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 289 11 SEPTEMBER 2014 PAGES 37590 TO 37805

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[PROCEEDINGS ON 11 SEPTEMBER 2014]
[09:12] CHAIRPERSON: The Commission resumes. Mr Jamieson, you're still under oath.
ALBERT JAMIESON: [s.u.o.]
CROSS-EXAMINATION BY MR NGCUKAITOBI (CONTD.): Thank you, Chairperson. Mr Jamieson, we left matters yesterday on exhibit XX2.9. Have you got the exhibit?
MR JAMIESON: Yes, Mr Chairman, is there something I can say before we start, please?
CHAIRPERSON: Well, I strictly speaking should ask what it is, but yes, say it.
MR JAMIESON: The homework I was given to read last night, in there was a statement by Mr Mokwena which I haven't read before and it differs from the one that was put up yesterday and I was asked questions on.
CHAIRPERSON: [Microphone off, inaudible] something about it?
MR JAMIESON: Only that.
CHAIRPERSON: You read it now?
MR JAMIESON: Yes.
CHAIRPERSON: Was there anything that you wish to say by way of amplification or qualification relating to that statement that you've now read?
MR JAMIESON: Yes, it concerns the decision not to talk to the strikers on the 10th of

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September and it's around how that decision was made.
CHAIRPERSON: Well, tell us what you want to say about it.
MR JAMIESON: Well, what I – I can only tell you what I read. Mr Mokwena's version –
CHAIRPERSON: Well, we've also read it.
MR JAMIESON: Okay. That's fine.
CHAIRPERSON: And I saw it, I realised that too, I also saw the difference.
MR JAMIESON: Yes.
CHAIRPERSON: But the fact is it was put to you, certain evidence was put to you and you agreed with it, so I'm not sure that the fact that that statement says something different from the one that was put to you earlier necessarily affects your evidence, but anyway, but you wish to comment on the accuracy? I don't want to muzzle you or censor in advance what you want to say. We're here to get the truth, not to catch people out or take advantage of mistakes that were made, if they were made.
MR JAMIESON: What struck me is the supplementary statement better suits, better or more accurately describes perhaps how the decision was made than the former one, and it suits the circumstances. That's all.

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CHAIRPERSON: The other way of looking at it is that the former one as made earlier when matters were fresher in the memory of the deponent.
MR JAMIESON: Sure.
CHAIRPERSON: But that was put to you and you agreed with it.
MR JAMIESON: Yes.
CHAIRPERSON: You didn't say that's not the way I remember it, so I don't know that that's necessarily a good point, but I don't want to – as I say I don't want to express a view at this stage because obviously I must listen to all the evidence and the argument. But if you want to say something more you can. I'm not going to stop you.
MR JAMIESON: Okay, well –
CHAIRPERSON: But also if I may be permitted so to say, words like "perhaps" don't always help very much, do they?
MR JAMIESON: If I give the, some of the context it perhaps helps to illustrate I think better what that was, so –
CHAIRPERSON: As I've said, you can go ahead, ja.
MR JAMIESON: Yes, thanks. The conversation in, on the 10th of, on the 10th of August was

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in my office and it was on speaker phone and I basically bumped into Barnard Mokwena on the way in to the office and he said "Can we go to your office and put this on speaker phone so you can listen in?" Clearly I wanted to listen in, it was an important matter, and also from my point of view if there was a unprotected strike in progress that would probably be a disclosable event if it gets announced, customers would phone in and so I'd have to be aware of it because it's got an implication on delivery. That was really the source of it. But that's not detracting from the fact that it was an important issue in any event.
On the other end of the phone when Barnard dialled up was to my recollection Abey and Frank and it was a very fast-flowing conversation and during that conversation the words we used were well, we're not going to talk to the strikers, are we; no, we're not going to talk to them. Now I –
CHAIRPERSON: Isn't that a decision in anybody's language?
MR JAMIESON: That's what I was coming to. But it's a question of whether it's a decision that was made on the phone on that call. What the other one seems to, what the other version seems to say is that it was a prior call, there was discussion around it on a lot of factors and the decision was then made.

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CHAIRPERSON: So the trouble –
MR JAMIESON: You know, I just wanted to mentioned that –
CHAIRPERSON: I don't want to debate with you too much on this at this stage.
MR JAMIESON: Sure.
CHAIRPERSON: But my reaction to that prima facie for what it's worth is it may have been a hasty decision, but it was a – there are two points about it. One, it was a decision, and secondly it was persisted in.
MR JAMIESON: Yes.
CHAIRPERSON: And as I said to you yesterday it was nyet, nyet, nyet. It wasn't just nyet and then followed by the –
MR JAMIESON: Correct.
CHAIRPERSON: - the Russian for no after a time for deliberation.
MR JAMIESON: Yes.
CHAIRPERSON: Isn't that so?
MR JAMIESON: And I'm not saying I didn't support it.
CHAIRPERSON: Ja, no, no –
MR JAMIESON: I certainly did which is –
CHAIRPERSON: Ja, but you participated –
MR JAMIESON: - when it was made and –

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CHAIRPERSON: - you participated in making it really, didn't you? I mean either by your silence or by even possibly saying something.
MR JAMIESON: Yes, agreed.
CHAIRPERSON: Adding your own nyet to the discussion.
MR JAMIESON: Yes.
CHAIRPERSON: Ja, alright.
MR NGCUKAITOBI: Thank you, Mr Chairman. I don't know whether this is the –
CHAIRPERSON: Sorry, you were interrupted, but it was I think a valuable exchange, if I may say so. Anyway, carry on with your cross-examination.
MR NGCUKAITOBI: Yes, thank you, Mr Chairman. I wonder whether this is the time I should be putting the, I mean what Mr – KK, Mr Mokwena's original statement at paragraph 4.5 on this very point, page 12 –
CHAIRPERSON: That was put previously, but put it again if you consider it necessary. The witness is –
MR NGCUKAITOBI: Yes, I was going to ask the question whether or not the narration here is accurate or inaccurate.
CHAIRPERSON: I thought he was asked that before and he said yes. Now he's got second thoughts. But

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anyway, let's put it on the screen and see.
MR NGCUKAITOBI: Yes. It's KK at page 12.
CHAIRPERSON: KK, you've got to give the number.
MR NGCUKAITOBI: KK.
CHAIRPERSON: Just KK?
MR NGCUKAITOBI: Yes.
CHAIRPERSON: No number? Early days we didn't realise what a sort of flood of exhibits we'd get.
MR NGCUKAITOBI: It's a bundle of statements.
CHAIRPERSON: Page 12?
MR NGCUKAITOBI: Page 12, Mr Chairman.
CHAIRPERSON: Page or para?
MR NGCUKAITOBI: No, paragraph 4.5 of the statement by Mr Mokwena.
CHAIRPERSON: Paragraph 4.5, alright, let's go back. 4.5? There isn't a 4.5. You also have in that particular part, that talks about the 11th of August anyway. Perhaps it's a bit earlier; as far as the narration is concerned this bit would relate to something said on the 10th, so perhaps it's earlier on, earlier in paragraph 3. Let's have a look at the beginning, please.
MR JAMIESON: This is Mr Kwadi's

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statement.
CHAIRPERSON: Oh, this is the wrong statement. This is Mr Kwadi's statement. No wonder we can't find it.
MR NGCUKAITOBI: Yes, but I'm looking for Mr –
CHAIRPERSON: Well, then give us the right reference then we'll have it on the screen.
MR NGCUKAITOBI: - Mr Mokwena's statement.
CHAIRPERSON: When in doubt ask Ms Pillay. Ms Pillay?
MS PILLAY: Chair, it's OO15.
MR NGCUKAITOBI: OO15.
CHAIRPERSON: OO15, what some people erroneously call 0015. It's actually OO15.
MR NGCUKAITOBI: Yes, thank you. Thank you, and the page is 11, the paragraph is 4.5. That's the paragraph, Mr Jamieson.
MR JAMIESON: Correct.
MR NGCUKAITOBI: Yes, now –
CHAIRPERSON: That's the paragraph that was put to him by Mr Mpofu.
MR NGCUKAITOBI: Yes.
CHAIRPERSON: And he agreed with it. He

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now says he's read the other statement and he says perhaps what he said was wrong. That's the exchange he had with me.

MR NGCUKAITOBI: Yes. Now is the point that you're making that –

CHAIRPERSON: But it doesn't really matter, does it? I mean if as he now says he agrees with it, he sat there, it may have been fast and furious things being said over the speaker phone, but he doesn't deny that he was in a sense a party to it, he's just explaining the background and the context of it. Am I right, Mr Jamieson?

MR JAMIESON: Correct.

CHAIRPERSON: Ja. Anyway, you know, if you think it's important you must carry on, but don't waste too much time on what looks like a peripheral red herring.

MR NGCUKAITOBI: Yes. Well, the only point, Mr Chairman, is to compare that statement with the later statement about exactly who took the decision. Mr Mokwena originally tells us that the decision was taken by you and him.

MR JAMIESON: I know. What was put to me yesterday was that the "we" on that decision included the people on the call at the mine –

MR NGCUKAITOBI: Yes.

MR JAMIESON: - so that it was a joint

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decision with the people who were on the call and the two who was in the office.

MR NGCUKAITOBI: And what is your version now, who took the decision?

MR JAMIESON: Well, I'm, I've read, it's not whether it's mine or not, I've read the supplementary statement which says that there was a decision taken beforehand by, on a different call with another group of people and Barnard takes accountability for that discussion himself, as –

MR NGCUKAITOBI: What is your version today, who took the decision?

MR JAMIESON: Well, I don't know because I didn't know about the previous call.

MR NGCUKAITOBI: Yes.

MR JAMIESON: So in the context of this I have to say I participated in a discussion that took a decision in the midst of the discussion, but I wasn't aware of what had happened earlier, so I can't say anything different.

CHAIRPERSON: It sounds from what you say that you didn't know about the previous decision, so you didn't know that you were in effect ratifying or continuing an earlier decision. You thought you were part of a new decision –

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MR JAMIESON: Yes.

CHAIRPERSON: - made the first time then.

MR JAMIESON: Correct.

CHAIRPERSON: I would have thought that from a legal point of view, a responsibility point of view it's a distinction without a difference, but it's a distinction all the same and it's now on record. So –

MR NGCUKAITOBI: But you would admit that you were party to the later decision?

MR JAMIESON: I, in fact I was –

CHAIRPERSON: But he said that.

MR JAMIESON: I mean I was supportive of this decision.

MR NGCUKAITOBI: Yes, thank you. Now can I go back then to where I wanted to start, which I annexure XX2.9, or exhibit XX2.9.

MR JAMIESON: I have a bundle without any index, I'm afraid, so –

MR NGCUKAITOBI: Okay, it's going to be shown up on the screen.

MR JAMIESON: Okay.

MR NGCUKAITOBI: It's the substantive agreement. Have you got that?

MR JAMIESON: Yes.

MR NGCUKAITOBI: Thank you. Now this is

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a agreement where yesterday you said you were afraid that you might fall in breach if you spoke to the union, if you spoke rather to the RDOs. Remember that?

MR JAMIESON: Please just remind me.

MR NGCUKAITOBI: Now the agreement on the cover page is between NUM and Lonmin. You see that?

MR JAMIESON: Yes.

MR NGCUKAITOBI: And clause 2 deals with the application, it makes it clear that it applies in respect of NUM and its members and then non-unionised employees. You see that?

MR JAMIESON: 2.1, 2.1.1 and 2.1.2?

MR NGCUKAITOBI: Yes.

MR JAMIESON: Ja, the query that I would have there is I don't understand what the bargaining unit is. I couldn't find anywhere in here where it was defined.

MR NGCUKAITOBI: Yes. Now, and then its substantive provisions deal with wages at paragraph 3 –

MR JAMIESON: Wages at paragraph 3, yes.

MR NGCUKAITOBI: And they cover the period 2011 and 2012.

MR JAMIESON: Yes.

MR NGCUKAITOBI: And then there's housing allowance and the rest of the substantive clauses which I don't want to spend your time on it. I want to take you to

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paragraph 12. Can you see that?

MR JAMIESON: Yes, full and final settlement?

MR NGCUKAITOBI: Yes, and then paragraph 12.4.

MR JAMIESON: Yes.

MR NGCUKAITOBI: It says, "No addition or variation, consensual cancellation or novation to the agreement or any right arising from it or breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representative."

MR JAMIESON: Yes.

MR NGCUKAITOBI: You see that? In other words this agreement can be changed or altered if Lonmin and NUM agree, because Lonmin and NUM are the only parties to the agreement.

CHAIRPERSON: It's obviously right, isn't it? We had this issue out long, long ago, when the debate turned on 12.3 and consensus at that stage was the following, that there's nothing to stop the parties negotiating before the cut-off date of the 30th of September 2013, and in fact instances were cited, not necessarily involving Lonmin, but where similar agreements had been made where there's a dramatic change of circumstances –

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inflation rate went up dramatically was the example given. There was an inflation-based increase in the agreement.

MR JAMIESON: Market adjustment.

CHAIRPERSON: That's right, and Mr Zokwana, the president of NUM, said no problem, we can negotiate despite the fact that there's this two-year agreement. Obviously we can't strike because 12.3 says we can't strike, but we can negotiate and in fact we have in past succeeded in persuading employers that the circumstances have changed so significantly that an increase is justified. So, and 12.4 actually reinforces that. It doesn't say you can't negotiate. What it says is if you do negotiate you've got to make sure that the result of your negotiation is, if an alteration is agreed to is in writing. That's all 12.4 says. But 12.3 says that you can't, during this period of two years you can't have a strike. That's all it says. Isn't that right?

MR JAMIESON: Are you asking me?

CHAIRPERSON: Yes.

MR JAMIESON: I'm not sure because when I read it last night I got a series of questions which I don't understand. So –

CHAIRPERSON: Well, alright.

MR JAMIESON: - I would, and not being able to talk to my legal team or anyone else I haven't got

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an answer to those.

CHAIRPERSON: Anyway –

MR JAMIESON: I can tell you what the questions are, if you want.

CHAIRPERSON: Well, if you don't know this point, but the point being put to you by counsel is there was nothing stopping negotiation during the period. What I put to you is that was agreed long ago when the NUM witnesses were giving evidence. The NUM people took the rather unfortunate stand, the local people at Lonmin, Marikana, they told their workers nothing we can do, the two-year agreement stands, don't do anything, we'll wait until September 2013. That was wrong and Mr Zokwana when he came agreed with that. He said, you know, it was unfortunate that that stance had been taken down at the mine level because that wasn't correct, but that point's covered by all that evidence. The point now being made to you is there was nothing stopping negotiation, but in terms of the agreement all that couldn't happen was a strike if the negotiations failed to reach an agreement.

MR JAMIESON: I understand.

CHAIRPERSON: That must be right.

MR JAMIESON: Yes, clear –

CHAIRPERSON: Now I don't know how relevant your questions are in the light of that point, but

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I'm sure if you ask your attorneys to set out the questions in a brief and send it to counsel they will give you a written reply and mark the brief accordingly.

MR JAMIESON: Okay.

MR NGCUKAITOBI: Thank you, Mr Chairman. Now Mr Jamieson, we also know from the statement of Mr Da Costa that when management decided to offer an allowance instead of as a response to the demand by the workers, NUM's view was not opposed to the allowance being paid. You remember that?

MR JAMIESON: Only through reading Mr Da Costa's statement and hearing the evidence here after the fact.

MR NGCUKAITOBI: Yes, you were not aware that NUM at that stage in July 2012 was not opposed to the allowance being paid?

MR JAMIESON: No, I wasn't aware.

MR NGCUKAITOBI: Now there was nothing stopping Lonmin from presenting the proposal by the RDOs at the bargaining forum?

MR JAMIESON: Wasn't there?

MR NGCUKAITOBI: I'm asking you.

MR JAMIESON: I'd have, in terms of reading this –

MR NGCUKAITOBI: No, from what you knew

at the time.
MR JAMIESON: I didn't know at the time. I've only read this last night.
MR NGCUKAITOBI: Yes, alright, and in terms of reading that?
CHAIRPERSON: It doesn't matter what he read last night. Were you involved in wage negotiations of any kind?
MR JAMIESON: No.
CHAIRPERSON: Were you involved in the bargaining forum?
MR JAMIESON: No.
CHAIRPERSON: Can you give us any – and I say this without disrespect or intending to insult you. Can you give us any meaningful information that will help us to answer the questions the President has asked us to answer in relation to wage negotiations, bargaining units, and so forth, of Lonmin?
MR JAMIESON: I doubt it very much.
CHAIRPERSON: Okay.
MR NGCUKAITOBI: Alright, thank you. Now let's move on to the next issue. You were asked yesterday about why you were keen to get the police involved.
MR JAMIESON: Yes.
MR NGCUKAITOBI: You mentioned, you used

the metaphor of a double-headed hydro. You remember that?
MR JAMIESON: Yes.
MR NGCUKAITOBI: What did you want the police to do?
MR JAMIESON: What we wanted the police to do was to come on site, restore law and order, stop the murders and stop the violence.
MR NGCUKAITOBI: Yes, now on your metaphor of a double-headed hydro you had one, the labour problem, and the second one that you had was the crime problem.
MR JAMIESON: Yes.
MR NGCUKAITOBI: So clearly you wanted the police to help you with the crime problem.
MR JAMIESON: Not help us, no. I wanted the police to solve the problem.
MR NGCUKAITOBI: You wanted the police to arrest the people who were involved in crime?
MR JAMIESON: That would probably be part of it, but it was just a, you know, create law and order on the mine.
MR NGCUKAITOBI: Yes, did you want the police to get involved in negotiation concerning the return of the workers to work?
MR JAMIESON: It wasn't something that I

was asked by my colleagues to handle. It was something that was also being handled and I understand, you know, from the conversations we've subsequently seen was being handled by the guys at the mine. So that was Mark, that was Barnard, Natasha, Jomo, Abey, those were the people involved in that. What I was asked to do, and I think you've seen it before, was try and escalate the issue of the crime situation because there was a slow response from SAPS at the mine. The guys were concerned that there wasn't enough police coming to site quickly enough and could I find a way to reach out to the DMR, who is our regulator, and would be concerned about safety issues on the mine to help.
MR NGCUKAITOBI: I'm asking you a different question. Did Lonmin want the police to get involved in negotiating a return to work by the workers?
MR JAMIESON: When you say Lonmin –
MR NGCUKAITOBI: Yes, the company.
MR JAMIESON: Who in Lonmin?
MR NGCUKAITOBI: Well –
MR JAMIESON: Who in Lonmin?
MR NGCUKAITOBI: Was it the position of Lonmin that the police should be involved in negotiating a return to work and an end to the strike?
MR JAMIESON: I can't speak to that

because I wasn't involved in those discussions.
MR NGCUKAITOBI: But as far as you were concerned the role of the police was limited to dealing with the criminal aspect?
MR JAMIESON: Yes.
MR NGCUKAITOBI: Now would you agree with me that it would have been wrong for the police to get involved in the negotiations pertaining to the end of the strike?
MR JAMIESON: Yes.
MR NGCUKAITOBI: Yes, and that's probably why you personally were not keen to get the police to be involved in that aspect of the dispute?
MR JAMIESON: I didn't express any opinion on whether I thought they should get involved or not. I was never asked.
MR NGCUKAITOBI: Yes.
[09:32] Now, I want to refer you to certain statements that have been made by Mr Annandale, Mr Naidoo and certain other officials, or make it clear that they understood their brief as ending the strike. Were you aware of that?
MR JAMIESON: No.
MR NGCUKAITOBI SC: Not aware, no I'm not aware of that.
CHAIRPERSON: I'd like to hear those

1 references. I don't remember it being put quite as crisply
2 as that. I remember what the Provincial Commissioner said
3 in her press conference, which she says was a slip of the
4 tongue, but I'm not sure that the quotation you put, you
5 summarised, is correct but I may find that you're right and
6 I'm wrong. It would be helpful if you gave us those
7 passages.
8 MR NGCUKAITOBI SC: Yes. Well, let's put
9 up exhibit GGG1 which was the statement by General
10 Annandale.
11 CHAIRPERSON: What paragraph do you want
12 us to look at?
13 MR NGCUKAITOBI SC: Paragraph 8, Mr
14 Chairman.
15 CHAIRPERSON: Thank you.
16 MR NGCUKAITOBI SC: Towards the seventh
17 line from the bottom, let's look at the first line. This
18 is General Annandale narrating what the negotiators were
19 tasked to do. He says, "The negotiators were tasked to
20 encourage the protesters to return to their working
21 stations, whereafter mine management would engage in
22 negotiations about the labour related matters." Now I want
23 to ask you about the –
24 CHAIRPERSON: Perhaps if you read the
25 next sentence as well.

1 MR NGCUKAITOBI SC: "It was made clear
2 that the hostage negotiators would not negotiate on behalf
3 of Lonmin mine as the employer. The negotiations were to
4 be conducted from a Nyala armoured vehicle using a public
5 relations system. They had to use the services of an
6 interpreter in Fanagolo." Now I want to ask you about that
7 first line which says, "The negotiators were tasked to
8 encourage the protesters to return to their working
9 stations," was that part of your understanding that that's
10 what the police were meant to do?
11 MR JAMIESON: No.
12 MR NGCUKAITOBI SC: Now, the same issue
13 appears in the statement by Mr McIntosh, which is HHH14,
14 HHH14.
15 CHAIRPERSON: Paragraph?
16 MR NGCUKAITOBI SC: Paragraph 14, Mr
17 Chairman. Now Mr McIntosh is narrating what transpired on
18 the scene on the day of the negotiations.
19 CHAIRPERSON: I take it you want to start
20 in the middle where he says, Mr Noki having said he wants
21 to talk to management –
22 MR NGCUKAITOBI SC: Yes.
23 CHAIRPERSON: Lieutenant-Colonel McIntosh
24 says, "We informed them that the mine management doesn't
25 want to talk to them before they put down their weapons and

1 return to work. We also informed them that the mine
2 stated" –
3 MR NGCUKAITOBI SC: Yes.
4 CHAIRPERSON: - "that there's a two-year
5 wage agreement in place with all the unions and that the
6 strike is unprotected but that the mine will talk to the
7 unions again when the workers lay down their weapons and
8 return to normal duties. This agitated the person in the
9 green blanket." That's the passage you rely on?
10 MR NGCUKAITOBI SC: Yes indeed, Mr
11 Chairman.
12 CHAIRPERSON: Now before you carry on, I
13 think in fairness to the witness who was in Melrose Arch at
14 the time all these things were happening, we had a lot of
15 evidence on this and the police witnesses, as I understand
16 it, emphasised that they were, as it were, wearing two hats
17 when they were talking in this way. They were wearing
18 negotiating hats – this isn't the two hats and two heads
19 and so on – but this is a rather unhappy metaphor but this
20 is the metaphor used, they were wearing two hats, the one
21 was a negotiating hat. The role they were performing
22 wearing that hat was to bring the state of law, to restore
23 law and order, bring an end to the violence and the
24 possession of the dangerous weapons and that kind of thing.
25 The second hat related to another role, what we lawyers

1 would call a nuntius role, you know, a nuntius is a
2 messenger, a bearer of communication from one side to the
3 other. And this passage makes it clear, they were
4 negotiating – well, this particular part doesn't make it
5 clear but they were negotiating to try to restore law and
6 order. They were also acting as nuntii, carrying
7 information from the mine, the employer to the strikers,
8 saying what the mine management's attitude was because
9 obviously the strikers wanted to know what mine management
10 were saying and this is all that passage says, but anyway I
11 don't see how it helps to ask this witness something. You
12 know we've had witnesses here before whose answer is andiaz
13 and sometimes they may be criticised because perhaps they
14 do know but if this witness says andiaz, whether he says it
15 in English or in Xhosa the answer will probably be a
16 truthful one.
17 MR NGCUKAITOBI SC: Yes. Can you, I just
18 want to ask one question about that passage. I mean that
19 passage that was read to you by the Chairman, was that your
20 understanding of the role of the police or was it contrary
21 to your understanding?
22 MR JAMIESON: I didn't have really any
23 understanding of what the police role was.
24 MR NGCUKAITOBI SC: I want to refer –
25 MR JAMIESON: Other than to restore the

law and order, definitely. This one I wasn't aware of.

MR NGCUKAITOBI SC: Alright. I want to refer you to statements made by Lonmin itself about the role of the police. The first is a statement by Mr Kwadi which is, again I have it as – which is in KK, yes, and particularly at paragraph 9.5. Thank you. Now what he is explaining there is the activities at the JOC and then he says when he was there he received a telephone call from Mr Mathunjwa. "He informed me," that is Mr Mathunjwa informed Mr Kwadi, "that he wanted to go to the koppie and requested that management should organise a meeting with SAPS in order that he be granted permission to go to the koppie." And then he says, this is Mr Kwadi, "I advised him (Mr Mathunjwa) that the area had been declared as a police area and that it was no longer in management control. I also informed him that management had expressly advised no-one would to go the koppie" –

CHAIRPERSON: "Would be allowed to go to the koppie." But were you a member of management in the sense that that expression is used in this paragraph? You were at Melrose Arch, weren't you?

MR JAMIESON: Yes, and when I read this last night I actually, my understanding was that it was a police controlled area from Monday. So when, I think this, if I'm correct, was this Thursday? Was this –

CHAIRPERSON: Yes, this was –

MR JAMIESON: Or the 15th.

CHAIRPERSON: This was the 16th, I think, the Thursday, ja.

MR JAMIESON: So my understanding, sitting Melrose Arch, was actually it was a police area from Monday. That's why on the issue of management –

CHAIRPERSON: I don't think that's right but the police certainly were in control or thought they were in control or endeavouring to exercise control on the Thursday.

MR JAMIESON: Ja, and from the point of view of management, no, that's not me. I think it refers to the people who were on the mine at the JOC.

CHAIRPERSON: One of the problems the Bishop had was he couldn't, he wanted to go back to the koppie to speak again to the strikers and he was told he couldn't go because the police wouldn't let him, so the police were purporting to exercise control, I think. Yes, sir?

MR NGCUKAITOBI SC: Thank you.

CHAIRPERSON: Is this question going to help us?

MR NGCUKAITOBI SC: Yes, well –

CHAIRPERSON: I can understand if he was

one of the management who had given that express advice, then the question would have some future but if he wasn't, he was in Melrose Arch, then I don't think it helps us really.

MR NGCUKAITOBI SC: Yes, I want to go then to the statement of Mr Seedat. I'll come to the presence of Mr Jamieson at the JOC on the day. The last statement is KK at paragraph 5.3, which is Mr Seedat's statement. Seedat, it's also KK –

CHAIRPERSON: KK is Mr Kwadi's statement. Which paragraph do you want now?

MS PILLAY: Chair, Mr Seedat's statement is OO14.

CHAIRPERSON: OO?

MR NGCUKAITOBI SC: OO14, Mr Chairman.

CHAIRPERSON: OO14?

MR NGCUKAITOBI SC: Yes, at paragraph 5.3. Now this is a recollection of what they were informed by General Annandale. "General Annandale informed us that the SAPS wanted to avoid loss of life and that the crowd appeared to be well-organised. One of the members of the team, I cannot recall, asked General Annandale how the SAPS intended to deal with the situation. General Annandale told us that SAPS, that this was an operational matter and that they could not talk to us about it." Do you remember

that?

MR JAMIESON: I wasn't given –

MR BURGER SC: I don't know what the question is, with respect, Chair. We've now had statement upon statement read from witnesses and this witness is unable to help us on that, so whether he's aware of this is not going to advance –

MR NGCUKAITOBI SC: Yes, well –

CHAIRPERSON: Some cross-examiners have different styles from others, some put statements and then bring them all together and I don't think we can stop him but –

MR NGCUKAITOBI SC: Yes.

CHAIRPERSON: The real question I'd like to ask is this, where were you on the 16th?

MR NGCUKAITOBI SC: Thank you.

CHAIRPERSON: Mr Jamieson, where were you?

MR JAMIESON: I drove from home, picked up Roger Phillimore and then drove out to the mine.

CHAIRPERSON: So you were at the mine?

MR JAMIESON: Yes, so we –

CHAIRPERSON: What time did you get there?

MR JAMIESON: - LPD.

CHAIRPERSON: What time did you get there?
MR JAMIESON: Does it say in my statement?
CHAIRPERSON: No, I'm not asking if it's in your statement. What time?
MR JAMIESON: Round about 10, half past 10.
CHAIRPERSON: Half past 10, alright. You went to LPD?
MR JAMIESON: Yes.
CHAIRPERSON: Were you at the JOC at all?
MR JAMIESON: Yes, we went to visit the JOC round about lunch time.
CHAIRPERSON: How long were you at the JOC?
MR JAMIESON: Maybe about an hour.
CHAIRPERSON: An hour. Now, this passage here that's been put to you –
MR JAMIESON: Yes.
CHAIRPERSON: - about what General Annandale told "us."
MR JAMIESON: Right.
CHAIRPERSON: That's Mr Seedat and others, that the SAPS wanted to avoid a loss of life –

MR JAMIESON: Yes.
CHAIRPERSON: Unfortunately they weren't able to do that. The crowd appeared to be very well-organised and when one of the members of the team, the deponent can't remember, Mr Seedat can't remember who it was, "asked General Annandale how the SAPS intended to deal with the situation and General Annandale told us this was an SAPS operational matter which they couldn't talk to us about." Were you one of the people who are covered by the word "us?" Were you present when that conversation with General Annandale took place?
MR JAMIESON: When - I think what this is referring to, I didn't get Mr Seedat's statement to read last night in my homework so this is the first time I've seen this. I think what it's referring to is, we went into the JOC, we got introduced to various police officials and what have you and then various conversations about different parts of, you know, what was there, there were legal people there, there were negotiators there that they pointed out, there was intelligence people there and different conversations occurred at different times within the groups of people. I can't specifically remember that but I can remember when we went outside with General Mbombo she said something similar basically.
CHAIRPERSON: Now what time, was that

before half past one?
MR JAMIESON: It was around lunch time that we were there.
CHAIRPERSON: Was it before half past one?
MR JAMIESON: Possibly.
CHAIRPERSON: You see, if it was before half past one the evidence indicates that General Annandale wouldn't have known how they intended to deal with the situation because that was only going to be told to them by Colonel Scott later on, but we don't have to go there now.
MR JAMIESON: Yes, so my answer to that was no, I wasn't one of the "us" in that but I was one of the "us" if it was said by General Mbombo.
CHAIRPERSON: The answer is you were told something along those lines by General Mbombo.
MR JAMIESON: Mbombo.
CHAIRPERSON: You and a party, a number of others –
MR JAMIESON: Yes, yes.
CHAIRPERSON: - who were with you.
MR JAMIESON: Yes.
CHAIRPERSON: I think that lays the ground for your next question.
MR NGCUKAITOBI SC: Yes. Now paragraph

5.4 in that same statement and there he says, "Thereafter the SAPS Provincial Chief Commissioner, General Mbombo, who had just arrived by helicopter, addressed us." Now presumably you were there. "She said to us that SAPS' first priority was to disarm the crowd in a manner which would avoid casualties and with public security at the forefront. She told us that SAPS had developed a tactical disarmament plan. With reference to the crowd she said, 'If you give them a hand they want the arm until you have no more to give' or words to that effect." You were clearly there when this statement was made –
CHAIRPERSON: I'd like to read the next sentence too. "General Mbombo did not share with us any detail of the manner in which SAPS would deal with the situation on the day," and if she'd just arrived by helicopter it was before the half past one meeting and on her own evidence she didn't know how they were going to deal with it, but anyway is this, was this said to you? The passage that we're now looking at, does this relate to something General Mbombo said when you were present?
MR JAMIESON: Yes, it does. This was outside the JOC. There's a little sort of thatched lapa that is there and we walked out from there and she was talking to a group of people under there. I didn't quite know what it meant but I was there when she said it.

MR NGCUKAITOBI SC: Yes. Now when she says, "If you give them a hand they want the arm, until you have no more to give," she was clearly referring to the strikers, wasn't she?

MR JAMIESON: I don't know.

MR NGCUKAITOBI SC: Yes. Now it seems the understanding of SAPS was that their role, in part, was to end the strike. The understanding of Mr Kwadi and the understanding of Mr Seedat was also that the role of SAPS was to end the strike and you seem to be the only one who has a different understanding. Can you explain why that is so?

MR JAMIESON: Well, I wouldn't say I was the only one. I was, anyone who wasn't there in those conversations and present and party to them would also not understand. There was, I think, quite a few people apart from me who wasn't there, so I don't think Simon Scott would say he understood that, I don't think Roger Phillimore would say he understanding that, we weren't there.

MR NGCUKAITOBI SC: Well, as I understand Mr Phillimore was actually at the briefing with Ms Mbombo on the 16th.

MR JAMIESON: Well, if it was this same –

MR NGCUKAITOBI SC: Yes.

MR JAMIESON: - this same discussion, yes, it was.

MR NGCUKAITOBI SC: Now if there was something wrong with the position that was taken by SAPS and communicated to you by General Mbombo, surely someone from Lonmin would have objected.

MR JAMIESON: Surely someone would, it would surely have been the people who had been there all week and been involved in all the same conversations.

MR NGCUKAITOBI SC: Well, you would also have objected if it was wrong.

MR JAMIESON: No.

CHAIRPERSON: What exactly do you say was wrong?

MR NGCUKAITOBI SC: Well, what was wrong is the understanding that seems to have been shared generally that the role of the SAPS was to negotiate an end to the strike.

CHAIRPERSON: Was that an understanding that you were aware of?

MR JAMIESON: No.

CHAIRPERSON: And was anything said in your presence which made you think that that was the way the police were expected to act?

MR JAMIESON: No.

MR NGCUKAITOBI SC: Can I ask you –

CHAIRPERSON: Of course – sorry, just in fairness I think there's a distinction that has to be drawn. You remember yesterday the witness explained that the evidence, according to his evidence, is their information was people at, I think it was Eastern Plats who wanted to work, that they were afraid for their lives, that they'd be either stabbed on the way or dealt with in the parking area when they got there. And a major concern of Lonmin was that law and order should be restored so that those who were passively participating in the strike out of fear for their lives, who wanted to go back to work, would be able to do so. Now that, in a sense, would have broken, at least partially, the strike but it wouldn't have been a result of a positive action by the police in order to break the strike, if you understand what I mean. It's a distinction which we mustn't ignore. I'm not saying it's a total answer but in fairness to the witness, one mustn't put everything together as if it's one issue.

MR NGCUKAITOBI SC: Yes. Can I ask you about your movements on the 16th? This is something you've just been asked briefly by the Chairperson.

MR JAMIESON: Yes.

MR NGCUKAITOBI SC: You've told us you arrived at the JOC at about 10 o'clock.

MR JAMIESON: No, it was about lunch time.

MR NGCUKAITOBI SC: You arrived at about lunch time?

MR JAMIESON: Yes.

MR NGCUKAITOBI SC: Well, I mean your statement –

MR JAMIESON: Ja, that's what I wanted to refer to in –

MR NGCUKAITOBI SC: - at page 15, paragraph 33.

MR JAMIESON: Paragraph 33?

MR NGCUKAITOBI SC: 33, yes.

MR JAMIESON: Ja.

MR NGCUKAITOBI SC: You say, "On the morning of the 16th I drove to Marikana with Phillimore."

MR JAMIESON: Yes.

MR NGCUKAITOBI SC: So that took you the morning until lunch time.

CHAIRPERSON: No, no, no, he said he got there earlier than that, as I understood his evidence.

MR JAMIESON: Yes.

CHAIRPERSON: How long did it take you to get from Marble – Melrose, not Marble Arch, Melrose Arch?

MR JAMIESON: Hour and a half –

CHAIRPERSON: How long did it take you from Melrose Arch to Marikana? Hour and a half?

MR JAMIESON: Hour and three-quarters, yes.

MR NGCUKAITOBI SC: And then you met with Scott and there was a briefing. Was that a briefing that you got from Scott?

MR JAMIESON: It was a briefing from the rest of the management that were based at the mine.

MR NGCUKAITOBI SC: And you were not briefed by Scott?

MR JAMIESON: Scott there refers to Simon Scott, not General Scott.

MR NGCUKAITOBI SC: Not the Scott of the police. Now then in paragraph 34 you refer to another, the arrival of General Mbombo.

MR JAMIESON: Yes.

MR NGCUKAITOBI SC: And was it explained to you what the SAPS wanted to do in relation to the strikers in this conversation?

MR JAMIESON: No. I didn't actually know even who General Mbombo was until we were introduced to her.

MR NGCUKAITOBI SC: You say it was never explained to you what the SAPS would do in relation to the

strikers?

MR JAMIESON: No, it was explained earlier in the week what, you know, the outline of the police plan was, I think as early as Monday or Tuesday. I think there are some handwritten notes of mine in the bundle that explain that they had an operation where they were going to bring a lot of police onto site, they were going to try and peacefully disarm the strikers. So that was explained, not directly from the police, it was explained to me by Mark Munro over the telephone.

MR NGCUKAITOBI SC: Now at paragraph 36 you say you left at 15:30.

MR JAMIESON: Yes.

MR NGCUKAITOBI SC: You know that the operation started, I think some 10 minutes thereafter?

MR JAMIESON: Yes, yes.

MR NGCUKAITOBI SC: Why did you leave at 15:30?

MR JAMIESON: I didn't have anything else to do and I was driving back home. I'd actually postponed some conference calls that I was supposed to have that afternoon with some bankers in London and I was trying to leave to get home to take the calls from there.

MR NGCUKAITOBI SC: Were you not aware that the operation was going to start a few minutes after

your departure?

MR JAMIESON: No, from when we were at the JOC it was just, it was going to start this afternoon.

MR NGCUKAITOBI SC: Chairman –

CHAIRPERSON: Our time is up.

MR NGCUKAITOBI SC: Yes.

CHAIRPERSON: If there is one little point you want to round off quickly I won't be harsh with you.

MR NGCUKAITOBI SC: No, Mr Chairman, I would –

CHAIRPERSON: But if this is the point you have made and you have covered the ground you want to cover then I think you must stop, am I right?

MR NGCUKAITOBI SC: Thank you, Mr Chairperson.

[09:52] CHAIRPERSON: Mr Gotz, are you next?

MR GOTZ: Good morning, Chair and –

CHAIRPERSON: Remind me, Mr Wesley, how long Mr Gotz has got, so the both of us can remember?

MR WESLEY: Mr Gotz has got two hours, Chair.

CHAIRPERSON: He did tell me this morning that he thought some points had been covered, he'd only be less than an hour. Am I correctly reporting our

conversation?

MR GOTZ: That is correct an hour maximum, Chair. In fact I'll probably be shorter in the light of some of the cross-examination of learned friend.

CHAIRPERSON: Yes you don't waste time, Mr Gotz, so I'm sure you'll keep up – you'll maintain your record.

MR GOTZ: Good morning, Mr Jamieson, my name is Anthony Gotz, I'm going to be asking some questions on behalf of AMCU.

MR JAMIESON: Good morning.

MR GOTZ: Can I revert very briefly to this issue about the decision that was taken on the 10th of August 2012 that management would not meet and engage with the strikers? I'd like to take you to page 7 of your statement which is dated 7 August 2012, I think this is exhibit VVVV2. It's paragraph 14 on page 7 of the statement. Perhaps just to get some context we can look very briefly at paragraph 13 on the previous page. You'll see there, Mr Jamieson, that you described in quite some detail, your discussions with Mr Barnard Mokwena. You reveal that Mr Mokwena informed you that there was an illegal gathering, people were intent on marching towards Lonmin's main administration offices, the LPD. You say that you went into his office and you had a discussion with

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various people including Mr Kgotle and Mr Russo-Bello on speaker phone. You then describe how Barnard and you were given an overview of the developing situation. Towards the bottom of that paragraph they say that it's revealed that the demands of the strikers related to the demands of the RDOs that had been given or been made at Karee and then you turn to page 14 –

MR JAMIESON: Can we stop there, there's an inaccuracy there.

MR GOTZ: Sorry, I beg your pardon.

MR JAMIESON: I didn't go into Barnard's office, he came into mine.

MR GOTZ: Sure.

CHAIRPERSON: It's important in Lonmin terms to preserve the protocols in that regard.

MR GOTZ: We too have similar protocols at the bar. Mr Jamieson, what is quite remarkable about this paragraph is that nowhere do you reflect the fact that a decision was made either in that meeting or had been made that management would not talk to the strikers, correct?

MR JAMIESON: Correct.

MR GOTZ: And in fact what happens then is in paragraph 14 you make the most remarkable statement, on the top of page 7. You say "On a subsequent call we heard that a delegation of the strikers had refused to come

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into the LPD offices to talk to management as they demanded that management address them outside." And there seem to be no list of demands or grievances. Now, Mr Jamieson, you'll accept, I think in the light of the discussions that various people have had with you that these facts are incorrect.

MR JAMIESON: Yes.

CHAIRPERSON: Mr Gotz, are you going to read the next sentence as well or must I do it?

MR GOTZ: Well –

CHAIRPERSON: I don't want to take your cross-examination away from you because I always enjoy it, but if you're not going to put that sentence I'd like to.

MR GOTZ: I'm happy for you to take over at this point or taking over –

CHAIRPERSON: No I don't want to take over, no, no, the question I want to ask him, if you're going to ask it already, if you're going to ask it anyway then I must sit back and enjoy hearing you ask it and get the answer you want or don't want as the case may be.

MR GOTZ: Well let me take it up at the next sentence then. You say "We left it that the management personnel on the ground would deal with the situation as they deemed fit and keep us updated." You'll agree with me, Mr Jamieson, that the sense of this

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paragraph is that in fact it was the strikers who refused to come in and meet with management, not as we know that management had refused to meet with the strikers. And the second sense that is conveyed is that no such decision was taken, in fact you left it up to the people on the ground to deal with the situation as they deemed fit. Now none of that is correct, isn't that so?

MR JAMIESON: Part of it is correct. I mean I can explain the bits that I think are incorrect and the bits that I think are correct.

MR GOTZ: Well proceed, I don't want to interrupt.

MR JAMIESON: I mean I had already said it was a fast flowing discussion and I was listening in to it on the end of a telephone and what I had to do when doing the statement was put myself back then and say what did I understand. And that's what I understood at the time. However incorrect it was that's what I understood. So this part that says the delegation of strikers had refused to come to LPD, I mean that was clearly wrong and I'll readily say yes that was wrong, subsequently that I found out. On the area that says we left the management personnel on the ground would deal with the situation as they deemed fit, clearly these decisions had been taken as we saw from Barnard's supplementary statement there'd some

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earlier discussion that there would be no talking to the strikers. The bit I agree to yes you know, yes I did, by omission or by non-objection go along with that. The bit that that refers to is there was a discussion about whether the people in the office should go out and meet them or not, I can recall that and I've had some personal experience of doing that. And therefore my sense of that was that the people who were there have to make the call if they want to go or not. I've been out to groups of 100s or 1000s and received memorandums and discussed grievances, but it's always been your personal decision to do that. No one can instruct you because there's a safety aspect to it. And I know we heard that it was relatively peaceful, but regardless of that my view is that the people who were there make that decision whether they'll do it or not. So that's what that bit referred to. Is that okay?

MR GOTZ: Chair, I've finished with that point relating to –

CHAIRPERSON: I want to ask a question, thank you. I thought you were going to make the point I'm now going to make. The second last sentence, the penultimate sentence of that paragraph is actually very misleading because – prima facie obviously that's why I'm putting it to you, to get the benefit of your inputs, it suggests that the management personnel on the ground as

they're described, had a free hand, to deal with the situation. That wasn't true, the most important restriction had been imposed, whether it was imposed or they agreed to it I suppose is neither nor there, but the fact is an important, a very significant restriction had been imposed, you can do as you deem fit, but you're not allowed to negotiate because it's the policy, a decision taken that we're not going to negotiate with these people. Isn't that right?

MR JAMIESON: Yes.

CHAIRPERSON: That is a very significant qualification which should have been introduced into the penultimate sentence.

MR JAMIESON: Well as I explained in the distinction of this morning about the how the decision was made, so by omission or not –

CHAIRPERSON: That's not going to work. There was a discussion on the telephone, those at Marikana and those at Melrose Arch were talking, two groups of people.

MR JAMIESON: Yes.

CHAIRPERSON: And it was agreed between them that there would be no negotiation.

MR JAMIESON: Yes.

CHAIRPERSON: That wasn't left, you

people at Melrose Arch didn't say by the way you chaps at Marikana have got free hand, you can do as you like. That wasn't said.

MR JAMIESON: Us people in Melrose Arch aren't in charge of those people.

CHAIRPERSON: No, no, no, but what was agreed was and this was an agreement from both sides that we don't negotiate with these people, you don't negotiate.

MR JAMIESON: Correct.

CHAIRPERSON: That was a very significant qualification and the penultimate paragraph is significantly misleading because that qualification is not there. Isn't that right?

MR JAMIESON: Well who would have come back to whom there? As I explained my interest there was about the -

CHAIRPERSON: This is a –

MR JAMIESON: If I can finish –

CHAIRPERSON: Yes sorry, yes please carry on.

MR JAMIESON: My interest in this was there was a work stoppage and how it might affect customers and deliveries.

CHAIRPERSON: Oh I understand

MR JAMIESON: So when they said you know

they'll come to us, you know Barnard went back out to work at his hot desk and I imagined that if they had any further things that they wanted to come back on they'd come back to Barnard. Why would they come back to me, you know? It's not my decision, Barnard's dealing with it. That's what this means, so don't get the impression that we were sitting there waiting for them to come back to us, we were intent on making another decision, I was focusing around that.

CHAIRPERSON: I'm not suggesting that, I'm not suggesting that, Mr Jamieson. But what the sentence suggests is the people on the ground at Marikana had a free hand and they didn't have a free hand did they? They didn't have a free hand on a significant area as to whether they could enter into negotiations of any kind. That must right.

MR JAMIESON: Agreed.

CHAIRPERSON: Okay.

MR GOTZ: Perhaps just to close off this point and it may be in fairness to you, can we look at EEEE19 which is the Lonmin log book? It's an entry for the 10th of August 2012 10:08 and the entry will be at 13:58.

CHAIRPERSON: What's the particular entry you want us to look at, Mr Gotz?

MR GOTZ: it's at the entry of 13:58,

CHAIRPERSON: Well that's on the previous –

MR GOTZ: It's at the bottom of the previous page.

CHAIRPERSON: There we go, yes.

MR GOTZ: Oh sorry, I beg your pardon.

CHAIRPERSON: It starts actually with debrief by GS.

MR GOTZ: It's on the next page, yes.

CHAIRPERSON: It's on the next page and it's quite a long entry.

MR GOTZ: The third line from the top you say or it said "Management can't make decisions sitting in the office. They must allow people on the ground to make a decision." Do you see that?

MR JAMIESON: Yes.

MR GOTZ: Now I mean obviously subject to what the Chairperson has put to you, it seems to be relatively clear that management did understand that they had some discretion or am I completely wrong?

MR JAMIESON: I think I'll make the distinction of which management are they talking about and which management is sitting in which offices and who are the people on the ground. So if you can explain that I can perhaps answer.

MR GOTZ: Let me return to the point at a later stage, this is something that I simply wanted to highlight for you.

MR JAMIESON: Okay.

MR GOTZ: I'm interested in a slightly different question, Mr Jamieson, and that's the fact that there seem to be at this stage a number of quite significant decisions that are taken, including members of EXCO and therefore by Lonmin itself for which there are absolutely no records or no minutes of that decision. And the decision not to engage with the strikers at this moment is one of those decisions, correct?

MR JAMIESON: So which question are you asking me, that there were not records taken or there was a decision?

MR GOTZ: There are no records of this decision that we've been talking about, the decision not to engage with the strikers.

MR JAMIESON: Well it was an ad hoc call as I understand it and on ad hoc calls you don't take minutes or keep records.

MR GOTZ: Another important decision was taken virtually at the same time and that decision was the one to apply to the Labour Court for an urgent interdict. That decision seems to have been taken by senior management

for which there is no record.

MR JAMIESON: There would probably be a record in the Labour Court.

MR GOTZ: No I'm talking about the fact that there is no minuted record of that decision.

MR JAMIESON: I don't there is any minuted records of the previous ones that we've taken as well. If you go backwards on previous unprotected strikes. It's almost like it's a procedure that swings into action every time it happens. The people at the mine phone our legal advisers and that process starts, I think they go hand in hand.

CHAIRPERSON: Mr Gotz, I take it in the Labour Court papers there'll be a founding affidavit and the founding affidavit I think we've actually got it somewhere, but we've got so many exhibits, I can't lay my hands on it immediately. We've certainly got the order and I think we've got the founding affidavit. The founding affidavit should have a paragraph indicating the authority of the deponent to the founding affidavit. And normally what happens, I don't know whether it happened on this occasion, you can perhaps tell us or someone else can tell us there was a normally annexed a copy of a resolution of the board or of some committee which with delegated authority from the board to institute this particular

litigation. So if I'm correct in saying that, then I assume that he's right that in the records of the Labour Court, as he puts it, there will be or should be or one would expect there to be a copy of a resolution taken by somebody, probably not the board. But I take it a body with delegated authority to institute those proceedings. Am I right?

MR GOTZ: Chair, I certainly haven't seen any, but I do stand to be corrected. Chair, I don't want to be making the point and I need to be clear about this, I'm not making the point that that decision was unauthorised either by way of delegated authority –

CHAIRPERSON: You're making a more general point-

MR GOTZ: Yes.

CHAIRPERSON: - that decisions where you say were quite important decisions of the EXCO, there's no paper backing them up –

MR GOTZ: Yes.

CHAIRPERSON: - which you would expect to be the case. I take it that's your point isn't it?

MR GOTZ: Yes indeed.

CHAIRPERSON: And the witness's answer on this particular one you put to him was to say well ad hoc decisions taken as a result of conference calls are not

recorded on paper. Is that correct?

MR JAMIESON: That's correct, Chairman, one qualification which is it wasn't an EXCO call.

MR GOTZ: Are you saying that wasn't a decision taken by EXCO to institute the application for an interdict?

MR JAMIESON: No my understanding – I think the question you asked was not to talk to the strikers was an EXCO decision. So that decision as you call it not to talk to strikers I think I've answered previously, my understanding and I'm not an HR expert, is that it's actually the default position, if someone is on an unprotected strike your first position is you don't talk to them. And especially as this was an escalation, this wasn't an isolated incident, a new incident. It was an escalation of had happened at Karee mine before. And as I described it in an analogy to Ms Pillay, was tantamount to someone of Mike De Costa's core, not like in the decision they got, they had no grounds for appeal. But they chose to march to the Appeal Court and demand to see anyone who was in the office to hear their appeal that there was no grounds for. That was the analogy I used with Ms Pillay and it's the analogy I will stick to. So the default position is you don't talk to them, it's not a decision that's affirmatively made by management, EXCO, board or

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anyone else.
CHAIRPERSON: Let's look at something a bit more direct than an analogy which may cause more darkness than light and that is you had a particular protocol which set out the standard way of dealing with unprotected strikes. That was, I would have thought, the default position and it's an exhibit. I take it Mr Gotz is going to come to it.
MR JAMIESON: It's a procedure that went up I think yesterday.
CHAIRPERSON: Yes and that actually talks about how you expect the unprotected strikers to form a grievance committee and you have negotiations with them and so on. One thing is absolutely clear that protocol does not say you don't negotiate with unprotected strikers, it says precisely the opposite, isn't that right?
MR JAMIESON: Correct.
CHAIRPERSON: So that's the default position surely.
MR JAMIESON: Well when that was put up yesterday, as I said, I wasn't aware of it and when I read Barnard's supplementary statement last night I presumed that all those things were actually discussed and that it's options were discussed and that that was what they'd come to. So when we talked on the call and the words were

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something like well we're not going to talk to them, no we're not going to talk to them. So you say that's a decision and I was part of it, I don't back away from that because I now see that that possibly there was a lot more discussed prior to that call which I wasn't party to, so I didn't know about it.
CHAIRPERSON: - Mr Gotz is making is you can't justify the decision on the basis of the default position, you've got to do it the other way around. You've got to say the default position was talk, we decided, you weren't a party to it, but you say there were previous discussions that you weren't a party to, but we decided, or someone before you decided that we wouldn't comply with the default position. I mean that's the true position isn't it?
MR JAMIESON: Yes.
CHAIRPERSON: But it must be.
MR JAMIESON: With the qualification I wasn't aware of.
CHAIRPERSON: Yes, yes, no, no I accept that.
MR JAMIESON: Part of the default, I'm aware of the default position –
CHAIRPERSON: Mr Gotz, sorry I'm interrupting you.

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MR GOTZ: No you've made the point I wanted to make, Chair. Can I move on then –
CHAIRPERSON: I'm sorry, I didn't intend to, -
MR GOTZ: Can I move on to a related theme and that's what arises from your supplementary statement of 3 September 2014 which I understand is exhibit VVVV3? Mr Jamieson, can you tell the Commissioners why you produced this statement? How did it come about that you produced this statement?
MR JAMIESON: I was asked by Fiona Lapan that there had been a request from the evidence leaders to explain Lonmin's position with respect to why we don't minute weekly EXCO calls and ad hoc calls and what have you. And the discussed ensued and I said why don't you get the company secretary to write that affidavit and what she said was that the company secretary is not going to give evidence, you are. It is not a big deal. It is perfectly explainable.
[10:11] Why don't you write and do the affidavit and answer questions on it which I'm quite happy to, and can.
MR GOTZ: Can I give you a little bit more background, see whether you know these facts because I think that they're relatively important. Lonmin initially provided the minutes that you see referred to in paragraphs

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2.2.2 through to 2.2.4 –
MR JAMIESON: Yes.
MR GOTZ: - of the supplementary statement. They've provided those minutes in heavily redacted form, only a couple of paragraphs of those minutes were in fact revealed to the Commissioners and the parties, correct?
MR JAMIESON: Yes.
MR GOTZ: As a consequence of a concern that there may be other relevant information, AMCU's legal representatives asked to have sight of the unredacted minutes, are you aware of that?
MR JAMIESON: No.
MR GOTZ: What happened then is that we went to inspect the unredacted minutes and it became clear from the inspection that there were certain documents which were referred to in the minutes which we had not yet seen. One of those sets of documents were board packs which we were then subsequently given access to and it also appeared to us from the last minute that there was a meeting of the executive committee that was scheduled for August of 2012 and we said, well, it may be relevant to have sight of that minute. Are you aware of that?
MR JAMIESON: Yes, I think I am. Fiona asked me, did that meeting take place and I said I don't

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1 think it did, not to my recollection. What we did after,
2 oh, probably from about the 19th onwards or something like
3 that, we actually just started to make minutes of all of
4 the meetings and that was at the instruction of the legal
5 department because the President had announced the terms of
6 the inquiry and it was deemed prudent, from then on we
7 should keep minutes.
8 MR GOTZ: I don't –
9 MR JAMIESON: When you refer to that
10 particular August meeting I think you're meaning the
11 monthly, regular monthly August EXCO meeting and I actually
12 can't remember, maybe it's in here, whether that occurred
13 or not.
14 MR GOTZ: It was scheduled, I think, to
15 occur on the 27th of August and so may have been caught up
16 in many of these other –
17 MR JAMIESON: Yes, ja.
18 MR GOTZ: - developments.
19 MR JAMIESON: There probably was no need
20 to actually have it because we were now having these almost
21 daily EXCO calls.
22 MR GOTZ: So what then happened, Mr
23 Jamieson, is that we were provided with the minutes of the
24 executive committee discussions which commenced on the 19th
25 of August and ran through to the, I think it's the 17th of

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1 September and those appear from pages 87 to 123 of your
2 bundle of documents which is exhibit VVVV1. Is that
3 correct?
4 MR JAMIESON: Correct.
5 MR GOTZ: But then it struck us that what
6 we had was a minute of the 19th of July 2012 and a set of
7 minutes commencing on the 19th of August for which there
8 seemed to be 20 minutes in the month running from the 20th,
9 the 19th of August through to the 17th of September and we
10 said to your legal representatives and to the evidence
11 leaders, but hang on, there's a month where there is
12 absolutely no record of any decision taken by Lonmin. Are
13 you aware of that?
14 MR JAMIESON: Am I aware of your
15 discussion on it or am I aware that there's no minutes?
16 MR GOTZ: Well, both.
17 MR JAMIESON: I'm not aware of your
18 discussion on it but I'm aware that there were no minutes
19 because there was no Commission during that time.
20 MR GOTZ: And so the reason for your
21 supplementary affidavit came about because you were
22 specifically requested by my learned friend Mr Budlender to
23 explain this apparent anomaly of a month having gone by
24 when we see minutes both prior to and subsequent to that
25 month, when despite the fact that there are important

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1 decisions having affected the company having been taken,
2 there are no records of those decisions. You were
3 requested, in the light of that, to attest to your
4 supplementary affidavit, correct?
5 MR JAMIESON: No, that's not correct.
6 MR GOTZ: What is incorrect in what I've
7 said?
8 MR JAMIESON: Mr Budlender didn't request
9 me, it was Fiona Leppan but I understand it came from the
10 evidence leaders, so that's the first thing. The second
11 thing is, we weren't requested to explain why we took no
12 minutes in a particular period. It was, why did we take no
13 minutes of ad hoc informal EXCO calls, which is what this
14 deals with and as I've already said, the reason for taking
15 minutes after the events on the 16th, starting from the
16 19th, was because the terms of reference of the Commission
17 had been announced and before that there were no terms of
18 reference of the Commission announced when we commenced to
19 take them from, at the advice of our legal department.
20 MR GOTZ: You understood that what you
21 were asked to address was why there was no documentary
22 record of any EXCO meetings or discussions, formal or
23 informal, during the period 20 July through to 18 August
24 2012, correct?
25 MR JAMIESON: Yes, that's correct.

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1 MR GOTZ: I'm not sure that your
2 statement actually addresses that question, Mr Jamieson.
3 In fact it evades that question. What we find in your
4 supplementary affidavit is no explanation at all as to why
5 those documents, why those decisions were not minuted.
6 MR JAMIESON: I can tell you now.
7 CHAIRPERSON: Go ahead.
8 MR JAMIESON: Well, there's no records
9 going back 10 years of any EXCO weekly informal calls.
10 Quite apart from that, the calls were instituted by Ian
11 Farmer when he became CEO, which would have been late in
12 August in 2008. Before that they didn't occur, so in Brad
13 Mills' time they didn't occur. Ian brought them in and we
14 had them pretty much every week from then on and they were
15 – the way I'd describe them is if you can remember the old
16 LA Law type soap opera where the partners would sit around
17 the table once a week or in the morning or whatever it is
18 and each of them would relate important things that were
19 going on in their areas. I mean on the TV it looked like a
20 five minute but I'm sure it was a bit longer than that and
21 that was the type of thing. It was a quick update, fast,
22 what's – if there were important decisions that I can
23 recall, they would be occasionally later minuted as part of
24 the monthly EXCO meeting. So Ian would say, look, we took
25 this decision on that call, I think it's important we

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record it. So you know, Peter can you record that along with the others? And I think you'll probably find, if you go back far enough you might find some instances of that. So where you're saying why was there no, specifically any minutes taken in the period 19th of July to 19th of August, the context is there were never ever any minutes taken of those meetings.

MR GOTZ: So what you're saying to us, as I understand it, is that despite the fact that there are important decisions that were taken, in particular during that week of the 9th of August through to the 16th of August, that there is no company record of the discussions that occurred and the ultimate decisions that were taken?

MR JAMIESON: There's no formal company record. I think what's been submitted is in a whole lot of e-mails that inform that time and I believe that in there are some notes that I took of probably two of the meetings, I think, and the reason for me taking those handwritten notes you'll see and then doing the notes for Simon and Roger is that when Ian was absent or Simon was absent, next person on the list to chair the meetings and take notes and then brief them was me. So I took those notes for that purpose.

MR GOTZ: Have you asked Mr Mokwena or has Mr Mokwena been asked, to the best of your knowledge,

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whether he took notes of any of the decisions that were taken?

MR JAMIESON: I don't know, no.

MR GOTZ: There certainly were meetings or discussions of an important nature that happened after the 10th of August, correct?

MR JAMIESON: yes.

MR GOTZ: You refer in your statement to meetings and discussions that happened on the weekend of the 11th and 12th of August.

MR JAMIESON: Correct.

MR GOTZ: At that, during those discussions it seems to us, reading from your statement, that an important decision was taken that you would be tasked with ensuring that police presence on the mine be increased dramatically, correct?

MR JAMIESON: Correct.

MR GOTZ: Sorry, perhaps we can just go to that paragraph of your witness statement just to provide us with context, it's paragraph 17 of your statement of the 17th, of the 7th of August and that's VVV2.

MR JAMIESON: Yes, page 7.

MR GOTZ: Yes, sorry, if you just – so you were designated to try to make contact with the DG of the DMR, correct?

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MR JAMIESON: Correct.

MR GOTZ: Was there a discussion about what the content of your e-mail to the DG should entail?

MR JAMIESON: I have to just go back one step, if I could, and just give you how that arose.

MR GOTZ: Sure.

MR JAMIESON: There was, I can't be specific but it appears to me that it was probably on a call on the 11th of August, which was the Saturday, there was a brief exchange on the call where I'd said to Frank Russo-Bello, how, in what way can I help, you know, is there anything you want me to do? And there had been some mention of a slow response from SAPS, they couldn't get the numbers they wanted on site, they were worried about that and I said perhaps, you know, I could draft a letter for Ian or something like that to a senior police officer and organise for him to sign it and send it off to them in some way, shape or form. That was a suggestion that was made. The guys at the mine said, no, don't do that, we don't want you to do that, leave that with us, there's a sort of protocol for escalating things with SAPS so we don't want to put people's noses out of joint or words to that effect. And I said what else can I help with or what about with the DMR, we'd had the MIGDETT meetings, I'd met the DG and therefore could we, you know, might that help? And they

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said yes, certainly if you can do that, that would be great. So during, between whenever that call was and before the call on the 12th I'd spoken to Barnard and spoken to Frank independently and from the security reports that were circulated by e-mail, just put this e-mail together. That's what happened and then I sent it off and on the call on the 12th kind of reported back, I'd done what I was asked to do and I'd circulated that e-mail around to the EXCO people as well, so that they could see what I'd done.

MR GOTZ: The next thing that you did as part of your initiative, and I understand that this may have been in consultation with Mr Farmer, was address a letter to the Minister of Minerals and Energy, Susan Shabangu.

MR JAMIESON: That's correct, yes.

MR GOTZ: Was there discussion relating to the content of that letter or was that something that you decided on by yourself?

MR JAMIESON: No, it was Ian so, and there was a discussion on that that I had with him and there's a few of the handwritten notes that you'll see that I submitted. There's some points there that Ian raised, he thought should go into the letter and thereafter it was circulated to him, to Roger and to the rest of the EXCO members to say, are you okay with this, this is what I've

sort of put together from all the notes and the calls and what have you. It was originally going to be signed by Ian, so it would have subsequently been sent over to him to sign and then sent on but right in – two things occurred in the formulation of that letter. One is that we became aware that the police officer had been killed, well, at the time I didn't know, I thought it was one striker but it ended up that there was, I think three that were killed in that altercation. So that caused some revision to it and the second thing was that Ian was hospitalised and said, and therefore he couldn't sign it. That was, it actually took quite a period of time, a longer period of time than we wanted for that letter to get there.

MR GOTZ: You've answered my question, Mr Jamieson, which was effectively that this was something that was circulated to the EXCO members and effectively signed off by all members of EXCO, even though you were the signatory on the document itself.

MR JAMIESON: Yes. I can recall I think I probably sent it around and said, you know, this thing is late already, please try and get back with any comments as soon as you can, if you don't then I'll assume that you're happy with it and I'll send it off.

MR GOTZ: It appears to us reading between the lines, and you must forgive me, Mr Jamieson, if

we had a proper documentary record of decisions taken and discussions, probably a lot of this would be unnecessary but it does seem to us that around that time you became quite concerned, indeed all members of EXCO became quite concerned about what could be called appropriate messaging. It's a term that you use. My learned friend Mr Mpofu would probably call it spin, but in your terminology it would be regarded as appropriate messaging, correct?

MR JAMIESON: Correct. Was that to do with Ian's condition?

MR GOTZ: Well, Ian's condition being one of them but another aspect of that appropriate messaging was that the situation should be characterised as not being an IR issue, correct?

MR JAMIESON: Correct, yes.

MR GOTZ: I don't want to take you in great detail to the topics because they have been dealt with in some detail by other parties but just to perhaps summarise what the position is or was at the time. As I understand it, there was a concern amongst members of EXCO but particularly you, that consistent and appropriate messaging should be sent out to players who could have some influence over the situation and that message that was sent across was that this should not be characterised as an IR issue, correct?

MR JAMIESON: That's with one correction. I think we've dealt with this at length. When you said members of EXCO and particularly me, the way it started was it was particularly the people at the mine on the ground and non-particularly me but I was tasked to escalate it because they thought it would be helpful, but I won't back away from the fact that I agreed with their concern and also with the characterisation, but we keep coming back to this insistence or however you want to characterise it, or obsession, and that's just not the case, it's not true.

MR GOTZ: Please don't be concerned about that. I'm not concerned whether it's an insistence or an obsession, I'm simply interested in establishing the facts, that it was part of the appropriate messaging and I think you've answered it fairly, was part of the appropriate messaging by Lonmin, by Lonmin EXCO, that this not be characterised as an IR issue and I think you've answered that, Mr Jamieson.

MR JAMIESON: Yes, it was important to characterise it as violence.

MR GOTZ: No, Mr Jamieson, sorry. I don't want to fence with you. The important messaging was partly that but it was to characterise it as not being an IR issue, correct?

MR JAMIESON: No, it's not the important

messaging. I thought you said it's the appropriate messaging and the appropriate messaging for this head of the double-headed nature of the situation was that it was violent, it was not an orderly situation, there was killings and murder. That was what was happening on that particular issue. There's another issue which is a labour dispute and that should be characterised differently.

MR GOTZ: Mr Jamieson, let's see if we can cut through this. You would agree with me that the genesis of the situation that you were experiencing at Lonmin in that week of the 9th of August through to the 16th of August was effectively a wage issue, correct?

MR JAMIESON: No, no, not correct and I wouldn't agree with you and I didn't agree with Mr Mpofu either. I don't think you were here yesterday or maybe you were.

MR GOTZ: Well, I'm not sure that Mr Mpofu dealt with this in great detail. I'm –

CHAIRPERSON: Mr Mpofu did deal with it in fair detail and there were these analogies which we may ultimately find not to be helpful, about hybrids and Hydras and, you know, mules and Siamese twins and all this kind of thing and then I introduced another one which is a sort of two-pony cart, I think. I preferred now, this morning I thought about a two-pony carriage and the one pony was the

1 labour dispute pony and the other one was the criminal
2 activity pony. Anyway we went into that in some detail, we
3 don't have to go into that again. It was bad enough
4 yesterday. It would be painful to do it again today.
5 [10:31] If there are points you want to ask about it may
6 I suggest you ask them after tea, unless you prefer to
7 round off before we take the first tea adjournment? I'm in
8 your hands.
9 MR GOTZ: No, let me continue after the
10 15-minute break. Thank you, Chair.
11 CHAIRPERSON: Right, 15-minute break.
12 May I ask you, sorry, I know you've got two hours, you said
13 you probably wouldn't need more than one. I think it's
14 important for Mr Burger to know how long after the tea
15 break do you think – I know it depends on interruptions
16 from me and long answers from the witness and so on, but
17 factoring that in, can you give us a kind of a forecast as
18 to how long you're likely to be?
19 MR GOTZ: Chair, given the revelations
20 that Mr Mpofu dealt with extensively, the topic
21 extensively, I'm not sure that I need more than 15 minutes
22 to wrap up now.
23 CHAIRPERSON: I take it Mr Burger will be
24 grateful for that information. We'll now take the first
25 comfort break.

1 [COMMISSION ADJOURNS COMMISSION RESUMES]
2 [10:58] CHAIRPERSON: The Commission resumes.
3 You're still under oath, Mr Jamieson.
4 ALBERT JAMIESON: [s.u.o.]
5 CHAIRPERSON: Mr Gotz.
6 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
7 Thank you, Chair. Mr Jamieson, I'd like to try and deal
8 with this as quickly as possible and what we were debating
9 before the adjournment was the various decisions that were
10 taken. It seems to us that on the weekend of the 11th or
11 12th of August 2012 a decision was taken by EXCO that what
12 was needed at Lonmin Mine was a massive police and possibly
13 also army presence in order to deal with the situation,
14 correct?
15 MR JAMIESON: No, that's not correct.
16 MR GOTZ: Mr Jamieson, sorry, if I'm
17 incorrect in something perhaps you can just explain why I'm
18 incorrect rather than waiting for the follow-up question
19 which says, why am I incorrect.
20 CHAIRPERSON: The question is
21 predictable. If you say it's incorrect then it's immoral
22 to bet upon whether the next question will be in what
23 respect was it incorrect, because it's immoral to bet on a
24 certainty.
25 MR JAMIESON: Sorry. I'm used to some of

1 the other cross-examination.
2 MR GOTZ: Proceed.
3 MR JAMIESON: What's incorrect with that
4 is it wasn't an EXCO decision.
5 MR GOTZ: Well I mean certainly you had
6 various EXCO discussions about what needed to be done,
7 correct?
8 MR JAMIESON: No, we had these calls
9 actually had some EXCO people on them and management people
10 on them, so I wouldn't label them as EXCO calls or EXCO
11 decisions. They were simply ad hoc calls with people on
12 them who were involved or who had an interest.
13 MR GOTZ: Mr Jamieson, you in your
14 statement refer expressly to EXCO having agreed to task you
15 to do various things –
16 MR JAMIESON: Yes, in agreement by EXCO.
17 The EXCO –
18 MR GOTZ: That was the decision, correct?
19 MR JAMIESON: The EXCO members on the
20 call. I think it's a better description.
21 CHAIRPERSON: Ja, but you know, that's
22 again, that's a bit of a theoretical distinction for me.
23 If all the members of EXCO in the course of a conference
24 call agreed on something then even though it wasn't
25 formally recorded in any way, and even though it wasn't a

1 formal EXCO meeting, it was effectively a decision of EXCO,
2 wasn't it, if they all agreed and –
3 MR JAMIESON: Well, the CEO –
4 CHAIRPERSON: - accepted that the matter
5 was going to proceed on the basis of what they'd agreed
6 would be done. So it's the equivalent of an EXCO decision,
7 isn't it?
8 MR JAMIESON: The two executive directors
9 weren't on the call. There were some people missing and
10 there were some stand-ins. That's really the only
11 distinction I'm making, and there was additional people. I
12 mean I won't split hairs on it, if you want me to put it
13 that way.
14 MR GOTZ: That's fine –
15 CHAIRPERSON: And if somebody tried to
16 take the point later that that wasn't a valid decision,
17 binding on Lonmin, because it wasn't the EXCO that so
18 decided they wouldn't get anywhere, would they?
19 MR JAMIESON: I doubt it.
20 MR GOTZ: And the point was that what
21 EXCO members, let's put it as low as that, what they wanted
22 was a massive police or army presence on the mine, correct?
23 MR JAMIESON: Yes.
24 MR GOTZ: You were tasked with securing,
25 or writing various emails, inter alia to the DG, in order

to make that proposal, correct?
MR JAMIESON: Only to the DG.
MR GOTZ: Your objective was to ensure, as you put it, "a massive police and possibly army presence in order to stop us having a repeat of recent past experiences on nearby," and then I assume you mean mines.
MR JAMIESON: Yes, that's correct.
MR GOTZ: So that's correct?
MR JAMIESON: Impala and Aquarius.
MR GOTZ: And after discussions with the various EXCO members you made a very similar proposal to the Minister of Minerals & Energy, Ms Shabangu, correct?
MR JAMIESON: That's correct, and it was a sort of promise from the email to the DG that we'd follow up the next day with, you know, a bit more detail, a bit more accurate reflection of what had happened.
MR GOTZ: The objective of your letter to the Minister was in order to persuade her that what was necessary was for the State to bring, as you put it, "its might to bear on this crucial sector of the economy using resources at its disposal to resolutely bring the situation under control," correct?
MR JAMIESON: Correct.
MR GOTZ: That letter was written in the morning of the 13th, or the afternoon of the 13th of August

2012.
MR JAMIESON: Correct.
MR GOTZ: By the 14th of August it would be correct to say that those objectives of having a massive police presence on the mine had largely been accomplished, correct?
MR JAMIESON: Yes.
MR GOTZ: It then seems to us that the objectives of various members of the EXCO changed and they must have changed in the late afternoon of the 14th of August because we see the objective being reflected in emails and conversations that were recorded very shortly after that period, after the afternoon of August the 14th, and I'm referring here inter alia to a discussion that your colleague Mr Barnard Mokwena had with the Provincial Commissioner in the evening of the 14th of August. I don't want to take you there –
CHAIRPERSON: I think you'll find it was about 2:30 in the afternoon actually. You may remember – were you here yesterday? – when I examined the National Commissioner I put to her that she'd had a telephone conversation with the Provincial Commissioner while she was with Mr Mokwena and in fact her side of the conversation is recorded in the transcript, and we traced that call to the, from an exhibit which gives all the phone calls of the

National Commissioner on that afternoon to, I think it was 2:38 in the afternoon. So that enables us with more or less precision to fix at what time that conversation took place.
MR GOTZ: Thank you, Chair, I'm indebted, and so I must adjust my time slightly, just to back up a little. By the 14th of August the objective of having a massive police presence on the mine had been accomplished, correct?
MR JAMIESON: Yes, and that was, you know if you go back to your purpose, I'd suggest that that had occurred because of the death of the police on the Monday. That was the main thing that accelerated it.
MR GOTZ: It seems to us that a discussion must have happened between EXCO members, including you and at least Mr Mokwena, where what was discussed was what happens next, and that must have happened just prior to the meeting between Mr Mokwena, various other Lonmin people and the PC in the afternoon of the 14th of August.
MR JAMIESON: I don't know. I'm not sure, and when you say what happens next, if you're referring to the second bullet in the email to Cyril, that was, from my perspective was a discussion I'd had with Roger Phillimore, trying to, you know, to stay one step

ahead and start to think, well, the police are there now, they've had some success in restoring law and order, if you like, because things had quietened down, which was great. The next thing we need to ensure is that they stay there, they don't go away by the weekend because we could have a reversion to the events that we had from the previous weekend. So if you're referring to next steps, that was the next step discussion I had with Roger. I think that was probably just a call to him, but I know that in an email he sent out to the board he also mentioned that in an email he put to the board as well.
MR GOTZ: Now Mr Jamieson, really, I don't have the – I wish I could, but I don't have the time to take you through the transcript of the meeting between Mr Mokwena and the Provincial Commissioner. I have no doubt that that will be dealt with in depth with Mr Mokwena himself, but we do want to note just at this point that this "what happens next" decision seems to have, be reflective in the statements that he is making to the Provincial Commissioner as well, and it is indeed, as you've correctly identified, precisely the point that you make in the second bullet point of your email to Mr Ramaphosa, and perhaps we can go there. It's page 34 of the bundle of documents, VVVV1.
MR JAMIESON: Yes. On the point of a

call, I'm fairly certain that there was no further EXCO call between Tuesday and it would have been around lunchtime. They were generally around lunchtime. There was no further call until the Wednesday, so you'll see some notes from me, handwritten notes which apply to a call that we had on Tuesday. There was no further notes to that, so I would, I'm fairly certain there was another call but that was on the Wednesday Roger Phillimore and Simon Scott arrived and Mahomed, Mahomed didn't come to Melrose Arch, he went straight to the mine, and the next discussion we had was what I referred to, you know, on the Wednesday when I briefed Roger and Simon and then they phoned various, the other various members of EXCO who were at the mine. But I don't, your question was, was there another call or was there some EXCO changed its mind, that was –

MR GOTZ: No, Mr Jamieson, that is good enough for me.

MR JAMIESON: Okay.

MR GOTZ: What you're confirming is that there was indeed a discussion around lunchtime on the 14th of August with the EXCO members.

MR JAMIESON: Tuesday, yes, and that's reflected in a –

MR GOTZ: Tuesday, yes indeed.

MR JAMIESON: Yes.

MR GOTZ: Tuesday the 14th of August there was a call, a discussion, and perhaps various decisions taken at lunchtime on the 14th, Tuesday the 14th of August.

MR JAMIESON: There's some hand – those handwritten notes that I've submitted is part of the minutes. That's that call.

MR GOTZ: The second bullet point reflects the "what happens next" decision because what it says is, "Our next challenge," after the bullet point, "We are grateful the police now have circa 800 on site." So your initial objective has now been accomplished, and you go on to say, "Our next challenge is sustaining this and ensuring they remain," and then the important point, "and to take appropriate action so we can get people back to work."

MR JAMIESON: Yes.

CHAIRPERSON: It will be helpful if you read the next sentence. "It would be good to have some independent confirmation the police have plans to sustain a presence for at least a week and numbers don't wane by the weekend."

MR GOTZ: Yes, so what –

CHAIRPERSON: But obviously the question that you asked still has to be answered, what was meant by appropriate action.

MR GOTZ: Yes, indeed. We see the second sentence as being a, in a sense qualifying the first point that is made, "Our next challenge is sustaining this and ensuring that they remain." But there seems to be this additional element, which is "They need to take appropriate action so we can get people back to work," correct?

MR JAMIESON: Yes.

CHAIRPERSON: What appropriate action did you have in mind?

MR JAMIESON: Well, restore law and order was number 1, stop the killings and create an environment in which it was then conducive where we could start to address the other head of the, whatever you want to call it, which was the labour dispute, to get back to that then.

MR GOTZ: Well, Mr Jamieson, has that not already been accomplished by the fact that you have circa 800 members on site? Can I ask you to look at page 23 of that bundle?

MR JAMIESON: Well, before we go there, I'd agree with you; in the first line of the email it said "Thankfully last night was relatively peaceful" –

MR GOTZ: Yes, indeed.

MR JAMIESON: - "as is this morning."

MR GOTZ: Yes, indeed, and the document at page 23, which is really a summary which was drafted by

Tanya –

MR JAMIESON: Yes.

MR GOTZ: - simply makes the point as well that you're now on a point of relative calm and peace.

MR JAMIESON: 23, did you say?

MR GOTZ: Yes, it's 23 of the bundle.

MR JAMIESON: Yes.

MR GOTZ: And it's paragraph 2, "The situation was relatively peaceful overnight with no reported instances of unrest," and then various other points which make the, which illustrate the point that you're satisfied that police presence has accomplished your objectives.

MR JAMIESON: Yes.

MR GOTZ: So I put it to you again, Mr Jamieson, what "take appropriate action" means must be something different from restoring peace.

MR JAMIESON: No, it's, I mean when I say relative, relatively peaceful, that means there was no further killings. There were still elements of intimidation and what have you going on and therefore they had to sort of flood the area and make sure that that was sustained and continued. So I wouldn't, when I say it was relatively peaceful, I would put it in the context that we had 10 people in the morgue.

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CHAIRPERSON: The second line of that email talks about the people at Eastplats, I think it is, I haven't got it in front of me, but –

MR JAMIESON: Yes.

CHAIRPERSON: - who were keen, who wanted to go back to work but would only go back to work, could only reasonably be expected to go back to work if there was adequate protection. I think I'm correct in saying, am I not, that Mr Langa worked at Eastplats? Am I right? Is that right?

MR JAMIESON: I don't know, Mr Chairman.

CHAIRPERSON: Is that right? Yes.

MR GOTZ: Yes.

CHAIRPERSON: Mr Langa on the Monday morning had been on his way to work to Eastplats and he was murdered by, viciously murdered, 3 o'clock in the morning. So I could understand NUM people who were happy to go to work at Eastplats say we'll go, but we're not going to go if there's any chance that we'll go down the same route that Mr Langa did and suffer the same fate. So some kind of action would have been required –

MR JAMIESON: Yes.

CHAIRPERSON: - which would have been appropriate, I would assume, to make sure that people at Eastplats who want to work can go to work and come back

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from work without suffering the fate of Mr Langa. Is that the kind of thing you had in mind?

MR JAMIESON: Yes, Mr Chairman, you'll remember also my explanation from the handwritten notes that Mark Munroe had said if we can just get, you know, Eastern Plats for instance secured and we can get some police presence there and we talked about the bus stops and perhaps we could get a shaft or two going there, that was yesterday I think.

MR GOTZ: Mr Jamieson, I would like to put to you that what you mean by "appropriate action so we can get people back to work" is that SAPS takes some pointed action that will effectively break the strike. That is what you meant by "taking appropriate action so we can get people back to work."

MR JAMIESON: No, that's not correct. It's far from the truth.

MR GOTZ: You see –

CHAIRPERSON: Isn't that at least partly correct what Mr Gotz puts to you, that people from Eastplats who wanted to work but were afraid that they'd be killed if they tried to go to work, they were as it were participating in the strike, albeit passively and unwillingly. Is that right?

MR JAMIESON: Yes, yes.

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CHAIRPERSON: Right, and so the strike would be "broken" at least in part if they were enabled to go to work without fear of fatal or semi-fatal consequences and that is something that you would have achieved if the police had been able to restore law and order to the extent that it would be safe for those people to go to work. It wouldn't have been a total breaking of the strike because those who were voluntarily participating in the strike, who didn't need any intimidation to do so, would have continued striking, so the strike would have continued to that extent, but that part of the strike which was involuntary would presumably have been brought to an end. So Mr Gotz is right, is he not, in saying that at least partial breaking of the strike in the way I've explained is something that you wanted?

MR JAMIESON: Well, in the letter to the Minister on the Monday I think the way that we reflected it was that it's every citizen's right to go back, going to work as they choose. It's the police's responsibility to make sure that there's law and order in place to have them do that. So while you say, you know, particularly Eastern Platinum, the distinction I could draw is it should have been –

CHAIRPERSON: I put just that as an example.

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MR JAMIESON: It should be anyone, anywhere, any citizen who wants to come to work should be free to do so.

CHAIRPERSON: Even foreign people as well, like people in Lesotho and elsewhere who weren't citizens would also be covered by that.

MR JAMIESON: Ja.

CHAIRPERSON: But the point is, you see, there are various ways the police could break the strike, to use that word in quotation marks. They could break it simply by creating a safe environment for those who wanted to go back to work to go back to work. They could also have gone further of course - it wouldn't have been appropriate, it would have been singularly inappropriate, but they could have also broken the strike by as it were forcing even the willing strikers to go back to work. Is that what you had in mind as well?

MR JAMIESON: No, I had the former in mind, which is in that goes back to the letter to the Minister, it really echoed that, and again don't forget that – I won't say the real reason, but a reason in this email was "Please, Mr Ramaphosa, can you put pressure on the Minister to talk to us?" If she'd talked to us we would have referred to the letter, and it was a letter I refer to with the DG and the conversation with him on the

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Tuesday, and said we need the Minister to get involved because only through her involvement do we think that we'll get the relevant parties together who can resolve this on the labour dispute issue, not the violence issue, and not only for her to get involved, but to denounce the violence which, you know, I was angry she didn't do, but also understand the drivers, what is going on here, because you know, it was clearly beyond us to understand the dynamics, the total dynamics of the situation, and only through someone in a position where you would think that she would have so influenced to get the relevant parties together would we get to the bottom of this.

[11:17] MR GOTZ: Mr Jamieson, there are two indications that you are quite wrong and that you did understand and you indeed meant when you said take appropriate action so we can get people back to work, that you meant that SAPS should take some pointed action which would have the consequence of breaking the strike and I'd like you to first of all refer or first refer you to page 24 of that bundle. This is an e-mail that you write on the evening of the 14th of August 2012 at 6:23PM and bear in mind that this is immediately following the meeting that Mr Mokwena attends with the Provincial Commissioner. First of all, you express the sadness at the discovery that a tenth person has been killed behind the koppie and you then say,

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and this obviously I think can only have meant an understanding of what was following the meeting with Mr Mokwena and the Provincial Commissioner, "The police are commencing their operation as outlined to us earlier to try to break the back of the situation and I'll get an update later this evening." Now you use the words "break the back of the situation." Mr Jamieson, you may as well have used the words "break the back of the strike," correct?

MR JAMIESON: No, it's not correct. If I – two things. The police commencing their operation was the operation as outlined to us earlier and if I was to take you to, again to the handwritten notes of the call which is number, page – sorry, page 72. So this was on the Tuesday on the call, Mark had outlined what, in essence, was the police's plan, I think here you'll see. So it's the fourth bullet that says, "A strategy of overwhelming force, hard shell helicopters, air force and take out enough officers to disarm everyone peacefully." So that was the description that was given on the call and when I refer to the operation, it's that that I'm referring to and according to your timeline the conversation with Mbombo happened after this.

MR GOTZ: No, according to my time – well, yes –

CHAIRPERSON: [Microphone off, inaudible]

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– the conversation between Provincial Commissioner Mbombo and Mr Mokwena took place, according to what we ascertained yesterday with precision, took place round about 2:38PM early in the afternoon. Of course whether that was, you were in communication at all with Mr Mokwena after that, you know, is something that we, I'm not sure about.

MR JAMIESON: It's referenced from this call and these notes.

MR GOTZ: And then reflecting on the nature of the police operation you got –

CHAIRPERSON: Sorry, I'm sorry, before you - he was also, I think, going to say something about break the back. He said he was going to – I think I'm right in saying he wanted to deal with the, what "as outlined to us earlier" meant, which he's now done. Were you also going to say something about break the back or did I misunderstand?

MR JAMIESON: Ja, I mean break the back was just a colloquialism. It may have been used, the words used by Mark on the phone or not, that I didn't write down, but that was, that was the essence of it.

CHAIRPERSON: What did that mean?

MR JAMIESON: Well, it meant to commence the plan that they had said, that they were going to, you know, peacefully disarm the strikers. If that had

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happened, of course, that started the possibility of then us looking at the issue of the labour dispute.

MR GOTZ: Mr Jamieson, I think that's good enough for me but I just wanted to point out as well that in the last line of that e-mail you say, "we are glad about the police operation." You say, "Although we are glad about the police operation, there is always the worry that it goes wrong" and what I want to put to you is that that reveals that you foresaw that something could go wrong and there might be injuries and possibly even deaths as a consequence of the police operation.

MR JAMIESON: Yes, well, what Mark had said on the phone was, you know, we have to be worried here that this is, you know, maybe 2 or 3 000 people who are armed, you've got a lot of police on site who are also armed and whilst there's a plan in place that the police have, which is the police's call, it's not ours, that sounds like a situation where things might go wrong where you've got an angry group of people who are armed and one other group who's intent on taking the arms off of them. It's clearly a situation has got the potential to go wrong, but you would think that the police had covered those eventualities.

MR GOTZ: I said there were two indications that you were talking about appropriate action

in the sense of the police acting in a more pointed way to break the strike. You will recall that Mr Ramaphosa responded to your e-mail of the 15th of August 2012 in the afternoon of the 15th August. He wrote his response at 3:13PM or a response on 3:13PM and you'll find that at page 47 of the bundle of documents. Sorry, I beg your pardon, your response to Cyril is at 3:13PM and you'll see Mr Ramaphosa's e-mail halfway down the page. It appears to have been sent at 2:58PM. You say, he says to you as well as other members of EXCO, "I have just had a discussion with Susan Shabangu in Cape Town." And then he makes three points and what I want to say to you is that those three points in fact correspond to your bullet points of the e-mail that you write in the morning of the 15th of August. So 1) is really a response to your first bullet point. He says, "She agrees what we are going through is not a labour dispute but a criminal act. She will correct her characterisation of what we are going through." He then says in 2) and I think it's reasonably obvious that he's talking about your second bullet point, "She is going into Cabinet and will brief the President as well and get the Minister of Police, Nathi Mthethwa, to act in a more pointed way." Now Mr Jamieson, we will certainly argue that when he says he will, that Minister Shabangu agrees that she will get Police Minister Nathi Mthethwa to act in

a more pointed way, that is a direct response to your concern expressed in your earlier e-mail that the police need to take appropriate action so that we can get people back to work. Would you agree with that?

MR JAMIESON: No, I wouldn't agree with that and I wouldn't know because you'd have to talk to Mr Ramaphosa. He also says that she will be in Johannesburg by 5PM and would be able to speak to Roger and that didn't happen either.

MR GOTZ: And that's why I say it's in fact a response to your e-mail because you'll see just below your second bullet point that he's talking about trying to get the Minister to talk to Roger.

MR JAMIESON: Yes.

CHAIRPERSON: So what this says, "Let's keep the pressure on them to act correctly." So it doesn't seem to indicate any intention to get them to act incorrectly.

MR GOTZ: But in the context, Mr Jamieson, what would acting in a more pointed way or more appropriate action be taken so we can get people back to work, what else can that mean but take action which would have the effect of breaking the strike?

MR JAMIESON: I don't know. I don't know what those words mean.

MR GOTZ: And we will argue that if one has regard, inter alia, to the Provincial Commissioner's disclosures to the press on the morning of the 16th, very shortly after the 15th, she understood – she calls it a slip of the tongue but she understood that what the operation was intended to do was to break the strike. Would you like to comment?

CHAIRPERSON: Can you – I don't know how the witness can answer that really. Can you answer that?

MR JAMIESON: I actually wasn't aware of the press conference, I mean –

CHAIRPERSON: No, after she made a media statement at 9:30 where she said they, if the arms aren't laid down we're going to deal with the situation, dispose of it today, she then had an interview with ENCA which is also before us in the form the video clip and in that she used the expression, "we're going to break the strike." She was questioned about that and she said it was a slip of the tongue. She, however, also said she didn't do anything to correct it but that's the point Mr Gotz is making but I don't know whether you, a) were aware of it and b) even if you were, whether you can throw any further light on it.

MR JAMIESON: I was neither aware of it nor can throw any further light on it.

MR GOTZ: Mr Jamieson, thanks very much.

Those are our questions, Chair.

CHAIRPERSON: I'd like to ask one question, if I may. Can we go back to the e-mail which deals with the two concerns, the one that you sent off early in the morning after you'd heard the Minister on the radio. I can't remember the exhibit number but perhaps Mr Gotz can tell me. Mr Gotz, what's that?

MR GOTZ: Sorry, the two concerns are page 34, you'll find –

CHAIRPERSON: Thank you, thank you.

MR GOTZ: - on 37.

CHAIRPERSON: Now you see you talk about two areas of concern. The second one is that you wanted to make sure that the police sustain their presence and remain and take appropriate action. That you've been questioned about. And you go on to say, "It would be good to have some independent confirmation that the police have plans to sustain a presence for at least a week and numbers done wane by the weekend." Now, actually there are really two questions I want to ask you about. The first is, does that indicate that you didn't envisage any action by the police, decisive action by the police to take place the next day?

MR JAMIESON: When you say decisive –

CHAIRPERSON: You sent this on the Wednesday morning.

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MR JAMIESON: Yes.
CHAIRPERSON: We know the police took decisive action, what they call their tactical option, on the Thursday afternoon with cataclysmic results. The question that I'm asking you is, you say here you want to have confirmation that they have plans to sustain a presence for at least a week.
MR JAMIESON: Yes.
CHAIRPERSON: Did you envisage them doing any decisive the next day?
MR JAMIESON: Well, I didn't envisage them certainly doing what happened.
CHAIRPERSON: Did you –
MR JAMIESON: What I was aware of is what's in the handwritten notes, what was related –
CHAIRPERSON: Yes, yes, I understand but you wanted them to sustain a presence for at least a week.
MR JAMIESON: Yes, because I mean what we envisaged was happening and what I envisaged was happening was that they'd come on site, restore law and order, but what you don't want is you don't want a reversion then by the weekend or thereafter, so you need a large sustained presence. It's a 35 kilometre mine strike –
CHAIRPERSON: Yes, yes –
MR JAMIESON: - in order to do that.

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CHAIRPERSON: Alright, thank you. Then the second – thank you, that's the first point. The second point relates to, the second area of concern is in the first bullet. You were concerned about what the Minister had said, Minister Shabangu.
MR JAMIESON: Yes.
CHAIRPERSON: That this was a wage dispute, management and the unions should sit down, and you've explained that. You did say it was too damaging but also wasn't too helpful. Did you fear that her remarks and her, quote, "characterisation," unquote, might cause the police to reduce the numbers on the site and not to sustain their presence in the way in which it was on that day?
MR JAMIESON: Yes, most certainly because she didn't condemn the violence and she didn't refer to it, not in the bit that I had. So when, as I said this point at that time was passé, the police were on site, they'd started to have an effect, we wanted them to stay on site maybe for weeks because we had in mind the Impala disturbance and that went on for six weeks. So her being, it's not too helpful when she doesn't refer to that in the mind of, well, you know, it's now fixed or there's no condemnation of that. So I certainly, ja, that was not helpful. It was also not helpful for her to not condemn the violence.

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CHAIRPERSON: But the point I'm asking you, did you think or did you fear that her remarks might have encouraged the police to slacken their activities and remove some of their people and no longer, quote, "sustain their presence," unquote.
MR JAMIESON: Yes, but I mean it was that plus the fact that she hadn't condemned the violence and you know you don't want to put it into the minds of people that this is just a labour dispute, it's the two things.
CHAIRPERSON: Yes, yes, I understand. Thank you. Mr Burger, I understand you were going to take responsibility for the re-examination of the witness, if any.
RE-EXAMINATION BY MR BURGER SC: Yes, I only have one question arising from what happened in the last half an hour. Mr Jamieson, will you go to page 24 of your bundle, please?
MR JAMIESON: Yes.
MR BURGER SC: That's your e-mail to the members of the EXCO of the 14th of August 2012 at about 6:20 that afternoon and if I read with you the second sentence you say, "The police are commencing their operation as outlined to us earlier to try to break the back of the situation and I'll get an update later this evening." You've explained to us where you get the "as outlined to us

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earlier from." What I want to ask you is, we know now that on that afternoon at about 2:38 there was a discussion between Mr Barnard Mokwena and General Mbombo. Did you know about that discussion at the time when you wrote this e-mail?
MR JAMIESON: No.
MR BURGER SC: Thank you, that's all, Chair.
CHAIRPERSON: Thank you. Can the – do you want me to excuse the witness?
MR BURGER SC: Yes, we do not have an objection. We don't need to ask any further questions.
CHAIRPERSON: Mr Jamieson, you'll be excused from further attendance. If it's necessary for us to get you back, I think it most unlikely but if it's necessary for us to get you back, will you undertake to come back without our having to serve a subpoena on you?
MR JAMIESON: Yes, certainly.
CHAIRPERSON: Thank you. On that basis you're excused.
MR JAMIESON: Thank you.
[NO FURTHER QUESTIONS – WITNESS EXCUSED]
CHAIRPERSON: [Microphone off, inaudible] to adjourn, or are you just going to call your next witness?

MR BURGER SC: We're ready to proceed, Chair. Chair, the next witness is Mr Mahomed Seedat and while he goes to the witness box, may I explain the paper to you? He is going to speak both to phase 1 and to phase 2 but because he's giving evidence on phase 2, that generated a lot of paper and having discussed it with my colleague, Ms Pillay, we propose to lead him on phase 2 out of five lever arch files. I've asked my attorney to make available to each of the members of your Commission hard copies of this in the course of tonight or tomorrow morning but they'll be available on the screen. I intend to lead him out of the hard copy, that's just a function of my age and I've agreed with my learned friend that we'll call this the phase 2 series which is SSSS and if we may have as SSSS1 the small document which is headed "In the Marikana Commission of Inquiry documents, Mahomed Seedat, theme 1." It's a file of paper running to some 77 pages.

As the second exhibit, it will be exhibit SSSS and that will have volumes 1 to 5. This would have the files that I'll be referred to and then there's a one page document as SSSS3 which is a cash flow of Lonmin during the relevant period and I'll address that in the context of phase 2 with the witness. So far the administration –

CHAIRPERSON: What is the relevant period? How do I describe the exhibit?

MR BURGER SC: That exhibit is a cash flow for the period, we've taken it from 2000 to 2013.

CHAIRPERSON: Yes, any other exhibits?

MR BURGER SC: Not at –

CHAIRPERSON: Let me just read that back to you to make sure I've got it right. SSSS1, I've headed, I've written down as "Mahomed Seedat: scene 1."

MR BURGER SC: Theme 1.

CHAIRPERSON: Sorry, theme 1. Theme 1? Oh sorry, theme. Just as well I read it out to you. "Theme 1." SSSS2 –

MS PILLAY: Chair, it's phase 1.

CHAIRPERSON: Oh, it's phase 1. Well, third time lucky. "Mahomed Seedat: phase 1," close quotes. SSSS2 is volumes 1 to 5 and SSSS3 is cash flow of Lonmin during period 2000 to 2013.

MR BURGER SC: Thank you, sir. You may want to swear the witness.

CHAIRPERSON: Would you stand, please, Mr Seedat? Are you prepared to take the oath or do you, would you prefer to make an affirmation?

MR SEEDAT: No, I'll take an oath.

CHAIRPERSON: Do you swear the evidence you'll give in this, do you swear the evidence you'll give before this Commission will be the truth, the whole truth

and nothing but the truth. Would you raise your right hand and say, I swear, do you say I swear by almighty God or Allah, or how do you do it?

MR SEEDAT: God.

CHAIRPERSON: God. So help me God.

MR SEEDAT: So help me God.

MAHOMED SEEDAT: (d.s.s.)

CHAIRPERSON: Thank you, you may be seated.

EXAMINATION BY MR BURGER SC: Mr Seedat, can I start off with referring you to your witness statement which we now file in SSSS1 from page 1 onward? It's been filed in different places but perhaps it's convenient to consider it here.

MR SEEDAT: Sorry, Chair, on which, which file number?

MR BURGER SC: That is SSSS1. It's on the overhead there and you may not have it in a hard copy but if you follow this one on your screen –

CHAIRPERSON: It's page 1, I gather, of that file.

MR BURGER SC: It's page 1 of SSSS1.

CHAIRPERSON: We've had it before but for convenience we have them all under one roof or actually five roofs.

MR BURGER SC: What is your relationship today with Lonmin if any, Mr Seedat?

[11:37] MR SEEDAT: Currently I still have a consultancy contract with Lonmin where I reserve three days a month for work with them and I chair the WPL, the subsidiaries, local subsidiaries WPL, EPL and Akanani.

MR BURGER SC: You're a qualified electrical engineer and you've been in mining for a very long time.

MR SEEDAT: That's right. I've been in mining all my working life, in excess of 34 years.

MR BURGER SC: I want to pick up your statement in paragraph 2.2 where you explain to us that you were the Lonmin chief operating officer from the 1st of September 2007 to 31st of December 2010. Where did you come from when you arrived there on the 1st of September 2007?

MR SEEDAT: My previous employer was BHP Billiton. I was the head of the Energy Coal Group in that company.

MR BURGER SC: And in that capacity as chief operating officer during that period did Mr Barnard Mokwena report to you?

MR SEEDAT: That's correct.

MR BURGER SC: How did it come that you stood down at the end of December 2010?

MR SEEDAT: In October 2008 we had the stock market crash. The platinum price had dropped to around $800 an ounce from being around 2 000, $2 200 an ounce. Lonmin was placed in a very difficult financial position. We then had to look at how we could contain costs, how we could ensure the survival of the company from a financial perspective, and one of the items that came out of this exercise, we called it the R&R exercise which is reorganise and restructure, was that the CEO who was located at that time in London primarily, and the CFO, would relocate to South Africa and we would minimise the size of the London office, I think it was around 35 people prior to this exercise, and we would have reduced that down to about six people, mainly company secretarial, and the view was the moment the CEO located himself to South Africa it made the job of the COO redundant and therefore we agreed that I would leave the organisation after a period when the CEO had been located in South Africa to give him a chance to settle down and that I would leave the company, and that we decided was December 2010.

MR BURGER SC: You came back into a Lonmin senior position during the time of the tragedy. Perhaps you can just explain to us how that happened –

MR SEEDAT: Sure.

MR BURGER SC: - round about the 11th of

August 2010.

MR SEEDAT: Sure, ja. Since January 2011 I had been appointed a non-executive director of Lonmin PLC and I also had this consultancy agreement with Lonmin South Africa, and that's all my involvement, was attending board meetings as a non-executive director and assisting the CEO as and when required, and of course chairing the local subsidiaries. On the 14th of August I got a call from our chairman Roger Phillimore –

CHAIRPERSON: That was in 2012?

MR SEEDAT: 2012. I had relocated to Durban, so he called me in Durban and informed me that our CEO Ian Farmer had taken very ill. I had heard on the news the events at Lonmin in terms of the security guards who'd been killed and he said we have a very difficult situation developing, we are short of staff, Ian's not well, Simon was on holiday, and he needed more resources to help the management team locally and asked whether I wouldn't come up to Johannesburg and assist, and I willingly agreed to do that.

MR BURGER SC: I want to go back to that period since your semi-retrenchment and you being called back into active service, and you address that in paragraph 2.4. You say in that interim period you've been a member of the Safety and Stability and Transformation Committee.

MR SEEDAT: That is correct. I was a member of the main board and I was also a member of these two committees of the main board.

MR BURGER SC: Did you also serve on EXCO until 2010?

MR SEEDAT: That's right. In January 2011 I relinquished that position.

MR BURGER SC: But in that interim period you were no longer involved in Lonmin's operational matters, you tell us in 2.5, but you chaired the local stakeholders forum which met quarterly. What was that stakeholders forum and who were the members of that forum?

MR SEEDAT: We recognised some time before the 2010 that we needed to engage more regularly with our key stakeholders and one of the key stakeholders, we had the various unions at Lonmin and we decided we'd set up what we called a stakeholder forum. We consulted with the unions, we established the terms of reference, and having agreed to those terms of reference the stakeholder forum took off. I can't remember exactly which year we started with this, but I think it was probably around 2009.

We met every quarter. All the key, all the union stakeholders were invited to that meeting and then the EXCO members, excluding the CEO, would go through and present the status of the company in their respective areas of

responsibility. For example Mark Munroe would tell the stakeholders how we were performing from a mining perspective. Theuns Du Bruyn, and thereafter Natasha Viljoen would talk to the same stakeholders about how the process division was operating.

Albert Jamieson, who was head of Marketing and Business Development would talk about what's happening in the platinum world from a price perspective, what customers are saying, etcetera, and also what's happening in terms of exploration and business development.

Simon Scott, the CFO, in his absence his delegate, would talk about financially how the company was doing, and I think it's important to point out here that the presentation that was used there was exactly the presentation that was used at the board. So whatever the information was presented to the board in that presentation pack, was replicated and used with the stakeholders. Then the objective was to ensure that the stakeholders knew exactly what the condition of the company was from a financial perspective.

Then we had Barnard Mokwena as head of Human Resources and External Relations talk about issues around human resources, number of people employed, how we're doing in employment equity, how we're doing on housing, how we're doing on all the various components of the SLP, and then we

allowed opportunities for any discussion. So the meeting generally commences around 9 in the morning and would finish around lunchtime, followed by lunch.

MR BURGER SC: Was it in that process that you might have heard of an event which played some role in these proceedings, and that is an approach by some RDOs from Karee to Mr Da Costa and an increase in a gratuity which followed from that? If so, will you please tell the Commission about that?

MR SEEDAT: Ja –

MR CHASKALSON SC: Sorry, Chairperson, I actually want to object to this leading. We agreed to extensive leading of Mr Seedat because it was necessary to do so in relation to phase 2. Mr Seedat is to the knowledge of Lonmin and all other parties being called in respect of phase 1 solely in relation to the simple dispute between himself and Mr Mathunjwa on whether Mr Mathunjwa sought a place at the bargaining table as a condition for bringing the workers off the mountain. Nobody other than AMCU is going to cross-examine Mr Seedat on phase 1. We haven't had a statement on phase 1 issues beyond what's in his statement. We don't have the time to have extensive leading of Mr Seedat on phase 1 issues on which he's not going to be cross-examined and on which people have not prepared to cross-examine.

CHAIRPERSON: Mr Burger, what do you say about that?

MR BURGER SC: Chair, I've agreed with my learned friend that I'll have three hours to lead this witness. I will comfortably finish his evidence-in-chief in the three hours, but I'll take heed of the remark and I won't spend more time on this than is necessary.

MR CHASKALSON SC: Mr Chairperson, the issue goes beyond the time that Mr Burger takes because if Mr Seedat is now going to be used as a witness on phase 1 issues to address broader issues, then all parties must have the opportunity to cross-examine him –

CHAIRPERSON: Mr Chaskalson, Mr Burger also said, having said he had three hours, he then said he would heed, take heed of what you said. So I assumed that that meant that the problem you raised was something that he was going to take into account. Am I right, Mr Burger?

MR BURGER SC: Yes, indeed, Sir. Mr Seedat, you've given us evidence up to the 14th of August, and in fact you've already told us about the call from Mr Phillimore. Can I then take you to the events of the 16th of August. You've told us what happened on the 15th. We can read that in your statement, and in this little bundle at page 4, in paragraph 5.1 you tell us about you meeting Mr Mathunjwa on the 16th of August 2012. Will you explain

to the Chairman and the Commissioners how that happened and what transpired during that meeting?

MR SEEDAT: I arrived in Johannesburg on the 15th, as per Mr Phillimore's request. We met at Melrose Arch. We got an update from Albert and then we agreed we would travel to the mine on the morning of the 16th and meet with the management team there to get an update from them. So it is in that context on the morning of the 16th that I travelled to Marikana. I travelled alone. Mr Phillimore travelled with Albert, and I went straight to the main admin building at LPD. I still have my access card, so I got straight through the access control and as I stepped into the reception area I noticed Joseph and a few other people sitting on the lounge suites at reception, and Joseph immediately recognised me.

We had met previously when I was in BHP Billiton when I was responsible for the South African Coal Operations, and he recognised me. He stood up, he greeted me and I greeted him back and he enquired from me what am I doing here and I said, "Joseph, what are you doing here?" in a joking way. I explained to him why I was there; I was a non-executive director of Lonmin, I was asked by the chairman to come and assist and it's in that capacity that I've come now to assist.

We were talking a bit loudly and there was the

press conference with the police that was going on behind us in the Hossy Boardroom, so somebody asked us to shoos, you know, and keep quiet, and we then moved to a corridor that leads off the reception area and we continued a conversation there. We exchanged cell phone numbers; Joseph took my number and I took his number down, and in the process of that conversation he said words to the effect that "Give me a place at the negotiating table and I'll get the workers off the mountain," or the koppie, and I explained to him that look, it's not, I can't make any decisions like that, I'm a non-executive director. I will take his message to the management team that I was going to see just now and, but I did explain to him based on my knowledge of the industrial relations at Lonmin that there were agreements in place with the unions that we had to honour. So whatever we did, we had to do within that structure in terms of giving him a place at the negotiating table, and I left it at that.

He went back to sit and I went off to the, it's called the Mining Boardroom, where I met most of the EXCO members. Albert was there I think by that time, as well as Roger, Simon, if I recall correctly Barnard was there, Jomo was there, and as well as Abey. I may be wrong with some of the people who were present, but generally that group was there, and I conveyed Joseph's message to them and I

left it to them to then give a response back to Joseph because as a non-executive director I don't want to get involved in executive duties of the company, and that's where I left it.

MR BURGER SC: Can I ask you now to go to SSSS2 and volume 3 of that for the report by Dr Forest on page 1367 of that bundle. That report starts at page 1310 and chapter 5 of that dealing with housing, you'll remember commences at 1362 and on page 1367 we have a table and as I understand it this addresses the dividends paid by Lonmin over a certain period of time, the housing budget over that period of time and a conclusion sought to be drawn from the analysis which we find at page 1367.

If we can just understand the analysis, you'll see the heading to table 1 is "Budgeted housing expenditure versus actual dividend payments," and the source is then the annual financial statements of Lonmin for a certain period of time, and the last column on the right-hand side says "Post crisis." Now as I understand it that means after the 2008 international financial crisis, that's the period addressed, and you'll see we have in that last column two totals, one in the second line for the capital budget for the number of houses to be built of some 426 million, and then in the fourth line from the top you have a capital budget again for stands to be serviced of 46

million. Now those figures, are they taking account of inflation or are they budgeted figures unadjusted from the inception?

MR SEEDAT: These figures come straight out of the SLP section on housing that was done in 2006 and they're not inflation adjusted for the years. In other words they're based on the 2006 money value.

MR BURGER SC: The next interesting line to the doctor is the second-last line. That's the illustrative round dividend value, again for that post crisis period 2008/9 to 2010/11 for a figure of R627 million, and as I understand her what she does is she compares the total of the first two figures, 472 million with 627 for a conclusion she seeks to draw. You understand it that way?

MR SEEDAT: Yes.

MR BURGER SC: Now that figure, the illustrative round dividend value, what was the value of the rand over that period?

MR SEEDAT: Well, she got that in the line just above that and it fluctuates between 6.87 in 2006, reaches a high of 8.32 in 2007 and then drops down to 6.94 in 2009/2010, and then up to 7.98 in 2010/2011.

MR BURGER SC: But that's a figure then adjusted annually with reference to the exchange rate?

MR SEEDAT: Confirmed.

MR BURGER SC: Now can I take a step back and just remind ourselves of the charter obligations of Lonmin during this period? If I may ask you to have a look at the 2004 charter, which you'll find in the same document at page 1253, that is the charter which the Minister has formulated in terms of section 100(2) of the Mineral & Petroleum Resources Development Act, and you see the housing obligation in 2004, you'll find at page 1258 of that charter.

Leading up to that, if you have your finger there, we'll see where it starts at page 1253 that this is published on the 13th of August 2004 and the introduction explained to us the purpose of the charter, its place in the transfer from old order rights to new order rights. There's reference to a scorecard and the stakeholders have to seek to achieve that scorecard, and there are various subjects addressed here.

At 1258 we have that list and we see included in this debate is a debate on human resource development, over the page 1259 employment equity, migrant labour, mine community and rural development, and then we come to housing and living conditions and we see in 2004 these are the obligations under the charter. "Shareholders, in consultation with Mine, Health & Safety Council, Department

of Housing and Organised Labour, undertake to establish measures for improving the standard of housing, including the upgrading of hostels, conversion of hostel to family units and the promotion of home ownership options for mine employees, and establish measures for improving of nutrition of mine employees." Did you understand it like that at the time when you joined?

MR SEEDAT: Confirmed.

MR BURGER SC: And 4.7, "Ownership and joint venture." How important was ownership and joint ventures from Lonmin's perspective pursuant to the publication of the 2004 charter?

MR SEEDAT: Well, clearly it was quite important and the challenge of achieving that was obviously a huge one and a lot of effort went into ensuring that we can achieve that objective as set out in the charter.

[11:57] MR BURGER SC: Then we know that that charter is rewritten in 2010 and in that same bundle at page 1265 we find the 13 September 2010 amended charter. The explanation for why a rewriting was necessary we find at page 1266. I don't have to read that out to you, but we find the elements of the Mining Charter now rearranged at page 1268 and following and the first one is ownership, and we see in the bullet the charter now requires achieving a minimum target of 26% ownership to enable meaningful

economic participation by HDSA by 2014.

In 1270 we have a new housing charter, housing and living conditions in paragraph 2.7, and we now have three aims to achieve according to this charter. First one is to convert or upgrade hostels into family units by 2014. The second one, to attain the occupancy rate of one person per room by 2014. Now am I understanding correctly, those two are mutually exclusive?

MR SEEDAT: I don't believe they can be mutually exclusive, Mr Chairman, because you've got one hostel and if you're going to convert the hostel you have to convert some components to family units in the hostel and others to single-room occupancy, and clearly a family unit may have more than one person living in a room.

MR BURGER SC: And how did Lonmin do that allocation between the two?

MR SEEDAT: When we originally started the project we focussed on creating as many family units as possible and when we undertook a survey in around 2009 to establish the needs of our employees it transpired that a very large number of them preferred a single-room unit because they wanted to stay there while they were working and then go back home to their houses from their sending areas once they had finished. So we changed our philosophy and focussed on building more single-room units as we

progressed with the hostel conversion and fewer family units.

MR BURGER SC: I see. That then the charter. We've looked at BEE. Can I ask you to turn to bundle 5 of SSSS2 at page 2004 so that we can just consider the BEE component of Lonmin during the relevant period. 5, page 2004. This is a table you prepared and perhaps you can explain to the Commission what you sought out to illustrate on page 2004.

MR SEEDAT: I tried to analyse what shareholders had received, all shareholders, and as well as look at what shareholders had to put back into the company between 2000 and 2013, and if I may go through each line?

MR BURGER SC: Can I just get clarity, what shareholders had received by way of dividends?

MR SEEDAT: By way of dividends.

MR BURGER SC: Yes, and what they've put in by way of rights issue?

MR SEEDAT: Rights issues, yes.

MR BURGER SC: Good.

MR SEEDAT: Buying more shares in the company.

MR BURGER SC: Yes.

MR SEEDAT: So the first line talks of the total dividends paid to all shareholders and that

includes the BEE shareholder, Incwala, and that total is $1.226 billion. The next line item is the dividends paid only to the BEE shareholder, Incwala, which is the BEE partner for Lonmin's local operations, and if you take that out that is $251 million paid clearly between 2005 and to date because that's when Incwala became into, came into existence. If you deduct what was paid to Incwala from the total dividends paid to all shareholders you end up with the third line, which is $935 million, so close to R10 billion in today's money terms.

The next line has a total there of $1.5 billion, so that's 15 and a half billion rand, and that's the amount of money shareholders have had to put back into the business and primarily since 2008.

MR BURGER SC: Do they put that back because they like the investment, or how does that happen that they put R15 billion back into the company?

MR SEEDAT: Well, when I think anybody who's a shareholder in a, or holds shares on the stock exchange, you would buy additional shares based on your assumptions about what return you're going to get going forward, and you would base that on historical performance, which is the dividends you received historically from the company, and based on that your level of confidence will dictate whether you're prepared to invest more money into

this business. So clearly shareholders thought Lonmin was a good business and effectively gave back more money to the business than they actually got out of the business, whether you take it from 2000 or you take it from 2008 post crisis, or 2006, which is the last line that I have, that between 2006 and 2013 shareholders received around $400 million, let's say – ja R4 billion, but they had actually put into the business since 2006 R15 billion. So net shareholders effectively have sponsored Lonmin by an additional 11, let's say R11 billion since 2006.

MR BURGER SC: I want to ask you why it was necessary, if it was necessary to pay a dividend to the BEE shareholder, but pen that question and if you turn over to 2005 will you tell the Commission about Shanduka and Incwala Resources as the BEE partners and how that financing worked –

CHAIRPERSON: Mr Burger, is this going to be a longish answer? Because if it is –

MR BURGER SC: It is going to be a long answer.

CHAIRPERSON: If it is it might be appropriate to take the tea adjournment now, but I'm in your hands. You must tell me.

MR BURGER SC: No, it's a convenient time, Chair.

CHAIRPERSON: We'll adjourn for 15 minutes.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[12:22] MR BURGER SC: - five and you were going to explain to the Commission, Incwala Resources and Shanduka's role in the 26% BEE requirement under the 2010 Charter.

MR SEEDAT: Yes. Incwala Resources was formed in around 2005 subsequent to the promulgation of the new Mining Charter with the intention of forming this BEE partner for Lonmin. Incwala would own a percentage of both WPL and EPL in South Africa and Incwala would consist of primarily HDSA shareholders. Originally there were three cornerstone, as they call them, shareholders that owned, if I recall correctly, close to 24% each and then there was the IDC and there was Lonmin who were the other primary shareholders. You also had shareholding for the Bapo tribe which is held in a trust and Incwala Resources owned about 18% of the South African Lonmin subsidiaries WPL and EPL.

The original shareholders of Incwala, the cornerstone shareholders, at some point indicated that they wanted to move on and in their place Lonmin negotiated with Shanduka Resources to become the primary shareholder in Incwala Resources. That transaction was essentially financed, about R300 million by Shanduka and Lonmin

provided a loan of around two and a half billion rand to enable this transaction to take place. Some of the conditions attached to this arrangement was that Shanduka Resources would have a permanent representative on the Lonmin EXCO and they would participate in the decision-making on all matters in the operation of WPL and EPL.

MR BURGER SC: Mr Seedat, out of that vendor finance is that R2.5 billion loan by Lonmin to Shanduka. Was there interest payable on that?

MR SEEDAT: Yes, yes, on –

MR BURGER SC: And how would that interest be paid then? How would that be financed over time? What was the intention?

MR SEEDAT: The intention was clearly that, once again you have Shanduka or Incwala, Shanduka investing in Incwala, that investment hopefully will realise dividends from WPL and EPL and those dividends would be used to pay back the loan and the interest on the loan.

MR BURGER SC: What would happen if that interest is not paid and that structure collapses because the interested is defaulted on?

MR SEEDAT: Well, with the amendment to the Charter in 2010 there were three non-negotiables and one of them is 26% BEE shareholding. So if Incwala didn't

receive these dividends that they could then pass over to their shareholders to pay back their loans, that would compromise the financial stability of Incwala, which could have led to default which could have led to the collapse of Incwala. So to ensure that we didn't, and if that did happen we would have violated one of the non-negotiables in terms of the revised Charter and as a result we would have put the risk, our mining licence at risk, the mining licence.

MR BURGER SC: Now I want to go back, we're still looking at that column by Dr Forrest. Does she in that column distinguish between dividends paid to Incwala and dividends to what I would call normal shareholders or not?

MR SEEDAT: No, she shows total dividends paid to all shareholders.

MR BURGER SC: Now can I ask you, with reference to your little table at page 2004 of volume 5, what was the total dividends paid from 2006 to the present, firstly to Incwala and secondly to non-Incwala shareholders.

MR SEEDAT: From 2006?

MR BURGER SC: From 2006.

MR SEEDAT: Yes, to Incwala the total is $251 million but if you talk from 2006 we have to exclude

the 27, so circa around $224 million, so it's R2.3 billion and to the non-Incwala shareholders for the period 2006 to date that would have been $975 million. Could I just point out something else, Mr Chairman?

MR BURGER SC: Yes, please.

MR SEEDAT: In Ms Forrest's report she talks of post-crisis and if you look at what the Lonmin shareholders besides Incwala, because we know we had to pay them dividends to pay their loans, the non-Incwala shareholders received a sum total of about 31, sorry, $61 million, R610 million post-crisis.

MR BURGER SC: And what did they put into the company during that period?

MR SEEDAT: $1.544 billion, so close to 15 and a half billion rand. That's billion, Mr Chair.

MR BURGER SC: Ja. While we look at this period and the vendor finance by Lonmin, can we have a look at its cash flow and you'll find that in a single page document which is triple, SSSS3. Chair, these documents will be delivered to you and your fellow Commissioners in hard copy by tomorrow morning. Mr Seedat, you may perhaps just explain to us what you seek to illustrate in the form of cash flow for operations, EBITDA –

MR SEEDAT: Yes.

MR BURGER SC: - on this schedule.

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MR SEEDAT: Chairman, what I've tried to show here is I've taken our loans –

CHAIRPERSON: I'm sorry, Mr Seedat, sorry to interrupt. Is it possible for the size of this document to be increased so it's easier to read. If it isn't, if it can't be done, if it can't be done then obviously it can't be but if it can I'd be grateful, then Mr Burger can ask the question again and we'll get the answer. That's a bit better, yes, thank you.

MR BURGER SC: Chair, may I do it better and ask my colleague to hand up three A3-sized documents to you and it may be easier to follow? Peter, please.

CHAIRPERSON: Thank you.

MR BURGER SC: Sorry I don't have it for my other colleagues but this was really prepared last night.

CHAIRPERSON: Thank you, this does make it easier.

MR BURGER SC: Mr Seedat, the purpose of this exercise, what do you try to explain, in layman's language?

MR SEEDAT: Ja, I tried to take out all the accounting terminology which, frankly, I'm not an accountant so I don't fully understand, and look at how much cash Lonmin generated in any one year from its

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operations. In other words, it produced platinum, the platinum group metals, a certain amount of money was spent producing it, it was sold, money was recovered, you covered your operating costs obviously and that's the cash flow from operations and then you had other things you had to pay for subsequent to that, which is tax, interest, there's interest received obviously and any cash that's left in the bank. Capital expenditure, extremely important, any sale of assets and then dividends and I only included the dividends paid to Incwala. Again in comparison to the Forrest report, to try to show you why the financial position of Lonmin was so precarious and I say this goes back from 2000 and you can see that from around 2005 as the commodity cycle started developing momentum, it peaked in 2008 and the cash flow was very good till then but subsequent to 2008 after the crash, if you look at 2009, 2010, 2011, 2012 and 2013, there's really one year post-2008 where the operations generated a positive cash flow of $210 million. Now if you take it from 2008 to 2013 and I've included 2008 because it was a good year, over that period Lonmin essentially lost cash of $313 million, which explains the rights issues, why Lonmin had to go and get the shareholders to put more money in the business.

MR BURGER SC: If we consider the Lonmin share price since 2008, give us a thumbnail sketch of the

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highs and the lows of that price?

MR SEEDAT: Ja, if you go back 10 years the Lonmin share price in rand terms peaked at around R612 a share and it went to a low, the low at R35.93. Today it's probably sitting at about R38, R39. So from 612 –

MR BURGER SC: That's page 2003. I'm sorry, I should have showed that to you before asking this. Yes, I interrupted you, I'm sorry.

MR SEEDAT: I must point, though, that between 2000 and to date because of the rights issues, the number of shares in circulation did double. So where you originally had about 300 million shares in circulation, you now have about 600 million shares in circulation. So if you factor that in and you take the R612.26 peak and divide that by half, because there's twice the amount of shares in circulation, you would then be comparing around R300 a share at its peak to around R38 today. So it's worth circa around 10% of the value it was at its peak. So from a shareholder perspective it hasn't been a good investment.

MR BURGER SC: If I had invested in Lonmin 10 years ago, what would have been my loss today?

MR SEEDAT: Just in the share price alone you would have lost around 70% of the value.

MR BURGER SC: And I invested five years ago?

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MR SEEDAT: You lost about 80% of your value.

MR BURGER SC: Now is the available cash of any importance to a platinum mine from the perspective of continuous development, opening up new shafts and cost pressures?

MR SEEDAT: Absolutely important. I think for someone who has not been in the mining industry, one reference point is the manufacturing industry. You spend lots of money, you put up a factory and you operate that factory for decades. In the mining industry it's very different, and Mark Munro – he used to be the head of mining in Lonmin – put it very well, every few years you have to rebuild your factory and let me explain that. You have a shaft that you establish, from that shaft you mine the ore but you can only reach so far from that shaft underground before that shaft has operated beyond its capability. You then have to put up a new shaft and as Lonmin, I'd like to use the example of K4 shaft, it's been mentioned where there were some incidents there.

K4 shaft is a shaft that has been in development I think since around 2000, certainly long before I got there. My guess is Lonmin has probably invested to date around R9 billion in K4 shaft and currently from K4 shaft you are getting zero return, no ore. Why? Because K4

shaft needs a little more development – my guess is it's around 80% complete. It still needs that 20% to be completed on the shaft which is the ore reserve development and there's some work to be done on the ore passes before you can start mining from that shaft. So there is circa R9 billion of capital sitting there, cannot be used and we can't finish the shaft because we don't have enough cash available to finish the shaft. And it may not sound politically correct to say this but if I have a choice between putting money in housing or hostel conversion, I would say rather put that into finishing the shaft because if you finish the shaft, K4 has the potential of employing a further 10 000 people, generating lots of cash which then puts you in a position to do the kind of good things like converting hostels and building houses. So this is the quandary we've been facing since the crisis started in 2008, is how best to use the cash we have.

Having said that, one of the areas where we've tried not to compromise is in the hostel conversions. There was one year, if I recall correctly, around 2009 when we were really, really cash constrained where we spent a lot less on the conversion of the hostels but if you look at the remaining years, we've been spending on average around 70 to 80 million rand on converting the hostels which will be finished by the end of this calendar year.

MR BURGER SC: Can I, in the light of that, consider something that Dr Forrest says in volume 3 at page 1367 and I read to you from the second last unnumbered paragraph about four –

CHAIRPERSON: What number is this, 1367?

MR BURGER SC: 1367 and volume 3.

CHAIRPERSON: Where on the page?

MR BURGER SC: It's typed page 57.

CHAIRPERSON: Yes, I know but where on the page?

MR BURGER SC: Right down, 4, 5, four-fifths down there's, four lines from the top of that penultimate paragraph, "For present purposes" -

CHAIRPERSON: I'm just asking that so that the, he can be shown the relevant section.

MR BURGER SC: Oh, I see. Yes, I'm indebted to you, Chair.

CHAIRPERSON: We've now got "For present purposes we merely point out."

MR BURGER SC: "For present purposes," thank you. Can I read that with you and just ask your comments, Mr Seedat? The doctor says, "For present purposes we merely point out that, notwithstanding the effects of the financial crisis, Lonmin understood its BEE obligations to be of sufficient importance to justify the

continued payment of substantial dividends to Incwala even in the 2009 financial year when it recorded an underlying loss of $93 million before interest and tax. It plainly did not view its housing obligations to its employees in a similar light."

MR SEEDAT: Ja, I guess the old saying, tell me how you measure me and I'll tell you how I will behave. If the Charter makes it clear that one of the non-negotiables is you have to maintain your BEE 26% shareholding, so if you are running the risk of that BEE shareholder defaulting on their loan, you will do whatever you can to prevent compromising that BEE structure because if it is compromised you run the risk of losing your mining licence and if you then have to repeat that exercise and get a new BEE shareholder and go through the whole exercise again, you're going to spend hundreds of millions of rand just to establish that structure again.

MR BURGER SC: She makes another statement at the top of that page, right at the top of page 1367. If I may ask your comment for that and I'll read you the first paragraph, "Nor have we seen a reasonable explanation for Lonmin's failure to comply with these obligations," this is now the housing obligation, "The primary justification put forward by Lonmin for its non-compliance with its housing obligations was the constraints

of the economic climate after the financial crisis, but Lonmin started defaulting on its housing obligations before the financial crisis and throughout the period in which it was defaulting on its housing obligations, it's continuing paying dividends to its shareholders."

MR SEEDAT: Ja, I think we have to start off with what the actual obligation in the SLP says and I'm going by memory but the SLP commitment is, Lonmin will facilitate the building of houses and it will do so by talking to the relevant institutions and in fact in the SLP, which was done long before I joined Lonmin, in the SLP it mentions that it's in discussions with Rand Merchant Bank. So one's understanding is, houses were going to be built with the assistance of relevant financial institutions, not necessarily being put on Lonmin's balance sheet in terms of assets and liabilities. So whether Lonmin had made the commitment to spend its own money building those 5 500 houses I think is debatable. Having said that, I have gone through a timeline of what Lonmin has done since the SLP was approved and the new order mining licence was issued. Now, if I may just run through that, Chairman –

MR BURGER SC: Can I just remind you, the SLP is approved in April 2007.

MR SEEDAT: That's correct. That's what

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I was getting to.

MR BURGER SC: Yes.

MR SEEDAT: During 2006 clearly Lonmin prepared the SLP and made its application to the Department of Mineral Resources and although I wasn't here, in another mining company that is involved there's a lot of iterations you go through, workshops, et cetera, before your SLP and your application is accepted and clearly that happened between 2006 and April 2007, as has been pointed out, when new order mining rights were eventually issued to Lonmin. Lonmin's financial year starts in October each year and I'm assuming now that the conversion was done, the management would have applied themselves in terms of putting budgets in place and plans in place to start delivering against their obligations or the commitments they made. In November 2007, so this is some months after the new order mining right was issued, Lonmin embarked on a housing needs analysis and they used a waiting list of people wanting houses as one way of trying to understand what employees wanted.

[12:42] And it was at this focus group interview that they called them, plus, minus 600 people were interviewed. Clearly that takes some time to do the interviews, to distil the information out of it and to come up with a plan. What came out that, one of the key components or

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messages that came out that exercise in 2007 was that 85% of employees expressed a need to want to live in the Marikana area, close to where they work. Subsequent to that, using that information in 2008 a meeting was held with the National Union of Mine Workers and that is a document that is one of these files –

MR BURGER SC: Chair, I'm going to refer to that. The market research the witness referred to, I'm not going to deal with now, but you'll find it in Mr Barnard Mokwena's file which will be lodged tomorrow from page 1 onwards. It's a very thick document that 2008 market research and the witness has referred to this. What I would like to refer to at this point in the chronology is volume 4, Mr Seedat, at page 1463 you now consult on that market research with the interested parties and that's minute of Essential Housing Forum Meeting Held on the 27th of August 2008.

MR SEEDAT: That's right. That meeting primarily I think NUM represented there because that's the category of people that this housing initiative was aimed at. A presentation was done to them which I think is just later on in the same pack.

MR BURGER SC: We don't have the right page on the screen, that's page 1463 of volume 4 of SSSS2. 1463, that's the document.

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CHAIRPERSON: We're at 1462 at the moment, we need 1463, there we are. Perhaps that can be enlarged a little bit.

MR BURGER SC: Thank you.

MR SEEDAT: So the presentation was done, the minutes discuss some of the discussions that took place, the unions had made some suggestions about options, providing a front and a back door as an example and other things. There was a concern about electricity being available because Eskom was fairly - if you recall in 2008 they had their power crisis and Eskom had told Lonmin that the earliest that we would be provide electricity be around 2010. So they looked at gas as an option and found that to be too expensive. I don't want to go through all the details.

MR BURGER SC: If you would go to page 1463 you'll see there's a debate about three types of houses.

MR SEEDAT: Yes.

MR BURGER SC: Chair, that's the next page.

MR SEEDAT: Yes and there was a debate about these houses, there was a debate about the options. It was then agreed that they would build three show houses so that employees would have an opportunity to look at

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these show houses and express their choice of what they wanted. There's a second presentation in here, just after the one that I referred to –

MR BURGER SC: 1484 that's in September.

MR SEEDAT: Which is an update on the presentation that was done to the unions which incorporated their suggestions. So –

MR BURGER SC: Sorry, I'm interrupting you again. 1488 we see now a 3D model of one of the houses, one of the show houses, 1488.

CHAIRPERSON: I'm seeing it upside down.

MR BURGER SC: There it is, thank you very much.

CHAIRPERSON: So we're seeing it sideways, I suppose we can.

MR BURGER SC: There we go.

CHAIRPERSON: Oh there we go now.

MR SEEDAT: As you can see we looked at solar water heaters to try to overcome the challenges of electricity and the costs of using electricity to heat water. So by September 2008 we were ready to start with the next phase which is build the three show houses and then hopefully in that new financial year build the remaining 97 houses.

MR BURGER SC: Did you have proclamation

by then?

MR SEEDAT: We had proclamation, sufficient land proclaimed for the 100 houses, but definitely not to extend this to the full commitment that were made in SLP. We then started with the building of these show houses, but sorry I must just say something, this was done in September 2008, October 2008 is when the financial crisis hit us. As I mentioned previously the price of platinum dropped from just over $2000 a fine ounce to around $800 a fine ounce. Clearly Lonmin had to contemplate the implications of that in terms of its cash position in terms of the loans it had with the banks, the covenants attached to those loans. So we went into what we call the R and R exercise, the reorganise, the restructure exercise and ultimately we followed all due processes, we involved the DMR, we kept them informed. Ultimately by around June 2009 we had retrenched, if I recall correctly, around 3000 people.

MR BURGER SC: Can we go to volume 4, page 1556?

MR SEEDAT: Yes that's the notification to the DMR to Sandile who was a DG at the time and to the Minerals and Mining Development Board of Lonmin's plans to enter into this R and R exercise. As I said this took the better part because of consultation periods, you've got to

give unions an opportunity to discuss what you intend doing. I think the period is either 4 weeks or 6 weeks and then you finalise your plans.

MR BURGER SC: Any objections from the Mining Development Board?

MR SEEDAT: No in fact what we were told by the DG is because we started with retrenching executive directors first then EXCO members like myself and then senior management and then at the last we went down to – by the way we started with shareholders by not giving them any dividends in 2009. They were happy with the process that followed because we started with the relatively most advantaged till we went down to the least advantaged.

MR SEEDAT: Were you at that same time also obliged to do another rights issue?

MR SEEDAT: Yes we were because as we went through this exercise in 2009 we realised that our cash position was looking very precarious and if memory serves me correctly, I think we raised $417 million so that's in today's money turns around R4 billion. So the 2009 financial year which is from October 2008 to September 2009 our minds were totally preoccupied with making Lonmin survive. No time to really think about anything else and in fact as I indicated the retrenchment we embarked on were across the board. So even a lot of people who left the

organisation left with some capability that we would have used for things like housing. In spite of that we did build the three show homes. We carried on with the exercise, that cost, if I recall correctly around R600 000 and gives you an indication that the cost of these houses by 2009 had increased from the estimate of R114 000 a house which is in SLP and which is quoted in the Forrest report to over R200, R220 000 per house by 2009. And it was in line with the inflation we saw in the building industry. So we built the houses, we had employees come through the houses and that is when we picked up comments that employees really don't want houses they want to rent units preferably single units. We then undertook a survey to get our data right –

MR BURGER SC: Mr Mokwena is going to tell the Commission tomorrow of an August survey which was done August 2010 in order to re-evaluate the needs of the workers and what comes out of that survey just briefly, Mr Seedat?

MR SEEDAT: Yes that what I was referring to is what we call an integrated human settlement strategy which is taking into account government's objective in terms of housing, taking into account what we'd heard from the employees. And looking at how we could then go forward with facilitating the building of these houses so that the

integrated human settlement strategy was produced, if memory serves me correctly, around November 2010. And then it was approved by the EXCO in that month and then it went to the next stage.

MR BURGER SC: Well just pause there, that document we find in volume 5 at page 1742 and following. 1742 volume 5. Lonmin Human Settlement Strategy October 2010. I'd like to read with you a few of the findings here please. At page 1750 we see there towards the end of that page there's a phase 1 envisaged.

MR SEEDAT: Yes there's a project plan somewhere else in the document and that's the first phase of that project plan. And you can see the bullet points there on what this is going to focus on which is really around continuing with the hostel conversions, preparing the land to conform with what we were trying to achieve. And I should make a comment here that in line with government's housing strategy we were going to look at what we call densification. So instead of having one house per plot which was clearly unaffordable for employees, we were going to look at more units in the same space. And they talk of a unit - somewhere in this document they talk of a number that they used to identify this. So we were going to follow that strategy, we were going to look at more dense units. In fact we looked at other examples around

the country for example in Cape Town if you're driving from the airport into Cape Town city you see these housing units off the highway. We looked at those as well and we were going to try to replicate some of that here.

MR BURGER SC: It's in that same timeframe that the mining charter gets changed and the housing aims get rewritten.

MR SEEDAT: That's true, that's correct, yes.

MR BURGER SC: Page 1775 addressing the possibility of getting a housing subsidy from the government for the workers and why did that now work out as nicely as one would have hoped?

MR SEEDAT: Sadly the problem we encountered is that our employees earned too much to qualify for a subsidy from government, but again too little to be able to get a loan from the banks. So they're caught in what I call the Twilight Zone. So that became a major challenge for us because as we went through this first phase and we called for proposals from institutions, banking, developers then the conclusion we came to once we got these proposals back is that all of these institutions expected Lonmin to carry this liability in terms of the costs of building, etcetera on its books. Now we just talked about Lonmin's financial position being quite

precarious, so putting these liabilities on Lonmin's books just made it much more difficult for Lonmin to meet its covenants as well. So this is where we actually got stuck. How do we go forward? We can't get institutions to come forward with using their funds, employees can't get loans for them to be able to build these houses and get financing from the banks and Lonmin's financial position was too precarious to put any of this debt on its books. And that's effectively where we ended up in 2010.

MR BURGER SC: Was the idea that you would build the houses with the assistance of construction companies and banks and once the house is built then ownership will step in and obligations will be between the owner and the bank and Lonmin will fall out of the equation?

MR SEEDAT: Yes it goes back to what we said in the original SLP which is we will facilitate with banking institutions. So that's what we were getting back to is find the right institutions, facilitate this building of the houses. Lonmin was still going to provide the land, free of charge. Lonmin was still going to provide the services it had already provided there like sewerage treatment, water reticulation, free of charge, so the developer and the employee gets a bit of a leg up in being able to see their dream come true of owning a house. And

yes we wanted the arrangements to be arms length so that between the employee and the developer the contractual arrangement would exist. What Lonmin was prepared to offer is to be able to do the deductions for the home loan or the rental out of its salary system, pay system. But that's as far as Lonmin could go in terms of its capability financially.

MR BURGER SC: And what did the banks want?

MR SEEDAT: Well the banks wanted all kinds of guarantees from Lonmin. Effectively it's coined in a phrase somewhere that I saw is that they just wanted to be the project managers. So all risk belongs to Lonmin or to the employee and all they were going to do is come on site and help build these units without any major financial input from themselves.

MR BURGER SC: And what effect, if any, would have on Lonmin's balance sheet if it now becomes a guarantor to the housing scheme?

MR SEEDAT: Well as I mentioned, our financial position in 2010 was very precarious, we were on the brink of violating some of our covenants on the loans we had with some banks. We couldn't take any further risk on our books.

MR BURGER SC: We talk about this

twilight zone where the workers fall between two stools. Page 1776 do that in a diagrammatic form and you'll see there is a category between R1500 and R7500 per month, 1776.

CHAIRPERSON: Where is this on the page? Is this the rental housing ladder? Part of the rental housing ladder?

MR BURGER SC: There it's coming up now in that – ja the third window from the top, Social Lonmin, 84% of Category 3 to 9 earn 4336 per month. And then there's a narrative to the right.

MR SEEDAT: And this comes out of government's, I think they call the document "Breaking New Ground." This is an excerpt out of that document in terms of what government strategy was.

MR BURGER SC: At page 1784 we see that new policy being described in paragraph 1.5 towards the end of the page "Breaking New Ground." And whereas the earlier idea was that one would have separate houses, the three show houses at page 1787 we're not told about the advantages of higher densities, 1787 at the top. That's correct.

MR SEEDAT: That's right. We benchmarked, as I mentioned one of them was Cape Town, but we also benchmarked other similar developments and the

little number you see in red on top that's a number that is used to define the density per hectare. So 164 in the one case, 75 in the other and 293 in the case of Middleburg, Gauteng. This is what we tried to emulate, but as I said it just got to the point where the banks just wanted to be project managers and Lonmin couldn't support those in terms of its financial status and therefore we couldn't progress any further with this.

MR BURGER SC: You've told us that EXCO agreed to this. We find this new Integrated Human Settlement Strategy, we find that in volume 4 at page 1503. A letter addressed to the members of EXCO copied to Mr Wayne Hill and it's dated 17 November 2010, 1503 volume 4.

CHAIRPERSON: We're quite a way from 1530 at the moment. I see it's 1 o'clock, Mr Burger. So when it's convenient for you we'll take the lunch adjournment, but you can carry on until you consider it appropriate for us to take the adjournment.

MR BURGER SC: Perhaps I can just finish this document and then I'm at the end of this subject. You're aware of this document, are you?

MR SEEDAT: Yes I am. This is just before I left Lonmin, so this was the last key areas that I discussed with the EXCO, it was as you see, the November EXCO. And I think to highlight here that on the second

page, the table reconfirms the fact that 85% of employees wanted rental units and only 15% wanted ownership and that's how we tried to structure what we were trying to do. The EXCO supported this and I mentioned the project plan, that's on the next page, 1505.

MR BURGER SC: And the EXCO approval at page 1507.

MR SEEDAT: That's right.

MR BURGER SC: Yes.

MR SEEDAT: So the EXCO approved this, but as I said sadly we got to the first stage which is getting proposals from various developers and banks and couldn't find a financially viable option.

MR BURGER SC: Is this a convenient time, Mr Chairman?

CHAIRPERSON: Certainly. We'll adjourn until a quarter to two.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[13:54] CHAIRPERSON: The Commission resumes. You're still under oath, Mr Seedat.

MAHOMED ISMAIL SEEDAT: [s.u.o.]

CHAIRPERSON: Mr Burger.

MR BURGER SC: Thank you, Chair.

CHAIRPERSON: Do I understand you're going to take the rest of the afternoon –

MR BURGER SC: Yes, I am.

CHAIRPERSON: So Mr Gotz is standing by to cross-examine on the small little aspect relating to phase 1, but that will have to stand over then.

MR BURGER SC: I don't want to make promises, we discussed with him, I don't want to keep him here. If I run till 20 to 4 you'll forgive me, but I'll probably be the better part of the afternoon.

CHAIRPERSON: Well, you see, how long are you going to be, Mr Gotz? You told me maximum half an hour.

MR GOTZ: Yes, Chair, I can't see it being longer than half an hour.

CHAIRPERSON: We'd been asked by the municipality to ensure that we leave here at 4 because they need the premises for another meeting, so I think in the circumstances we'd better – sorry, Mr Gotz, but it's obviously important for Mr Burger to have time to present his case fully. You won't be prejudiced, but it doesn't look as if you're going to get a chance this afternoon.

MR GOTZ: Thank you, Chair.

EXAMINATION BY MR BURGER SC (CONTD.): Mr Seedat, I just want complete the chronology, take it through from 2010 to 2012 now. Can I ask you whether Lonmin was looking for funding again in 2012?

MR SEEDAT: That's right. Towards the beginning of 2012 we realised that our financial position was not secure. We were at risk of violate the covenants related to the loans we had and one of the options that was first explored was trying to tap into the bond market and our chief executive at the time, Ian Farmer, and the CFO, Simon Scott, went to test the market in the US. This was done around July 2012 and the feedback they gave the board in August was that the market wasn't the right place to go and seek additional funding through bonds, two reasons, one is obviously Lonmin's rating determines the premium you pay for a bond and that was, you know one was registered as junk bond and therefore the premium you pay would be quite high.

Secondly the feedback they got from some of the potential customers they talked to about getting a bond, because Lonmin's cash flow – and I showed that cash flow segment area – Lonmin's cash flow was going to be negative in several years, the forecast, the bond customers felt that it wasn't appropriate to finance a company that had negative cash flow. So in August of 2012 that option was abandoned and then Lonmin embarked on the rights issue –

CHAIRPERSON: When in August?

MR SEEDAT: August, essentially by the end of July 2012 it was abandoned. It was reported at the

board meeting in August.

CHAIRPERSON: What was the date of the board meeting?

MR SEEDAT: Chairman, I don't have it offhand.

CHAIRPERSON: It was after the catastrophe?

MR SEEDAT: It was after. It was after. So as I say they came back in July because I recall Ian Farmer came back, attended the July board meeting, then fell very sick, was confined to the UK and then by the 16th of August we knew, that week we knew that it was pretty serious. It was the meeting after that, that, the board meeting that we had towards the end of August that it was formally reported at the board meeting and a decision taken to rather now proceed to a rights issue. Lonmin looked at its cash flow projections. It looked at what it needed to sustain itself. It looked at what capex it may require and it then decided to go for a rights issue which was in gross terms around $850 million and that rights issue, it's a lengthy process but effectively kicked off around November 2012, if I remember correctly, and was concluded in about January 2013. That's when we got the additional $877 million.

MR BURGER SC: Somewhat anecdotal, but

just to explain how [microphone off, inaudible] 2008 was, shortly before [inaudible] was there an offer made to Lonmin by Exxaro?

MR SEEDAT: By Exxaro, that is correct. You know Exxaro is a diversified mining company. It's very huge. It decided to make a hostile bid for Lonmin and in and around September 20087, literally I think it was a week before the crisis, they made an unbinding offer to Lonmin for around 33 million – sorry, £33 a share, bearing in mind that Lonmin's share price currently is around £2.70, and as I say, I mean they had a view obviously that platinum was on the rise, they were happy to offer £33 a share. Literally a week later platinum had dropped from $2100 a fine ounce to around 800 and Exxaro in that week had bought shares in Lonmin and it got to just below 25%. Until today they hold those shares, they've made it clear, they've been taken over by Glencore and the chief executive of the combined company, Ivan Glasenberg, has made it quite clear that he's not interested in being in the platinum business but he's not in a hurry to dispose of his shares because clearly there's a lot of value to be lost.

But that gives you an indication of how positive things can be one day and literally overnight become very negative. Mike Teke, who's currently the president of the Chamber of Mines, put it very well; he says mining is a

whole lot of winters with one or two very good summers in between, and especially if you're a single, what we call a single-trick pony. If you're a single commodity business like platinum you have to structure yourself financially that you can enjoy the good times, but also ride through the bad times, and one of the decisions the board took in 2012 is that funding of new shafts will be done with own cash, we're not going to borrow, because the problem with borrowing is the bad times it's difficult to pay, we haven't got the cash flow. But if you have cash reserves that you use you can ride the bad times much more easily.

MR BURGER SC: I want to go over to your social and labour plan. Much of that's been said by Dr Forest, let's just put that into perspective. We know that the first SLP gets finalised – sorry, we have a recording problem.

CHAIRPERSON: I don't know what's been missed. It might be an idea to sort of go back a sentence or two –

MR BURGER SC: Yes, right.

CHAIRPERSON: - just to make sure that what you said is on record.

MR BURGER SC: Much has been said in the Forest report on the social and labour plans, and I want to put that into perspective. We know from your evidence that

the social and labour plan - one should really speak of the singular there - gets finalised in April 2001 –

MR SEEDAT: 2007.

MR BURGER SC: In that document we find in SSSS2 in volume 1 –

CHAIRPERSON: Sorry, I thought the witness said something. What did you say?

MR SEEDAT: Well, it gets finalised in April 2007.

MR BURGER SC: Yes.

MR SEEDAT: I thought you said 2001.

MR BURGER SC: No, 2007.

MR SEEDAT: Apologies.

CHAIRPERSON: Yes, you said 2001, but it's been sorted out now.

MR BURGER SC: Sorry. Two old men talking to each other and we're bound to misunderstand each other. Volume 1 page 76, if we go to paragraph 3.7.2 that deals with housing –

MR SEEDAT: I'm sorry, which volume?

MR BURGER SC: Volume 1.

MR SEEDAT: It's not in my – I'll look at it there, it's fine.

MR BURGER SC: Volume 1, page 76, paragraph 3.7.2, housing, and the first three paragraphs

tell us about company-owned housing.

MR SEEDAT: Yes, this is up to 2006 Lonmin had been providing company-owned housing for its employees. Clearly the majority of the category 328s were housed in hostels, overcrowded rooms, but there were also houses that were available to those category of employees, limited number of houses, and then the officials, the more senior staff are also housed in houses in Mooinooi.

Towards the end of 1999 Lonmin if I recall correctly embarked on a joint project with Rustenburg Municipality where they created this Marikana Housing Development Company and they put up around a thousand housing units in Marikana and the intention with those housing units was to sell them to the employees on a rent-to-buy basis. In other words the price was fixed on the day the employee took ownership, or occupation of the house, and the figure is around 60-odd thousand rand. The monthly rental is around R500 and clearly after 10 years of paying that rental the house becomes, is owned by the employee and the transfer happens.

Now of those 1 100-odd houses to date I think only 220 have actually been transferred onto the employee's name, and you would ask yourself this is such a good deal, you pay R500 a month rental, you pay the same rental unescalated for 10 years, you buy the house at the price

that was agreed 10 years ago at R60 000, and we've been scratching our heads and wondering why is this take-up not more, and the majority of employees have a few thousand rand in outstanding rental owing. They're behind on their rental, and we looked at, you know, using money from their pension funds and other options to cover that. But on deeper analysis you realise that actually the employees do not want to take ownership. They'd rather rent because once they take ownership the rates, the electricity, the water, all become their responsibility. In fact in the original agreement the moment they occupy the unit the electricity and the water was their responsibility and they renege on that and Lonmin's been carrying that responsibility for those employees that have not been, without recovering, have not been paying the water and electricity.

So it's quite a safe thing to do, but I guess in some ways if you look at 220-odd houses being transferred to the occupants, whereas the other 85% not being, it ties up with the survey we did which said that 85% of employees want to rent accommodation, they do not want to own accommodation in the Marikana area. So maybe that sort of explains why employees do not want to encumber themselves with having to pay rates and other things for a house in the Rustenburg area, even though financially it's a good

deal. You buy for 60 000, you could sell it for, today probably R300 000.

MR BURGER SC: Towards the end of that page 76 we now deal with the future during the course –

COMMISSIONER HEMRAJ: I'm sorry to disturb you. Just before you go any further, when do you say those houses were built, Mr Seedat?

MR SEEDAT: I'm speaking from memory, but they were built from 1999 onwards.

COMMISSIONER HEMRAJ: Alright. Sorry to have interrupted you, Mr Burger.

MR BURGER SC: Not at all. The future is addressed in the penultimate unnumbered paragraph on page 76 and this is where the idea of 5 500 houses come in and over the page you'll see, I pick it up at the foot of page 76, over to 77, "The housing development and hostel conversion activities described in this section will be carried out by a housing association using the institutional model for housing provision as recommended by the National Government Housing Strategy. Lonmin Platinum intends to facilitate the building of these houses through entering into partnerships with banking institutions and in particular has commenced discussions with Rand Merchant Bank who are likely to provide the necessary funding." Now was that the model at the time?

MR SEEDAT: Clearly.

MR BURGER SC: I want to ask you, this SLP is prepared and has this become available to the DMR?

MR SEEDAT: Yes, well as I mentioned earlier, you submit all of this to the DMR. They then review it, they will call all affected stakeholders together, which is employee representatives, community representatives, into a workshop with the employer. This SLP is discussed, comments are taken back and changes are acquired if necessary and so finally once it's finalised you submit it back to the DMR. If they're happy with it they will issue you your conversion.

MR BURGER SC: We're going to go through this year by year and we're going to see DMR responses to this. Have you prior to preparing for this case been privy to those responses by the DMR?

MR SEEDAT: No, these documents, except for one, the section 93 –

MR BURGER SC: Yes.

MR SEEDAT: The others we had not seen before.

MR BURGER SC: I see. Well, then we have this SLP. Then the one for 2008 we find in the second volume at page 549 and following. Chair, we don't find in the papers the comments by the DMR to the plan we've just

seen, the original plan. It may be somewhere, but we haven't been shown it, but we'll find the reactions presently. 2008 we file the amended, upgraded plan, and at page 549 we deal with housing and hostel conversion. We see in paragraph 15 towards the top of that page, "Lonmin is committed to provide affordable housing and to convert all existing hostels to single and family units."

Then in the table we see there was a target of houses, 1 300 had to be built, actual zero, variant 1 300, so there was no performance there, and in the first bullet after NB towards the end it says, "The target for the number of houses that should have been built in 2007 was 700, none of which was built."

Over the page that's expanded upon and on page 551 we're told about the challenges and the risks. You'll see the challenges, meeting the commitments that have been made and the risk, financial constraints of current economic climate, and then building affordable houses that are acceptable to the employees it's said there's a challenge and the risk, high interest rates, availability of capital, and then I read the bullet under that, "The areas where the building of the houses were going to take place had not been proclaimed as townships by the time building activities should have been started. Delays in the proclamation process had not been anticipated when

submitting the SLP for approval." Could you perhaps just expand on that?

MR SEEDAT: Yes, I think you've got to look at the third bullet point as well. We had some stands available and I think that's why the 700 of the 1 300 were initially intended to be built where we had partial proclamation, but there were problems there and that's why when you saw the proposals, the issues around electricity and we looked at alternatives like gas and solar power. Those were available, but beyond the initial commitment of the 700-odd in 2007 we couldn't progress until the proclamation of the remainder of the township was done, and if I recall correctly, and Barnard will be better able to speak on it, but if I recall that was only done around 2010.

MR BURGER SC: We find the first DMR report September 2009 in volume 4. Perhaps you keep volume 2 with you because we'll have to come back to it, but if we go to volume 4 at page 1600 we find a departmental report September 2009, and is this one of these documents you've only seen now in preparation?

MR SEEDAT: That's right, never seen before.

MR BURGER SC: And at page 1606 deals with housing and what we find at 1606 to 1607 is simply a

quote from the original SLP –

CHAIRPERSON: I think you've got to go further down the page. What is on the screen, yes, now it's on the screen.

MR BURGER SC: Yes. Housing provision employees North West, and you see there's the reference to Rand Merchant Bank which was the original 2007 plan, and over the page –

MR SEEDAT: That's right.

MR BURGER SC: - 1607, that was the old original budget.

MR SEEDAT: That's right.

MR BURGER SC: So the author of this report was presumably looking at the 2007 SLP to write a report in 2009.

[14:13] MR SEEDAT: Yes. I mean he would have only one SLP which is the one we submitted in 2006 –

MR BURGER SC: Yes.

MR SEEDAT: Ja.

MR BURGER SC: Then in that year, 2009, you give an updated SLR and that we find back in volume 2 at page 645 –

CHAIRPERSON: You say SLR, I think you mean SLP.

MR BURGER SC: SLP, I'm so sorry. SLR is

a motor car, that's the one I remember very well. Page 645, it's now a different format. It's a Lonmin document, it's the Social and Labour Plan, Annual Report 2009 and do you want to point out anything on page and over the page to us? You'll see over the page at 646, table 4 deals with housing.

MR SEEDAT: Ja, we changed the format in the sense that we created an executive summary in the front, which is what you see here, listing all of the commitments and where we stand and then later on in the document we expand on why we have under-achieved or over-achieved.

MR BURGER SC: Let's go to 682 for that explanation and I don't want to read it all but perhaps, Mr Seedat, you can have a look at 682 and 683 and highlight what you consider relevant as a report to the DMR in 2009.

MR SEEDAT: Well, in the Forrest report mention is made of the three houses that we said we'd built and in the context of what I'd said earlier about this being part of the plan, discussed with the unions, those three houses were built. Hostel converted, because of the financial crisis that we'd entered in October 2008 we did not keep any funds aside to do any hostel conversion, so that explain why we didn't achieve that objective. We talk to the proclamation of the 800 stands in Marikana Extension

2 and an additional 1 500 stands, so although some progress was made in the proclamation of these stands, in the actual building of houses, not any acceptable progress except for the three units we talked about previously.

MR BURGER SC: Did you have any reaction from the DMR which was negative?

MR SEEDAT: Not to my knowledge, no.

MR BURGER SC: In fact, the next DMR report we find back in volume 4 at page 1626. That's dated the 7th of May 2010 and in that report at page 1650 the department deals with housing and they've clearly now read what was happening because we now have a reaction to what you've told them and the latest plan update. At page 1650 towards the second half of the page there's a reference to the 3 200 houses that should have been built, only three show houses had been built, the various challenges experienced by Lonmin, the action plan for the 100 houses, that's the new strategy and then they end off to say, "Will it be viable to build all those 5 500 houses for the employees amidst the challenges indicated above? The company should rather split this number into half, one half can be built for the employees and the other half can be built for the community members assisting with housing in the municipality." Was that ever mooted by the department while you were at Lonmin?

MR SEEDAT: No, I don't recall that discussion. In any event, if that suggestion was brought to us, it actually doesn't make much sense because as you are de-densifying the hostels, you're getting more people looking for accommodation and our priority would be to ensure that all, I think the number is around 16 000 because there'd be about 6 000 that would be housed in the hostels and the existing houses and the remaining 16 000 we had to find a solution for. So this, if it was presented to us, we would have found unacceptable because it wouldn't solve the problem for our employees.

MR BURGER SC: Now comes a rather nasty surprise. Lonmin gets a section 93 order from the department. You find that in this volume 4 at page 1521 and Dr Forrest refers to it and draws certain conclusions from it. Now let's just put that into perspective. 1521, you'll find the date at page 1524, the 3rd of August 2010.

MR SEEDAT: Yes. Lonmin had never received a section 93 like this before. The issuing of it was quite coincidental because we were in dispute with an ex-director of Lonmin who was an ex-director-general in one of the other government departments, relative to the mining of what we call associated minerals, when you mine the PGM. Now the ore body that you mine for the platinum group minerals also has other base metals in them, for example

copper, chrome, and when we had the old order mining rights these were all included in that, there were no issues. We understood that when you do the conversion, whatever you had as the old order mining right would become the new order mining right. So we had assumed that when we got the new order mining right, all of these associated minerals were still, we were still legally processing them. You have to mine them as far as the ore body – you can't pick and choose these little microscopic bits and say you're not, you can't mine them. We had, in fact all of the facilities prior to the conversion had been set up to do this and it's done by all the platinum mining companies. So we were doing this and then we get a note from the DMR that says they have a prospecting right over these associated minerals, as they're called, over the properties where we are mining.

MR BURGER SC: Awarded to whom?

MR SEEDAT: This ex-director of Lonmin. And then coincidentally while we're having the dispute we have this and in this note, if I may refer you to page 1523, although it's supposed to be talking about commitments to SLP, if I refer you to paragraph 3 – sorry, item 3 the first paragraph, it talks there that Western Platinum was found to mining UG2 and Merensky reefs, blah-blah-blah and towards the bottom it talks about selling the

following precious and base metals, platinum group metals, chrome, copper, nickel, notwithstanding the fact that the two companies are authorised in the mining right to mine for platinum group metals only. It was the first time this reference had been made in this way on an SLP audit. So we found it quite strange. We did –

CHAIRPERSON: I'm sorry, I can't follow this because it's not on the screen. What paragraph are you reading from, Mr Seedat?

MR SEEDAT: It's section 3 on page 1523.

CHAIRPERSON: I don't know, my page, the page number is on the screen but I don't see that.

MR SEEDAT: That first –

MR BURGER SC: There's a manuscript number -

CHAIRPERSON: Oh, there you are.

MR BURGER SC: - to the right, Chair.

CHAIRPERSON: Where's it?

MR SEEDAT: That first paragraph just under –

CHAIRPERSON: "It was found that Western Platinum is currently mining" –

MR SEEDAT: Yes.

CHAIRPERSON: - "the UG2 and Merensky reefs," yes. That's the paragraph, right?

MR SEEDAT: Yes.
MR BURGER SC: Just read that again please, Mr Seedat?
MR SEEDAT: "It was found that Western Platinum is currently mining the UG2 and the Merensky reef," these are the two main platinum-bearing reefs, "whereas Eastern Platinum is mining the UG2 reef" because it makes economic sense only to mine UG2 on the eastern side of the property. "It was also discovered and confirmed through the annual reports and interim reports that EP and WP are mining, processing and selling the following precious and base metals, platinum group metals, chrome, copper, nickel, gold, notwithstanding that the fact that the two companies are authorised with the mining right to mine for platinum group metals." What is implied there is, you're only supposed to mine and process the PGMs, platinum group metals but you're doing all of these other things, you're mining gold, you're mining chrome and you're mining nickel. These are all in very small quantities, present in the same ore body and prior to 2006 we were doing exactly the same and post-2006 we were doing exactly the same. So this, we were very uncomfortable receiving this letter because it appeared to be linked to the dispute around the processing of those associated minerals.
MR BURGER SC: And it's in this query

that we find paragraph 6, requesting you to submit a plan to address housing and living conditions of the employees.
MR SEEDAT: Ja, that's right. I mean we'd been submitting –
CHAIRPERSON: But what's the problem about that? One of these paragraphs relates to gaps in the ABET programme, that was dealt with earlier in the letter under another paragraph number. If you look at the beginning of the letter you'll see before they get to paragraph 3 which talks about the PGM metals and the others, they also talk about other things, including the ABET programme. So clearly this, "Based on the above findings" paragraph relates not only to paragraph 3, findings on the mining work programme but to the earlier paragraphs which deal with other problems. Let's look earlier in the letter. Unfortunately we haven't got copies yet but it was on the screen, I saw it – let's go up further, just go up further, up further still.
MR BURGER SC: 1521 paragraph 1.1.
CHAIRPERSON: Ja, I thought I saw it, yes. There, you see. Paragraph 1.1 deals with the ABET problems and that is a paragraph, that's paragraph 1.1 as Mr Burger says, which is part of paragraph 1 which is headed "Social and Labour Plan." So it's quite clear when one reads further down the letter, after para 3, that the

numbered paragraphs which deal with particular problems doesn't only relate or they do not – they do not only relate to para 3 dealing with the PGM metals and the other non-PGM metals but also relates to the earlier comments which include the reference to the ABET classes and further on there was something to do with housing as well. So I don't understand your problem, Mr Seedat.
MR BURGER SC: Well, perhaps you can try to find the reference to housing earlier in that letter because I couldn't.
CHAIRPERSON: The advantage of seeing the –
MR SEEDAT: It's under paragraph 3, section 6.
CHAIRPERSON: No – no.
MR SEEDAT: Conclusion.
CHAIRPERSON: No – no, that's the point. There are three numbered paragraphs 1, 2, 3. Then there's a separate paragraph with no heading which says, "Based on the above findings, the following orders, directives and instructions are hereby issued to you in terms of section 93 of the Minerals and Petroleum Resources Development Act, Act 28 of 2002." Then there are a number of, a series of numbered sub-paragraphs which deal with various problems. The first one is the gaps in the ABET programme which

refers to 1.1 above. I take it somewhere further down there'll be something dealing with paragraph 3, the non-PGM metals but it's not correct to say that these numbered paragraphs or sub-paragraphs only relate to paragraph 3 dealing with the non-PGM metals because patently at least sub-paragraph 1 relates to something said in 1.1, paragraph 1.1.
MR CHASKALSON SC: I think the reference –
CHAIRPERSON: I haven't had the advantage of reading the document but –
MR CHASKALSON SC: Sorry, Chair, I might be of assistance here. I think the reference Mr Burger is looking for is at page 1522, paragraph 1.2(d), "The housing and living conditions of the employees have not been addressed."
CHAIRPERSON: I suspected there was something like that there and I'm interested to see that my suspicion was correct. What paragraph number, Mr Chaskalson?
MR CHASKALSON SC: 1.2(d).
CHAIRPERSON: 1.2(d), "The housing and living conditions of the employees have not been addressed. Only three houses of the committed," that's obviously the committed 5 500, I take it, "have been built to date." So

Mr Seedat, I don't understand why you say, if I understood you correctly, that you were misled by this letter because the paragraph or sub-paragraph to which you referred didn't quite fit in with what was said in paragraph 3. The reason for that is obvious, isn't it?

MR BURGER SC: Chair, that's my mistake. That wasn't the witness's evidence. I queried that paragraph 6 and I did it in the context that it has no relevance in the context on base metals and PMG metals -

CHAIRPERSON: That is obviously correct –

MR BURGER SC: That may be right or wrong and perhaps I shouldn't say that.

CHAIRPERSON: I see. That's obviously correct, okay. Alright, anyway the other problem has been solved –

MR BURGER SC: Yes.

CHAIRPERSON: - sorry, sorted out and we can now proceed.

MR BURGER SC: Yes. Can I just ask you, Mr Seedat, at this stage does the DMR have access to your annual SLP report explaining what was happening on the housing front?

MR SEEDAT: Yes, we send them copies every time we produce an annual report.

MR BURGER SC: But you answer this letter

now on page 1525 and at page 1538 you deal with housing. 5.4.1 you refer to the 5 500 housing, I don't have time to read it all but 5.4.6 you refer to the three show houses, financial matters addressed in 5.4.8. Then you explain, 5.4.10 over the page at 1539, why the targets had not been achieved.

MR SEEDAT: Ja, I mentioned these things before. Perhaps the comment I can make is, what was put into the response to the DMR was no different to what we had told them previously when they visited the mine and did the audit.

MR BURGER SC: What became of this section 93 query?

MR SEEDAT: We responded to the query, as you see, and we heard nothing back.

MR BURGER SC: To this day?

MR SEEDAT: To this day.

CHAIRPERSON: What is the date of your response?

MR BURGER SC: 31st August 2010, sir.

CHAIRPERSON: Thank you.

MR SEEDAT: 3rd August 2010. Sorry, 31st, apologies.

MR BURGER SC: We do get a DMR report two months later in September of 2010. That you find in this

volume at page 1653 dated 8 and 9 September 2010. This is now after they've given you a section 39 notice and you've given them a response in August – 8 and 9 September, page 1653.

CHAIRPERSON: [Microphone off, inaudible.]

MR BURGER SC: A section 93 –

CHAIRPERSON: I know you just do these from time to time to make sure I'm listening. I've passed the test so far, I hope.

MR BURGER SC: And the comment on housing we find at 1662 in the last half on that page, 1662 and it's the last bullet. "Housing provision, employees North-West. A growing number of informal settlements has been identified as a concern by both IDP of Rustenburg and Madibeng Local Municipality and as such WPL will, in collaboration with the tribal authority, municipalities, appropriate government departments, Rand Merchant Bank and other stakeholders, support the housing development and hostel conversion using an institutional model for housing provision with the objectives of enhancing the quality of life for all employees and their families and to support infrastructure programmes as identified in an initiative." Then over the page it says, "Therefore, against this background, it is clear that the housing provision was

meant to benefit the employees and the community members. Budget committed" and then they give the budget for 2007. Now you haven't seen this before but do you have any reaction to this in this time frame?

MR SEEDAT: Yes, I mean the wording is a carbon copy of the wording of the report that was done a year earlier, 21st to 22 September 2009 on page 1606 and in between you had the issuing of that section 93 letter, which seems to have been done in isolation with these reports.

[14:33] MR BURGER SC: We know that a week later the new charter comes out in 2010 and the next DMR report we find is in August 2011. That's in the same bundle, page 1694. I'm just really going to the relevant page. The document itself starts earlier.

CHAIRPERSON: It looks like the relevant paragraph –

MR BURGER SC: The document starts at 1681 –

CHAIRPERSON: It looks like the relevant paragraph is 2.2.5.

MR BURGER SC: Correct, 2.2.5. Housing provision, and it says, "The project has not been implemented although it was going to serve employees' needs in terms of housing and living conditions."

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MR SEEDAT: That's right.
MR BURGER SC: Do you have a debate with the DMR in this timeframe? Do they know what's happening on the ground?
MR SEEDAT: Well, they come to the mine and we accompany them and we fully brief them on what's going on, so they clearly know what's going on. They don't necessarily engage in debate, and then this report is produced, which we don't have sight of. But perhaps I should take you to page 1698 because it expands there on housing and living conditions and on what their expectations are under section 2.4, 1698.
MR BURGER SC: 1698 towards the second-half of the page, and I'll just read the last paragraph, "Measures and strategies have been revised to ensure facilitation of homeownership, particularly locally, North West Rustenburg. However, for employees coming from labour sending areas, Eastern Cape, and wishing/wanting to own home there the company does not have a plan in this regard." Now have they ever raised with you that you should start building houses in the Eastern Cape?
MR SEEDAT: Not to my knowledge.
MR BURGER SC: Have they ever objected to what was happening in 2010 and 2011 on the provision of housing to employees by Lonmin?

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MR SEEDAT: No.
CHAIRPERSON: Have you ever been to Nkaneng?
MR SEEDAT: Yes.
CHAIRPERSON: Have you seen the houses there?
MR SEEDAT: Yes, yes.
CHAIRPERSON: You've seen the lack of basic services?
MR SEEDAT: Yes.
CHAIRPERSON: Have you seen the quality of life that the people must be having to endure while there?
MR SEEDAT: Yes.
CHAIRPERSON: Did you do that during the period before August 2012?
MR SEEDAT: Yes, we did it before that. I also recall that when the board came to – the board has two meetings every year in South Africa and they meet at the mine and I recall taking board members when I was an EXCO member to those townships as well.
CHAIRPERSON: Were you proud of the housing conditions that your workers were enduring?
MR SEEDAT: Chairman, absolutely not, and that's why as you can see we've put a lot of effort in

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trying to find a solution and we, although I'm not a member of Lonmin anymore, I personally have some thoughts – some people may find them unacceptable, but I do believe a solution is possible. If I may expand, your reference point is a person living in a shack, a single shack, pays R500 a month rental and a person living in a married shack pays R800 a month rental. That is a reference point.
So whatever you do, you have to come up with a solution that matches what they're currently paying but provides them with much better accommodation, and we have to find creative ways of achieving that objective because although they get a housing allowance currently of around R1 875, if I remember correctly, they are not prepared to use more of that allowance towards rental. That's fact. So we have to come up with a creative solution and we have to really think carefully about how we can come up with a solution. The current situation absolutely is unacceptable. We have to think creatively how we find a better solution.
Having said that, it started during my tenure and it still continues; Lonmin does refuse removal in those townships. It also does it in Mooinooi, by the way, which is part of the Madibeng Municipality, and in spite of rates being paid Lonmin still does water provision, sewage services and other services for the township.

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CHAIRPERSON: Mooinooi, we drove through Mooinooi, those are sort of middle-class –
MR SEEDAT: That's right.
CHAIRPERSON: - houses, isn't that right?
MR SEEDAT: That's right. But the point I'm making is that Lonmin is going beyond its obligation. Even though rates are paid on those properties Lonmin at its cost is providing the services which is supposed to be provided by the municipality.
MR BURGER SC: You've referred to the housing allowance. When was that introduced?
MR SEEDAT: That was introduced in 1999. It was at the request of the unions and obviously it was, NUM was the majority union at the time, and it has been implemented since 1999, and if I may, I did a calculation of the total value of housing allowance paid since 1999 to date. All categories of employees the number is around R3.4 billion and if you take the category 328, which is the vast majority of employees, we've paid around R3 billion in housing allowances since 2000.
MR BURGER SC: What is the contribution of the Madibeng Municipality to their housing obligations as a local authority?
MR SEEDAT: Well, as I mentioned earlier, I mean they have done, there's no development being done by

them to cater for the category 328 employees, the less-advantaged employees, and as far as Mooinooi is concerned, which is incorporated into the Madibeng Municipality, even though property rates are being paid to the municipality, Lonmin is still at its cost providing the services in terms of water, sewage and general maintenance.

CHAIRPERSON: Does the Madibeng Municipality have any obligations under the SLP?

MR SEEDAT: I'm not sure, Chairman. Not sure.

MR BURGER SC: On page 1703 in volume 4, it is still in the report by the DMR, housing and living conditions, and again the idea that a plan should be devised on how to do –

CHAIRPERSON: I'm sorry, we haven't seen 1703. We saw the recommendation on 1704 –

MR BURGER SC: I'm so sorry.

CHAIRPERSON: - but perhaps we should look at – it's not your fault, Mr Burger. If we look at 1703, there, I think we've now got the, yes, the relevant paragraph reads, "Housing and living conditions. The company must ensure alignment with the new mining charter targets and the compliance as set thereof." I suppose it means set therein, and then the paragraph, similarly worded to the one we saw earlier, "A plan on how homeownership for

labour sending areas employees, Eastern Cape, wanting/wishing to own home in Eastern Cape must be developed." That's that paragraph. We now look at the next page, do we, for the recommendation?

MR BURGER SC: Ja, I wasn't going to refer to that – oh, I see, 1704, let's have a look at that. 1704, this is now by the –

CHAIRPERSON: We've looked at 1704, we looked at the recommendations. "It is recommended that the concerns outlined in the abovementioned conclusion must be addressed and others be," I suppose that should be taken into account, "in the next social and labour plan, thereby ensuring proper implementation that will bring about transformation within the industry and towards sustainable socioeconomic development as envisaged by the MPRDA."

MR BURGER SC: When did you see this report for the first time, Mr Seedat?

MR SEEDAT: During preparation.

MR BURGER SC: Lonmin then files a close-out report on the SLP and that we find in volume 3 at page 1059. Bear with me, Chair.

CHAIRPERSON: While you do that, can I ask you a question, Mr Burger? You have told us that we'll be delivered copies of these files in due course. May I ask, are the documents bound or are they just filed, and

are they in chronological order or is there an index? Because you know, I foresee difficulty for us to master these documents in a short period unless there's an index or the documents are in chronological order, but perhaps you can't answer that now, but if you can perhaps address it when we adjourn.

MR BURGER SC: Chair, the first four volumes are in a chronological order and they have an index and that's the way I follow them through.

CHAIRPERSON: Thank you. That addresses my concern.

MR BURGER SC: Then during preparation we discovered more documents, for example we for the first time had a copy of the new strategy from this witness. That's in volume 5. So volume 5 is a type of an omnibus volume right at the end, but I think what we –

CHAIRPERSON: It's really an addendum, really. But if there's an index at the front of it obviously we'll be able to handle it. If there isn't - with dates of course. If there isn't, I hope someone of the industrious members of your team will compile an index for us.

MR BURGER SC: No, there's a very nicely blue-coloured index in volume 1.

CHAIRPERSON: Does that include the

volume 5 documents too? I think what I said wasn't recorded –

MR BURGER SC: It does. It does.

CHAIRPERSON: So the volume 1 index therefore includes the documents in volume 5. That satisfied my difficulty, thank you.

MR BURGER SC: We are living by the skin of our teeth on this, but it's been done and there it is. You'll have it tomorrow morning, Chair. I was looking –

CHAIRPERSON: It's more as if you're flying by the seat of your pants, but we won't go there now.

MR BURGER SC: Volume 3, page 1059, is the overview filed, the overview for the period 2006 to 2010, and in paragraph 3.2 on page 1059 we deal with housing and living conditions, and Mr Seedat, we don't really see anything new here. It's really explaining and bringing up to date what has happened.

MR SEEDAT: That's right.

MR BURGER SC: Explanation of the key factors why we couldn't achieve the target. Can I ask you, could you work out where this 5 500 houses target comes from?

MR SEEDAT: Yes, obviously it was done before I got to Lonmin, but in preparing for this

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Commission I did a bit of research and the only thing I can find linked to this 5 500 houses is that when they started with this exercise there was a waiting list of employees who wanted houses of around 5 000 employees. So I guess they decided to add a 10% margin and decided to provide for 5 500 houses.

However, the question that was never answered is that you've got around 23 000 own employees, you've got around another 13 000 contract employees; if you take care of the 5 500 plus those you're already housing in houses, plus those that are going to remain in the hostel, my estimate is that you'd still be looking to accommodate a further 13 000 employees, and that's not covered in any of this. So a commitment was made, and perhaps it was intended to be done after 2014, I don't know, but I can't find reference anywhere of how we were going to accommodate all of the employees at Lonmin.

CHAIRPERSON: May I ask you a question which flows essentially from what you said; how many people, how many workers were employed in the hostel blocks before the conversion started?

MR SEEDAT: It was the time –

CHAIRPERSON: Sorry, I used the wrong wording. How many were accommodated, I think I should have said. How many workers were accommodated – I used the

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wrong word – accommodated in the hostel blocks before the conversion started?

MR SEEDAT: Chairman, the number that comes to the top of my head is around 14 000.

CHAIRPERSON: Alright, now one of the things we saw when we did an inspection in October 2012 was that there, I think the single rooms in the hostels each accommodated eight people and there were double, the larger rooms accommodated 16, and we then went into converted hostel blocks, which I must say were, had been very well done and made a very favourable impression, and family units there, which were the old double rooms really, accommodated a worker and his family and then there were also smaller units in the converted hostels and those essentially accommodated one person each. So it was clear therefore that the conversion of the hostel reduces the housing stock by 7/8ths. That's correct, isn't it?

MR SEEDAT: Ja.

CHAIRPERSON: So you then got all these other people, 7/8ths, say 14 000 who need to be accommodated, and you say that problem wasn't properly – well I suppose some of the 5 000 who wanted houses were in the hostels, so what it means though is that 7/8ths of 14 000 minus 5 000 is the figure of people who would effectively lose their accommodation in the hostels, but

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not be available to stay in houses that were being built as part of the plan. That's correct, isn't it?

MR SEEDAT: That's correct, but if you look at the original SLP that problem you mentioned is anticipated. It is mentioned in the SLP that when you dedensify you're going to have the following problem and it talks of potential solutions because one of the infrastructure benefits is that when you dedensify the hostel the strain on the water system, the strain on the sewer system, electricity, is a lot less, and the SLP talks about a plan to put up additional housing adjacent to those hostels to take advantage of those. But it says we still have to work through all of them. So it was a bit ambiguous about exactly what was going to happen, but it did anticipate this problem coming.

CHAIRPERSON: So would it be fair to say that what it means is that you had obligations to do things. These obligations were assumed in exchange inter alia for the, they were assumed in exchange for new order mining rights, amongst other things. That's simplification, but that's in substance correct. The obligations which you assumed did not include these other houses which were merely envisaged as requiring to be built, but they weren't part of the obligations you assumed. Would that be correct?

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MR SEEDAT: Well, even the 5 500 obligation was for Lonmin to facilitate, not to build, but yes –

CHAIRPERSON: Okay, there may be a debate about that, but apart from the obligations you assume, whatever they may mean, there was also envisaged that other houses would have to be built –

MR SEEDAT: Yes.

CHAIRPERSON: - to make up for this, the reduction in housing stock brought about by the conversion of hostels, but in respect of that shortfall, except for insofar as was provided for by the 5 500, there was no obligation assumed by Lonmin. I think that would be fair, would it?

MR SEEDAT: Correct.

CHAIRPERSON: Ja, thank you. Sorry, Mr Burger.

MR BURGER SC: While we talk of numbers of workers, can we just get a bit of perspective here; if you go to Dr Forest's report in volume 3 at page 1340, you see there she shows us the Lonmin labour force by labour sending area in 2013. Let's just assume that this is still valid for 2012, which it probably is. You'll see that the foreign component there, the component of foreign workers would include Mozambique, Lesotho, Zimbabwe, Botswana,

Swaziland. I've calculated it, it's about 19.2% - round it off to say 19% of the workforce would be foreign labour.

MR SEEDAT: Yes.

MR BURGER SC: Then North West province, those are the people living in the area, coming from there, 27.4%.

MR SEEDAT: Could I make a comment on the North West employees –

MR BURGER SC: Please do. Please do.

MR SEEDAT: - because we did have a debate about who's the migrant worker, because you do have people who come from North West who are not resident in the mining area. They still seat their families back 80 kilometres away, 100 kilometres away, so they also end up migrating between their place of work and the place of permanent residence, and I remember when I visited the hostels when they were converted I visited one employee and he had a family unit, and I said but you're living here alone. He says ja, my family is 80 kilometres away, they're staying there. So I said why do you need a family unit. Oh, in case they come and visit me here. So even within that 27.4% there's a significant component that will need rented accommodation because they are essentially also migrant.

MR BURGER SC: Then we have a very large

percentage coming from the Eastern Cape, 36.4%. [14:53] What I want to ask you is where would you, if you had notionally 5 500 houses which would be your typical market to occupy those houses in these three categories, the three major categories.

MR SEEDAT: I'm not sure I understood your question.

MR BURGER SC: You have to allocate 5500 houses –

MR SEEDAT: Okay.

MR SEEDAT: Do you allocate it to foreign workers, to Eastern Cape workers, to North West workers or do you do it on a pro rata basis or how do you do that?

MR SEEDAT: It's done on a waiting list basis. There's a waiting list that is compiled in consultation with the unions, it's like they participate in managing the waiting list and whoever's next on the waiting list will be given a house which is all employed equally. And it's purely where they are on the waiting list that determines when they get a house.

MR BURGER SC: And remind us what is your contingent, your employee contingent workers, contract workers?

MR SEEDAT: Okay own employees is around 23 000 and contract is around 13 000 if my memory serves me

correctly.

MR BURGER SC: 13 000. Now in that workforce 23 000 permanent and 13 000 contract, in an ideal world how many housing units would you require?

MR SEEDAT: I will have to have a look at the doc because yes there are quite a few employees who live in the area, who come from the area so you've got to exclude them.

MR BURGER SC: Yes.

MR SEEDAT: There are others who have moved into the area and bought their own units. It's going to be a rough guess because I don't have any numbers in front of me, but I would guess probably about 80% of those employees will require houses.

MR BURGER SC: What I want to ask you is assume for the moment 80% of your permanent employees require housing and you've got 5 500 housing where do the other 15 000 go?

MR SEEDAT: Well that's what I said earlier, it's a big challenge. The 5 500, in fact if we had done the 5 500 homes I think we would have in some way exacerbated the situation because you'd have employees feeling relatively deprived and wanting to know when are we going to have additional houses available for them. So if you solve this problem then you have to solve it for all

the employees and not just a percentage of them.

CHAIRPERSON: Sorry before you carry on, what percentage of your employees, we'll look at your own employees and the contract people in a moment, what percentage of your employees were accommodated in hostels before the conversion program began?

MR SEEDAT: Well as it is, Chairman, I think there's around 14 000 employees, so roughly over 60%, roughly over 60%. It's a rough guess, I –

CHAIRPERSON: Yes, no we're talking ballpark figures and then of those, it may be an unfair question, of those people what percentage were permanent employees and what percentage were contract employees or did you not consider it your duty to accommodate contract employees. It may be that the sub-contractor for whom they were working was responsible for accommodation. What was the position in that regard?

MR SEEDAT: Well that is correct. We accommodated our own employees in the hostels.

MR BURGER SC: And Mr Seedat, where do these 13 000 contract workers go after the shift now?

MR SEEDAT: Various options, some have – you know some go into the settlement, so the contractor relies on them finding their own employment, others have established camps and others commute either from Rustenburg

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or from Gauteng.

MR BURGER SC: We were looking at the DMR reports for that relevant period. The next one we find is April 2012 and that is in volume 4 at page 1705. We'll see from the foot of the page it's April 2102 and at page 1706 right at the foot housing is addressed.

CHAIRPERSON: Forgive my ignorance, what does IDP stand for?

MR SEEDAT: I think it's Interaction Development Plan.

CHAIRPERSON: Thank you.

MR BURGER SC: Any comment on this narrative?

MR SEEDAT: It' the same as what we've seen in the previous reports in the previous years.

MR BURGER SC: And 1716 towards the end of that report The Housing and Living Conditions. Presumably if there's reference to a target to be achieved in 2014 what would be that target in reality?

MR SEEDAT: Well as far as hostel conversions are concerned we would have achieved that target. We will have converted all the hostels by the end of this calendar year, but as far as the building or facilitating the building of houses apart from the three show houses we don't have much more to show.

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CHAIRPERSON: And the target isn't going to be achieved by the end of this year, the two targets aren't going to be achieved by the end of this year.

MR SEEDAT: No the one will, the hostels will.

CHAIRPERSON: The hostels one, yes. That of course brings a corresponding reduction in the housing project. But the houses themselves those – by the end of the year you're still only going to have three.

MR SEEDAT: Ja.

CHAIRPERSON: I see.

MR BURGER SC: I'm not sure that that grammar – that grammar is awkward as it is, but that's a unitary target, not a deal one. I would argue at the end of the day that that target refers only to the hostels. The Department must know it by now if they've read the paper.

CHAIRPERSON: "Due to the impact of global economic crisis and the financial position of the company, 5 500 houses target and conversion of 124 hostels by this year 2011 the target will not be achieved, but by 2014." I would have thought the grammar seems to indicate that the total target will not be achieved. Well maybe the answer is that the conversion of the hostels will be achieved by the end of 2014 which is what the witness says.

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But the target as so described, the 5 500 houses target isn't going to be achieved and the witness tells us if that was the prediction it was correct because they're only going to have three houses by the end of the year. Is that right?

MR BURGER SC: Then we have another report, we don't know where it comes from, at 1717 –

CHAIRPERSON: Mr Burger, I see it's now 3 o'clock. If you'd like to take the tea adjournment we will. If you'd like to carry on I'm in your hands.

MR BURGER SC: No we'll take the tea –

CHAIRPERSON: Thank you, Mr Burger. 15 minutes.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[15:18] CHAIRPERSON: The commission resumes. Mr Seedat, you're still under oath. Mr Burger?

MR BURGER SC: Thank you, Chair. Mr Seedat, we were looking at the last report from the DMR in volume 4 at page 1717 dated 3rd of April 2012 and it deals with housing at page 1726 in paragraph 5.4. Will you read that and just give us any comment you have please? 1726, paragraph 5.4.

MR SEEDAT: Essentially the narrative there is very similar if not exactly the same as it's in the previous reports.

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CHAIRPERSON: Do you know what the ASGISA initiative is?

MR SEEDAT: Not. It's a government initiative but I can't, I don't know what that acronym stands for.

CHAIRPERSON: We can find out if you don't know.

MR BURGER SC: It was the successor to GEAR I think. It was the government economic strategy, ASGISA.

CHAIRPERSON: I see, thank you.

MR BURGER SC: You can put that file away now, Mr Seedat, and let's go back to Dr Forest in volume 3. I just want to ask you in the light of this for comments on some of the statements she makes and in this statement you'll find in volume 3 at page 1365 and if you read the first bullet there and if you have any comment she says, "Lonmin's unilateral repudiation of its housing and hostel commitments was not accepted by the DMR." And then she refers to that section 93 letter you received.

MR SEEDAT: Yes, I wouldn't say Lonmin had unilaterally repudiated its housing and hostel commitments. As far as the hostel commitments are concerned we're on track to deliver by the end of 2014. There were financial constraints over a couple of years and

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those – since then we have ensured that even if we have cash constraints we still press ahead with the hostel conversion. As far as its housing commitment is concerned as I've indicated since April 2007 when the conversion happened we have tried numerous ways to try to achieve the objective of having decent accommodation for employees and our internal commitment is to house all the employees who are not just the 5 500 so sadly with all of our efforts we still haven't come up with a solution that works for employees and works for us and works for the banking institutions who ultimately will have to finance it, so it's not a unilateral repudiation.

MR BURGER SC: Do you think the section 93 letter was triggered by a housing commitment in the SLP?

MR SEEDAT: I don't have a conspiracy theory but it was quite unusual in the way it arrived and the references it had to the other non-mine or non-SLP issues especially around the associated minerals.

CHAIRPERSON: That was only paragraph 3 about the non-PGM metals.

MR SEEDAT: Yes.

CHAIRPERSON: And there were a lot of other things in the earlier paragraphs.

MR SEEDAT: I acknowledge there were others but, Chairman, it was the first time the issue

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around the associated minerals was raised as a concern.

MR BURGER SC: Did your response elicit any debate from the DMR?

MR SEEDAT: No, as I indicated earlier we submitted our response and we heard nothing. We then got the report about a month or two – no, we didn't get it but we've seen it now. And no mention of the section 93 is made in that report dated I think around September 201.

MR BURGER SC: Was that debate with the ex-director then resolved?

MR SEEDAT: Yes, it was. We eventually came to a commercial settlement which the board felt was in the best interest of the company.

MR BURGER SC: Another comment of hers we find at page 1366, that's the next page of the report, right at the foot. I'd like your comment for that. The last four lines she says, "So quite apart from what one would ordinarily expect from government in terms of housing provisions within the Marikana area Lonmin was itself obliged to discharge these housing obligations in its social and labour plans and had it done so most of its migrant employees would've been provided with decent housing a year before the tragedy."

MR SEEDAT: Well, I think if I deal with the latter part first, 5 500 as I indicated earlier would

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not have addressed the problems of the majority of our migrant employees. And in terms of discharging the housing obligation the SLP is quite clear that Lonmin's duty, are committed to facilitate and work with financial institutions and in spite of its best efforts it did not achieve the desired objective.

MR BURGER SC: In one of the reports Dr Forest asked and she does not refer to it in her report but we've seen it, there is a thumbnail sketch of the schools in the Marikana area and they're not sufficient. Can I just ask you if you add 5 500 families in that area with the kids they bring along how would that be accommodated with the, by the education system?

MR SEEDAT: Well, that's one of the issues we addressed in our integrated social housing development plan because we recognise that by enabling employees to bring their families we would create not only challenges around schooling but there would be challenges around clinics, around shopping, all the infrastructure issues that go with managing a township so in that document, the integrated human settlement strategy, we tried to address those issues as well in the way we do the layouts and trying to ensure that we avoid some of these other problems that come later on down the line.

CHAIRPERSON: May I ask you a question

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based on the quotation that I see here in the passage in the report which is on the screen, the four lines on the top of the screen? Mr Phillimore stated in his speech to the Lonmin AGM of 31 January 2013, "Lonmin has a duty to its employees to ensure that they "have access to decent accommodation and the essential utilities for fresh water, proper sanitation and electricity."" Do you agree with what Mr Phillimore said in that regard?

MR SEEDAT: Absolutely. There's never been doubt in my mind that since I've been on the board and when I was an executive committee member and I attended board meetings the board did feel very strongly about this commitment to house our employees in an adequate and acceptable way so that obligation was always recognised.

CHAIRPERSON: The obligation may be recognised but would you say that Lonmin has discharged its duty to its employees to ensure that they "have access to decent accommodation and the essential utilities of fresh water, proper sanitation and electricity"?

MR SEEDAT: Clearly, Mr Chairperson, until you house all 23 000 of your employees adequately you're not going to –

CHAIRPERSON: Once you recognise a duty, duty means it's something you've got to do, right.

MR SEEDAT: Yes.

CHAIRPERSON: And you admit you haven't done it.

MR SEEDAT: Well, we haven't delivered the houses but we've done a lot in trying to get there but our efforts have not delivered any –

CHAIRPERSON: Well, I don't know what the percentage is but a substantial number of your employees I understand have not enjoyed, and I take it still today, would that be correct, do not have access to decent accommodation and the essential utilities of fresh water, proper sanitation and electricity. That's correct?

MR SEEDAT: Those living in informal settlements clearly don't have those essential utilities.

CHAIRPERSON: That's right.

MR SEEDAT: Absolutely right.

CHAIRPERSON: Now, these are the people who when working at full capacity produce I think it is a R1 million worth of platinum every day.

MR SEEDAT: In total throughout the whole site depending on the platinum price Lonmin's daily turnover, turnover -

CHAIRPERSON: Yes, I said produce, I said turnover.

MR SEEDAT: About R50 million a day.

CHAIRPERSON: How much?

MR SEEDAT: 50 million if all of the shafts are operating.

CHAIRPERSON: R50 million a day?

MR SEEDAT: In turnover.

CHAIRPERSON: In turnover, yes, that's what they produce, the value.

MR SEEDAT: Yes.

CHAIRPERSON: And despite that they don't have the majority I take it don't have access to decent accommodation and essential utilities of fresh water, proper sanitation and electricity?

MR SEEDAT: Yes.

CHAIRPERSON: I understand, thank you.

MR BURGER SC: What's the answer to that, Mr Seedat, if there is an answer?

MR SEEDAT: Well, as I mentioned earlier, I mean, we've consulted widely, we've looked at different options. We even looked at overseas solutions but nothing's come out that clearly solves this problem, so as I said earlier we need to think creatively about this ourselves. And the starting point is the current benchmark. R500 for a single unit shack and R800 for a family unit shack. What can we build that is financially viable that if somebody - go and do it with those rentals he would get a reasonable return? And I think if you apply

– South Africans have been very creative when they've been faced with a crisis and I believe that if we apply our minds we will come up with a solution that meets these conditions of essential utilities, etcetera but also is a financially viable solution.

CHAIRPERSON: Why do you have to shackle yourselves to comply with the benchmark which may be unrealistic if you recognise that you have this duty expressed here in this report?

MR SEEDAT: Well, if I understand you correctly, sir, the problem is that if you put up a unit and let's say you're going to charge for a single unit R800 the shacks are still going to be available and the employee who is financially squeezed and wants to send as much money possible back to his home is probably still going to take that option. So we have to face that reality. Renting out of shacks is a reality in these areas. We have to find a value proposition for the employees that says I'm prepared to move across, it's not going to cost me anything. It's not going to cost me much.

CHAIRPERSON: At the moment I think I've heard it said that, or I read it in one of the reports, that the attitude is, well, they have a choice. They can accept the living out allowance and they don't have to accept it, they can – they don't have to live in a shack.

It's their choice to do so but is that correct? That is an attitude that's been expressed.

MR SEEDAT: No, Chairman, I would – certainly in the discussions I've had we've recognised that the densification of the hostel has in some ways forced the employees to take the allowance and find their own accommodation, and it's not that because they've taken the allowance it's not a problem anymore.

CHAIRPERSON: The problem, sorry, forgive me, sorry.

MR SEEDAT: This also makes business sense because we have recognised that when you have employees living in these informal conditions in winter when the - or ventilation is poor, they have to light their own fires, make their own meals, they cannot come to work in a condition that is optimal for their performance, so it makes business sense as well.

CHAIRPERSON: Yes, I understand. Part of the problems is of course if I was a worked in your, in one of your mines and I took a living out allowance I take it I'd only be able to get a shack, wouldn't I? There aren't, there isn't other alternative accommodation available for me.

MR SEEDAT: Not currently but I would guess if people are prepared to pay a higher rental then

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you would possibly find better quality units if people are prepared to hire units.

CHAIRPERSON: Where?

MR SEEDAT: Well, you get entrepreneurs who'll do it.

CHAIRPERSON: Sorry?

MR SEEDAT: You will get entrepreneurs –

CHAIRPERSON: Ja, but at the moment it doesn't exist.

MR SEEDAT: No, it doesn't exist.

CHAIRPERSON: I would have to wait for an entrepreneur somewhere to build a block of flats or build some housing estate for me to stay in which isn't the case at the moment.

MR SEEDAT: Yes.

CHAIRPERSON: I see.

COMMISSIONER HEMRAJ: So to date there's no solution to this housing problem, no viable solution.

MR SEEDAT: No obvious solution but there are I believe potential solutions that we can apply and have a benefit not only for the employees but create business opportunities for entrepreneurs in the local community. I'll share this example with you and I do it a little hesitantly because when I've mentioned it to other people and I've shared these thoughts with the treasury

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general of the ANC, I've shared it with the previous deputy chairman, deputy president of the country, the initial reaction is horror but after doing some basic research they realise that there's a potential opportunity here and I'll share it with you and clearly it needs more work, and I'll start off by saying if you drive on the N1 north on the double-decker and if you look to the left you'll see student accommodate there which is silos that have been converted. And on top of the silos, and this is the point, are containers, containers that are properly converted into accommodation units.

We did a bit of research on this and you can buy a second-hand container for around R50 000. And let's say you spend another R30 000. These are general numbers, nobody hold me to it. Let's say you spend R45 000 on that unit. If you're charging R500 a month rental that's R6 000 a year, 10% return means you can pay up to R60 000 for that unit and still make a reasonable return. So that's the thinking. Now in fact having discussed it with other consultants we came up with the terminology Mintel, mine hotel. The other reason why this works is because your shaft has a limited life. Now, if you put up bricks and mortar once the shaft has served its purpose you demolish all the bricks and mortar, whereas if you do these containers and the thoughts where I had was you do it in a

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U-shaped format in a proper secure area, you provide walkways, you provide insulation inside these units, proper insulation. If you ever have time on your iPad just put down containers to convert it to houses and you will see the wonderful things people have done around the world in it.

CHAIRPERSON: They can, I know they also convert containers into school classrooms and so on.

MR SEEDAT: Yes.

CHAIRPERSON: Quite successfully. It's a wonderful idea. If it had been implemented in 2010 then of course a lot of the problem would've disappeared and –

MR SEEDAT: Well, Chairman, one of the problems is the psychological acceptance of the container because some people's reaction is horror. You're putting them in a steel cage. And obviously we are concerned when we thought and when we discussed this that there will be people out there who will rubbish this rather than saying let's hear how we can make it work and that's where there's been a hesitancy to try to make this work. We did approach – in fact just outside Pretoria there's a place with zillions of containers I'm told and we approached them but I suspect there are some opportunities and they quoted us around R100 000 for a converted container.

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CHAIRPERSON: You know, you say people complain about being in a steel cage but at the moment they're living in – I think it's really just zinc, I think it's actually corrugated iron shacks, aren't they?

MR SEEDAT: Absolutely. It's much better than their current, what they have, yes.

CHAIRPERSON: So the objection to living in a metal structure is apparently, that's apparently been overcome.

MR SEEDAT: Ja. There's other benefits if you do it with the community. Clearly these employees who are single, they need their clothes washed, cleaned. They need food. And within the U-shaped complex if you can put a kitchen up, a canteen, a laundry, outsource that to local members of the community you create an environment and you're talking, just on Lonmin you're talking of potentially up to 15 000 people who need the service. So you create a business that the community also benefits. Now, we thought of this even further because one of the negatives, very mild word, negative, with the way we're currently structured and the way we work on our mines is that it [inaudible] meaning that an average migrant worker only gets home once a year on average for four weeks. I was involved in my previous life with running operations in other parts of the world. In Australia they have the

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concept of fly in, fly out.

CHAIRPERSON: Can I say to you that my understanding is it doesn't work that way in Australia? And how does it work with the North Sea oil rigs? Same situation.

MR SEEDAT: Same situation. I've actually lived on an oil rig for a couple of days and I must tell you the little steel unit that I lived in and shared with another person if one of you have to stand up the other person had to get out of the room. They're really small.

CHAIRPERSON: They don't stay there for 11 months and go home for a month.

MR SEEDAT: No, they stay for two weeks.

CHAIRPERSON: That's the point.

MR SEEDAT: Ja, now, the problem in this country is that the lavenshire port system only allows the employees to get an extended break to go home once a year. There's another component to this. With the lavenshire port system we have we put up the shafts as I said earlier, could cost up to R10 billion, but you operate them for 270 days of the year only. Now, in other parts of the world like Australia these operations run 365 days a year. We need to work towards that objective as well. If we do that we create additional value for the shareholder. 50% of

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that value, that's the number I used before, should be used to improve the living and working conditions of the employees. So not only can you then have the money because you're realising an asset you've got there anyway, not only do you have the money to put up better accommodation units but if you structure your system such you can try to ensure that your employees get home, let's say they work for two weeks then go home for a week, and you do it more regularly. Then it has other socioeconomic benefits, HIV/AIDS, etcetera, etcetera. So that's what I was alluding to earlier about you have to think through this creatively. You have to remove yourself from the current paradigm and think in a different paradigm. And I think with bold leadership this is possible. Now, I know that Anglo Gold, for example has also been exploring the possibility of working 365 days a year and they've gone to great lengths to get agreement with the unions on that. [15:38] It's not as simple as I say it is because if you want to run your shaft 365 days a year you have to change the configuration, so there's capital investment you have to do. So ideally you want to do it with a new shaft and possibly with some shafts that are more - so it's not something you do overnight, you do it over a period but you know I think this is the kind of creative solution we need to put together, otherwise the current paradigm will

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persist.

CHAIRPERSON: I see. And of course if the people were living in these converted containers, they'd obviously have the essential utilities of fresh water, proper sanitation and electricity which is very important for maintaining a dignified standard of living.

MR SEEDAT: And these units are more secure. You're not going to get – and a container is meant to travel and shift around the world, it is waterproof, it is made of such thick steel that it's not going to be broken into, so they have other benefits in terms of security, health, et cetera, as well. So I still believe there's a potential solution here but it needs strong leadership to make it work.

CHAIRPERSON: It sounds affordable too.

MR SEEDAT: Hopefully. I, my numbers say it should be but I think it takes – one of the things I suggested that we should do is engage the universities, the three universities in Gauteng, the architectural departments, set a challenge, set a prize and say, come up with a creative solution. So –

CHAIRPERSON: Sorry, Mr Burger, we took over your examination in chief, the witness and I. Would you like to carry on with your questions?

MR BURGER SC: Well, I'm so delighted

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that we've solved the housing problem in the land, so it's time well spent.

CHAIRPERSON: Pity it wasn't solved years ago but we won't go there now.

MR BURGER SC: Well, well, well, that's a debate for another day. Sir, I'm not going to finish with this leg and I want to deal with two subjects outside of phase 2 or stage 2, whatever it's called, and with your leave I'd like to do that now very briefly. One is the recent suggestion that the mine should have been closed and so, as I understand the proposition, there wouldn't have been a tragedy. And the other is the suggestion of less recent origin and that is that Lonmin shouldn't have, should have spoken to the strikers. With your leave, I've spoken to my learned friend Mr Chaskalson, I'll be very brief but I'd like to have the benefit of this witness's views on those two issues towards the end of my evidence –

CHAIRPERSON: It sounds sensible, if may say so. Mr Chaskalson, you haven't got a problem, have you?

MR CHASKALSON SC: I don't have a problem. I anticipate that it may need an opportunity for SAPS to cross-examine on these issues but Mr Semenya will obviously address that –

CHAIRPERSON: Alright, Mr Burger, carry

on.

MR BURGER SC: I'm indebted to you, Chair. Mr Seedat, you'll have known from consultations with me that there's recently been a suggestion that if the mine was closed we wouldn't have had the tragedy. Now, I'm now going very quickly because my time is limited but can I have the benefit of your views? We've debated at your consultation and perhaps you can deal with that, please.

MR SEEDAT: I'll deal with the practicalities first and then I'll go on to the financial. A shaft, at all times, needs to be maintained. So even when you're not producing, you need essential services. On average a shaft like K3 will need between 150 and 200 people on three shifts to maintain it. There's water pumping, there's ventilation, there's electrical, the shaft, you're using the cage to take people up and down, you have to keep all of those things going. Let me give you one real example of what could happen. If your ventilation stops, in some shafts you could have, potentially, methane build-up. You still have electricity, you have the potential of a blast. On the shallower shafts you have water, the water table is higher than the shaft, you have water ingress into the shaft. If it's not pumped regularly it can decant out of the shaft and create environmental problems. You've got 11 shafts, so you're

talking of 11 times, whether it's 150 or 200, you're talking circa 2 000 people you need.

Let's take it further. Next to each shaft is a concentrator. The concentrator takes the ore, crushes it, mills it, puts it into a liquid solution and then you do the separation and you get roughly, the rough cut of the PGMs and the other products. You can't just switch that off overnight. You've got to drain it in an orderly way, otherwise if you just stop, the material settles and you're going to spend days, weeks, de-blocking the system when you have to restart it, at significant cost. That's the concentrator.

From the concentrator the material goes to the smelter. Now, the smelter operates, there's two furnaces in the case of Lonmin, the smelter operates at temperatures above 1 000 degrees. These are highly sophisticated electrode furnaces. In other words, you have positive and negative electrodes and the material in between and it arcs and it creates heat and these are water-cooled units. When we have to maintain one of these furnaces, we have to shut it down and that takes two weeks and if you want to keep it alive but not producing because you're in this crisis situation, you still need people there to maintain it. You've got water systems around it, if those water systems fail you can either have water ingress into the furnace and

there's an explosion or you have water not cooling and you can have the furnace failing as well. So not practical to turn a furnace off overnight.

The same with the base metals refinery. The base metals refinery is right next to the smelter, the furnaces, and similarly it puts all of these products in suspension, through the various circuits and then produces, separates from there the different components and it's a base metal – they're associated minerals that are pulled out there. So you can't just shut that overnight. You've got to do it over a good few days. So those are the practical reasons why you couldn't just, let's say on that Monday the 13th, switch off the lights and let's leave, take everybody out of harm's way. You can't do that, you need these essential service people.

I spoke earlier about Lonmin's financial position. In the midst of this, as I mentioned – well, prior to this we had gone on a road show to test the market for a bond, not successful. Ore was not being produced, but when this stopped, when the strike started you had stockpiles of ore and you had material in process. To enable Lonmin to maintain its liquidity to a level that satisfies its covenants with the bank, Lonmin literally over a period drained all of that product and produced finished product and sold it and that's how it managed to

keep on the right side of its financial covenants. If you recall the last extended strike, legal strike that we had in the country, the analysts were saying that this how many of the companies had managed to keep themselves financially afloat, they'd been draining their system, using up their work in progress.

So those are really the reasons why, I mean I say this with a bit of cynicism but the guys, the people who were on strike, those that lived in the hostels still went back to the hostel to have their meals. So if you had sent the people there were doing the cooking of the meals away as well, because you can't selectively – you'd create a further problem for yourself. So not a real practical solution that could have been implemented, you know, within a couple of days or in some cases within a couple of weeks.

MR BURGER SC: Thank you. Just briefly on that subject, the other subject is the talking to or negotiating with the strikers. Now I thought I would put more to you but let me just bring you up to date with the evidence thus far before the Commission. The attitude of the strikers was told to us by Mr Nzuza who says he was the second IC of the strikers and let me just briefly refer to what his evidence was. It's in SSSS1 at page 20 and 21, if I may briefly take you there. That's the little bundle before you. At page 20 of it and page 35992 opposite line

20. My learned friend Mr Bham is asking him questions. 35992 opposite line 21 Mr Bham says, "If at the time Lonmin did not agree to the demand for R12 500, would the strike have continued?" And Mr Nzuza said, "Yes, the strike would have continued." And at page 21, that's the record page 35997 opposite line 20, really line 22, Mr Bham said, "Is it fair to conclude from what we've seen shown" – and they've looked at a video – "from all those video clips, that there were two not-negotiables for those of you who were on the koppie at the time, the strikers? The first was that you wanted Lonmin management to come to the koppie and the second was, you wanted your demand for payment of 12 500 to be met." He said, "Yes, that's what we wanted." Mr Bham, "And if you don't get what you wanted the strike would continue?" "Yes, I've already said so." Now that's the attitude, an attitude of the striker.

Let me give you the AMCU attitude. The AMCU attitude you'll find in that same bundle at page 22. It's a letter we found first in the AMCU bundle but we only saw page 1 of it. We've got page 2 now, so let me give you both pages. It's written on the 10th of August 2012. It's at the time of the strikers going to your headquarters and there's a debate between Mr Mokwena and Mr Mathunjwa and this is what he writes apropos of that to Mr Mokwena. He says in the middle of that page, "As AMCU we were not aware

of any march directed to the employer, we only knew about this when you made the telephone conversation." First bullet, "However, at AMCU we propose that whoever will be receiving the memorandum" - they expected that the strikers would hand over a memorandum, that didn't happen but that's what he believed – "that whoever will be receiving the memorandum must inform the marchers that by receiving such memorandum does not set any precedent." And in the second bullet, I pick it up in the second line, "For non-unionised employees there are management structures dealing with grievances, hence if there are issues of common concern, should be communicated via such structures.

And I read selectively page 23 over the page, "We urge management not to take extreme measures in addressing this predicament by not giving undue recognition to the sinister forces which are not known to ourselves." He's clearly fingering a third force there at the time and that's what he is saying, I'll argue, and then he concludes to say, "As AMCU we suspect that there are forces behind this which, as leaders, we must address amicably." Now that's the attitude of one of the two trade unions.

Now, I must also tell you that on the Wednesday before the tragedy these two unions leaders and Mr Barnard Mokwena go on national radio. They have a verbal shootout and at the end they decide the two unions leaders will go

to the koppie and speak to the strikers to try to defuse the situation, that doesn't work. Against that background can I ask you, what is your reaction to the suggestion that Lonmin should have spoken to the strikers during the period 10 to 16 August 2012 and so avert the tragedy?

MR SEEDAT: As I mentioned earlier, I've been in the mining industry for the better part of 30, 32, 33 years. Whenever we were faced with situations where you had an unprotected strike, people marching, you had to position it that you made that situation move back into a regulated environment, honouring the unions that represent them, ensuring that the agreements that are in place are honoured, et cetera. And in this case I would have seen it no differently, so on that Friday I think the management - I wasn't involved but I'm giving you my opinion – the management team's approach that said, let someone from security get this memorandum from the workers and pass it on to us and Mr Mathunjwa said, once you get that, talk to the unions leaders and we'll see how we can take this forward. So I thought that was the right approach. I understand the workers said, no, we can't read or write you know, we're not going to give you a memorandum. I mean I know, I've seen photographs with posters on that said "We want R12 500." Clearly some of them could read and write. So I think that was the right approach on the 10th of August

and as things got worse, when I got involved on the 15th and I recall on the 16th when I came to LPD and I met with the management team, as I mentioned earlier, the idea of talking to the workers was discussed and I know it was discussed prior to that when I wasn't there. But the security situation, you know, in all my time that I've been in the mining industry, to have two security guards killed, to have two policemen killed in addition to all the other employees that were killed, I think it was absolutely the right decision to say we're not sending anyone out there. The police is not respected, they've been killed, how do you expect them to protect us, a manager, and if you go there and you say, sorry, we can't give you R12 500, how – have you thought about how the workers would react? Could they take the manager hostage, could they make an example of him in a more tragic way? And I recall one of the managers saying, you know, I'll go up if it's the right thing to do and his wife said, I will divorce you if you go up. So the circumstances were such that we did not see, and I support the management's view on this, Mr Chairman, that it wasn't the right environment to send someone out to speak. As I said, historically when something like this happens you get the workers to submit a memorandum, go back to work, we will discuss it with the unions and we will address this through the unions structures. That generally

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1 works. This is, in this case clearly the experience of the
2 past was not going to be the same.
3 MR BURGER SC: Can I ask you this because
4 I must argue this at the end of the day and I'm not clear
5 in my own mind, so help me. Assume you went to a workers'
6 committee, assume they had three or four representatives,
7 assume you have a safe place and you sit down and you're
8 all very calm and you talk. What do you then say to them?
9 You know what they want, they want R12 500. What do you
10 say, as employer, to them?
11 MR SEEDAT: We can't meet your demand,
12 it's financially not viable.
13 MR BURGER SC: But what happens then?
14 MR SEEDAT: Well, you know, sadly that's
15 exactly what happened after the 16th. The workers did
16 appoint, I think through the assistance of Bishop Seoka, he
17 was here earlier, they appointed – they got a group of the
18 workers together, we got a management team together, we got
19 the unions involved and I'll talk a little bit about that
20 and they all sat around a table and eventually we moved
21 away from the R12 500 demand and came to a solution which
22 everybody could live with. It wasn't ideal but everybody
23 could live with it, but prior to the 16th they wanted the
24 manager to come to their mountain and talk to the 3 000-odd
25 people there, many of them carrying dangerous weapons,

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1 there was a history of 10 people being killed. It's – to
2 have gone up there and said, you're not going to get
3 R12 500, somebody would have been hurt badly. After the
4 16th I think some sanity prevailed –
5 MR BURGER SC: I was criticised for that
6 and sorry I interrupt you, I was criticised for calling
7 that a watershed, the 16th. Why do you stress the 16th?
8 MR SEEDAT: Well, you know, until the 16th
9 we saw no way of talking to the workers in the way we used
10 to do it historically, appoint a group of representatives,
11 come into the management, meet with management, but it say
12 that a bit hesitantly because at that time, as you saw, the
13 unions – AMCU and I know NUM in the position said you do
14 not talk to these people and the words used were, "You are
15 encouraging anarchy." So we would have had to get the
16 agreement of the other unions and said in the best
17 interests of resolving this, please agree that we have
18 these discussions and you participate. And by the way,
19 that's what happened after the 16th, I went and saw Frans
20 Baleni on the 23rd of August and I said, Frans, we cannot
21 continue like this, you cannot have people having lost
22 their lives and perpetuating the situation, will you agree
23 to AMCU sitting at the same table as you and the worker
24 representatives so that we can resolve this? And then he
25 agreed to it but I have no doubt that before the events of

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1 the 16th if I went to him with that proposal he would have
2 said, no, we have a recognition agreement with you, we are
3 the bargaining union, you cannot talk to anyone else.
4 MR BURGER SC: Mr Chair, I see it's five
5 to four. My time is up. Ideally I would like to have
6 another 15 minutes to do the rest of phase 2 which I'd
7 planned, but I will seek leave for that on Monday morning
8 and see whether I can get another 15 minutes.
9 CHAIRPERSON: Alright, we'll look at it
10 and look at the programme and deal with it then. So we'll
11 adjourn now till tomorrow morning at 9 o'clock. You're
12 excused for the moment, Mr Seedat, because I understand
13 your colleague Mr Mokwena is coming tomorrow.
14 MR SEEDAT: Yes.
15 CHAIRPERSON: And I take it you'll come
16 back again sometime on Monday.
17 MR SEEDAT: That's right.
18 CHAIRPERSON: That's correct, is it, Mr
19 Wesley?
20 MR WESLEY: Well –
21 CHAIRPERSON: Or is it Tuesday?
22 MR WESLEY: It's likely to be Tuesday but
23 if there's a request for another five minutes in chief, it
24 should happen on Monday, not Tuesday so we know what –
25 CHAIRPERSON: I think there's a request

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1 for 15 minutes extra, but I would hope we can put it in,
2 fit it in somewhere on Monday. Let me tell you, let me say
3 now for the benefit of those who are interested in what's
4 happening on Monday. We're starting at 9:30 but we're
5 going to have a half-hour lunch break from one until half
6 past one and we're going to sit until quarter past four so
7 we make up the half-hour. So those who are not going to be
8 here tomorrow, they may like to be told now that we're
9 starting at half past nine on Monday, with the adjustments
10 that I've mentioned but the witness I suppose will be back
11 here on Monday, so you can insert your extra 15 minutes of
12 examination in chief on phase 2.
13 MR BURGER SC: Thank you, Chair.
14 CHAIRPERSON: We'll now adjourn till
15 tomorrow morning at 9 o'clock.
16 [COMMISSION ADJOURNED]
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