

3 CROSS-EXAMINATION BY MS PILLAY (CONTD.):  
 4 Thank you, Chair. Chair, if I may begin by dealing with  
 5 the objection that was raised by Mr Bham on behalf of  
 6 Lonmin, and that's around the factual basis for questions  
 7 that there was a perception that what was transpiring was a  
 8 negotiation, and I can do no better, Chair, than to refer  
 9 to Lonmin's own documents. It's EEEE19, which is the Karee  
 10 RDO occurrence book. Do you have a copy of the occurrence  
 11 book before you, Mr Jameson?

12 MR BHAM SC: No, he –

13 MS PILLAY: I suspect that it's not here.  
 14 If we can have EEEE19 put up on the screen, please?

15 CHAIRPERSON: Your counsel says you  
 16 haven't got it, but if you change your spectacles you'll be  
 17 able to see it on the screen in a minute.

18 MR BHAM SC: Mr Chair, I would have no  
 19 difficulty if Ms Pillay simply read out the particular  
 20 line. I don't imagine it's more than that, and we can take  
 21 it from there.

22 MS PILLAY: Chair, there's an entry on  
 23 the 21st of July at 10 o'clock and it reads as follows,  
 24 "RDOs' first illegal march, the general office, Karee."  
 25 Then the next line, "First demand made for an increase from

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1 ask, Ms Lupuwana had it on her screen, Chair, she'll pull  
 2 it up for us in a few minutes. I think in the meantime Mr  
 3 Mpofu wanted to say something, Chair.

4 CHAIRPERSON: Mr Mpofu, do you want to  
 5 say something too on the subject?

6 MR MPOFU: Yes, no, all I wanted to add,  
 7 Chairperson, was just apropos Mr Bham's statement that I  
 8 think it's PPPP1, Mr Nzuzza did say that had the approach  
 9 taken by Da Costa been adopted and in comparison to what  
 10 actually happened when he was involved, for what it's  
 11 worth, so –

12 CHAIRPERSON: He didn't say he saw it as  
 13 negotiation. He doesn't use that word, but –

14 MR MPOFU: Yes.

15 CHAIRPERSON: I must say it seems to me  
 16 that I think it's not necessary there should be direct  
 17 evidence. I have in the past ruled in this Commission that  
 18 points can be put in cross-examination based either on  
 19 statements filed or evidence or something which could be  
 20 inferred as a matter of circumstantial evidence, and it  
 21 seems to me that inasmuch as the witnesses to who Mr Bham  
 22 referred didn't give evidence as representatives of all the  
 23 strikers, and if it was a reasonable perception on the part  
 24 of the reasonable striker, if such a thing exists in this  
 25 particular context, then that what was happening in fact

<p style="text-align: right;">Page 37284</p> <p>1 amounted to negotiation, the point that's been put by Ms  2 Pillay is supported by a process of circumstantial,  3 reasoning based on circumstantial evidence. So the  4 objection is disallowed. Ms Pillay may proceed.  5 MS PILLAY: Thank you, Chair. Mr  6 Jameson, in the circumstances I'm going to put to you that  7 it was entirely inconsistent for Lonmin to engage in this  8 process which we have just described through Mr Da Costa  9 in, towards the end of July, but then on the 10th of August  10 adopt a completely intransigent attitude where it refused  11 to entertain the demand of, or listen or entertain the  12 demand of the workers for increased remuneration. Your  13 response to that?  14 MR JAMIESON: I can only repeat what I  15 said, regardless of how it's seen from one side, from the  16 side of the company, and I think I can say that because in  17 the EXCO meeting where it was discussed it was very clear  18 between the conversation between Barnard and Mark Munroe  19 that there was no mandate to negotiate, there was not  20 negotiations. Be careful about these engagements over this  21 grievance, and you clearly can't negotiate – go into one of  22 my points – unless you have the whole bargaining unit's  23 agreement, and in that case Mike Da Costa would not have  24 been the principal, it would have been someone higher. So  25 I, all that I can say is that from my perspective, my view</p>	<p style="text-align: right;">Page 37285</p> <p>1 is this was not negotiation because it didn't meet quite a  2 few criteria that would have classified it as such.  3 MS PILLAY: And in view of the perception  4 that we've dealt with already, Mr Jameson, what I'm putting  5 to you is that the situation was exacerbated by the fact  6 that Lonmin was well aware of the shortcomings of the  7 collective bargaining structure and we've had extensive  8 evidence this morning to demonstrate that middle management  9 and EXCO were aware of the significant shortcomings of the  10 collective bargaining system that it employed, and that  11 this system didn't create, it didn't cater for the  12 situation which Lonmin was dealing with, namely a large  13 percentage of its workforce being either non-unionised or  14 being represented by a union other than the majority  15 recognised union.  16 MR JAMIESON: Yes, I think that was your  17 third point when you were talking about between April and  18 July and I sought the clarity that when you were saying  19 about the system that it's underlaid by legal agreement and  20 so regardless of whether we think that the effectiveness of  21 that agreement is waning, we are still bound by it and  22 therefore the approach from the EXCO is regardless of our  23 opinion on it, or anyone else's, we're bound by that legal  24 agreement and we have to operate – that's my understanding.  25 MS PILLAY: On the question of the</p>
<p style="text-align: right;">Page 37286</p> <p>1 binding nature of the legal agreement, Mr Jameson, were you  2 aware that at the time NUM would have considered engaging  3 in discussions outside the collective bargaining structure  4 if that meant exploring ways to bring a peaceful end to the  5 turbulence experienced at Lonmin?  6 MR JAMIESON: Was that between April and  7 July?  8 MS PILLAY: That's the –  9 MR JAMIESON: July the 18th?  10 MS PILLAY: The evidence before this  11 Commission is that NUM would not have been averse to  12 engaging in a process outside of the collective bargaining  13 process if that meant that it would bring an end to the, a  14 peaceful end to the strife at Lonmin.  15 MR JAMIESON: No, I wasn't aware of that.  16 MS PILLAY: And what I'm putting to you  17 is that Lonmin EXCO was aware of the possibility of acting  18 outside the collective bargaining structure and that in  19 fact had it pursued that possibility, as we say it had a  20 duty to do if that meant bringing a peaceful end to the  21 strife at Lonmin, that it would have discovered that NUM  22 was in fact open to that, notwithstanding the agreements  23 which you refer to.  24 MR JAMIESON: Okay, but there was no  25 strike by the 18th of July. You were referring to the</p>	<p style="text-align: right;">Page 37287</p> <p>1 period between April and 18th of July.  2 MS PILLAY: No, I'm referring to the  3 period in the run-up to the demand on the 10th of August and  4 what had transpired afterwards, that during that period NUM  5 would have been open to opening up discussions outside of  6 the collective bargaining structures –  7 MR JAMIESON: Yes.  8 MS PILLAY: - if that meant bringing a  9 peaceful end to the strife – not the strike – to the strife  10 at Lonmin.  11 MR JAMIESON: Strife.  12 MS PILLAY: Yes.  13 MR JAMIESON: Okay, yes, and I wasn't  14 aware of that.  15 MS PILLAY: And in view of this  16 possibility, what I'm putting to you is that Lonmin had an  17 obligation to explore whether or not it was possible to do  18 so and that Lonmin failed in that obligation.  19 MR JAMIESON: No, I wouldn't agree with  20 you. The analogy I would draw is that, you know, a group  21 of people had been to the court with Mr Da Costa, Mr Da  22 Costa had consulted with his fellow people and gave an  23 answer at that level and the answer was no. The people who  24 received the answer weren't happy, so they wanted to go to  25 the appeal court. The appeal court is Mark Munroe, that it</p>

<p style="text-align: right;">Page 37288</p> <p>1 was, Mark Munroe was part of the decision and there was no 2 grounds for appeal, so therefore they decided let's march 3 to the appeal court and demand to see some judge that will 4 hear us and you know, that can't happen. So we fully dealt 5 with the matter at the time that Mike was engaging in these 6 discussions, which were exploratory, which he was entitled 7 to do with his employees in order to try and clarify what 8 was at the bottom of it, and there was a good debate, as 9 you saw the risks were weighed up, a judgment was given and 10 that judgment was communicated back to the people who had 11 come there. There was no further obligation for us to 12 receive anymore grounds for appeal, if you like, because 13 there was no change in the circumstances and we had done 14 what we thought we could do.</p> <p>15 MS PILLAY: Well, what I'm putting to you 16 is that in view of how Lonmin handled the demand in July 17 and in view of Lonmin's accepted understanding of the 18 limitations of the collective bargaining structures, that 19 Lonmin had an obligation to pursue all avenues in order to 20 arrive at a peaceful outcome and if those avenues entailed 21 exploring systems beyond the collective bargaining 22 structures then Lonmin had an obligation to do that.</p> <p>23 MR JAMIESON: If you could identify each 24 avenue and each obligation I could answer that, but 25 generally saying we had obligations to consider all</p>	<p style="text-align: right;">Page 37289</p> <p>1 options, I'm not aware of what other options that would be.</p> <p>2 MS PILLAY: Well, the specific one I'm 3 going to refer to is to deal directly with the strikers to 4 understand what was the cause of their complaint and 5 whether it could be dealt with constructively.</p> <p>6 MR JAMIESON: Yes. Agreed, and Mike Da 7 Costa did that and they received their answer.</p> <p>8 MS PILLAY: Beyond the decision to give a 9 R750 RDO allowance, that Lonmin had an obligation to try 10 and explore every avenue to ensure a peaceful outcome, even 11 if that meant going outside the collective bargaining 12 structures.</p> <p>13 MR JAMIESON: When you say a peaceful 14 outcome, there was no – up until the 10th or 11th there 15 wasn't any unpeaceful activity. So are you referring to 16 the 10th or –</p> <p>17 MS PILLAY: I'm referring to what 18 occurred after the 10th.</p> <p>19 MR JAMIESON: Well, after the 10th was not 20 peaceful.</p> <p>21 CHAIRPERSON: After the 10th did you not 22 have the police actually saying to you we have a problem 23 and they want to speak to you, the strikers on the koppie, 24 they had taken the trade union presidents there in a Nyala 25 and they negotiated with a loudhailer from the Nyala, so</p>
<p style="text-align: right;">Page 37290</p> <p>1 from a safety point of view there was no danger that 2 whoever went to the koppie could be injured in any way. 3 The police according to what we heard were anxious that you 4 should make some gesture, but according to the evidence 5 Lonmin dug in, had taken up a position set in concrete, as 6 it were, and weren't prepared to budge and they gave 7 reasons as to why they weren't prepared even to go to the 8 koppie in those circumstances and speak. They weren't 9 prepared to receive representatives from the strikers, 10 although the protocol that exists in Lonmin when dealing 11 with an unprotected strike provides for that. The attitude 12 of Lonmin was just nyet, nyet, nyet, the whole time. 13 That's the thrust of the point being punt to you and that's 14 correct, isn't it?</p> <p>15 MR JAMIESON: So post the 10th yes, most 16 certainly and I was hearing those discussions between Mark, 17 Barnard, Natasha, Abey Kgotle was on certain calls after 18 that as well, and they were taking all the issues into 19 consideration and that was it, that was their stance. I 20 had no grounds to object to that or question them on it, 21 but I think the principle that I think the people who were 22 there dealing with the situation and on the ground, they 23 need to take that decision.</p> <p>24 CHAIRPERSON: But the policy decision 25 they took in fact amounted to a departure from the</p>	<p style="text-align: right;">Page 37291</p> <p>1 protocol, the Lonmin protocol for dealing with unprotected 2 strikes. That's correct, isn't it?</p> <p>3 MR JAMIESON: I don't know, Mr Chairman.</p> <p>4 CHAIRPERSON: I'm sure Ms Pillay or one 5 of the others will take that point up.</p> <p>6 MS PILLAY: Mr Jameson, I'm certain that 7 one of the other parties will take the point further. I'm 8 running out of time so I need to just move to a new topic 9 very briefly, and if I can ask you to look at VVVV1.1 –</p> <p>10 CHAIRPERSON: While you talk about 11 running out of time, we may have to revise the time 12 allocations. I understand that the SAPS are available to 13 cross-examine. Is that correct? How long did we give 14 SAPS?</p> <p>15 MR WESLEY: Chair, there's been a slight 16 change. SAPS have an hour, but when I requested earlier 17 they hadn't made a final decision whether they can go this 18 afternoon, but Mr Mpofu has said he can certainly take up 19 an hour of his time this afternoon.</p> <p>20 CHAIRPERSON: So how long have we 21 allocated him?</p> <p>22 MR WESLEY: He has two hours.</p> <p>23 CHAIRPERSON: Two hours, so if we work 24 backwards, an hour of Mr Mpofu, it means he would start at 25 about quarter to 3?</p>

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1 MR WESLEY: That's so, Chair.  
 2 CHAIRPERSON: Alright, and are the police  
 3 not in a position to cross-examine before quarter to 3?  
 4 MR MATHIBEDI SC: Chairperson, I don't  
 5 think I'll take more than 10 minutes. I would be in a  
 6 position to cross-examine.  
 7 CHAIRPERSON: Alright, so we'll give him  
 8 quarter of an hour and that takes us back to half past 2,  
 9 so is there anyone else who's in a position to cross-  
 10 examine?  
 11 MR WESLEY: We've received no indication  
 12 of anybody else, Chair.  
 13 CHAIRPERSON: Alright, so on that basis I  
 14 think the sensible thing to do is if Ms Pillay has got  
 15 questions that she wants to ask we will allow her to cross-  
 16 examine till half past 2.  
 17 MS PILLAY: I'm indebted, Chair. If we  
 18 can then look at VVVV1.1 –  
 19 MR JAMIESON: Which page is that?  
 20 MS PILLAY: It's page 1 of the bundle.  
 21 MR JAMIESON: Page 1.  
 22 MS PILLAY: And the email that I wish to  
 23 deal with, Mr Jameson, is the one that appears towards the  
 24 end of the page. It's an email from you to Mr Tubedi  
 25 Ramonsha from the DMR. It's dated the 12th of August 2012

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1 under control. That's correct, isn't it?  
 2 MR JAMIESON: Yes.  
 3 MS PILLAY: And you say further in the  
 4 second-last line of that paragraph, "We simply do not have  
 5 the capability to protect lives and limb." Do you see  
 6 that?  
 7 MR JAMIESON: Yes.  
 8 MS PILLAY: And you ask that they use  
 9 their influences over the necessary officials who have the  
 10 resources at their disposal.  
 11 MR JAMIESON: Yes.  
 12 MS PILLAY: But what you're clearly  
 13 telling the officials in the DMR in this email is that the  
 14 situation at Lonmin is not stable, it's not under control,  
 15 that Lonmin is unable to protect – sorry, Lonmin does not  
 16 have the capability to protect life and limb and that you  
 17 therefore need external assistance.  
 18 MR JAMIESON: Yes.  
 19 MS PILLAY: So while we're on the 12th of  
 20 August can we look at VVVV1.3? It's the next page of this  
 21 bundle. This is a media release by Lonmin on the 12th of  
 22 August 2012. I'd like you to look at the sixth paragraph  
 23 of that media release and in that the following is stated,  
 24 "At the commencement of the unrest Lonmin immediately took  
 25 appropriate precautions from a security perspective,

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1 and the time is at 1:06 in the afternoon. Do you see that?  
 2 MR JAMIESON: Yes.  
 3 MS PILLAY: Now in that email you give a  
 4 summary of events and you rightly say that you are  
 5 concentrating on speed of communication and that you're  
 6 unsure of accuracy, so we won't go into how accurate your  
 7 account of events are.  
 8 MR JAMIESON: Yes. So there were a  
 9 couple of errors in there.  
 10 MS PILLAY: Yes, but what I would like to  
 11 raise with you is what you say on page 2 of the bundle in  
 12 paragraph 2, and specifically the second-last, the third-  
 13 last line of that paragraph where you say, "Attacks and  
 14 disruptions are continuing and the situation can neither be  
 15 described as stable nor under control." Do you see that?  
 16 MR JAMIESON: Yes.  
 17 MS PILLAY: And this remark is made, Mr  
 18 Jameson, in the context of you describing the violence that  
 19 had occurred at Lonmin and the intimidation of workers who  
 20 want to report for duty. Isn't that correct?  
 21 MR JAMIESON: Yes, as described to me.  
 22 MS PILLAY: That's right, as described in  
 23 the email. Now what we see from this is that by midday, 1  
 24 o'clock on the 12th of August you took the view that the  
 25 situation at Lonmin can neither be described as stable nor

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1 including mobilising additional resources." Do you see  
 2 that?  
 3 MR JAMIESON: Yes.  
 4 MS PILLAY: And to your knowledge was  
 5 that an accurate statement? Did Lonmin mobilise additional  
 6 security resources at the commencement of the unrest at  
 7 Lonmin?  
 8 MR JAMIESON: Yes, I can remember Frank  
 9 saying that, Frank Russo-Bello who was standing in for Mark  
 10 Munroe, he was describing on one of the calls, and I can't  
 11 be entirely accurate whether that was the 10th or the 11th –  
 12 sorry, the 11th or the 12th, it was probably the 11th, which  
 13 was a Saturday I think.  
 14 [12:59] That additional resources had been asked for from  
 15 Natasha, William Blignaut was standing in for her. So  
 16 there's two separate security departments and he had got  
 17 some from there I think and also for some external, but I'm  
 18 not sure who the service providers –  
 19 MS PILLAY: Are you able to give us any  
 20 further about the additional resources brought in  
 21 specifically from the 10th of August onwards?  
 22 MR JAMIESON: No. When I was writing  
 23 this and reading this I'm at home in Johannesburg.  
 24 MS PILLAY: Now we know from the reports  
 25 of intimidation and from the content of many of the emails

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1 which I included in Lonmin's bundle that Lonmin management  
 2 was well aware of the widespread intimidation faced by its  
 3 workers who were trying to go to work during the strike.  
 4 MR JAMIESON: Yes.  
 5 MS PILLAY: That's correct isn't it?  
 6 MR JAMIESON: Yes.  
 7 MS PILLAY: And they were therefore aware  
 8 of the danger faced by Lonmin workers who were trying to go  
 9 to work.  
 10 MR JAMIESON: Yes.  
 11 MS PILLAY: And they were also aware of  
 12 the ongoing threat to the lives and safety of workers  
 13 reporting for duty.  
 14 MR JAMIESON: Yes.  
 15 MS PILLAY: And so in view of this Lonmin  
 16 management would have been aware of the need to be careful  
 17 about calling on workers to report for duty in view of this  
 18 inherent risk and serious risk associated with reporting  
 19 for duty.  
 20 MR JAMIESON: Yes.  
 21 MS PILLAY: Now let's look at page 23 of  
 22 VVVV1. This is an update by I think it's Tanya Chikansa,  
 23 that's correct isn't it? If we look at the email before  
 24 that from Roger Phillimore which is dated the 14th of August  
 25 4:28pm –

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1 Tanya sent around some emails with some drafts of this and  
 2 she asked everybody, you know who was the people at the  
 3 mine, particularly the three EVPs and well Frank Russo-  
 4 Bello who was a VP and Abe [inaudible] was a VP to update  
 5 this in readiness because Roger had asked her to do this.  
 6 So there some, if I can recall, maybe the day before or  
 7 maybe it was on that day this did the rounds just to make  
 8 sure that it was correct for her purposes. So when it  
 9 refers to, is that what you're asking me, when did this one  
 10 refer to or when the 7 was referred to?  
 11 MS PILLAY: Specifically 7, when does  
 12 that refer to?  
 13 MR JAMIESON: No I don't know.  
 14 CHAIRPERSON: A statement or updates was  
 15 clearly issued on the Tuesday because it talks about in the  
 16 first paragraph of about what happened yesterday and what  
 17 happened yesterday which is the 13th of course, involves the  
 18 killing of amongst others of the two policemen. That's in  
 19 the second sentence of Para 1 is referred to as having  
 20 happened yesterday afternoon, so that means this was issued  
 21 on the 14th it is that out of 7 it says that instruction to  
 22 return to work was issued this afternoon, in the past  
 23 tense. So this document is either drafted in the course of  
 24 the afternoon of the Tuesday or possibly the evening, but  
 25 it's clearly done on the 14th and it was – well in fact

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1 MR JAMIESON: Yes, prepared by Tanya.  
 2 MS PILLAY: It says "Dear Colleagues, I  
 3 attach a note from Tanya summarising the current situation  
 4 at the mine."  
 5 MR JAMIESON: Yes.  
 6 MS PILLAY: And the update is what  
 7 appears at page 23 where Ms Chikansa says the following and  
 8 I specifically want to refer you to paragraph 7 of that  
 9 update. She says "Management has been monitoring the  
 10 situation closely in order to decide when it is safe enough  
 11 to instruct the workforce to return to work." Do you see  
 12 that?  
 13 MR JAMIESON: Yes, the second sentence.  
 14 MS PILLAY: And she says "That  
 15 instruction to return to work was issued this afternoon."  
 16 MR JAMIESON: Yes.  
 17 MS PILLAY: Now do you know when the  
 18 update was made?  
 19 MR JAMIESON: This update?  
 20 MS PILLAY: Yes. We know it's attached  
 21 to an email from Mr Phillimore dated the 14th of August, but  
 22 do you know – specifically I'm trying to understand when  
 23 did management decide that it was safe enough to instruct  
 24 workers to return to work?  
 25 MR JAMIESON: What I can recall is that

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1 we've got the answer. If you look at 22 Mr Phillimore  
 2 sends this email to various people including – he didn't  
 3 send it to you, but he sent to various other people and  
 4 it's at 4:28pm. So Tanya had already prepared the note, so  
 5 it's clear from the sections I referred you to that this  
 6 document was prepared in the course of the afternoon of the  
 7 Tuesday before 4:28pm.  
 8 MR JAMIESON: So that will be my  
 9 recollection of the sort of marked out, sort of draft that  
 10 come around to be checked that it is factually correct.  
 11 CHAIRPERSON: Yes I see, but that  
 12 instruction to return to work says Para 7 was issued this  
 13 afternoon. So it's already been issued and so therefore it  
 14 seems that management had decided that it was safe to  
 15 instruct or safe enough, I don't know what the enough  
 16 means, safe enough to instruct the workforce to return to  
 17 work. When was that instruction given, do you know?  
 18 MR JAMIESON: I don't. It would have  
 19 been a decision, Mr Chairman, taken between I would guess,  
 20 Mark, Natasha and Barnard at the mine.  
 21 CHAIRPERSON: Are you going to put to him  
 22 the reference in the occurrence book to the radio  
 23 broadcast?  
 24 MS PILLAY: I am, Chair.  
 25 CHAIRPERSON: Yes all right.

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1 MS PILLAY: Because, Mr Jamieson, what we  
 2 know is that Lonmin would not have encourage workers to  
 3 come to work had it not been confident that it was safe for  
 4 the workers to report to work. That's clear from the  
 5 outset isn't it?  
 6 MR JAMIESON: Right.  
 7 MS PILLAY: And that to do so in  
 8 circumstances where Lonmin was unable to adequately protect  
 9 the workers would have been reckless.  
 10 MR JAMIESON: Yes given the timing that I  
 11 see there was 800 to 1000 police on the property so I would  
 12 infer that that the reason why it was given because it was  
 13 then thought it was safe.  
 14 MS PILLAY: And that was by the 14th.  
 15 MR JAMIESON: Well the first paragraph  
 16 says that there's 800 to 1000 police on site.  
 17 MS PILLAY: Yes and do we know when did  
 18 the police come to Lonmin, the 800 to 1000 police?  
 19 MR JAMIESON: Well it was certainly by  
 20 14th of August.  
 21 MS PILLAY: By the 14th of August. Can I  
 22 ask you to look at EEEE19?  
 23 MR JAMIESON: Which page is that please?  
 24 MS PILLAY: If we look at the entry –  
 25 it's the occurrence book, I don't think you've got it

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1 CHAIRPERSON: - problem, but we have seen  
 2 it before and there's reference to broadcasts on the local  
 3 radio station telling people to come to work.  
 4 MR JAMIESON: Yes.  
 5 CHAIRPERSON: And that was on the Sunday  
 6 afternoon, late afternoon I think and we know that Mr  
 7 Mabebe was – we don't know whether he heard the broadcast,  
 8 but we know he went back to work that Sunday evening. He  
 9 was murdered at K4.  
 10 MR JAMIESON: Right.  
 11 CHAIRPERSON: So it wasn't safe enough  
 12 for him to go back to work. Others at K4 shaft were  
 13 injured. Mr Langa was on his way to work on the Monday  
 14 morning, about 3 o'clock, he was murdered. All after  
 15 broadcasts had been made on behalf on Lonmin telling people  
 16 to go back to work. That's the thrust of the point, but  
 17 can we get the –  
 18 MR JAMIESON: May I just clarify? You  
 19 were referring to a radio broadcast on the 14th, you were  
 20 referring to the –  
 21 CHAIRPERSON: She said the 12th, am I  
 22 right the 12th.  
 23 MS PILLAY: That's correct, Chair. I  
 24 think it's up on the screen now.  
 25 CHAIRPERSON: We've now got it on – you

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1 before you, so we're going to have to rely on the  
 2 technician. If we could put up EEEE19. Now just to recap  
 3 before we look at a specific insert, Mr Jamieson, at this  
 4 stage in terms of the letter you sent out to the DMR it's  
 5 clear that there was Lonmin – the situation was unstable  
 6 and out of control at this stage with widespread  
 7 intimidation.  
 8 MR JAMIESON: Yes.  
 9 MS PILLAY: Now let's look at the entry  
 10 against 7:40 on the 12th, on the 12th of August.  
 11 CHAIRPERSON: Is it going to take some  
 12 time because I was proposing the lunch adjournment now, but  
 13 if we can see it immediately we'll look at it, otherwise –  
 14 MS PILLAY: I am going to proceed  
 15 immediately, it won't take long, Chair.  
 16 CHAIRPERSON: Well you can tell me when  
 17 it's appropriate to take the adjournment.  
 18 MS PILLAY: I'll do so, Chair. If you  
 19 look at the entry on the 12th against 7:40 you'll see an  
 20 insert, Mr Jamieson, that message broadcast through Radio  
 21 Mafisa and North West FM that people should go back to  
 22 work. Do you have any knowledge of this public broadcast  
 23 that people should go back to work?  
 24 MR JAMIESON: I haven't got to the entry  
 25 yet.

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1 see 7:40, this is on the 12th, this is in the morning as a  
 2 matter of fact. If you go against the numbers 7:40, there  
 3 was a line reading chopper was used, you go three lines  
 4 below that, message broadcast through Radio Mafisa and  
 5 North West FM that people should go back to work. And this  
 6 is against the background of various things that had  
 7 happened and certainly if a message was sent out for people  
 8 to go back to work because it's regarded as safe, later  
 9 that morning, on the 12th we know that two security guards  
 10 were murdered which would seem to indicate that the  
 11 premises were not safe enough for people to go to work.  
 12 Now let's assume that that broadcast was made on  
 13 instructions of Lonmin who believed in good faith at that  
 14 stage that the situation was under control. Surely when  
 15 two people were murdered in the circumstances they were  
 16 there rested a heavy duty on Lonmin to contact Radio Mafisa  
 17 and North West FM and say disregard our previous  
 18 communication, workers must not come to work until we can  
 19 give them the green light. Isn't that right?  
 20 MR JAMIESON: I wasn't aware of that  
 21 entry. I wasn't aware of the radio broadcast, so that  
 22 answers that part of the question.  
 23 CHAIRPERSON: I get that, but do you  
 24 agree with the proposition I put to you?  
 25 MR JAMIESON: Yes.

<p style="text-align: right;">Page 37304</p> <p>1 CHAIRPERSON: And if you'd known that 2 that broadcast had been made would you have strongly urged 3 on your colleagues that steps should be taken to as it were 4 to render it inoperative, to cancel it, to send the 5 opposite message to the workers? 6 MR JAMIESON: I wasn't particularly aware 7 of that radio broadcast, that's what I said. 8 CHAIRPERSON: I'm saying if you had been. 9 MR JAMIESON: This email that I wrote I 10 wrote before the conference call which was on the Sunday. 11 So the conference was after this, so me writing the email 12 that you refer to the DG was based on the security reports. 13 There were some briefs that were sent out by Frank and if I 14 recall I also spoke to him early in the morning or some 15 time before the conference call, Mr Chairman. And so my 16 email was based on that, not after, but regardless, even on 17 the conference call I can't recall anyone saying that 18 there'd been an instruction issued to come back to work. 19 Or there was a radio broadcast. 20 CHAIRPERSON: You would agree, as a 21 senior official in Lonmin that those who knew that the 22 radio message had been caused to be broadcast should have 23 responded or reacted in a way that I put to you. 24 MR JAMIESON: Yes I would agree to that. 25 I also know that the management out there on the mine was</p>	<p style="text-align: right;">Page 37305</p> <p>1 being urged to you know, agree to people coming to work, 2 particularly by NUM. 3 CHAIRPERSON: Now do you know whether any 4 broadcast took place after the broadcast referred to in 5 this entry in the occurrence book cancelling the 6 instruction of people to go back to work. Any broadcast at 7 all from then onwards? 8 MR JAMIESON: I wasn't aware of the first 9 one and I wasn't aware of any subsequent ones. 10 CHAIRPERSON: No all right. Is it 11 appropriate now for us to take – 12 MS PILLAY: Chair, I just have two 13 questions – 14 CHAIRPERSON: We will not resume at a 15 quarter to then, we'll resume a little bit later. 16 MS PILLAY: Mr Jamieson, Mr Sinclair 17 candidly testified before this Commission that Lonmin 18 security did not have the capacity to protect all workers 19 who were asked to come to work. Now in those circumstances 20 and I ask the question specifically because today Mr 21 Langa's widow is in attendance at the Commission. Now I'm 22 not sure if you're aware, but Mr Langa was killed on his 23 way to work in the early hours of the 13th of August. 24 MR JAMIESON: Yes. 25 MS PILLAY: And he was brutally killed.</p>
<p style="text-align: right;">Page 37306</p> <p>1 MR JAMIESON: Yes. 2 MS PILLAY: The question that I want to 3 ask you is whether, in view of the fact, that there was 4 widespread intimidation, there was widespread violence, 5 there were direct threats made against people reporting for 6 work, in view of the situation which you have described in 7 your email which was out of control, unstable, Mr Sinclair 8 conceding that Lonmin security did not have the capacity to 9 protect all the workers, was it not reckless for Lonmin to 10 actively pursue workers to come to work? Or even to desist 11 from actively discouraging workers to come to work? 12 MR JAMIESON: In, I'm just dealing with 13 the documents, in this circular by Tanya and in the 14 previous drafts I can recall that she questioned that 15 approach. It may have been on this one, there was another 16 release I think on the Sunday, there was a press release on 17 the Sunday I think and she did question that. And I 18 believe it would have been discussed although I wasn't 19 involve in it, but by Mark and Barnard and Natasha out at 20 the mine or Riaan and Frank. Sorry getting mixed up when 21 they're acting. So that they would have taken all of those 22 things into consideration I'm sure and came to the decision 23 they came to. So when I wrote the email to the DG what I'm 24 saying is it was related to me and I was asked if I would 25 put the email together and that's what I did. So it's not</p>	<p style="text-align: right;">Page 37307</p> <p>1 my direct knowledge of what was being discussed, only what 2 was said on the call. 3 COMMISSIONER HEMRAJ: Mr Jamieson, who 4 would have taken, ultimately taken the decision that the 5 workers should be encouraged to go back tot work? 6 MR JAMIESON: I can't say ultimately, but 7 the people who were there that day were Frank, I don't 8 think Natasha Viljoen, I think it was Riaan Blignaut at 9 that time and it was Barnard, Abie, they were there. 10 Whether they phoned Ian or not I don't know. 11 COMMISSIONER HEMRAJ: Yes, thank you. 12 MS PILLAY: Chair, is this a convenient 13 time? 14 CHAIRPERSON: We adjourn now then until 15 five to two. 16 [COMMISSION ADJOURNES COMMISSION RESUMES] 17 [14:06] CHAIRPERSON: The Commission resumes. Mr 18 Jamieson, you're still under oath. 19 ALBERT JAMIESON: (s.u.o.) 20 CHAIRPERSON: Ms Pillay? 21 MR JAMIESON: Mr Chairman, if I could say 22 something, please, to you? 23 CHAIRPERSON: Of course. 24 MR JAMIESON: When you adjourned I wasn't 25 quite finished with my –</p>



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1 CHAIRPERSON: Oh, I beg your pardon.  
 2 MR JAMIESON: - with my answer.  
 3 CHAIRPERSON: I didn't intend to cut you  
 4 short, please complete your answer now.  
 5 MR JAMIESON: Thank you. I was finishing  
 6 off, I believe, by saying I'm not sure if they called Ian  
 7 to discuss that on the Sunday because the decision to close  
 8 the mine is not an EXCO level decision, it's really a board  
 9 level decision. So the process would have been Riaan and  
 10 Frank and Barnard discussing the situation, coming to a  
 11 conclusion between them. Then they would have had to talk  
 12 to the CEO and I think the CEO would have had to talk to  
 13 the Chairman. The Chairman may have wanted to talk to the  
 14 board but he would have done that independently by calling  
 15 around. It's a market-sensitive issue and it would be, you  
 16 know, disclosable. So I didn't want to leave it short,  
 17 that the decision is taken on the mine to close the mine,  
 18 it's not. Thank you.  
 19 CHAIRPERSON: I see. If you hadn't asked  
 20 the people, if you told the people not to come to work,  
 21 would that effectively have meant closing the mine or were  
 22 there people available to do, on a sort of care and  
 23 maintenance basis for the period until it was fully  
 24 operational again?  
 25 MR JAMIESON: The process of closing the

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1 operation over 35 kilometres.  
 2 CHAIRPERSON: They would be much – if you  
 3 could concentrate your whole security forces, as it were,  
 4 on protecting the essential service people, that would have  
 5 a much greater prospect of success in avoiding injuries  
 6 than if the general mining staff had come from various 360  
 7 degrees, as it were, it would have been very difficult to  
 8 protect them all, as in fact we know from what happened.  
 9 MR JAMIESON: Mr Chairman, when you say  
 10 taking the entire security force you're talking about, I  
 11 think, 25 people –  
 12 CHAIRPERSON: Perhaps force is the wrong  
 13 word but –  
 14 MR JAMIESON: It's only 25 –  
 15 CHAIRPERSON: I understood you also  
 16 called for external people because you also use private –  
 17 MR JAMIESON: Yes.  
 18 CHAIRPERSON: - security firms, don't  
 19 you?  
 20 MR JAMIESON: I don't know the exact  
 21 number but I would be surprised if it was more than 25, 30  
 22 or something like that. What you really needed was a lot  
 23 of police to do that.  
 24 CHAIRPERSON: I understand that the  
 25 police were also asked to come.

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1 mine would be, you know, would take days. That would be  
 2 one thing. On the Sunday effectively the mining part of  
 3 the mine is closed anyway.  
 4 CHAIRPERSON: Yes.  
 5 MR JAMIESON: Because it's not a working  
 6 day but there are still essential services, people who have  
 7 to come to work and it has to be safe for them to come to  
 8 work because if they can't get to work, you know, perhaps  
 9 the mine floods and then you've got all sorts of –  
 10 CHAIRPERSON: Yes, yes, I understand that  
 11 but presumably if only essential services people were told  
 12 to come, the whole security operation could have been  
 13 focused on protecting them. So I understand you've got, I  
 14 mean a staff of thousands of people, haven't you, but the  
 15 people who were involved in the care and maintenance side,  
 16 they presumably would have been substantially fewer than  
 17 the full work force.  
 18 MR JAMIESON: When you say care and  
 19 maintenance, do you mean essential services?  
 20 CHAIRPERSON: Yes, sorry, sorry, yes.  
 21 MR JAMIESON: But it's over a vast area,  
 22 it's 35 kilometres.  
 23 CHAIRPERSON: Yes, yes, no, I understand  
 24 that but presumably –  
 25 MR JAMIESON: Difficult to focus an

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1 MR JAMIESON: Yes.  
 2 CHAIRPERSON: And the police had come.  
 3 Whether the numbers were adequate is a matter we may have  
 4 to consider but there certainly were police on, visible  
 5 policing and so on and I think you public order policing as  
 6 well, weren't there, on the Sunday?  
 7 MR JAMIESON: Yes and that was, actually  
 8 it was, what was related to me on the calls was there was a  
 9 very slow response. There was worry on the mine that there  
 10 weren't enough and coming quick enough and the reason that  
 11 I was asked to escalate the matter in the DMR was  
 12 specifically that issue.  
 13 CHAIRPERSON: Yes, yes, I understand.  
 14 No, we've heard some evidence on that. It's one of the  
 15 matters we'll have to be addressing in our report.  
 16 MR JAMIESON: Alright.  
 17 CHAIRPERSON: Thank you. Ms Pillay, the  
 18 witness and I were having a conversation, we ignored you,  
 19 I'm afraid. We didn't do so intentionally.  
 20 CROSS-EXAMINATION BY MS PILLAY (CONTD.):  
 21 No, thank you, Chair. I'm indebted. Mr Jamieson, I think  
 22 it's important for me just to pursue this point and I've  
 23 been asked, specifically requested to do that by Mrs Langa  
 24 herself and by the team acting for Mr Mabebe.  
 25 MR JAMIESON: Right.

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1 MS PILLAY: And I think first just to  
 2 respond to your answer now, we must be clear that it wasn't  
 3 impossibility for Lonmin to instruct workers not to come to  
 4 work. In fact we see from the document at page 23 of the  
 5 bundle that in fact that's what management was  
 6 contemplating at some stage.  
 7 MR JAMIESON: It's not an impossibility,  
 8 you're correct.  
 9 CHAIRPERSON: Before you ask the next  
 10 question may I ask those responsible for controlling the  
 11 air conditioning if they could increase the air  
 12 conditioning, I don't know what the correct word is but the  
 13 level of the air conditioning slightly because it is rather  
 14 unpleasantly hot at the moment.  
 15 MS PILLAY: And so I just want to repeat  
 16 the proposition I put to you, Mr Jamieson, and just to ask  
 17 you to carefully consider the proposition and respond  
 18 specifically to the proposition that I'm putting to you,  
 19 that in the circumstances which we described before lunch  
 20 where the situation was out of control, where Lonmin was  
 21 not able to protect the workers who were coming to work and  
 22 where Lonmin was aware of the dire threat to the lives and  
 23 safety of workers coming to work, that it was reckless for  
 24 Lonmin to either encourage workers to come to work or not  
 25 to discourage workers from coming to work in those

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1 MS PILLAY: On the 14th of August at 6:23  
 2 in the afternoon, do you see that?  
 3 MR JAMIESON: Yes.  
 4 MS PILLAY: And in that e-mail you're  
 5 responding to a notification by Mr Kgotle that a tenth  
 6 person had been killed and presumably that's Mr Twala who  
 7 was killed at the koppie and just to deal with what Mr  
 8 Kgotle says, he says, "Sad to report that a tenth person  
 9 has been killed. His body is at close" – at close, I  
 10 suppose – "His body is at close to the hill where these  
 11 criminals meet daily." Do you see that?  
 12 MR JAMIESON: Yes.  
 13 MS PILLAY: And this e-mail was sent,  
 14 amongst others, to you on the 14th of August at 6:14. Do  
 15 you see that?  
 16 MR JAMIESON: Yes.  
 17 MS PILLAY: Now I just want to emphasise  
 18 and just focus for a second on the words "these criminals"  
 19 who had gathered on the koppie. Is that an indication of  
 20 how middle management and possibly even EXCO viewed the  
 21 people who were gathered at the koppie?  
 22 MR JAMIESON: Here clearly it is, I mean  
 23 it's written there and on the calls I would say probably on  
 24 the 13th and 14th that was how it was being described,  
 25 criminal activity.

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1 circumstances.  
 2 MR JAMIESON: I would answer the same as  
 3 I did before, which was Tanya raised it in fact and I would  
 4 imagine, although I wasn't involved, that that would then,  
 5 because she'd raised it, it would have been discussed with  
 6 the people who were at the mine making those  
 7 decisions/recommendations and I can only presume that it  
 8 was thought that, you know, it was prudent not to or, you  
 9 know, keep things going. I can't say any more than that.  
 10 MS PILLAY: Mr Jamieson, I have now put  
 11 the proposition to you twice.  
 12 MR JAMIESON: Yes.  
 13 MS PILLAY: And given you an opportunity  
 14 to respond to it twice. Save to say that we will argue  
 15 that that's not an answer to the proposition that I'm  
 16 putting to you but I'd like to move on in the interests of  
 17 time and I'd like you to look at VVVV1.24 which is an e-  
 18 mail sent from you on the 14th of August –  
 19 MR JAMIESON: Which page is it?  
 20 MS PILLAY: Sorry, 24, page 24 of the  
 21 bundle, of VVVV, VVVV1.  
 22 MR JAMIESON: Yes.  
 23 MS PILLAY: It's an e-mail from you to  
 24 Roger Phillimore, Simon Scott and Mohammed Seedat.  
 25 MR JAMIESON: Yes.

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1 MS PILLAY: But specifically we're not  
 2 looking at the activity now –  
 3 MR JAMIESON: Yes.  
 4 MS PILLAY: - Mr Jamieson, we're looking  
 5 at the people.  
 6 MR JAMIESON: Yes.  
 7 MS PILLAY: People being referred to as  
 8 criminals.  
 9 MR JAMIESON: Yes.  
 10 MS PILLAY: Alright and then if we can  
 11 look at page 40 just to round off this short point –  
 12 COMMISSIONER HEMRAJ: Before you go  
 13 there, on that same page 24, the e-mail that appears on the  
 14 top, "Although we are glad about the police operation there  
 15 is always the worry that it goes wrong."  
 16 MR JAMIESON: Yes.  
 17 COMMISSIONER HEMRAJ: What's the basis of  
 18 that?  
 19 MR JAMIESON: Mark Munro had said that on  
 20 the call that day.  
 21 COMMISSIONER HEMRAJ: I beg your pardon?  
 22 MR JAMIESON: Mark Munro had said that on  
 23 the call that day, this is forwarding Abey's e-mail on.  
 24 COMMISSIONER HEMRAJ: Yes.  
 25 MR JAMIESON: Mark had also described, so

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1 on the daily calls I said that we had, he described the  
 2 operation I think it was the previous day, he'd given some  
 3 details and then there was, of what the police were  
 4 considering doing and Mark had said that, you know, there's  
 5 always a possibility that it could go wrong. So that's  
 6 what I carried over.  
 7 COMMISSIONER HEMRAJ: You had no  
 8 appreciation of what it was that he was referring to as  
 9 what might go wrong?  
 10 MR JAMIESON: No.  
 11 COMMISSIONER HEMRAJ: I understand, thank  
 12 you.  
 13 CHAIRPERSON: Where were you when you  
 14 sent this e-mail? Were you in Johannesburg or in Marikana?  
 15 MR JAMIESON: I was always in  
 16 Johannesburg, either at the Melrose Arch office or at home.  
 17 I didn't go to the mine until the 16th when I drove out with  
 18 Roger. This was 6:23PM, I can't specifically remember if I  
 19 was still at the office or I was at home.  
 20 CHAIRPERSON: No, I understand. I  
 21 thought you might have been at Marikana but I was wrong.  
 22 Were you in contact with Mr Mokwena at all, or Mr Sinclair  
 23 for that matter, that same afternoon before you sent this  
 24 e-mail?  
 25 MR JAMIESON: Mr Sinclair I didn't talk

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1 Provincial Commissioner talks about "We must act tomorrow"  
 2 and talk about the operation that's going to be launched  
 3 and so forth and Mr Mokwena of course urges her to see that  
 4 it happens. Now is that the operation that you were  
 5 talking about? Of course you didn't speak to Mr Mokwena  
 6 yourself, you say. Or you may have done, you can't  
 7 remember. You see, Adv Hemraj put part of it to you but  
 8 the e-mail says this, "The police are commencing their  
 9 operation as outlined to us" –  
 10 MR JAMIESON: Yes.  
 11 CHAIRPERSON: - "earlier, to try to break  
 12 the back of the operation. I'll get an update later this  
 13 evening. Although we're glad about the police operation  
 14 there's always the worry that it goes wrong." Now I'm  
 15 interested to know what you had in mind when you talked  
 16 about the operation as outlined to us earlier to try to  
 17 break the back of the operation – situation, sorry. Let me  
 18 read it again. "The police are commencing their operation  
 19 as outlined to us earlier, to try to break the back of the  
 20 situation." Now it's that operation that you were afraid  
 21 might go wrong, you were worried it might go wrong. Now  
 22 what I'd like to know is, when you sent that e-mail what  
 23 exactly, what operation did you exactly have in mind that  
 24 might go wrong?  
 25 MR JAMIESON: It was, I think, related to

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1 to at all during the period from the 10th to the –  
 2 CHAIRPERSON: Mr Mokwena?  
 3 MR JAMIESON: Mr Mokwena, I could have  
 4 been -  
 5 CHAIRPERSON: I'll tell you why –  
 6 MR JAMIESON: - calls and phone calls  
 7 backwards and forwards really.  
 8 CHAIRPERSON: Yes, yes, no. The reason I  
 9 asked the question is this, we have had evidence, I don't  
 10 know whether you've seen the transcript but we have had  
 11 evidence in the form of a transcript produced by Lonmin  
 12 actually of a conversation which took place on that  
 13 Thursday, on that Tuesday afternoon, we think round about 4  
 14 o'clock. I'm not sure how precise that timing is.  
 15 MR JAMIESON: Yes.  
 16 CHAIRPERSON: Between Mr Mokwena, I think  
 17 Mr Kgotle, I'm not sure and certainly Mr Sinclair on the  
 18 one hand and Provincial Commissioner Mbombo on the other.  
 19 MR JAMIESON: Yes.  
 20 CHAIRPERSON: Do you know about that?  
 21 MR JAMIESON: Yes.  
 22 CHAIRPERSON: Did you know about it at  
 23 the time?  
 24 MR JAMIESON: No.  
 25 CHAIRPERSON: You see because there the

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1 as early as the Monday call but I'm just checking because  
 2 my notes are at the back on page 68 and 69 and there's some  
 3 reference to it there, so it may have been the Tuesday  
 4 call, I'm just checking now, Mr Chairman. Ja, it was on  
 5 Tuesday and Mark had related, although I didn't know about  
 6 a specific conversation with General Mbombo that the  
 7 transcripts allude to, I was aware that she had been to the  
 8 mine and also aware the National Commissioner had been to  
 9 the mine on, I think, the afternoon of Monday and I can  
 10 also recall that there was an exclamation mark here that  
 11 they – it's on page 72 – that they stayed there until 2  
 12 o'clock in the morning to formulate a plan. And it was  
 13 either between Mark and Frank who were on the call that  
 14 they described, and you'll see there the description of the  
 15 plan that they talked about and it would have been on that  
 16 call that Mark or Frank said, listen, there's always the  
 17 chance that things can go wrong. So it wasn't so much my  
 18 concern as just relaying the concern of what they'd said.  
 19 CHAIRPERSON: What time on the Tuesday  
 20 would this note have been made?  
 21 MR JAMIESON: I can check, Mr Chairman.  
 22 It would have been on a daily call. There may be a record  
 23 of that somewhere.  
 24 CHAIRPERSON: You see, I see on page 69  
 25 there's a reference. I take it 69 is a note made before

<p style="text-align: right;">Page 37320</p> <p>1 72, is that right?</p> <p>2 MR JAMIESON: 69 was Monday.</p> <p>3 CHAIRPERSON: Monday.</p> <p>4 MR JAMIESON: Yes and the plan had, that</p> <p>5 plan had been –</p> <p>6 CHAIRPERSON: - circle secure area, NUM</p> <p>7 members want to come to work. Was that something you were</p> <p>8 told on the Monday?</p> <p>9 MR JAMIESON: Yes.</p> <p>10 CHAIRPERSON: And then again – ja, I see.</p> <p>11 And then the next real note about it is the one on page 72.</p> <p>12 COMMISSIONER HEMRAJ: Page 73, Mr</p> <p>13 Jamieson, "Avoid dismissal of all work force? Just worried</p> <p>14 about" - is that lives?</p> <p>15 MR JAMIESON: Yes.</p> <p>16 COMMISSIONER HEMRAJ: What is that a</p> <p>17 reference to?</p> <p>18 MR JAMIESON: Just safety and security,</p> <p>19 law and order and stopping the violence and the killings</p> <p>20 that had occurred. That was a primary concern.</p> <p>21 CHAIRPERSON: And this is based upon,</p> <p>22 this note, is it just the thoughts that were in your mind</p> <p>23 or something that you'd jotted down after speaking to</p> <p>24 somebody?</p> <p>25 MR JAMIESON: No, that was, these were a</p>	<p style="text-align: right;">Page 37321</p> <p>1 continuation.</p> <p>2 CHAIRPERSON: The previous page 72 is</p> <p>3 headed "Frank/Mark" so –</p> <p>4 MR JAMIESON: Yes.</p> <p>5 CHAIRPERSON: Was this a conference call</p> <p>6 you had with Mr Russo-Bello and Mr Munro?</p> <p>7 MR JAMIESON: It was a call, I think it</p> <p>8 was the sort of daily call that we then started to have.</p> <p>9 There were EXCO people on it so there was Frank and Mark</p> <p>10 but there were other people as well, so Natasha was back by</p> <p>11 then –</p> <p>12 CHAIRPERSON: You've got Frank and Mark</p> <p>13 as a heading on the top of page 72.</p> <p>14 MR JAMIESON: Yes.</p> <p>15 CHAIRPERSON: It made me think it was a</p> <p>16 conversation –</p> <p>17 MR JAMIESON: It was Frank Russo-Bello</p> <p>18 and that's Mark Munro.</p> <p>19 CHAIRPERSON: Ja, you were in</p> <p>20 conversation with them.</p> <p>21 MR JAMIESON: No, it wouldn't have been a</p> <p>22 conversation with them directly, it would have been on the</p> <p>23 conference call.</p> <p>24 CHAIRPERSON: You see Mr Ramaphosa told</p> <p>25 us that he had a conversation, I think it was with Mr</p>
<p style="text-align: right;">Page 37322</p> <p>1 Mokwena, if I'm wrong I'm sure I'll be corrected and Mr</p> <p>2 Mokwena was talking about sending out a notification to say</p> <p>3 to the workers, look here, if you don't come back to work</p> <p>4 you will be dismissed and he said no – no, don't do that</p> <p>5 and he gave reasons why he thought that wasn't sensible.</p> <p>6 He said he was concerned about the lives of people and that</p> <p>7 steps should be taken to ensure that more lives weren't</p> <p>8 lost but he specifically counselled against threats of</p> <p>9 dismissal because he thought that would be counter-</p> <p>10 productive and I wondered, when I saw this note I was</p> <p>11 wondering whether that wasn't a reference to that, but you</p> <p>12 weren't in contact with Mr Ramaphosa, were you?</p> <p>13 MR JAMIESON: No, I didn't, I didn't</p> <p>14 speak to Mr Ramaphosa until the 17th when I saw him at the</p> <p>15 mine.</p> <p>16 CHAIRPERSON: [Microphone off, inaudible]</p> <p>17 71, now what's all that about? Who's Mojela, the name at</p> <p>18 the top of the page?</p> <p>19 MR JAMIESON: Abey Kgotla.</p> <p>20 CHAIRPERSON: Oh, that's another name,</p> <p>21 that's –</p> <p>22 MR JAMIESON: Yes.</p> <p>23 CHAIRPERSON: - Mr Kgotla's.</p> <p>24 MR JAMIESON: Yes.</p> <p>25 CHAIRPERSON: I see. And this is what he</p>	<p style="text-align: right;">Page 37323</p> <p>1 said to you, "Met NUM yesterday." Now what date is this</p> <p>2 note?</p> <p>3 MR JAMIESON: This is a continuation, so</p> <p>4 all of this where it says pages 67 was the regular Monday</p> <p>5 EXCO call that usually commenced at 12 o'clock.</p> <p>6 CHAIRPERSON: So this was Monday?</p> <p>7 MR JAMIESON: Yes.</p> <p>8 CHAIRPERSON: This is Monday.</p> <p>9 MR JAMIESON: And so from –</p> <p>10 CHAIRPERSON: "Met NUM yesterday and</p> <p>11 President Zokwana and Eric and Sidwell." So we know that</p> <p>12 Mr Zokwana came to the mine on the Sunday and I take it</p> <p>13 Eric and Sidwell are the local NUM people there.</p> <p>14 MR JAMIESON: Eric is Gcilitshana, I</p> <p>15 think he gave some evidence here from NUM.</p> <p>16 CHAIRPERSON: Yes, he was an office-</p> <p>17 bearer at Marikana.</p> <p>18 MR JAMIESON: Sidwell I believe is</p> <p>19 Dikolwana who was the regional co-ordinator for NUM.</p> <p>20 CHAIRPERSON: Anyway, they were there on</p> <p>21 the Sunday with President Zokwana, the President of NUM.</p> <p>22 MR JAMIESON: Right.</p> <p>23 CHAIRPERSON: And he spoke to you people,</p> <p>24 alright. Then it says, then there's a line, an arrow</p> <p>25 pointing, "Called Minister DMR and police." Am I correct</p>

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1 in thinking that's what Mr Zokwana said he had done?  
 2 MR JAMIESON: He told Abey Kgotla that he  
 3 called them.  
 4 CHAIRPERSON: Yes.  
 5 MR JAMIESON: And that was that, that's  
 6 that note, yes.  
 7 CHAIRPERSON: Then there's a note,  
 8 "Safety of members management issue." This relates back to  
 9 the topic that Adv Pillay was talking to you about.  
 10 MR JAMIESON: That was, I think it's in  
 11 the context of discussions that Abey said he had with NUM  
 12 and NUM had said to him, you know, the safety of our  
 13 members is your responsibility, management, and they had a  
 14 conversation about that. I'm not, I don't think Abey  
 15 necessarily agreed with it but that's a note I made. So  
 16 they pointed out to him that in their view safety of their  
 17 members lay with management. I think our position at that  
 18 time was it probably lay with SAPS.  
 19 CHAIRPERSON: Yes, yes, thank you. Now –  
 20 yes, sorry, Adv Hemraj draws my attention to further on  
 21 that page under the heading "Mark," this is obviously  
 22 something that Mr Munro told you –  
 23 MR JAMIESON: Yes.  
 24 CHAIRPERSON: I don't quite know what it  
 25 means. It starts off, "Need additional police," I

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1 recall who that was, sorry. Direct access to RDOs, 24  
 2 hours return to work, they, Wednesday, Thursday, I can't  
 3 recall that either, what specifically that was, sorry.  
 4 That –  
 5 CHAIRPERSON: It puzzles me because  
 6 firstly what was suggested was there should be direct  
 7 access to the RDOs, which I take it means there should be  
 8 direct negotiations with – I'm not using negotiations in  
 9 the wage negotiations sense, but –  
 10 MR JAMIESON: Ja.  
 11 CHAIRPERSON: - there should be direct  
 12 dealings, shall we say, with the RDOs 24 hours, any time I  
 13 take it day or night. That's what that means, I assume.  
 14 Then return to work, so that's with a view to persuading  
 15 them to return to work. So certainly Mr Munroe seems to  
 16 have been thinking, according to your note, that it would  
 17 be appropriate to have direct dealings with the RDOs with a  
 18 view to endeavouring to persuade them, possibly by some  
 19 consideration coming from the Lonmin side, to return to  
 20 work. Would that be correct interpretation of that?  
 21 MR JAMIESON: I just can't remember, I'm  
 22 sorry.  
 23 CHAIRPERSON: It looks like it, doesn't  
 24 it?  
 25 MR JAMIESON: It could be the

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1 understand that. "Out of production for two weeks,  
 2 estimate." That's presumably what the loss of revenue will  
 3 be if you're out of production for two weeks. NUM/AMCU  
 4 issue, who to sort?" So that was raised specifically  
 5 presumably. "Direct access to RDOs 24 hours, return to  
 6 work date, Wednesday/Thursday. What does that mean?"  
 7 [14:26] MR JAMIESON: So Mark is Mark Munroe.  
 8 Need additional police. This was on the Monday, if I  
 9 recall probably round about 12 o'clock, and Mark was still  
 10 saying that the SAPS response had been slow. There were  
 11 police starting to arrive, but in his view still not in  
 12 enough numbers and not as quickly as he would like. Right  
 13 at that time we got the first reports of the, I think there  
 14 was an altercation in that, the Monday morning with the  
 15 police and some strikers and some police had been killed.  
 16 So that, you know, that would have been in there, the  
 17 conversation that you, you know, we still need more police.  
 18 So his view was still keep the pressure on, whatever I was  
 19 doing, with the DMR.  
 20 Out of production was, two weeks was Mark's  
 21 estimate of if there was a turn to work, how long it would  
 22 take us to sort of ramp up and what have you. Probably  
 23 there would only be a return to work maybe next week. That  
 24 was what he was saying.  
 25 NUM/AMCU issue, who to saw, I can't specifically

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1 interpretation, but I –  
 2 CHAIRPERSON: It looks like it, doesn't  
 3 it?  
 4 MR JAMIESON: Ja. Direct access to RDOs.  
 5 MS PILLAY: Mr Jamieson, if I understand  
 6 your evidence, and just going back to page 24 of the bundle  
 7 where you state that "The police are commencing the  
 8 operation as outlined to us earlier" –  
 9 MR JAMIESON: Yes.  
 10 MS PILLAY: - "to try and break the back  
 11 of the situation," this was outlined by Mr Munroe and Mr  
 12 Russo-Bello?  
 13 MR JAMIESON: Yes.  
 14 MS PILLAY: The nature of the police  
 15 operation.  
 16 MR JAMIESON: Yes.  
 17 MS PILLAY: And what was your  
 18 understanding of what the police operation was going to be?  
 19 MR JAMIESON: Well, if we go back to  
 20 those notes that would be my understanding, on page 67. It  
 21 wasn't the first time it had been described. In fact –  
 22 CHAIRPERSON: You mean the notes on page  
 23 69?  
 24 MR JAMIESON: If Frank had mentioned the  
 25 police were preparing operation on the Monday on, or Frank

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1 and Mark on the Monday on the call would specifically, when  
 2 we got to Tuesday he had said that it appeared that what  
 3 the police operation was going to be, he kind of added that  
 4 he, we, they didn't tell us exactly what it was and exactly  
 5 when it was going to happen. He said they did that behind  
 6 closed doors, but they wanted to bring a lot of police, 800  
 7 plus. They wanted to bring hard-shell vehicles,  
 8 helicopters, and take out enough officers to disarm  
 9 everyone peacefully. That's, that was how it was described  
 10 on the call.

11 MS PILLAY: Alright, and that –

12 CHAIRPERSON: Sorry, can I – before you  
 13 carry on, there's a reference on page 69 –

14 MR JAMIESON: Yes.

15 CHAIRPERSON: - second line, "Circle  
 16 secure area," etcetera, but there's also an exhibit which I  
 17 haven't got with me up here at our table now, of a letter  
 18 that was sent to Mr Ramaphosa by the - I think I'm being  
 19 given it now – by his representative on the EXCO, a lady  
 20 whose name I've forgotten, that she sent to Mr Ramaphosa on  
 21 the Tuesday and she gave an account, as I remember it, of  
 22 what her understanding that she must presumably have got  
 23 from you people –

24 MR JAMIESON: Thandeka Ncube I think it  
 25 probably was.

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1 something, if they could secure the bus stops and the drop-  
 2 off areas.

3 CHAIRPERSON: So you don't know anything  
 4 about the report that Ms Ncube sent to Mr Ramaphosa, which  
 5 was obviously derived from information she'd received from  
 6 Mr Mokwena or Mr Kgotle or somebody, setting out in summary  
 7 of what she understood the police plan to be? Does that  
 8 not ring any kind of bell with you at all?

9 MR JAMIESON: No, I only saw that email  
 10 subsequently, not at the time.

11 MS PILLAY: Mr Jamieson, may I jog your  
 12 memory and refer you to page 40 of the bundle? That's your  
 13 briefing note to Mr Simon Scott.

14 MR JAMIESON: Yes.

15 MS PILLAY: And if I ask you to look at  
 16 paragraph 1(b) of that briefing note –

17 MR JAMIESON: Yes.

18 MS PILLAY: - you state there that  
 19 "Police waiting to carry out encircle, contain and remove  
 20 or arrest operation." Do you see that?

21 MR JAMIESON: Yes.

22 MS PILLAY: So clearly this was your  
 23 understanding of the operation.

24 MR JAMIESON: Yes, that was on the 15th.  
 25 So these notes were on the 13th and 14th, so by the time we

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1 CHAIRPERSON: Yes, yes, Ms Ncube.

2 MR JAMIESON: Yes.

3 CHAIRPERSON: And she spoke about, used  
 4 the word "corral." She sets out effectively, or in essence  
 5 what the police plan was that had obviously been  
 6 communicated by the police to people at Lonmin, I suspect  
 7 possibly by the Provincial Commissioner to Mr Mokwena, but  
 8 we won't go there now. But she used the word "corral," the  
 9 police plan at that stage was to "corral" the strikers and  
 10 then obviously to move in and to disarm them. Now does  
 11 that ring a bell with you at all? That –

12 MR JAMIESON: No.

13 CHAIRPERSON: - links up that word  
 14 "circle" you used on page 69.

15 MR JAMIESON: No, this is different, Mr  
 16 Chairman. What this was, was Mark had said that NUM had  
 17 continued to ask about, you know, could they come to work,  
 18 could you, it now became "you/the police" basically make it  
 19 safe and I recall the conversation was around Eastern  
 20 Platinum and Mark was saying, you know, if we can just get,  
 21 you know, the shaft into operation at Eastern Plats where  
 22 there seems to be an overwhelming number of NUM people who  
 23 want to come to work, then that would be good. That was  
 24 what this was. The circle, I'm not entirely sure but I  
 25 think it referred to, it's where the bus stops, or

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1 got to the 15th there was a little more information.

2 MS PILLAY: So when did you first  
 3 understand the police operation to be encircle, contain and  
 4 remove?

5 MR JAMIESON: I would imagine it was  
 6 somewhere between the Tuesday and the Wednesday when I did  
 7 this note.

8 MS PILLAY: I'm really asking, Mr  
 9 Jamieson, for your specific recollection. Now if you don't  
 10 remember –

11 MR JAMIESON: No, I don't specifically –

12 MS PILLAY: - you can indicate that,  
 13 but –

14 MR JAMIESON: I don't.

15 MS PILLAY: When did you first understand  
 16 the police operation to be encircle, contain and remove?

17 MR JAMIESON: Sometime before the 15th of  
 18 August. That's the best I can do.

19 MS PILLAY: But you're certain that your  
 20 understanding as at the 13th and 14th was different from  
 21 your understanding as at the 15th?

22 MR JAMIESON: Well, the 13th was, all that  
 23 was described there, it was overwhelming force, bring a lot  
 24 of police onto the site and to bring in all the equipment  
 25 that they needed to do it. Somewhere between then and

<p style="text-align: right;">Page 37332</p> <p>1 there the encircle word appears and that would have been 2 communicated probably after this. I'm certain that that 3 reference to circle later is not this. It was something to 4 do with securing buses and bus stops at Eastern Plats. 5 MS PILLAY: You see, Mr Jamieson, I'm 6 trying to understand why it is that you're so certain of 7 this fact. 8 MR JAMIESON: Because I can remember the 9 conversation with Mark saying if we can just secure the bus 10 stops and the areas at Eastern Plats, Eastern Plats has got 11 a lot of NUM members who want to come to work. I can 12 specifically remember that conversation. 13 MS PILLAY: But why are you so certain 14 that your understanding of the operation as at the 13th and 15 14th wasn't that there should be encirclement and 16 disarmament? 17 MR JAMIESON: I'm not. It's just that in 18 my notes I didn't use that word, but here I did. 19 MS PILLAY: So it's possible then that as 20 at the 13th and 14th that could have been your understanding 21 of the operation? 22 MR JAMIESON: Yes, I may just not, have 23 not written it down here on the notes of the Tuesday call. 24 MS PILLAY: I'm running out of time, so I 25 need to go to my final topic and that's the one around</p>	<p style="text-align: right;">Page 37333</p> <p>1 characterisation. If I could ask you to go to VVVV1.27, 2 and this is an email sent by Tanya to Khanze – 3 MR JAMIESON: Which page is that? Sorry. 4 MS PILLAY: Sorry, it's at page 27, 5 VVVV1.27. 6 MR JAMIESON: Yes. 7 MS PILLAY: I'm sorry, I'm referring to 8 the second email, it's one from you to Mark Munroe on the 9 14th of August at 8:59PM. Do you see that? 10 MR JAMIESON: Yes. 11 MS PILLAY: And you say there, "Mick 12 Davis, our largest shareholder, told me we have his support 13 and offered help and assistance if needed." 14 MR JAMIESON: Yes. 15 MS PILLAY: "ETV news tonight quite even 16 to positive in characterising this as a police issue." 17 MR JAMIESON: Right. 18 MS PILLAY: "Even NUM said this and had 19 to have company criticism dragged out of them. Also made 20 Sky News." 21 MR JAMIESON: Yes. 22 MS PILLAY: Now we see a lot of emphasis 23 in the documents before the Commission, and we've actually 24 heard a lot of evidence around this issue before, Mr 25 Jamieson, in fact it's one of the key issues in the</p>
<p style="text-align: right;">Page 37334</p> <p>1 infamous chain of emails between Lonmin executives and Mr 2 Ramaphosa. You know that that exhibit is – 3 MR JAMIESON: Yes. 4 MS PILLAY: - is BBB4. Can you explain 5 to this Commission why it was that you, Mr Jamieson, were 6 so fixated on correcting the characterisation of the issue 7 and ensuring that it's characterised as a police issue and 8 not as – sorry, as a criminal issue and not as a labour 9 issue? 10 MR JAMIESON: Do you want me to go 11 through that email in the point you said Mick Davis and 12 what have you? 13 MS PILLAY: Well, what I'm putting to you 14 is that this is just a sign – 15 MR JAMIESON: Yes. 16 MS PILLAY: - of what we see as a broader 17 theme – 18 MR JAMIESON: Right. 19 MS PILLAY: - where you are insistent 20 that the issue that Lonmin was grappling with must be 21 characterised as a criminal issue and not as a labour 22 issue. 23 MR JAMIESON: Yes. 24 MS PILLAY: Now we see this coming 25 particularly strongly from you –</p>	<p style="text-align: right;">Page 37335</p> <p>1 MR JAMIESON: Yes. 2 MS PILLAY: - in communication with Mr 3 Ramaphosa and we see it in emails between yourself and 4 other Lonmin executives where you are insistent that the 5 characterisation must reflect that this is a criminal issue 6 and not a labour issue. Now I just want to understand why 7 it was so important for you to put it in that light. 8 MR JAMIESON: I think two areas; first is 9 the way it was being characterised from the guys at the 10 mine, and you're quite right, that was in the emails, the 11 one that you referred to earlier, where these criminals 12 collect, collect, this is a criminal issue, Albert, it's 13 moved from a labour issue to now being just pure 14 criminality. That was the language that was being used on 15 the calls. So that was where I got it from. 16 I don't have any specific contact with it, but 17 clearly when it was being described and the murders were 18 being described, the intimidation and the violence were 19 being described, it would be difficult to describe it any 20 other way, and what I was referring to here is the, 21 obviously the media had got hold of this as of Sunday night 22 and during the course of Monday and Tuesday the reports on 23 the news were also that it was criminal activity, that the 24 police should intervene. There was a lot of calls at that 25 time from different news agencies for the police to move in</p>

<p style="text-align: right;">Page 37336</p> <p>1 and sort it out. So that's one.</p> <p>2 When you say I was insistent, I – can you refer</p> <p>3 me specifically to where I insisted somewhere? I know in</p> <p>4 the conversation I had with the DG what I'd said to him was</p> <p>5 that this is, this in our view is how it should be</p> <p>6 characterised, but I – it's not really possible for me to</p> <p>7 insist with the DG. It's possible for me to put my point</p> <p>8 of view and ask him what his is, and that's what I did.</p> <p>9 MS PILLAY: Well Mr Jamieson, I'm more</p> <p>10 than certain that other parties are going to deal with</p> <p>11 BBBB4 with you and you will see the insistence coming</p> <p>12 through quite strongly. But before we get there, if I can</p> <p>13 ask you to look at VVVV1.40, which is your briefing notes</p> <p>14 to Scott Simon.</p> <p>15 MR JAMIESON: True, ja.</p> <p>16 MS PILLAY: Sorry, to Simon Scott.</p> <p>17 MR JAMIESON: It's back to page?</p> <p>18 MS PILLAY: 40. Now I want to put to you</p> <p>19 before we go to the specific portion of the letter that I</p> <p>20 want to draw your attention to, I'm going to put it to you</p> <p>21 that indeed it seems to have been imperative for you to</p> <p>22 correct, or sorry, to change the characterisation of the</p> <p>23 issue and that from my analysis of the documents there's</p> <p>24 two reasons for it and I'll take you to why I say it in due</p> <p>25 course.</p>	<p style="text-align: right;">Page 37337</p> <p>1 MR JAMIESON: Okay.</p> <p>2 MS PILLAY: And the first reason is that</p> <p>3 it was necessary to sustain your insistence that</p> <p>4 significant numbers of police and even the army needed to</p> <p>5 be deployed in Marikana – sorry, in Lonmin, at Lonmin, to</p> <p>6 contain the situation.</p> <p>7 MR JAMIESON: Yes.</p> <p>8 MS PILLAY: And for that reason it was</p> <p>9 important for you to emphasise that the issue was a</p> <p>10 criminal issue and not a pure labour issue. That's the one</p> <p>11 reason.</p> <p>12 MR JAMIESON: Yes.</p> <p>13 MS PILLAY: I'm going to put it to you</p> <p>14 that there's a second reason and this is evident from your</p> <p>15 briefing note which we're going to look at now.</p> <p>16 MR JAMIESON: Okay.</p> <p>17 MS PILLAY: And that's the following; the</p> <p>18 characterisation as a criminal issue was an angle meant to</p> <p>19 portray Lonmin in the best possible light by shifting focus</p> <p>20 away from the underlying labour issue and Lonmin's duty to</p> <p>21 try and resolve that issue, and this I'm putting to you was</p> <p>22 well within Lonmin's reach. It was within Lonmin's power</p> <p>23 to do, to address the underlying labour issue, but that it</p> <p>24 was important for Lonmin to change the characterisation</p> <p>25 because to do so detracted from the spotlight being placed</p>
<p style="text-align: right;">Page 37338</p> <p>1 on Lonmin and its actions during the period.</p> <p>2 MR JAMIESON: I understand what you're</p> <p>3 saying, but –</p> <p>4 MS PILLAY: No –</p> <p>5 MR JAMIESON: Do you want me to comment</p> <p>6 yet, or not?</p> <p>7 MS PILLAY: Feel free to comment now and</p> <p>8 I'll take you to the documents.</p> <p>9 MR JAMIESON: The insistence that you</p> <p>10 refer to was that, what was being reported was the</p> <p>11 activity, criminal or not, or perpetrated by criminals or</p> <p>12 not, but it was murder, it was violence, it was</p> <p>13 intimidation, and that combined over the 11th and 12th,</p> <p>14 which was the Saturday and Sunday, and into the Monday, was</p> <p>15 Mark and Frank, because they were very worried that the</p> <p>16 response from SAPS was slow. By the time that you see in</p> <p>17 these notes there was 800 or so police on the property by</p> <p>18 Tuesday, I think it was, and the operation had been</p> <p>19 designed or whatever by General Phiyega and General Mbombo</p> <p>20 on the Monday, there was no further need in my mind to</p> <p>21 insist on anything of it being criminal because we had the</p> <p>22 police on site now to stabilise the situation. So the</p> <p>23 characterisation that was being requested, if you like,</p> <p>24 over that weekend was in order to escalate it through DMR</p> <p>25 to please let people know how bad the violence is because</p>	<p style="text-align: right;">Page 37339</p> <p>1 we need more police on site.</p> <p>2 MS PILLAY: But what I'm putting to you,</p> <p>3 Mr Jamieson, is that it went beyond trying to get enough</p> <p>4 police and/or the army to Lonmin. There was a further</p> <p>5 dimension to it and that was managing the publicity angle,</p> <p>6 managing the public relations, and that's the reason, Mr</p> <p>7 Jamieson, when the Minister of Minerals went onto the</p> <p>8 Xolani Gwala show on radio on the 15th, on the morning of</p> <p>9 the 15th of August, it sparked off a series of emails from</p> <p>10 yourself trying to get somebody to get the Minister to</p> <p>11 correct her characterisation because she characterised it,</p> <p>12 on the morning of the 15th she characterised it as a labour</p> <p>13 issue.</p> <p>14 MR JAMIESON: Yes, she did.</p> <p>15 MS PILLAY: And what you were most</p> <p>16 concerned about was the PR angle of it.</p> <p>17 MR JAMIESON: I wasn't concerned at all</p> <p>18 about the PR angle of it. I wasn't dealing with the PR.</p> <p>19 So this was an internal briefing notes and internal</p> <p>20 discussions. It didn't even cross my mind.</p> <p>21 MS PILLAY: Well, let's look at VVVV1.40.</p> <p>22 That's your note to Mr Simon Scott.</p> <p>23 MR JAMIESON: Yes.</p> <p>24 MS PILLAY: And I'd like to start with,</p> <p>25 we know that this is on the 15th of August at 10 minutes</p>



<p style="text-align: right;">Page 37340</p> <p>1 past 11 in the morning, and I'd like to start with 2 paragraph 1. "Request and influence the mobilising of 3 significant numbers of police and possibly army to secure 4 the property and create the environment in which we say 5 it's safe for employees who want to come to work." Now 6 that I'm putting to you is the first – 7 MR JAMIESON: Yes. 8 MS PILLAY: - rationale – 9 MR JAMIESON: Yes. 10 MS PILLAY: - for correcting the 11 characterisation. "Characterise as civil unrest, union 12 rivalry, destabilisation, not IR issue. This is a police 13 operation and can't be resolved at management/union level." 14 MR JAMIESON: Yes, and that's exactly the 15 conversation I had with the DG on Tuesday. 16 MS PILLAY: Now you say in (a), "After a 17 slowish start on Friday now over 800 police on site and 18 relative calm for the last 36 hours," and in (i), "Letter 19 to Minister, awaiting call. 20 [14:45] Urgent as she is not saying helpful things." 21 MR JAMIESON: Yes. 22 MS PILLAY: Now that's a reference to the 23 Minister being on the Xolani Gwala show – 24 MR JAMIESON: On the radio in the 25 morning.</p>	<p style="text-align: right;">Page 37341</p> <p>1 MS PILLAY: In the morning. 2 MR JAMIESON: Yes. 3 MS PILLAY: And characterising the issue 4 as a labour issue. 5 MR JAMIESON: It's a reference to two 6 things. It's not just that. 7 MS PILLAY: What's the second thing? 8 MR JAMIESON: The second thing was that 9 she didn't denounce the violence. 10 MS PILLAY: Can I just understand this? 11 You're saying that you were unhappy with what the Minister 12 had said on the radio because she didn't denounce the 13 violence. 14 MR JAMIESON: Yes. 15 MS PILLAY: So when you write here that 16 she's not saying helpful things, you're not limiting it to 17 the characterisation of the dispute? 18 MR JAMIESON: No. So in, what I heard on 19 the radio in the morning, I was driving in to Melrose Arch 20 and I was going into our garage, so I'll be the first to 21 admit that I may not have heard everything she said but 22 what I did hear was that she didn't denounce the violence. 23 Then if you, you know, the sort of chronology is that what 24 Cyril said is after – I'm jumping ahead a little bit but 25 after he spoke to her there was some statement issued then</p>
<p style="text-align: right;">Page 37342</p> <p>1 in, I think it was probably Wednesday afternoon where she 2 did, but she didn't actually, it was a spokesman who talked 3 on her behalf but at the time I heard and when I was 4 driving in to work, the one thing that stuck in my mind was 5 she didn't denounce the violence. She just said it was an 6 industrial relations issue and management and the workers 7 should sit down and sort it out. I didn't think that was 8 helpful. 9 MS PILLAY: So you were primarily 10 concerned about the fact that the Minister didn't denounce 11 the violence. 12 MR JAMIESON: Yes. 13 MS PILLAY: A secondary issue was that 14 she had characterised it as a labour issue and not as a 15 criminal issue. 16 MR JAMIESON: I won't say it was 17 secondary you know, sorry, they were both certainly issues. 18 MS PILLAY: Chairperson, I think my time 19 is up so if – 20 CHAIRPERSON: Finish off the point before 21 we call upon Mr Mpofu. His hour will obviously be less 22 than an hour but then he's got some time tomorrow, so he's 23 alright. Don't worry, he's smiling, don't worry. Let's 24 round off your point. 25 MS PILLAY: Mr Mpofu assured me,</p>	<p style="text-align: right;">Page 37343</p> <p>1 Chairperson, Mr Mpofu assures me that he's going to be 2 dealing with BBB4 in detail so it might be an appropriate 3 time for him to take over. If I can just consult my notes 4 for a second, there might be one or two questions – 5 CHAIRPERSON: I think you'll need more 6 than a second but you can consult your notes. 7 MS PILLAY: I think this is an 8 appropriate place to stop, Chair. 9 CHAIRPERSON: Mr Mathibedi, did I 10 understand you correctly to say that – 11 MR MATHIBEDI SC: That's correct, Chair. 12 CHAIRPERSON: - you don't want to cross- 13 examine. 14 MR MATHIBEDI SC: No, Chair, I've got 15 nothing. 16 CHAIRPERSON: Mr Mpofu? 17 CROSS-EXAMINATION BY MR MPOFU: Thank 18 you, Chairperson. Good afternoon, Mr Jamieson. 19 MR JAMIESON: Good afternoon. 20 MR MPOFU: Yes, I'm going to – I'll come 21 very quickly to the point that my learned colleague was 22 dealing with but before I do that I just want to understand 23 your role, broadly speaking. You were referred to as the 24 chief commercial officer, correct? 25 MR JAMIESON: Yes.</p>

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1 MR MPOFU: Now chief commercial officer  
 2 for quite a big organisation, multi-billion rand  
 3 organisation, correct?  
 4 MR JAMIESON: The third biggest platinum  
 5 mine in the world, yes.  
 6 MR MPOFU: Yes. And that title, I'm  
 7 saying this because sometimes the titles are not what they  
 8 suggest, would indicate that you were chiefly concerned  
 9 with the commercial or financial aspects of things. Would  
 10 that be correct?  
 11 MR JAMIESON: No, I wasn't concerned with  
 12 the financial aspects. That's the finance director, Simon  
 13 Scott.  
 14 MR MPOFU: Okay. So in this context  
 15 commercial meant what?  
 16 MR JAMIESON: It meant the sales and  
 17 marketing because there were a few commercial contracts  
 18 involved in that with our customers, so that was, referred  
 19 to it. Also in terms of business development and mergers  
 20 and acquisitions, those are the two biggest areas that I  
 21 looked after. Prior to that my title had actually been  
 22 executive vice-president, marketing, and during a  
 23 restructuring my job title got changed, no change in status  
 24 or anything else other than I assumed some other  
 25 responsibilities.

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1 line.  
 2 MR JAMIESON: Yes.  
 3 MR MPOFU: And at the risk of stating the  
 4 obvious, a strike of this nature would have a severe impact  
 5 on the bottom line. That's the most important commercial  
 6 consequence of it, isn't it?  
 7 MR JAMIESON: At the time, no, it wasn't.  
 8 MR MPOFU: What wasn't? There was no  
 9 concern about impact on bottom line?  
 10 MR JAMIESON: No. I'm not saying there  
 11 was no concern, it's a concern but you were saying that  
 12 that's the most important part and right at that time, no,  
 13 it wasn't.  
 14 MR MPOFU: No, what I was saying, Mr  
 15 Jamieson, is that that would be the most important  
 16 commercial consequence. There might be other consequences,  
 17 political, HR and so on but as far as the commercial aspect  
 18 of things, it would be the shrinkage to the bottom line,  
 19 wouldn't it?  
 20 MR JAMIESON: In my responsibility, no.  
 21 It would have been the fact that we were perhaps in breach  
 22 of contracts with our customers.  
 23 MR MPOFU: Breach of contract.  
 24 CHAIRPERSON: [Microphone off, inaudible]  
 25 happened, I take it you're referring to sales of platinum.

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1 MR MPOFU: Okay, but it would be fair to  
 2 say you were business development concerned with growing  
 3 the bottom line, as it were?  
 4 MR JAMIESON: No, it's more concerned  
 5 with growing revenue –  
 6 MR MPOFU: Yes.  
 7 MR JAMIESON: - and growing sort of  
 8 operations, both inside and outside the company.  
 9 MR MPOFU: Ja, but nobody just grows  
 10 revenue, you grow revenue so that the bottom line can –  
 11 MR JAMIESON: Profit is in issue.  
 12 MR MPOFU: Pardon?  
 13 MR JAMIESON: Profit is in issue, yes.  
 14 MR MPOFU: Ja. No, well, profit is the  
 15 issue, isn't it?  
 16 MR JAMIESON: Yes.  
 17 MR MPOFU: You can't – revenue on its own  
 18 is meaningless.  
 19 MR JAMIESON: Yes.  
 20 MR MPOFU: What you really wanted was to  
 21 increase the bottom line.  
 22 MR JAMIESON: Yes. Every person on the  
 23 EXCO was tasked with making sure the profits were good.  
 24 MR MPOFU: And so similarly you would be  
 25 concerned with something that was shrinking the bottom

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1 MR JAMIESON: Yes.  
 2 CHAIRPERSON: And I think you told us you  
 3 had two big customers.  
 4 MR JAMIESON: Yes.  
 5 CHAIRPERSON: With whom you had,  
 6 presumably, longstanding contracts.  
 7 MR JAMIESON: BISF and Mitsubishi.  
 8 CHAIRPERSON: Yes, obligations to – what  
 9 was the first one?  
 10 MR JAMIESON: BISF is our biggest  
 11 customer and Mitsubishi is our second biggest customer.  
 12 CHAIRPERSON: Presumably if you breached  
 13 a contract, failed to deliver the platinum you were obliged  
 14 to deliver, there would have been consequences.  
 15 MR JAMIESON: That's correct.  
 16 CHAIRPERSON: Were there penalties in the  
 17 contract or was there a fear they would cancel?  
 18 MR JAMIESON: There's force majeure  
 19 clauses in there basically which mean you then have to  
 20 extend the contracts beyond their term, you have to make  
 21 sure that you deliver the metal that you didn't deliver in  
 22 that, so the consequence is that these contracts could  
 23 endure beyond the time that you wanted them to and it's not  
 24 just platinum, it's platinum, palladium, rhodium, iridium,  
 25 resonium, silver, gold, copper nickel sulphate and chrome.

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1 So that's my area of responsibility –

2 CHAIRPERSON: If they endured longer than

3 you wanted them to that would mean that you would still

4 have to sell them, supply them these metals at old prices?

5 MR JAMIESON: Yes, not old prices, no.

6 They're linked to the spot price so it's not really a price

7 risk but it's –

8 CHAIRPERSON: So what's the risk then?

9 MR JAMIESON: - a length risk. You know,

10 if you had it in mind to change those contracts or change

11 to other people or additional people –

12 CHAIRPERSON: I see, I see.

13 MR JAMIESON: You'd be restricted from

14 doing so.

15 MR MPOFU: Yes, but I think the bottom

16 line of all these questions is that whatever the nature of

17 the problem, the impact would be financial or commercial.

18 MR JAMIESON: I think the prime

19 consideration at that time was a slightly different

20 financial one. The worry was that we would breach our

21 covenants that were due to be measured in September and the

22 finance department were, you know, extremely – they were

23 presenting this to the organisation at every possible

24 opportunity.

25 MR MPOFU: Yes.

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1 MR JAMIESON: Yes.

2 MR MPOFU: But in your case you were such

3 a key decision maker that when Mr Farmer fell ill, he

4 appointed you as his stand-in, that's the CEO.

5 MR JAMIESON: That's not correct. I

6 think we dealt with that earlier.

7 MR MPOFU: No. Listen to me very

8 carefully.

9 CHAIRPERSON: [Microphone off, inaudible]

10 what he says is the CEO, Mr Famer –

11 MR JAMIESON: Yes.

12 CHAIRPERSON: - appointed you as his

13 stand-in, that's what he more or less asked you to do.

14 MR MPOFU: Yes.

15 CHAIRPERSON: Until Mr Scott could get

16 there and deal with it. We've covered that before.

17 MR JAMIESON: Yes.

18 CHAIRPERSON: But we did ask you and you

19 did, you used the word "steward," you did perform your

20 stewardship role.

21 MR JAMIESON: And I explained what that

22 meant.

23 CHAIRPERSON: Yes, until Mr Scott came.

24 MR JAMIESON: Ja.

25 CHAIRPERSON: That's the point Mr Mpofu

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1 MR JAMIESON: Ja.

2 MR MPOFU: But I think we are saying the

3 same thing but I don't know what it is that you're not

4 agreeing with. All those things, the covenants, the breach

5 of contract or whatever, would have a financial, an adverse

6 financial impact on the company.

7 MR JAMIESON: Definitely.

8 MR MPOFU: Yes, thank you. And there was

9 already talk of a 4% impact on the share price, for

10 example, correct?

11 MR JAMIESON: Yes.

12 MR MPOFU: And that would be a concern

13 obviously for anyone in your position.

14 MR JAMIESON: Yes.

15 MR MPOFU: Yes. And you were, well,

16 let's put it this way, you were one of the key decision

17 makers at the time, correct?

18 MR JAMIESON: At what time?

19 MR MPOFU: At the time – well, at all

20 times, all relevant times.

21 MR JAMIESON: Decision maker in my area

22 of responsibility and a member of EXCO -

23 MR MPOFU: No, I'm talking of overall.

24 If you were a member of EXCO, that alone makes you a key

25 decision maker, correct?

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1 is busy with.

2 MR MPOFU: Yes. Mr Jamieson, Chairperson

3 is correct, let's put aside that whole debate you had about

4 the word "steward" and so on. Let's assume it never

5 happened. All I'm saying is that the first person who came

6 to mind to Mr Farmer when he fell ill to take over from him

7 was you. He anointed you or appointed you as that person.

8 Whether in fact it materialised is another matter but he

9 had you in mind as the person who should take over.

10 MR JAMIESON: Yes, I agree because Simon

11 Scott was on vacation and he knew he was on vacation at the

12 time.

13 MR MPOFU: Ja. Now the next issue which

14 I want to deal with just as a build-up to that point that

15 Ms Pillay was busy with is that you, you are definitely

16 aware that there was a stance by management – again I don't

17 want to go through the discussion because Ms Pillay covered

18 it, of how we got there but ultimately there was a stance

19 by management that we should not engage or talk to the

20 workers outside the so-called wage agreement, existing wage

21 agreement. That was a –

22 MR JAMIESON: Yes, that was –

23 MR MPOFU: - a stance that was taken.

24 MR JAMIESON: Yes.

25 MR MPOFU: Before the trouble started.

<p style="text-align: right;">Page 37352</p> <p>1 MR JAMIESON: Yes, right back to the sort 2 of June, July discussions, ja. 3 MR MPOFU: Yes, correct. And that stance 4 was steadfastly adhered to throughout until the time of the 5 tragedy. 6 MR JAMIESON: Yes. 7 MR MPOFU: Ja. And you in fact – okay, 8 let me put it this way, with the benefit of hindsight – 9 MR JAMIESON: Yes. 10 MR MPOFU: - which is, as we know, not an 11 exact science – 12 CHAIRPERSON: No, hindsight is an exact 13 science – 14 MR MPOFU: Well – 15 CHAIRPERSON: Hindsight is 20/20. 16 MR MPOFU: 20/20 yes. Yes, okay. Forget 17 the commentary but with – I mean my wrong commentary – with 18 the benefit of hindsight would you agree that had that 19 stance not been taken, but let's put that aside, but had it 20 not been so steadfastly adhered to, things might have 21 turned out differently and by that I mean the tragedy might 22 not have occurred. 23 MR JAMIESON: It's possible. 24 MR MPOFU: It's possible. 25 MR JAMIESON: Also not possible.</p>	<p style="text-align: right;">Page 37353</p> <p>1 MR MPOFU: Pardon? 2 MR JAMIESON: It also may not have 3 happened – 4 MR MPOFU: Ja, ja. 5 CHAIRPERSON: Possible means it's also – 6 MR JAMIESON: - not possible. 7 MR MPOFU: Yes, thank you. 8 CHAIRPERSON: Possible means it could 9 have happened or it may not have happened. 10 MR MPOFU: Yes. 11 CHAIRPERSON: But because it could have 12 happened, even though it may not have happened, it's 13 possible. 14 MR MPOFU: Yes. 15 MR JAMIESON: Agreed. 16 MR MPOFU: Thank you, Chairperson. 17 Alright, and you were instrumental in making sure that once 18 the trouble started – let's call it that for just, you know 19 what I mean, broadly speaking – around the 10th, that that 20 stance of management was, as I call it, steadfastly adhered 21 to, were you not? 22 MR JAMIESON: No, I didn't really have 23 much to do with it in terms of you saying steadfastly 24 adhered to it. What I was asked to do was to escalate the 25 issue of the slow police response to the DMR. The</p>
<p style="text-align: right;">Page 37354</p> <p>1 industrial relations part of it, the labour dispute part of 2 it I wasn't involved in very much. 3 MR MPOFU: Well, but there's a suggestion 4 that on the 10th you, or rather reinforced I think to put it 5 mildly, that decision that the strikers should not or 6 rather that management should not talk to the strikers but 7 they must only talk to security, which is what happened. 8 MR JAMIESON: I was on the call with 9 Barnard from the office and participated in that call. 10 MR MPOFU: Yes, but that's exactly what I 11 mean. So you agree that you, of the top leaders of Lonmin, 12 you were instrumental in taking the decision that there 13 should be no discussions with the strikers. 14 MR JAMIESON: I was certainly part of the 15 decision, I agree to that. Instrumental, no. 16 MR MPOFU: What does that mean? 17 MR JAMIESON: What do you mean by – 18 MR MPOFU: Let's not go to mixing the 19 issue now. 20 MR JAMIESON: Instrumental means to me 21 that I was absolutely proposing it or recommending it or 22 something like that. 23 MR MPOFU: Okay, alright. Let's just cut 24 it short, Mr Jamieson. If we go to Mr Mokwena's statement, 25 Ms Pillay will help me here. It's page 165 of one of the</p>	<p style="text-align: right;">Page 37355</p> <p>1 bundles but I – original statement. OO15, I'm told, OO15 2 Craig, paragraph 4.5. Is there a problem? Okay, if 3 there's a problem I'll just, I'll come back to this, 4 Chairperson. Thank you, yes, we'll short-circuit. At 5 least you and I have got it. I think it will come up, it's 6 a small point. It says there at 4.5, Mr Mokwena says, he's 7 talking about the time when he first learnt about the march 8 to LPD. 9 MR JAMIESON: 4.5? 10 MR MPOFU: Ja, start at 4.4 just for 11 context. "I received a further call that this large group 12 of employees had commenced making their way to LPD," that's 13 4.4 and then 4.5 which is where I wanted to – he says, "I 14 was with Mr Albert Jamieson, our chief commercial officer 15 at Lonmin premises in Melrose Arch. We took the decision 16 that this was an illegal and unprotected action and as such 17 any memorandum which was intended to be presented should be 18 received by our security," in other words not by 19 management. Would you agree with that summary of Mr 20 Mokwena's recollection of how the decision was taken on the 21 10th? 22 MR JAMIESON: Yes, we were in, we were 23 actually in my office on the speakerphone. 24 MR MPOFU: Yes. 25 MR JAMIESON: To the guys at the mine.</p>

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1 MR MPOFU: Yes, you and him.  
 2 MR JAMIESON: Him and I. I think maybe  
 3 by that time Peter McElligott had joined us, he was the  
 4 legal head, and on the other end it was Abey and Frank –  
 5 MR MPOFU: Okay.  
 6 MR JAMIESON: - if I recall.  
 7 MR MPOFU: So when he says “We took a  
 8 decision” –  
 9 MR JAMIESON: - collective.  
 10 MR MPOFU: - it certainly must include  
 11 you and the others.  
 12 MR JAMIESON: Yes, collective. I’ve got  
 13 no, I have no problem in saying I supported that decision,  
 14 just not instrumental in –  
 15 MR MPOFU: Pardon?  
 16 [15:05] MR JAMIESON: I have no problem in saying  
 17 that I fully supported that decision and participated in  
 18 it, the only thing when you said instrumental.  
 19 MR MPOFU: What’s the difference.  
 20 CHAIRPERSON: Both of you are missing the  
 21 point, with respect. It’s not whether you supported it,  
 22 the question is whether you were a party to taking it.  
 23 MR JAMIESON: Absolutely.  
 24 CHAIRPERSON: And I think that’s what Mr  
 25 Mpofu had in mind, you were a party to taking it.

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1 MR JAMIESON: Okay.  
 2 MR MPOFU: And then this is where it  
 3 reinforces that this was pre-existing stance. Mr Mokwena  
 4 then says in the last sentence “In accordance with the  
 5 decision which had been taken management did not meet with  
 6 the crowd.”  
 7 MR JAMIESON: Correct.  
 8 MR MPOFU: You agree with that.  
 9 MR JAMIESON: Ja.  
 10 MR MPOFU: Okay. So –  
 11 CHAIRPERSON: I’m sorry, Mr Mpofu, it’s  
 12 now 3 o’clock. When it’s convenient for you we will take  
 13 the adjournment. I’m not saying we must take it now, it’s  
 14 for you to decide.  
 15 MR MPOFU: Yes okay. Let me just round  
 16 off, I’ll just ask one question. Thank you, Chairperson,  
 17 just to round off this point. So in summary what we have  
 18 here is that you become aware that there are strikers at  
 19 LPD, correct?  
 20 MR JAMIESON: Yes.  
 21 MR MPOFU: You become aware that they are  
 22 demanding to speak to management, correct?  
 23 MR JAMIESON: Yes.  
 24 MR MPOFU: You discuss the matter with Mr  
 25 Mokwena and maybe two others, correct?

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1 MR JAMIESON: Definitely.  
 2 CHAIRPERSON: It was a decision to which  
 3 you were a party.  
 4 MR JAMIESON: Yes.  
 5 CHAIRPERSON: All right.  
 6 MR MPOFU: That’s enough, thank you,  
 7 Chairperson. And what is more at that stage you knew that  
 8 – the only demand really of the workers at that stage was  
 9 to engage with management in relation to their demand. It  
 10 was to talk to management.  
 11 MR JAMIESON: On the call.  
 12 MR MPOFU: Ja, I’m not denying that there  
 13 was the 12 500 and so on.  
 14 MR JAMIESON: Sure.  
 15 MR MPOFU: But their key thing was to  
 16 engage with management which you decided should not be  
 17 done.  
 18 MR JAMIESON: Yes.  
 19 MR MPOFU: And so if you go to 4.7 that’s  
 20 what you indicate, that answer of yours. “I was advised  
 21 that the crowd eventually reached LPD and demanded to speak  
 22 with management.” So this was known that this was their  
 23 demand.  
 24 MR JAMIESON: Ja.  
 25 MR MPOFU: Correct.

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1 MR JAMIESON: Yes.  
 2 MR MPOFU: And you decide that in line  
 3 with the decision that had been taken these people should  
 4 not be engaged by management, correct?  
 5 MR JAMIESON: Yes.  
 6 MR MPOFU: But only by security, correct?  
 7 MR JAMIESON: Yes.  
 8 MR MPOFU: Ja and this decision, you and  
 9 I have already agreed that once this decision was taken  
 10 then it was enduring throughout the episode or let’s call  
 11 it the situation, correct?  
 12 MR JAMIESON: Yes, I mean it endured.  
 13 MR MPOFU: Yes and you and I have agreed  
 14 that it is possible that had this decision not been taken  
 15 the massacre, the tragedy might not have occurred,  
 16 possibly.  
 17 MR JAMIESON: Yes.  
 18 MR MPOFU: Thank you. Okay we’ll then,  
 19 Chair.  
 20 CHAIRPERSON: 15 minutes.  
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 22 [15:32] CHAIRPERSON: The Commission resumes. Mr  
 23 Jamieson, you’re still under oath.  
 24 ALBERT JAMIESON: [s.u.o.]  
 25 CHAIRPERSON: Mr Mpofu.

<p style="text-align: right;">Page 37360</p> <p>1 CROSS-EXAMINATION BY MR MPOFU (CONTD.):</p> <p>2 Thank you, Chairperson. Mr Jamieson, okay, again I don't</p> <p>3 want to be bogged down as to whether what Mr Da Costa did</p> <p>4 was a negotiation or an engagement or whatever it is, but</p> <p>5 you were aware that the approach that he took had averted a</p> <p>6 possible industrial unrest, correct?</p> <p>7 MR JAMIESON: Yes.</p> <p>8 MR MPOFU: Ja, and in fact there was</p> <p>9 nothing stopping you – when I say you I mean plural with</p> <p>10 Mokwena and the others – from adopting that Da Costa</p> <p>11 approach, as it were, except for this decision that you</p> <p>12 should not engage with these people, correct?</p> <p>13 MR JAMIESON: I think twofold, yes,</p> <p>14 partly you're correct but the other one was we believed it</p> <p>15 had been dealt with, so –</p> <p>16 MR MPOFU: No, no, I'm sorry, I think</p> <p>17 we're misunderstanding each other. No, I'm saying remember</p> <p>18 the Da Costa approach, as we call it neutrally, was</p> <p>19 confined to Karee?</p> <p>20 MR JAMIESON: Yes.</p> <p>21 MR MPOFU: Yes, now I'm saying there was</p> <p>22 nothing stopping you as EXCO from adopting that approach</p> <p>23 for the broader –</p> <p>24 MR JAMIESON: Correct.</p> <p>25 MR MPOFU: - RDO family, correct?</p>	<p style="text-align: right;">Page 37361</p> <p>1 MR JAMIESON: Correct.</p> <p>2 MR MPOFU: Yes, and we now know that had</p> <p>3 you adopted the Da Costa approach things may have been</p> <p>4 different, to put it mildly, correct?</p> <p>5 MR JAMIESON: Possibly, yes.</p> <p>6 MR MPOFU: And when we say things could</p> <p>7 have been different, we're not only confining that to the</p> <p>8 tragedy itself, we're also talking about the 10 deaths that</p> <p>9 occurred between the 12th and the 14th, correct? That</p> <p>10 possibly could also have been averted.</p> <p>11 MR JAMIESON: Yes.</p> <p>12 MR MPOFU: Yes, now were you aware that –</p> <p>13 let me put it this way. The decision not to talk to the</p> <p>14 strikers was really just a tactical decision, really.</p> <p>15 There was, as you have agreed, nothing stopping you from</p> <p>16 doing it.</p> <p>17 MR JAMIESON: Tactical?</p> <p>18 MR MPOFU: Ja, it was taken for tactical</p> <p>19 reasons to do with what you and Ms Pillay discussed earlier</p> <p>20 about positioning yourselves in respect of the unions, what</p> <p>21 will happen if you do this and that kind of thing. There</p> <p>22 was nothing in principle that stopped you from talking to</p> <p>23 these people.</p> <p>24 MR JAMIESON: No, only that we thought it</p> <p>25 had been dealt with, you know, at Karee. I know what you</p>
<p style="text-align: right;">Page 37362</p> <p>1 say, which is - but it's the bigger issue, yes. Because</p> <p>2 when we thought that it-</p> <p>3 MR MPOFU: Ja, so which one is your</p> <p>4 answer?</p> <p>5 MR JAMIESON: We thought it had been</p> <p>6 dealt with at Karee and this was an escalation from Karee.</p> <p>7 That was the –</p> <p>8 MR MPOFU: Ja. No, that could not have</p> <p>9 been the reason. Even assuming it was dealt with</p> <p>10 adequately in Karee –</p> <p>11 MR JAMIESON: Ja.</p> <p>12 MR MPOFU: - which we know is not the</p> <p>13 case, even assuming that was the case, that would not have</p> <p>14 resolved the issue in relation to the people of Eastern and</p> <p>15 Western, the RDOs.</p> <p>16 MR JAMIESON: Right.</p> <p>17 MR MPOFU: So that can't be the reason.</p> <p>18 MR JAMIESON: Right.</p> <p>19 MR MPOFU: So the reason was, what I'm</p> <p>20 saying, which was the tactical issues around your dynamics</p> <p>21 with the unions in general, correct?</p> <p>22 MR JAMIESON: Yes.</p> <p>23 MR MPOFU: Yes, and were you aware that</p> <p>24 the – well, let me put it this way; the decision was</p> <p>25 illogical - I'm going to argue that, I want to give you a</p>	<p style="text-align: right;">Page 37363</p> <p>1 chance to comment – illogical in the sense that if your</p> <p>2 intention, your broader intention was to secure industrial</p> <p>3 peace and you had seen the decision, the opposite of your</p> <p>4 decision working in practice to stop unrest and a wildcat</p> <p>5 strike, then it was not a logical thing to take the exact</p> <p>6 opposite stance, as it were, to that of Mr Da Costa,</p> <p>7 correct?</p> <p>8 MR JAMIESON: I'm not sure I understand</p> <p>9 that –</p> <p>10 MR MPOFU: No, okay. I'm just saying,</p> <p>11 just from a pragmatic –</p> <p>12 MR JAMIESON: - of was it illogical.</p> <p>13 MR MPOFU: Ja, from a pragmatic point of</p> <p>14 view, you are management, you are rightfully concerned with</p> <p>15 making sure that production carries on. Your purposes are</p> <p>16 not served by workers being on strike. You understand</p> <p>17 that?</p> <p>18 MR JAMIESON: Yes.</p> <p>19 MR MPOFU: Yes, now I'm saying knowing</p> <p>20 that an approach of engagement had prevented industrial</p> <p>21 strike and therefore loss of profits and all that goes with</p> <p>22 it, it was illogical for you to adopt the exact opposite</p> <p>23 approach because that would lead to industrial strike,</p> <p>24 wildcat strike, violence and all sorts of things, possibly.</p> <p>25 I'm not saying you knew what was going to happen. Do you</p>

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1 understand what I'm saying?

2 MR JAMIESON: I would, in my mind I

3 separate the two. Could I say that?

4 MR MPOFU: Okay. Explain.

5 MR JAMIESON: The, when you say it would

6 have stopped, or it wouldn't – in fact it was a

7 continuation of what had happened at Karee, so in fact we

8 weren't successful in what had happened at Karee, you know,

9 notwithstanding that you said that it was across the

10 property now, so there was an escalation of –

11 MR MPOFU: Ja.

12 MR JAMIESON: There was an escalation

13 both from Karee and it was an escalation that it was no

14 longer confined to Karee, but was now across the property.

15 MR MPOFU: Yes.

16 MR JAMIESON: So that's the two

17 distinctions –

18 MR MPOFU: No, I accept that, ja.

19 MR JAMIESON: Ja, and so that, if you say

20 were we successful with our tactics at Karee, we patently

21 weren't.

22 MR MPOFU: No, fair enough. Okay, let's

23 then confine it to the following. Let's say Mr Da Costa's

24 efforts had at the very least averted imminent industrial

25 action.

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1 your own purposes, this is effectively Lonmin policy on

2 unprotected industrial actions, which is what this was,

3 correct?

4 MR JAMIESON: Right.

5 MR MPOFU: What was happening on the 10th.

6 MR JAMIESON: Yes.

7 MR MPOFU: Ja, and in a nutshell if we

8 start from about 8.3.5 it says there that, "The parties

9 involved in the industrial action must be confined to a

10 central location, preferably outside of the security

11 controlled area in order to effectively monitor and manage

12 the situation. Management committee will be identified

13 that will engage in talks with the grievance committee,

14 that will include the manager security or such appointed

15 person, and the ER liaison officer." And then, "A

16 committee that will talk to management will be identified

17 and only those people will be allowed to engage in talks

18 with management." I won't go word for word, but you can

19 see that this policy postulates immediate engagement with

20 the people who are involved in an unprotected strike.

21 MR JAMIESON: Yes.

22 MR MPOFU: Correct? And therefore your

23 decision was in conflict or in breach of standing Lonmin

24 policy to that extent, correct?

25 MR JAMIESON: It seems to be so. I

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1 MR JAMIESON: Postponed, would be a –

2 MR MPOFU: Okay, postponed it, yes.

3 MR JAMIESON: Yes.

4 MR MPOFU: So you took a decision which

5 was - the opposite of postponement is bringing it forward.

6 You understand? That's what I'm saying.

7 MR JAMIESON: Yes, but I mean we kind of

8 echoed that decision, we stood by, we considered the

9 matter, given the market adjustment, and that's the way we

10 dealt with it and we didn't want to take it any further.

11 So yes –

12 MR MPOFU: Okay, fine, so that then let's

13 stop quibbling about the logicity of the decision. Did

14 you know that the decision was actually in breach of Lonmin

15 policy?

16 MR JAMIESON: No.

17 MR MPOFU: You didn't know that?

18 MR JAMIESON: No.

19 MR MPOFU: Okay, well were you aware that

20 – can we bring up XXX8, please? Sorry, I understand

21 there's some change of guard in the corner there. Okay,

22 there you are. Can you go to paragraph 8.3.5, or page 24

23 of the big pages. Ja, 24. Just go back a bit. Okay,

24 again I'm not going to waste much time here because this

25 point has been considered many, many times, but just for

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1 wasn't familiar with this, but yes, I agree with you.

2 MR MPOFU: Yes, thank you. You are aware

3 – getting now closer to the point of characterisation, you

4 are aware that if you mischaracterise a problem then you

5 are unlikely to resolve it? In fact that's the quickest

6 way of not resolving the problem. It's simple logic. I

7 mean if you have a headache and I give you stomach ache

8 pills I'm not going to resolve the headache.

9 MR JAMIESON: Yes.

10 MR MPOFU: Ja, okay. And in fact one of

11 your mottos or something, that is contained in the Lonmin

12 bundle, which is VVVV1, page 125, so that will be

13 VVVV1.125.

14 MR JAMIESON: Have you got a page number?

15 MR MPOFU: Yes, it's 125.

16 MR JAMIESON: 125.

17 MR MPOFU: Of your bundle, ja. You

18 attended this scenario planning meeting, correct?

19 MR JAMIESON: Yes.

20 MR MPOFU: Ja, and the broad brush on the

21 very first page of your approach said that, "Many serious

22 errors of management can be traced to solving the wrong

23 problem." Precisely. You would agree with that?

24 MR JAMIESON: I wouldn't agree with much,

25 except that they look like things you get on posters that

<p style="text-align: right;">Page 37368</p> <p>1 someone's copied down in a –</p> <p>2 MR MPOFU: Yes, well when it was raised</p> <p>3 on top there you didn't say that thing, I don't agree with</p> <p>4 it, it comes from posters.</p> <p>5 CHAIRPERSON: But it is right, isn't it?</p> <p>6 If you solve the wrong problem, even if you solve it</p> <p>7 precisely –</p> <p>8 MR JAMIESON: Yes.</p> <p>9 CHAIRPERSON: - it's not going to help</p> <p>10 you if the real problem, the right problem remains</p> <p>11 unsolved.</p> <p>12 MR JAMIESON: Correct.</p> <p>13 CHAIRPERSON: So that will be a serious</p> <p>14 error of management.</p> <p>15 MR JAMIESON: Yes.</p> <p>16 MR MPOFU: Yes.</p> <p>17 CHAIRPERSON: So why are you quarrelling</p> <p>18 with this then?</p> <p>19 MR JAMIESON: No, I'm just looking at</p> <p>20 those and thinking they look as if they've been taken off a</p> <p>21 poster and written onto a PowerPoint presentation.</p> <p>22 CHAIRPERSON: Ja, that's true, they</p> <p>23 probably are, but that doesn't mean that they're</p> <p>24 necessarily incorrect.</p> <p>25 MR JAMIESON: Sure, agreed.</p>	<p style="text-align: right;">Page 37369</p> <p>1 MR MPOFU: Yes, okay, so we agree. It's</p> <p>2 the same as the headache and stomach ache problem.</p> <p>3 MR JAMIESON: Yes, yes.</p> <p>4 MR MPOFU: Ja, thank you. And therefore</p> <p>5 this issue of characterisation is important because you</p> <p>6 might fall foul of that rule. You might be solving, if you</p> <p>7 mischaracterise the situation you might be solving the</p> <p>8 wrong thing. That goes without saying, correct?</p> <p>9 MR JAMIESON: Yes. Yes.</p> <p>10 MR MPOFU: Yes, now Ms Pillay, and you</p> <p>11 seemed to be taking her to task, said correctly that you</p> <p>12 were the torchbearer, or you were insistent – I think is</p> <p>13 the word she used – in ensuring that the characterisation</p> <p>14 of the situation that prevailed at Lonmin was characterised</p> <p>15 as a criminal act – and listen to me carefully; it's one</p> <p>16 thing to say it's, you know, it's an industrial action that</p> <p>17 has escalated to criminal activity and so on. That's not</p> <p>18 what I'm saying. What Ms Pillay was saying to you, which</p> <p>19 I'm repeating, is that you were insistent on it being</p> <p>20 characterised as not a labour dispute but a criminal act.</p> <p>21 Would you agree with that?</p> <p>22 MR JAMIESON: I think I said criminal</p> <p>23 issues, destabilisation. There were three sort of things</p> <p>24 in that email that I –</p> <p>25 MR MPOFU: Ja, whatever those three.</p>
<p style="text-align: right;">Page 37370</p> <p>1 MR JAMIESON: - saw as being –</p> <p>2 MR MPOFU: Ja, you called it, ja, unrest,</p> <p>3 civil unrest, criminal action, destabilisation.</p> <p>4 MR JAMIESON: Correct, yes.</p> <p>5 MR MPOFU: So you're insistent on that,</p> <p>6 that that's how it should be characterised, and</p> <p>7 specifically not as a labour dispute?</p> <p>8 MR JAMIESON: I think where I split the</p> <p>9 hair with Ms Pillay was on use of the word "insistent."</p> <p>10 MR MPOFU: Okay, we'll come to that.</p> <p>11 MR JAMIESON: Good.</p> <p>12 MR MPOFU: But you wanted it to be</p> <p>13 characterised as only as a criminal/destabilisation and not</p> <p>14 an industrial relations issue?</p> <p>15 MR JAMIESON: Correct.</p> <p>16 MR MPOFU: Yes, well I'm just going to</p> <p>17 show you that Ms Pillay, that it's higher than that. Ms</p> <p>18 Pillay was correct that you were insistent.</p> <p>19 MR JAMIESON: Okay, alright.</p> <p>20 MR MPOFU: Go to, still on that VVVV1-</p> <p>21 series, it's page 40, I think that's the last document she</p> <p>22 showed you.</p> <p>23 MR JAMIESON: Page 40?</p> <p>24 MR MPOFU: Four zero, yes.</p> <p>25 MR JAMIESON: Yes.</p>	<p style="text-align: right;">Page 37371</p> <p>1 MR MPOFU: You would agree that, let's</p> <p>2 look at the first sentence, you say, "Request and influence</p> <p>3 mobilisation of significant numbers of police possibly and</p> <p>4 army to secure the property and create an environment in</p> <p>5 which we can say it's safe for employees who want to come</p> <p>6 to work." That goes to the motives that Ms Pillay ascribed</p> <p>7 to you, which I think you agreed with.</p> <p>8 MR JAMIESON: Sure.</p> <p>9 MR MPOFU: One of them, yes. And then</p> <p>10 the next one you say, "Characterise as civil unrest, union</p> <p>11 rivalry, destabilisation," and then "Not IR issue. This is</p> <p>12 a police operation." The point I simply want to make again</p> <p>13 is almost like a punctuation point. You put the word "not"</p> <p>14 in –</p> <p>15 MR JAMIESON: Yes.</p> <p>16 MR MPOFU: - in block letters.</p> <p>17 MR JAMIESON: Yes.</p> <p>18 MR MPOFU: Ja, and that to a reader might</p> <p>19 seem as something that you're emphasising.</p> <p>20 MR JAMIESON: Emphasis, yes.</p> <p>21 MR MPOFU: Emphasis is the same as</p> <p>22 insistence, correct?</p> <p>23 MR JAMIESON: No. Emphasis is emphasis.</p> <p>24 Insistence is something else.</p> <p>25 MR MPOFU: Well –</p>



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1 MR JAMIESON: And in the context the word  
 2 "insistence" was used it's in something else.  
 3 MR MPOFU: No, I'm saying to you when -  
 4 you've written this document, this long email, right?  
 5 MR JAMIESON: Yes.  
 6 MR MPOFU: Ja. The only word in this  
 7 long email which you have put in block capital letters is  
 8 "not industrial relations issue." That is part of what Ms  
 9 Pillay meant when she said you were insisting.  
 10 MR JAMIESON: Well, it was a cut and  
 11 paste from the email to the DG in terms of the conversation  
 12 I had had with him on the Tuesday.  
 13 MR MPOFU: Ja, I don't -  
 14 MR JAMIESON: That's the point -  
 15 MR MPOFU: Ja, no fine.  
 16 MR JAMIESON: Ja.  
 17 MR MPOFU: I'm not saying you insisted  
 18 many times.  
 19 MR JAMIESON: Ja.  
 20 MR MPOFU: Let's say it was cut and  
 21 paste. When it originated, it originated from you,  
 22 correct?  
 23 MR JAMIESON: Yes.  
 24 MR MPOFU: Yes.  
 25 MR JAMIESON: But the context of the word

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1 MR JAMIESON: I did it twice. Twice is  
 2 where it appeared -  
 3 MR MPOFU: No -  
 4 MR JAMIESON: - where I'm saying "not" in  
 5 capital letters was in the email -  
 6 MR MPOFU: Yes, sure.  
 7 MR JAMIESON: Right, ja.  
 8 MR MPOFU: And if you did it twice it  
 9 would be more than once at least.  
 10 MR JAMIESON: It's double emphasis, yes.  
 11 MR MPOFU: And if you did it thrice it  
 12 would be insistence.  
 13 MR JAMIESON: I can't, I won't split  
 14 hairs on that. It's -  
 15 MR MPOFU: You agree -  
 16 MR JAMIESON: To my mind it's emphasis  
 17 because the point this relates to is the violence.  
 18 MR MPOFU: Okay, fine.  
 19 MR JAMIESON: Ja.  
 20 MR MPOFU: Let's forget the semantic.  
 21 MR JAMIESON: Ja.  
 22 MR MPOFU: You did this so-called  
 23 emphasis to the DG, correct?  
 24 MR JAMIESON: Yes, ja.  
 25 MR MPOFU: You did it again to Simon

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1 "insist" was, came from a different email and it also  
 2 related to a conversation I'd had with the DG. That's the  
 3 point I'm making.  
 4 MR MPOFU: No, let's deal with two  
 5 things.  
 6 MR JAMIESON: Okay.  
 7 MR MPOFU: First let's assume that it  
 8 only happened once. Okay? I'm saying to you by putting in  
 9 such big block letters you were insisting and emphasising  
 10 that point. What's wrong with that? You couldn't have  
 11 just out of the blue decided the only word in this long  
 12 email that is going to be in block letters if that one.  
 13 MR JAMIESON: Yes. Yes.  
 14 MR MPOFU: You agree?  
 15 MR JAMIESON: But it's for emphasis, is  
 16 what I'm saying.  
 17 MR MPOFU: Yes.  
 18 MR JAMIESON: Ja.  
 19 MR MPOFU: Okay, so let's call that one  
 20 emphasis.  
 21 MR JAMIESON: Yes.  
 22 MR MPOFU: Then let's go to the fact that  
 23 you did this many times, this emphasis, and that's why I'm  
 24 saying the combination of that emphasis and doing it many  
 25 times must amount to insistence. You have to agree?

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1 Scott, correct?  
 2 MR JAMIESON: Well ja, this was in the  
 3 briefing note talking to Roger and Simon and Mohammed, yes.  
 4 MR MPOFU: Yes, and you did it again to  
 5 Mr Ramaphosa.  
 6 MR JAMIESON: No, I didn't.  
 7 MR MPOFU: You did.  
 8 MR JAMIESON: Okay, take me to it because  
 9 I -  
 10 MR MPOFU: I will.  
 11 MR JAMIESON: Thank you.  
 12 MR MPOFU: Okay, if you go to BBB4 -  
 13 thank you, Ms Pillay. Okay, if -  
 14 MR JAMIESON: Which page is that?  
 15 Sorry -  
 16 MR MPOFU: That's on page, on this it's  
 17 on page - okay ja actually that's better.  
 18 [15:52] Let's use VVVV1.34. That should be easier to  
 19 find. I will need BBB4 so we might as well look for it.  
 20 So you did it again for the third time. If you look at  
 21 your first bullet point on that you say "I've had two  
 22 discussions with the DG and in each case" oh actually you  
 23 did it four times, you did it twice with the DG, correct  
 24 yes?  
 25 MR JAMIESON: Yes two conversations with

<p style="text-align: right;">Page 37376</p> <p>1 the DG.</p> <p>2 MR MPOFU: Yes and in each of those you</p> <p>3 emphasise and then you did it with Scott. So the fourth</p> <p>4 time was when you did with Mr Ramaphosa and you say in each</p> <p>5 case I've characterised this as not," again big block</p> <p>6 letters "industrial an relations issue blah, blah, blah."</p> <p>7 Correct?</p> <p>8 MR JAMIESON: That was my reporting to</p> <p>9 him on the discussion with the DG.</p> <p>10 MR MPOFU: I know, but you were not just</p> <p>11 telling him as a matter of interest, you were actually</p> <p>12 asking him to do something.</p> <p>13 MR JAMIESON: I wasn't, no.</p> <p>14 MR MPOFU: You were not?</p> <p>15 MR JAMIESON: No.</p> <p>16 MR MPOFU: You said these were your two</p> <p>17 areas of concern and you said to Mr Ramaphosa "Could you</p> <p>18 influence these things?" You didn't ask him to do</p> <p>19 anything.</p> <p>20 MR JAMIESON: If I could take you through</p> <p>21 my rationales of the email I will or –</p> <p>22 MR MPOFU: No, no be my guest.</p> <p>23 MR JAMIESON: As it related about when I</p> <p>24 drove into work and heard the Minister on the radio, so</p> <p>25 that represents the first bullet point, Mr Chair, I'm</p>	<p style="text-align: right;">Page 37377</p> <p>1 sorry. That represents the first bullet point. It was by</p> <p>2 chance that I heard that and the purpose of the email here</p> <p>3 was the second bullet point, that was my reason for writing</p> <p>4 this. And also to try and get him to yes influence with</p> <p>5 the Minister, but also to get the Minister to talk to Mr</p> <p>6 Phillimore. That was the original intent if you think,</p> <p>7 when I drove to work and I had the email formulated in my</p> <p>8 head. Then I heard the Minister talking on the radio and</p> <p>9 as I reported earlier one of the things that struck me was</p> <p>10 that she didn't denounce the violence and so –</p> <p>11 MR MPOFU: I'm sorry to interrupt. I'm</p> <p>12 sorry, Mr Jamieson, carry on.</p> <p>13 MR JAMIESON: Okay. That was the thing</p> <p>14 that struck me. So when I said she wasn't too helpful</p> <p>15 because she didn't say anything that denounced the</p> <p>16 violence. Not that I heard, but I could have missed it in</p> <p>17 driving into the garage, I appreciate that, I do. So the</p> <p>18 characterisation of not industrial relations is the</p> <p>19 violence, that is what I'm saying in this issue. So when I</p> <p>20 talked to the DG, the two conversations I had with him on</p> <p>21 the Tuesday, Tuesday morning and Tuesday afternoon number</p> <p>22 one is I didn't insist with him, I simply put it to him the</p> <p>23 same as in the letter to the Minister because what I did</p> <p>24 was take him through the script of the letter to the</p> <p>25 Minister. And said this is our view, this is what we think</p>
<p style="text-align: right;">Page 37378</p> <p>1 it is, what do you think? And in the letter to the</p> <p>2 Minister it was very much Minister would you please engage</p> <p>3 with us, would you please talk to us, would you please give</p> <p>4 us your counsel, would you please give us your assistance?</p> <p>5 In our view this is how it is, but we never got to talk to</p> <p>6 her. And I think if you're counting the number of times in</p> <p>7 emails you count the number of times in emails that we</p> <p>8 tried to say anybody please can you get the Minister to</p> <p>9 talk to us. That was a primary issue. That's the sort of</p> <p>10 background to it, so when I'm characterising this as not</p> <p>11 industrial relations, civil unrest, destabilisation,</p> <p>12 criminal issues I absolutely agree with you there and I</p> <p>13 absolutely agree that I'm emphasising it, I emphasised it a</p> <p>14 number of times. What I'm emphasising though is the</p> <p>15 violence, I'm not emphasising the issue of the dispute over</p> <p>16 wages.</p> <p>17 MR MPOFU: No that can't be correct, Mr</p> <p>18 Jamieson. I mean that simply cannot be correct. That big</p> <p>19 not, N-O-T, comes when you're saying it is not an</p> <p>20 industrial action. So that's what you're emphasising, do</p> <p>21 you agree?</p> <p>22 MR JAMIESON: Yes I'm emphasising that</p> <p>23 the violence is not an issue of the labour dispute.</p> <p>24 MR MPOFU: No I think you're just evading</p> <p>25 my question. I'm saying to you, firstly let's start with</p>	<p style="text-align: right;">Page 37379</p> <p>1 this. You say in this email there are two concerns,</p> <p>2 correct?</p> <p>3 MR JAMIESON: Yes.</p> <p>4 MR MPOFU: Ja that's what you say and the</p> <p>5 first concern that you raise is the one of</p> <p>6 characterisation.</p> <p>7 MR JAMIESON: There's actually three.</p> <p>8 CHAIRPERSON: Sorry, Mr Bham has got his</p> <p>9 light on.</p> <p>10 MR MPOFU: I'm sorry, Chairperson.</p> <p>11 CHAIRPERSON: I think he wants to object.</p> <p>12 You've got your light on, Mr Bham.</p> <p>13 MR MPOFU: Oh my mistake.</p> <p>14 CHAIRPERSON: There's a mistake -</p> <p>15 MR MPOFU: Thank you. I'm saying, Mr</p> <p>16 Jamieson, really this shouldn't detain us for long. You</p> <p>17 say you have two concerns to Mr Ramaphosa. Correct?</p> <p>18 MR JAMIESON: Yes.</p> <p>19 MR MPOFU: And then you say that you put</p> <p>20 them in two bullet points, correct?</p> <p>21 MR JAMIESON: Yes.</p> <p>22 MR MPOFU: And the first bullet point you</p> <p>23 put is the one of characterisation, correct?</p> <p>24 MR JAMIESON: Yes.</p> <p>25 MR MPOFU: Ja and then the second one is</p>

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1 about the numbers of police, correct?

2 MR JAMIESON: Yes and the third one is

3 can the Minister please talk to us.

4 MR MPOFU: No that one is – ja well ja,

5 but the issue is when you say can you influence these

6 things you are talking about those two things.

7 MR JAMIESON: Yes.

8 MR MPOFU: Yes now all I'm saying to you

9 is the – or maybe let me approach it like this. The reason

10 I'm doing this is because I'm going to argue, I'm going to

11 put it higher than Ms Pillay who said you were insistent,

12 I'm going to say you are obsessed with characterising this

13 as a criminal act and not an industrial dispute and I'm

14 going to say that characterisation A was wrong. That's

15 what I'm going to argue.

16 MR JAMIESON: Okay, I disagree with that.

17 MR MPOFU: Yes, well you can only

18 disagree if your characterisation is correct. So do you

19 disagree that this was an industrial dispute?

20 MR JAMIESON: I agree the industrial

21 dispute was around wages of rock drill operators.

22 MR MPOFU: Yes thank you.

23 MR JAMIESON: This characterisation is

24 not about the dispute around wages.

25 MR MPOFU: Thank you, ja it's not that

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1 two situations there, you had a labour dispute on the one

2 hand and you had escalating violence on the other hand.

3 MR MPOFU: Yes, fine.

4 MR JAMIESON: And quite bad.

5 MR MPOFU: Yes thank you.

6 MR JAMIESON: So twin-headed would be the

7 way I would describe it.

8 MR MPOFU: I'm happy with twin-headed, I

9 call it hybrid which I think is the same thing. Twin-

10 headed is fine, but it was not a single-headed criminal

11 issue.

12 MR JAMIESON: Correct.

13 MR MPOFU: Ja. So your characterisation

14 then which was reducing it to a single-headed issue was

15 wrong to that extent.

16 MR JAMIESON: To the extent that the

17 subject matter is a security situation and what I was asked

18 to do was escalate the violence issue and the police issue

19 to the DMR, actually to the extent I was dealing with it,

20 it doesn't say that it wasn't being dealt with as an

21 industrial dispute. Barnard and the guys at the mine were

22 continually dealing with that.

23 MR MPOFU: Okay let me assist you because

24 I think you're getting into some kind of trouble. You'd

25 agree that to the extent that this was a wage dispute it

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1 easy, Mr – do you agree that it would be wrong to say this

2 was not a wage dispute or rather not an industrial dispute?

3 I've already conceded to you that the fact that it was – if

4 I was saying to you it was purely industrial relations I

5 would also be wrong because clearly there were issues of

6 violence and so on. But I'm saying you were also wrong in

7 saying it was not industrial dispute, what is your comment?

8 MR JAMIESON: Because I was talking about

9 the violence, I'm talking about the security situation so

10 specifically. I would agree with you 100% with two issues

11 here. One is the labour dispute, wage dispute, there's

12 also another one which is violence.

13 MR MPOFU: Absolutely, so it's a hybrid,

14 correct?

15 MR JAMIESON: No not in my book, sorry.

16 MR MPOFU: So there are two issues, what

17 do you mean when you say there are two issues and it's not

18 a hybrid.

19 MR JAMIESON: I would more describe it as

20 it had become, it had moved from being a labour dispute, I

21 agree with that and that was you know from Karee to the

22 tents and that was an issue of wages or a demand or what

23 you. It then, over the weekend, crossed the line to become

24 something else, but I won't put one on top of the other or

25 that, I would characterise it as a twin-headed. You had

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1 would be resolved between management and the workers.

2 MR JAMIESON: Yes.

3 MR MPOFU: Yes to the extent that it was

4 a wage dispute it would be resolved as it did not happen in

5 Karee around the table by management sitting down with the

6 workers, correct?

7 MR JAMIESON: Yes and eventually it was

8 so –

9 MR MPOFU: No, no, ja eventually it was,

10 but after 44 people had died, that's why we're here. And

11 therefore to that effect when the Minister said on radio

12 this is a wage dispute and it should be resolved by

13 management and the workers sitting around the table, she

14 was right to that extent.

15 MR JAMIESON: About the labour dispute,

16 yes.

17 MR MPOFU: Yes.

18 CHAIRPERSON: Mr Mpofo, I'm sorry to

19 interrupt you, it's now 4 o'clock.

20 MR MPOFU: Oh, oh is it?

21 CHAIRPERSON: I know time passes quickly

22 when you're having fun.

23 MR MPOFU: That's correct, Chair.

24 CHAIRPERSON: But if it's convenient for

25 you I suggest you continue with the cross-examination

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1 tomorrow when the National Commissioner has finished her  
 2 evidence.  
 3 MR MPOFU: Yes.  
 4 CHAIRPERSON: We'll adjourn until 9  
 5 o'clock tomorrow. The position is that I understand from  
 6 Mr Bham that you're not going back to Melrose Arch but you  
 7 will be in the vicinity. You don't have to sit in the  
 8 chamber, but you will be more or less on standby to come  
 9 back when necessary, is that correct?  
 10 MR JAMIESON: Yes approximately 11  
 11 o'clock I've been told would be a good time to be here.  
 12 CHAIRPERSON: Ja probably, if we finish  
 13 with the National Commissioner before that we'll wait a  
 14 little bit until you come. It may be that we won't be  
 15 finished with the National Commissioner and you'll have to  
 16 wait a bit outside. But anyway –  
 17 MR JAMIESON: I could be here at 10:30.  
 18 CHAIRPERSON: Well it's difficult to  
 19 predict these things.  
 20 MR JAMIESON: Okay.  
 21 MR BHAM SC: Can the witness nonetheless  
 22 be excused until 10:30 tomorrow?  
 23 CHAIRPERSON: Yes, yes. I propose to 11  
 24 o'clock, but I'll settle for your time, Mr Bham. So we'll  
 25 adjourn now till 9 o'clock tomorrow. If the witness isn't

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1 What I want to know is and I did ask at the time whether  
 2 that was implemented. I mentioned it to Mr Pretorius  
 3 yesterday and said I'd like the answer today. So can you  
 4 give me the answer?  
 5 MR MATHIBEDI: Chairperson, unfortunately  
 6 I never had an opportunity of talking to Mr Pretorius.  
 7 CHAIRPERSON: I'd like the answer at 9  
 8 o'clock tomorrow morning please.  
 9 MR MATHIBEDI: Thanks, Chairperson.  
 10 CHAIRPERSON: Thank you. We'll adjourn  
 11 now till 9 o'clock tomorrow morning.  
 12 [COMMISSION ADJOURNED]  
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1 here before 10:30 we won't sent a posse of policemen to  
 2 arrest him.  
 3 MR BHAM SC: Thank you.  
 4 CHAIRPERSON: Mr Chaskalson.  
 5 MR CHASKALSON SC: Thank you,  
 6 Chairperson. If I can just tell the parties there may need  
 7 to be a further slight change to the program. It's  
 8 something that I'll have to discuss with the Commissioners  
 9 now. But please watch your emails this evening because  
 10 after Mr Jamieson and the National Commissioner have  
 11 completed things may proceed in a slightly more complicated  
 12 fashion than we had originally suggested.  
 13 CHAIRPERSON: Thank you, before we  
 14 adjourn, Mr Mathibedi, some time ago I asked, in fact it  
 15 was when Mr De Rover was giving evidence on Friday –  
 16 MR MATHIBEDI SC: Sorry Chair, I did not  
 17 hear that.  
 18 CHAIRPERSON: On Friday when Mr De Rover  
 19 was giving evidence he said that he had advised the  
 20 National Commissioner, I think it was February or March  
 21 2013 that R5s were unacceptable in public order policing  
 22 whether they were used by POP units or by other units  
 23 during public order policing work. And it was  
 24 internationally unacceptable and he advised that it not  
 25 longer be the practise as far as the SAPS are concerned.

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