

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

11 FEBRUARY 2021

DAY 342



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 11 FEBRUARY 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Good morning. Are you ready Mr Seleka?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you.

10 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Chairperson this morning we have Mr Mark Pamensky as the first witness.

CHAIRPERSON: Yes.

ADV SELEKA SC: Mr Mark Pamensky is represented legally by my learned friend who will introduce himself. Thank you.

CHAIRPERSON: Yes.

20 **ADV BLOU SC:** Thank you Chair. My name is Jonathan Blou I am from the Johannesburg Bar I appear with Ms Goodman.

CHAIRPERSON: Thank you.

ADV BLOU SC: For Mr Pamensky instructed by Adam Mitchell of Attorneys Thomson Wilks.

CHAIRPERSON: Thank you very much.

ADV SELEKA SC: I believe Chairperson Mr Pamensky is

ready to take the affirmation.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR PAMENSKY: Mark Vivien Pamensky.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR PAMENSKY: No.

REGISTRAR: Do you consider the oath binding on your conscience?

10 **MR PAMENSKY:** I do.

REGISTRAR: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

MR PAMENSKY: So help me God.

CHAIRPERSON: Thank you very much you may seated Mr Mark Pamensky.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Yes you may proceed Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chair. Thank you. Mr Pamensky has provided the commission with an affidavit Chairperson which is contained in Bundle Eskom Bundle 17 – 17 and Exhibit 39. U39.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Thank you. Mr Pamensky...

CHAIRPERSON: Continue.

ADV SELEKA SC: Mr Pamensky will have the same. You will have the same bundle in front of you with your main affidavit. That affidavit is on page – and we follow the black pagination at the top left hand corner page 368. You are there? Keep your microphone on and just relax Mr Pamensky and you will be addressing the Chairperson. I will ask you questions. So the affidavit is from page 368 – affidavit I, the undersigned Mark Vivien Pamensky you see
10 that?

MR PAMENSKY: I do Advocate and Chair.

ADV SELEKA SC: Yes. It runs up to page 404.

MR PAMENSKY: That is correct.

ADV SELEKA SC: Yes, ja. I think you – there is a signature on page – at the bottom of page 403.

MR PAMENSKY: That is correct that is my signature Sir.

ADV SELEKA SC: Is that is your signature? The affidavit is dated 22nd December 2020. You confirm this to be your affidavit?

20 **MR PAMENSKY:** I do Sir.

ADV SELEKA SC: You confirm the contents of the affidavit?

MR PAMENSKY: I do Sir.

ADV SELEKA SC: Thank you. Chairperson I beg leave to have the affidavit admitted as Exhibit U31 – U39.1.

CHAIRPERSON: The affidavit of Mr Mark Vivien Pamensky which starts at page 368 is admitted together with its annexures as Exhibit U39.1.

ADV SELEKA SC: Thank you Chair. Mr Pamensky has filed a sub – or submitted a supplementary affidavit Chairperson which is yet to be incorporated in the bundle. If Mr Pamensky wishes to refer to it we will have to make copies and have it admitted. Is it in the bundle already? What page? Page 6 – oh they have already incorporated
10 it. That is on page 685 of the same bundle Chairperson.
685.

CHAIRPERSON: Yes I have got it.

ADV SELEKA SC: You have it Mr Pamensky as well?

MR PAMENSKY: I do Sir.

ADV SELEKA SC: The affidavit runs up to page 697.

MR PAMENSKY: That is correct.

ADV SELEKA SC: The signature at the bottom of page 696 is that your signature Mr Pamensky?

MR PAMENSKY: Yes it is Sir.

20 **ADV SELEKA SC:** The affidavit is dated 9 February 2021
you confirm this to be your affidavit?

MR PAMENSKY: I do Sir.

ADV SELEKA SC: You confirm the contents?

MR PAMENSKY: I do Sir.

ADV SELEKA SC: Thank you. Chairperson I beg leave to

have the affidavit admitted as Exhibit U39.2.

CHAIRPERSON: The affidavit of Mr Mark Vivien Pamensky starting at page 685 is admitted together with its annexures as Exhibit U39.2.

ADV SELEKA SC: Thank you Chair. Thank you. Mr Pamensky thank you for coming again I understand you are not coming for the first time to give testimony before the commission.

MR PAMENSKY: That is correct Sir.

10 **ADV SELEKA SC:** That is good thank you. Just by way of the information Chairperson Mr Pamensky has dealt extensively with the issues of suspensions.

CHAIRPERSON: I think I have had too many witnesses appear before me now that I cannot remember. So – but the last – at the last count I was told I had heard about 257 witnesses.

ADV SELEKA SC: Wow.

CHAIRPERSON: So that is not a small number.

ADV SELEKA SC: Mr Pamensky is one of those.

20 **CHAIRPERSON:** So thank you for coming back Mr Pamensky.

MR PAMENSKY: Thank you Sir.

ADV SELEKA SC: Yes. Yes Mr – just for information purposes Mr Pamensky's affidavit – the main affidavit deals more with the issues of suspension Chairperson on

the issues of transactions Mr Pamensky had recused himself – yes in the matter that came before the board Mr Pamensky had recused himself – is it the board?

MR PAMENSKY: Yes Chair it came to the board I recused myself from all coal and coal procurement at Eskom from that date forward I was never involved in anything that would come coal or coal procurement whether it was at board level or sub-committee level.

ADV SELEKA SC: Yes.

10 **MR PAMENSKY:** B. I was never a board tender committee member either.

ADV SELEKA SC: You were never?

MR PAMENSKY: A board tender committee member.

ADV SELEKA SC: Okay yes. So – but there is an issue regarding Mr Pamensky's emails that were exchanged with one of the Gupta brothers. He will have to explain that part insofar as the transactions are concerned.

And then he touches on the McKinsey matter insofar as he came to the board to the extent that is dealt with in
20 the affidavit I think we will refer to what is in the affidavit.

CHAIRPERSON: You might wish to just speak up a little bit Mr Seleka. Speak up a little bit.

ADV SELEKA SC: Oh a little bit ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you Chairperson. I will then

proceed Chairperson to lead Mr Pamensky's evidence.

CHAIRPERSON: Yes do yes do so.

ADV SELEKA SC: Mr Pamensky the evidence already just by way of background before the commission and I think you have already given this in your first appearance that you were one of the new persons appointed with effect from the 11th of December 2014 on the board of Eskom. Correct? Just by way of background.

MR PAMENSKY: That is correct.

10 **ADV SELEKA SC:** Yes. Could you tell the Chairperson what is your profession?

MR PAMENSKY: Chair I am a Chartered Accountant by profession. Yes that is my profession.

ADV SELEKA SC: Yes. Well was this your first appointment to serve on the board of Eskom

MR PAMENSKY: Yes it is my first time to serve on a state owned enterprises board.

ADV SELEKA SC: Or an SOE that is the – how were you appointed to serve on the board?

20 **MR PAMENSKY:** Sir as I explained last time I filled in a – from the newspaper I filled in the advert. What transpired from there is we got receipt acknowledging receipt of my application. Then I received on the 11th of December a letter to say you have been approved. I did not accept that appointment up front. There were certain conflicts I

needed to disclose upfront. Once those were disclosed everybody was happy and after the DPE Department of Public Enterprise and all the other members approved it I accepted the position thereafter in January Sir.

ADV SELEKA SC: Did you know any of the board members prior to your appointment?

MR PAMENSKY: Yes I did.

ADV SELEKA SC: Which ones did you know?

MR PAMENSKY: I knew Ms Viroshni Naidoo.

10 **ADV SELEKA SC:** And how did you know her?

MR PAMENSKY: Socially.

CHAIRPERSON: Your voice drops down.

ADV SELEKA SC: Does it oh.

CHAIRPERSON: From time to time Mr Seleka. So make an effort to speak up.

ADV SELEKA SC: Yes. And how do you know her?

MR PAMENSKY: Socially.

ADV SELEKA SC: Ja just explain that?

20 **MR PAMENSKY:** Oh yes her husband Mr Kuban Moodley is a good friend of mine since 2001 so I have known her since meeting Mr Kuban Moodley.

ADV SELEKA SC: Yes. I asked her the same question yesterday if you followed her testimony and I asked her whether knowing you socially as a friend does it mean you were a family friend and she said yes.

MR PAMENSKY: I agree with that.

ADV SELEKA SC: You agree with that.

MR PAMENSKY: I do.

ADV SELEKA SC: So prior to your appointment to the board can you roughly estimate how long did you know each other?

MR PAMENSKY: Twelve/thirteen years.

ADV SELEKA SC: About thirteen years?

MR PAMENSKY: Yes about thirteen years.

10 **ADV SELEKA SC:** Did you – did you know that she was also applying to serve on the Eskom board?

MR PAMENSKY: No I did not.

ADV SELEKA SC: No. By the way you said the husband is a friend of yours.

MR PAMENSKY: That is correct.

ADV SELEKA SC: Ja do you know the type of business the husband is doing?

MR PAMENSKY: I have been listening over here to the commission just hearing what the story is.

20 **ADV SELEKA SC:** But you did not know?

MR PAMENSKY: No not at all.

ADV SELEKA SC: Ja. What do you know him to be doing?

MR PAMENSKY: Kuban is a business developer – Mr Kuban Moodley sorry Chair I should look here is a business developer manager – or a business development executive

where he puts deals together with certain parties.

ADV SELEKA SC: I see. We understand that he is also friends with Mr Salim Essa?

MR PAMENSKY: That is correct.

ADV SELEKA SC: You also knew Mr Salim Essa?

MR PAMENSKY: Yes I did know him Chair.

ADV SELEKA SC: Ja. Did you know that he also knew Mr Salim Essa?

MR PAMENSKY: Yes.

10 **ADV SELEKA SC:** So the three of you knew each other as friends?

MR PAMENSKY: Yes Sir.

ADV SELEKA SC: In business?

MR PAMENSKY: No business.

ADV SELEKA SC: No business?

MR PAMENSKY: No business. I did a business – Mr Moodley left Eskom in 2011 we did a roof tiling business in 2012 which did not work out and we decided that we are not going to do business together we will remain our
20 friendship so we never did any business together.

ADV SELEKA SC: Okay. Did your appointment to the Eskom board – let me put it differently. When you were applying to serve on the board did you have any conversation with Mr Salim Essa about it?

MR PAMENSKY: No I did not.

ADV SELEKA SC: So he did not know that you were going to serve on the Eskom board?

MR PAMENSKY: Correct.

ADV SELEKA SC: And did you know any other board member apart from Ms Viroshni Naidoo?

MR PAMENSKY: Yes I knew Mr Khoza September I would see him occasionally at the yearend functions at Vodacom – I mean at Telkom and then I knew Mr Romeo Khumalo also just from the year end functions of Vodacom and the
10 awards so we used to go for awards at year end to either Telkom or either Vodacom.

ADV SELEKA SC: And that is – those are the only three you knew?

MR PAMENSKY: That is correct.

ADV SELEKA SC: Any of the Gupta brothers prior to your appointment to serve on the Eskom board?

MR PAMENSKY: Yes I did know the Gupta brothers Mr Tony Gupta as I told you last time I went for a cup of tea and then I joined the board of Oakbay Resources and
20 Energy Limited the Johannesburg Stock Exchange Company.

ADV SELEKA SC: Ja. Okay you understand the reasons why these questions are being asked?

MR PAMENSKY: I do Sir.

ADV SELEKA SC: You do. Because the board members

have been alleged to have had connections with the Gupta's and that as a result of those connections they have facilitated transactions that benefited the Gupta entities when they were at Eskom. So that is – that is the reason we are asking those questions.

Please turn to page 372 of your affidavit.

MR PAMENSKY: Yes Sir.

CHAIRPERSON: Before you proceed Mr Seleka can I ask this question because I do not want to forget it?

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: As I understand it yourself, Mr Moodley and Mr Salim Essa are all friends, is that correct?

MR PAMENSKY: Yes Chair that is correct but the way you describe it that you think we are very close the way I am friendly with a very lot of people Chair. This is just one of my many friends.

CHAIRPERSON: Ja no, no that is fine but I am just saying you are friends with both of them?

MR PAMENSKY: That is correct Sir.

20 **CHAIRPERSON:** Yes. Evidence that has been led here has suggested that Mr Salim Essa met with certain Eskom officials at Melrose Arch on the 10th of March of course one of the Eskom officials was alleged to have been present in those meetings is Mr Koko who has denied that there were such meetings.

Did you know his offices at Melrose Arch – Mr Salim Essa?

MR PAMENSKY: Yes I did.

CHAIRPERSON: Yes. Would you be willing to point where those offices exactly used to be for the commission? Is that something you could do?

MR PAMENSKY: Yes with pleasure.

CHAIRPERSON: I would be very grateful because one of the things we want to establish is whether the people who
10 say they had meetings with him and Mr Koko at Melrose Arch can point out that this is where we were at those meetings. And it is important to find somebody who can say well Mr Salim Essa's offices were – this is where they are or they were in March 2015. Then at least we know that as a fact and then we see whether they are pointing the right places or not.

MR PAMENSKY: Yes Sir with absolute pleasure.

CHAIRPERSON: Thank you very much. You will take that further Mr Seleka.

20 **ADV SELEKA SC:** Yes indeed Chairperson.

CHAIRPERSON: Yes thank you.

ADV SELEKA SC: Thank you. Yes Mr Pamensky I was then – I had asked you to turn to page 372 of your affidavit paragraph 8.5 which is in relation to your knowledge and interaction with the Gupta brothers. So it says there:

“As to the Gupta’s I met Tony Gupta in about June 2014 when he invited me to his house to meet him.”

I thought the information was insufficient – it was limping in the sense that we do not see how it came about that he had to invite you for – to his house – invite you to his house.

“He – when he invited me to his house to meet me.”

10 Did he know you before this in order to invite you?

MR PAMENSKY: As I said last time to you no he did not know me Chair.

ADV SELEKA SC: Yes but how did he – because the call cannot come out of the blue? So did he?

MR PAMENSKY: Chair the calls do come out of the blue. I got a call out the blue it was a SMS or a call I cannot remember who said come over for a cup of tea. That is how we do our business. People phone you, you go there and you have a chat and you see what the discussions are
20 about. That is what we do in business.

ADV SELEKA SC: Yes no we just want you to explain.

MR PAMENSKY: Oh sorry.

ADV BLOU SC: Sorry Chair can I just for the benefit of the commission and Mr Seleka and for my own – just bring my own witness into line for two seconds?

CHAIRPERSON: Ja.

ADV BLOU SC: Mr Pamensky you heard the Chair say that he is in 1257 Rivers, right. You were last here when we were here last it was sometime last year probably – the year before the examiner was different it was a Ms Hofmeyr. Please treat the questions as if the persons in this room had never heard the answers.

MR PAMENSKY: Understood sorry for that.

CHAIRPERSON: Yes.

10 **ADV BLOU SC:** Now no one is suggesting that you have not given the answers but they are not – they will not know them. Okay.

CHAIRPERSON: Yes. No thank you very much for that thank you very much.

MR PAMENSKY: Sorry Chair. Sorry Advocate.

CHAIRPERSON: As I indicated I could not remember that he had been to – he had given evidence.

MR PAMENSKY: I could not have led a good impression Chair if you did not remember me. That is – that be the
20 truth.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Yes so I – I mean we just want to understand how the call came about.

MR PAMENSKY: Sorry the call just came about roughly in June I got a telephone call or a whatsapp message says

would you like to come over and have a cup of tea and have a discussion?

ADV SELEKA SC: Yes.

MR PAMENSKY: It was as simple as that Sir.

ADV SELEKA SC: Yes no you told us.

MR PAMENSKY: So it was as simple as that Sir.

ADV SELEKA SC: Ja. Because I mean we thought maybe you had been referred to him – he is – your name has been mentioned to him that you are in this type of business and
10 that is why he called you to explore the possibility of what business they can do with you. You know that sort of information one does not see here.

MR PAMENSKY: I hear you Advocate – I hear you Advocate Seleka so it was a call and we went – we had a meeting. He explained to me a bit about the Sahara group a lot. He explained to me more of his operations where they going and he explained to me his mining operations and then I explained to him Blue Label Telecoms what we do and we are doing and we left it there. It was a very
20 cool meeting.

ADV SELEKA SC: Hm. So are you saying nothing came of that meeting?

MR PAMENSKY: No Sir nothing came of that meeting. There was just a general chat. He explained to me what he does in their business, what he is doing. I said this is

what Blue Label does and we just had a general chat and that was it.

ADV SELEKA SC: What does Blue Label – what did or does Blue Label do?

MR PAMENSKY: Blue Label is involved in the telecommunications industry. It is involved in all facets of start and prepaid airtime whether it is cellular, whether it is electricity, whether it is other services. It provides a variety of services to – shoo it has been five years –
10 excuse me – it offers a variety of electronic services to enable end users to obtain products much easier and much more accessible to anyone. So we were primarily in the cellular distribution game.

ADV SELEKA SC: Hm. Was – did you get a sense that he was calling you because of you being at Blue Labels and Blue Labels was doing?

MR PAMENSKY: I did not – it did not cross my mind – did not think about that. He called me probably to have a meeting to see and also open up a relationship.

20 **ADV SELEKA SC:** Yes. So that is June 2014. At the time were you an employee of Blue Labels or is this your company?

MR PAMENSKY: No I was the Chief Operating Officer of Blue Label Telecoms at that time.

ADV SELEKA SC: And then you do also say you met with

Mr Atul Gupta but just before I go there did you ask Mr Tony where did you get my name and number from?

MR PAMENSKY: No.

ADV SELEKA SC: Why not?

MR PAMENSKY: It did not cross my mind. He sent no message got hold of me and wanted to speak. You know I do not know where he got my number from. Did not cross my mind.

ADV SELEKA SC: No but this time 2014 the Gupta's were
10 well-known from a media point of view, the landing at the military base, the wedding at Sun City and the connections – their connections with the former President. Did you know about all that?

MR PAMENSKY: Chair asked me last time that question and I did not see it like that at all Chair. You know maybe it was a political fight they were not near as toxic as they are today. You know when I worked at ORE the listed company you know we had KPMG, we had the big auditors there was nothing wrong. It was run very well by
20 management. It was very impressive from my perspective. Just to maybe give you a little concept. ORE is listed on the Johannesburg Stock Exchange and we meet quarterly. So we follow very similar to how the Eskom works. We follow your board meetings and you attend quarterly and you have all the different committees.

ADV SELEKA SC: Yes. Yes but okay. I understand

MR PAMENSKY: So I just wanted to say I have never seen anything untoward at all.

ADV SELEKA SC: Yes. Yes, now you will deal with that when you become a board member. It think you will deal with that at that stage. But I am just talking from an outside point of view hearing media reports this is what is happening, the Gupta's and their involvement with the former President, the deals that they are making with
10 government and so on. I am asking whether you were aware of that?

MR PAMENSKY: No Chair – well no. I was aware they had relationships but it also seemed to me that it looked like a lot of fighting to do with like the media people because they in my mind owned TNA and all this coming across was just like a – a media fight but I did not see anything of that Chair, not at all.

ADV SELEKA SC: Then you do say also that you came to know Mr Atul Gupta and let me just read out from your
20 affidavit.

MR PAMENSKY: Sorry Chair.

ADV SELEKA SC: I will just read out from your affidavit.
Again you say 8.5.2

“Atul Gupta called me in late August or early September 2014 to invite me to sit on

the board of Oakbay Resources and Energy Limited in anticipation of its listing on the Johannesburg Stock Exchange.”

So okay I pause there again because I am trying to think like in the first – in the preceding paragraph why does it look like a call out of nowhere or is this one different?

MR PAMENSKY: No Chair as I said to you on that 12th he explained to me some of his companies and they have got mining and everything and then Mr Atul Gupta phoned me afterwards to ask me to come and have a meeting with him and to say that he is going to go and they looking to list Oakbay Resources and Energy Limited. And in order to list these companies you need to have three independent non-executive directors.

ADV SELEKA SC: Yes. So – ja you explain.

MR PAMENSKY: Oh sorry.

ADV SELEKA SC: Ja you will explain. Are you saying the call was a sequel to the meeting you had in June 2014
00:25:02 Mr Tony Gupta?

20 **MR PAMENSKY:** No.

ADV SELEKA SC: It had no relation at all with...

MR PAMENSKY: No.

ADV SELEKA SC: So – but then explain to us how – how is he calling you out – it seems to be out of nowhere?

MR PAMENSKY: Yes he is calling me out of nowhere.

This is how you get invited to boards people call you up, they come, they know you got expertise and skills and they call you up.

ADV SELEKA SC: Yes.

MR PAMENSKY: So it was like ...

ADV SELEKA SC: Yes my point is how did they know you?

MR PAMENSKY: Oh I do not know Chair. That I cannot answer you I do not know sorry. Sorry Advocate I do not know how they know about me.

10 **ADV SELEKA SC:** Yes.

MR PAMENSKY: I will just give you a story I do not want to mention names but you know when I joined the board of ORE there were two members of the board and what they actually said to me was ...

CHAIRPERSON: Which board now?

MR PAMENSKY: Board of ORE.

CHAIRPERSON: Yes.

ADV SELEKA SC: Or I used the word Oakbay Resources and Energy I rather use the word ORE Chair because I
20 have been dealing with this for four years people keep on getting confused with the Oakbay Investments which is the Gupta ship and on this side. So I created another affidavit to try explain and show you my role and the group. Sorry I lost my train of thought what was your question Sir?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes I think you are dealing with the question of receiving this call out of the blue but you wanted – I think you wanted to share some...

MR PAMENSKY: Oh so – so those board members told me that they joined the board because I was there. I did not realise what a good name I had in the market at that point of time – I really did not.

ADV SELEKA SC: You did not what?

MR PAMENSKY: Know what a good name I had in the
10 market at that point of time. You know to hear from fellow board members they considered coming on because I was coming on which is quite impressive.

ADV SELEKA SC: Ja just – yes just direct the – I mean face the Chairperson as you answer.

MR PAMENSKY: Oh sorry, sorry.

CHAIRPERSON: Okay I think let us – let us just get the final answer on I think what Mr Seleka is trying to establish. I think what he is suggesting is – is this a situation where you were called and invited to join the
20 board without really having had any directions of worth mentioning with the – with them you know without – without really having had any prior interactions of any substance?

MR PAMENSKY: That is correct Chair.

CHAIRPERSON: Yes.

MR PAMENSKY: You know as I said last time he called

me. We sat, we had a meeting. He asked me after what I had to consider it – I had to go and speak to my employer as well – I am employed and I had to consider my options. I then got a subsequent call from the company secretary and I duly accepted the appointment. So I do not – no we never had any discussions before.

CHAIRPERSON: Okay.

ADV SELEKA SC: Okay that is alright. So Atul Gupta also – Mr Atul Gupta also calls you and the conversation leads
10 to you becoming an elite independent non-executive director in ORE – Oakbay Resources.

MR PAMENSKY: Correct.

ADV SELEKA SC: As opposed to Oakbay Investments. Is this Oakbay Resources.

MR PAMENSKY: Correct.

ADV SELEKA SC: As appose to Oakbay Investments. Is this Oakbay Resources the very company that was assisting Tegeta to acquire OCH?

MR PAMENSKY: No, Oakbay Resources is an energy. It
20 had nothing to do with the Optimum Coal transaction.

ADV SELEKA SC: Ja, but we know that Oakbay had made an offer through Bowman Gilfillan to the Business Rescue Practitioners. I am asking you which Oakbay is this? Is that Oakbay Resources or Oakbay Investments?

MR PAMENSKY: Chair, I am not sure. It was definitely

not Oakbay Resources. I do not know which entity in the Gupta Group made that offer but I know it was not Oakbay Resources and Energy Limited.

ADV SELEKA SC: So then you came to know the other Gupta brothers as a result. Is that Varun Gupta?

MR PAMENSKY: Yes, Mr Varun Gupta was the Executive Director on the board of ORE and Shiva.

ADV SELEKA SC: And you also came to know Mr AJ Gupta?

10 **MR PAMENSKY:** Yes, sir. He was in the building when he used to have meetings there.

ADV SELEKA SC: Now I am going to go a little bit out of sequence because of this issue that you are talking about now. The... If ORE was not a company involved in Tegeta for the acquisition of OCH. When the matter came to the board as form of a submission for prepayment of R 1.68 billion to Tegeta in December 2015. Why did you recuse yourself?

MR PAMENSKY: If I may Chair?

20 **ADV SELEKA SC:** Yes.

MR PAMENSKY: Very, very important. Roughly October/November, ORE and Tegeta suggested to the ORE Board that we purchase the Brakfontein Coal Mine in exchange for shares. So that was on the 20th of November.

I gave a commitment. I had to explain to the board

that I am not conflicted. The conflict was very remote. The Brakfontein Contract had already been awarded by Eskom at that time.

Our audit was done by the Board Tender Committee because they deal with coal procurement but we learnt it was management who signed that on the 10th of September.

Secondly, I do not sit on the Board Tender Committee. I will not be involved in any coal procurement
10 issues. It will be a very limited occasion where I would be at the expense of the other. Therefore, it is was a manageable conflict.

What I committed to the ORE Board that I will recuse myself from anything that is related to coal or coal procurement.

ADV SELEKA SC: I think... Ja, just keep a distance from the mic a little bit. Ja.

MR PAMENSKY: Sorry. So I would do – I committed to the ORE Board that anything that came up that about coal
20 or coal procurement, I would recuse myself.

And duly when I first came up on the 8th of December, I recused myself straight away from all coal and coal procurement going forward and anything to do within the Eskom environment.

I never received board packs. I never received

anything at all that I could have influenced anything within those environments.

ADV SELEKA SC: Ja. So that matter, it is a submission prepared within Eskom by Eskom and certain Eskom executives.

They have prepared a submission for a prepayment decision to be made by the board, R 1.68 billion by way of a Round-robin to be made at 12:00 noon, 9 December 2015.

10 You received the communication via email from Ms Suzanne Daniels on the 8th of December. You would have received it as well. And you are saying as a result of receipt of that email – not as a result, after receipt of the email, you recused yourself because of the matter that had to be decided.

MR PAMENSKY: No, sir.

ADV SELEKA SC: Ja.

MR PAMENSKY: I am not sure I am understanding your question.

20 **ADV SELEKA SC:** Okay.

MR PAMENSKY: But when the email arrived on the 8th.

ADV SELEKA SC: Yes, yes.

MR PAMENSKY: It said the pre-purchase of Optimum Coal and it was coal related. So immediately I sent an email to the company secretary and to the chairman

because that the Eskom conflict rules. You need to inform them.

And I asked them: Please, I am potentially conflicted. I would like to be recused from all items. So my recusal was based on the ORE Board meeting that I am not getting involved that has got anything to do with coal or coal procurement at Eskom.

ADV SELEKA SC: Yes. Have you attached your email to your affidavit?

10 **MR PAMENSKY:** Yes, to my affidavit. The supplementary affidavit.

ADV SELEKA SC: Oh, they are in the supplementary...

MR PAMENSKY: Yes, sir.

ADV SELEKA SC: Those emails?

MR PAMENSKY: Yes, sir.

ADV SELEKA SC: Okay. Can we go there?

MR PAMENSKY: Yes, sure we can. Chair, just before Advocate Seleka starts. We put a supplementary affidavit in just to explain my role and to give context to where
20 these mails are coming from.

I think it is important that maybe, with your permission, I can maybe explain the Oakbay Investments or the whole group to you so that you get a little bit of a quick sight. It will not take me more than five minutes and I think it will put a little bit of perspective to you.

CHAIRPERSON: Yes. Okay. Let us give you that chance.

MR PAMENSKY: Thank you, Chair. If I may ask? Could you go to page 700 in the Eskom Bundle?

CHAIRPERSON: Yes, I have got that.

MR PAMENSKY: So Chair, on your right hand side is Oakbay Investments ...[intervenes]

CHAIRPERSON: When you said Eskom Bundle, you mean the bundle we are currently using? I think you do because I think the page you have in front of you is the page I have.

10 **MR PAMENSKY:** Yes.

CHAIRPERSON: Ja.

MR PAMENSKY: Yes.

CHAIRPERSON: Ja. Okay.

MR PAMENSKY: So Chair, on the right hand side is Oakbay Investments and all its groups. One of them, we put down there is obviously Tegeta and Optimum.

I have never been a director of any of those companies, nor have I had any insight into any of the affairs of those companies. The role I played is on the left.

20 So Oakbay Resources and Energy Limited and if one asset should ...[intervenes]

CHAIRPERSON: I am sorry. This shows the position as at when? It could not be in 2014?

MR PAMENSKY: No, no. I would propose as – call it 2016, sometime in the year 2016.

CHAIRPERSON: Ja, okay.

MR PAMENSKY: Perfect.

CHAIRPERSON: H'm.

MR PAMENSKY: So Chair, as you know, to list on the Johannesburg Stock Exchange, you need three independent non-executive directors as well as a financial director.

So we listed on the 28th of November 2014, ORE listed. Its only assets that it had was Shiva Uranium. That
10 changed Chair on the 29th of February when the purchase a Brakfontein asset in exchange for shares. So those are the only assets that are there.

So that is the Oakbay Group of companies. I sat on the left. I had nothing to do with any of the companies on the right. I had no insight, no nothing. It is in the affidavit.

So I think that just gives you a bit of clarity that I would not have seen what was going in Tegeta, Optimum of Oakbay Investments and their group of companies.

20 **CHAIRPERSON:** Yes. Oakbay Investments was the majority shareholders in ORE?

MR PAMENSKY: Yes, it was an 80% shareholder and 20% was owned by public shareholders also included in the RDC(?).

CHAIRPERSON: H'm. And Shiva was the... Oh, no ORE

was the majority shareholder in Shiva?

MR PAMENSKY: That is correct, sir.

CHAIRPERSON: Yes. And Tegeta was a minority shareholder in Shiva. Is that right?

MR PAMENSKY: That is correct.

CHAIRPERSON: Yes.

MR PAMENSKY: It became a minority shareholder. We have no duties, we have no relationships with shareholders, there are no obligations to shareholders. So
10 they become clearly a shareholder. They have no board representation or no board seats but they become a 19% shareholders in Shiva.

CHAIRPERSON: H'm. Okay. Thank you.

MR PAMENSKY: Thank you.

CHAIRPERSON: Mr Seleka.

MR PAMENSKY: So in context with that email...

ADV SELEKA SC: Sorry.

MR PAMENSKY: Can I start?

ADV SELEKA SC: Yes, but I want us to go to the email.

20 **MR PAMENSKY:** Yes, I am going to go to the emails now. So I am just putting in context.

ADV SELEKA SC: Yes.

MR PAMENSKY: Now Chair, roughly in October/November, Nazeem Howa is the CEO ...[intervenes]

CHAIRPERSON: That is in 2016?

MR PAMENSKY: No, this would be October/November 2015.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

MR PAMENSKY: He approached the ORE Board and he wanted to make a Group Investment Committee which would monitor investments, corporate governance and all those elements. I was very keen to serve on that board,
10 that is my expertise.

So the emails I am going to bring into context, that Oakbay Investments was created and Investment Committee for the Oakbay Investments Group which ultimately did not happen. It fizzled away end of January and with due respect, thank God. [laughs]

ADV SELEKA SC: [laughs]

MR PAMENSKY: Thank God. Anyway ...[intervenes]

ADV SELEKA SC: Why do you say that?

MR PAMENSKY: Because Chair we had no idea what was
20 going on and what is coming out of this Commission, is a – I just would rather not just comment, you know?

Because I am sure that if there was an Investment Committee these things would also have been hidden from us completely because you do not know what is going on behind the scenes, you know.

So I just want to put me in – while we are sitting here and discussing this, I am putting context into my emails and I am not involved in the Gupta affairs or their business and that is what I am here to explain to you.

I have lived with these emails for years. I am happy to explain. Sorry, I am hoping I am not talking too much.

ADV SELEKA SC: Oh, are you getting permission to stop you?

10 **CHAIRPERSON:** Your counsel's laughs gives me the impression what he thinks about that. [laughs]

ADV SELEKA SC: [laughs]

MR PAMENSKY: My apologies. So in connection with those emails. It is in context of the Oakbay Investments Committee that was going to be formed.

ADV SELEKA SC: Yes. So Mr Nazeem Howa – you also knew – you and him knew each other?

MR PAMENSKY: On a professional relationship, he was the Chief Executive of the holding company.

20 **ADV SELEKA SC:** Of ...[intervenes]

MR PAMENSKY: Of Oakbay Investments.

ADV SELEKA SC: Investments. Oh, that is how you came to know him. Ja, but let us go to the emails then.

MR PAMENSKY: Yes, sir.

ADV SELEKA SC: Is that the email, the first one? I see

one on page 717.

MR PAMENSKY: That is correct Chair.

ADV SELEKA SC: So the email – and tell us how we should read them? Where do we start?

MR PAMENSKY: Chair, I think you would start on Eskom 717 and it would say: Hi, Chair. Above that seems to be the Gupta leaks that have gone out. It seems to show that Mr Atul Gupta then forwarded this onto others.

ADV SELEKA SC: Okay. So what we have then. If I may
10 identify the email? It is an email from yourself, Mark Pamensky. The email is there, markpam2@mac.com. It is dated November... 22 November 2015 at 07:40 p.m.

It is an email to Atul at ANN7.com.

MR PAMENSKY: And CC'd Varum Gupta.

ADV SELEKA SC: Yes, that is right.

MR PAMENSKY: Because these are in relation to...

ADV SELEKA SC: Yes. Now I am pausing because I
remember ANN7 being mentioned yesterday, that Ms Naidoo said she had attended – a what? I think it was
20 breakfast or whatever occasion, function it was with her husband which was an ANN7 occasion when Mr Salim Essa was present. Have you been invited to such occasions?

MR PAMENSKY: I have been invited to certain occasions but I cannot recall that one.

ADV SELEKA SC: Yes.

MR PAMENSKY: It was the SATI Awards that you get invited to, that big function that they have for the year-end awards.

ADV SELEKA SC: Ja. Were you invited to the Sun City wedding?

MR PAMENSKY: [No audible reply]

ADV SELEKA SC: The Sun City wedding, were you invited?

MR PAMENSKY: Yes, I was.

10 **ADV SELEKA SC:** No, but that is before 2014.

MR PAMENSKY: Oh, no. Sorry Chair. I was not invited. Blue Label Telecoms was invited to attend the wedding.

ADV SELEKA SC: Who was invited?

MR PAMENSKY: Blue Label Telecoms.

ADV SELEKA SC: Yes.

MR PAMENSKY: I do not know why the invitation came. I took the invitation.

ADV SELEKA SC: You took it?

MR PAMENSKY: I took it.

20 **ADV SELEKA SC:** Ja?

MR PAMENSKY: And I went because I am a single, everyone else is married.

ADV SELEKA SC: [laughs]

MR PAMENSKY: I took it and went to Sun City for the two days. I never met the Gupta's or anything there but I went.

CHAIRPERSON: That was 2013, is it not?

MR PAMENSKY: That is correct.

CHAIRPERSON: H'm?

ADV SELEKA SC: No, that is before 2014.

MR PAMENSKY: Yes. I have never met them. I was invited to the wedding and I went – or I was not invited, Blue Label was invited to the wedding and I took the invitation.

ADV SELEKA SC: Oh.

10 **CHAIRPERSON:** So are you suggesting they just sent an invitation to a company that they had nothing to do with it?

MR PAMENSKY: Yes!

CHAIRPERSON: That they did not know anything about?

MR PAMENSKY: Yes! It came. It was like okay. What I know was: Let us okay. I will go anyway. It is a free weekend.

ADV SELEKA SC: [laughs]

MR PAMENSKY: Ja, that is.

20 **ADV SELEKA SC:** [laughs] Had the CEO agree to you taking the invitation?

MR PAMENSKY: Yes.

ADV SELEKA SC: The CEO?

MR PAMENSKY: Yes.

ADV SELEKA SC: Not him, but you?

MR PAMENSKY: No, they are all married, as I said to

you. So they did not want to go. So I was happy to go because it was a free weekend.

ADV SELEKA SC: Oh. Yes. No, the wedding was 2013.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes, but Mr Pamensky are you saying. You went to the wedding and you never met the Gupta's?

MR PAMENSKY: That is exactly what I am saying Chair. That is exactly what I am telling you. I never met the Gupta's there. There were hundreds of people

10 **CHAIRPERSON:** Did you bring a present for the couple that was getting married?

MR PAMENSKY: Yes, we did.

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

MR PAMENSKY: Yes, we did. [laughs]

CHAIRPERSON: Ja. Well, it just sound strange that they would send an invitation to a company that they had never interactions with.

20 **MR PAMENSKY:** Chair, from my mindset, we saw the invitation coming in. It was a massive box. We said: Well, let us see what this is. We opened it. Oh, it is a Gupta wedding.

ADV SELEKA SC: [laughs]

MR PAMENSKY: So we came.

CHAIRPERSON: You said to the CEO: I will go. Do not

go.

MR PAMENSKY: No, no, no. We all – we, the CEO sit in the same office at Blue Label together. So it came in. I said: Oh, it is a free weekend. But I will go. He said ja. As simple as that Chair. It was nothing to it.

ADV SELEKA SC: Yes, but I think what the Chair is saying. It is surprising that they would sent an invite to a company they do not know, that has nothing to do with them.

10 **MR PAMENSKY:** Correct.

ADV SELEKA SC: Ja. So we are trying to establish what is the link, what is the connection?

MR PAMENSKY: Chair, I cannot answer you on that. I was invited or Blue Label was invited and I was happy to go.

ADV SELEKA SC: Because some of us were not invited and we had nothing to do with the Gupta's. I mean, it could have also come to chambers and say: Hey, Mr Jonathan Blou you are invited.

20 **MR PAMENSKY:** Chair, I cannot answer you that. I do not know. I do not know what they said. I... Blue Label was invited and I attended it and I did not meet them there Chair.

ADV SELEKA SC: Okay.

ADV BLOU: Mr Seleka, you do not know that I was not

invited.

ADV SELEKA SC: Yes. [laughs]

ADV BLOU: But I will place it on record that Johnny Blou was not invited. [laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: I am sorry. Just repeat what you have just said.

ADV BLOU: He... This is silly. Mr Seleka said but I was not invited, right? And out of the blue, he mentioned me,
10 saying you were invited. That never happened.

CHAIRPERSON: [laughs]

ADV BLOU: I am confirming that it never happened. Chair, but can I just say this? And I wonder if Mr Pamensky should not be out?

CHAIRPERSON: Well, you would know better in terms of what you want to say.

ADV BLOU: Well ...[intervenes]

CHAIRPERSON: So we can excuse him for a few minutes if you ...[intervenes]

20 **ADV BLOU:** Perhaps I will address you on something on the end and he can leave. But I just want to say Chair that – and I do not want to place anything on Mr Seleka yourself but I think you will find that perhaps – and this is a position on my part because I do not – but I do not know how many people were invited to that wedding. I cannot

recall the number.

But this is a – it seems to me to be a company, at least in those days, that would reach out to anybody with whom it might have – think might have influenced anywhere whether they have dealt with them or not but I am going to put in my own words.

In other words, for the proposition to be correct, one had to look at all the invitees and see whether or not they had been or not. That is all I am saying, on the
10 probabilities.

CHAIRPERSON: Ja.

ADV BLOU: That is all I am saying. I do not know about it.

CHAIRPERSON: Ja.

ADV BLOU: I am just saying, it might be worth of an inquiry.

CHAIRPERSON: Ja. No, that is fine. Yes, let us continue Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Pamensky, let us
20 go to the emails.

MR PAMENSKY: Yes, sir.

ADV SELEKA SC: The email then reads: Meeting of even date: “Hi Chair.” So you are addressing Mr Atul Gupta?

MR PAMENSKY: That is correct.

ADV SELEKA SC: It says:

“Thank you for the conversation today. I will action all the items and ensure that they are completed.

I will send an email to Terry regarding the lead independent role and that you as chairman has decided to take a more conservative approach and would like to appoint him.

This is the correct business decision for ORE.

10 We will have the Shiva Uranium Board sorted out by Tuesday.

This will allow us to vote on the Tegeta acquisition with no related parties.

I would like to conclude this approval urgently so ORE and Shiva Uranium can implement the transaction.

In terms of the Investment Committee, I am available to start straight away as I am at the tail end of the main acquisition of Optimum Coal.

20 Please ensure that a condition precedent is that the R 2 billion plan from Eskom is withdrawn or it becomes the seller’s problem.

I am happy to get involved to assist with this acquisition and monthly monitoring and analysing of all investments from today.

I can meet anyone you require.

If you need me in Indian or Dubai to discuss, I will meet you there.

Travel safe and look forward to seeing you soon.

Once again, thank you for today.”

Now it is that paragraph, the penultimate paragraph we would like to concentrate on for now. In that penultimate paragraph, can you explain to the Chairperson
10 what are you talking about there with Mr Atul Gupta?

MR PAMENSKY: Sorry, Mr Seleka. I am not sure what you are asking. Are you asking me for the paragraph or are you asking me for the sentence?

ADV SELEKA SC: No, the penultimate paragraph.

MR PAMENSKY: Travel safe?

ADV SELEKA SC: The one in terms of investments
...[intervenes]

MR PAMENSKY: Oh, yes Chair.

ADV SELEKA SC: Yes.

20 **MR PAMENSKY:** Yes, Chair. As I have said to you. Mr Nazeem Howa approached us in October/November. As I said to you... So he approached us, that is the Investment Committee.

As I said to you, on the 20th of November, ORE agreed to purchase the assets in exchange for shares in

Tegeta with the Brakfontein contract.

Mr Gupta was the Chairman of ORE. He did not attend the meeting. I then met him two days afterwards on the 20th to appraise him of those events.

The first event, as you can see, is Mr Terry would be Lead Independent. I felt that the Lead Independent of ORE should have no relationship with Eskom because I was the Lead Independent.

In terms of the Shiva transaction, the Shiva Board
10 had to approve. Everybody was a related party on the Shiva Board. So I had to go onto the Shiva Board. So those are the two elements.

Now in terms of the Investment Committee. That was the Investment Committee to come up. That is why I stated that point.

Second of all. I am coming to the tail end. Oh, sorry. We just jumped back. So met Mr Gupta on the 22nd. And Mr Gupta... I filled him in on those two points. And he said to me at that meeting for the first time that they
20 are looking to buy OCM and the teams are in due diligence.

I said to Mr Gupta: Is it ORE? Because I did not see it on the agenda. And he said to me: No, it is not ORE. And that was the end of our discussion.

Hence, after our meeting I then wrote the email on what our discussions are.

ADV SELEKA SC: Yes.

MR PAMENSKY: Okay.

ADV SELEKA SC: Sorry Mr Pamensky. Which Mr Gupta told you that they are buying OCH?

MR PAMENSKY: OCM, it is Optimum Coal Mine.

ADV SELEKA SC: Okay yes.

MR PAMENSKY: Mr Atul Gupta.

ADV SELEKA SC: Oh. Did he tell you that at the meeting?

10 **MR PAMENSKY:** He told me at the meeting of the 20th.

ADV SELEKA SC: Oh, the 20th.

MR PAMENSKY: 22nd, when I went to fill him in. He did not come to the board meeting. I needed to appraise him on what went on.

It is normal for a chairman without chairing the meeting. So it is normal for a chair to go and fill in the chairman if he did not attend that meeting.

20 And it was at that meeting, he first said to me, Mr Atul Gupta, that they are looking to buy Optimum Coal and the teams are in due diligence.

ADV SELEKA SC: Okay. So when he says: We are looking to buy OCM. That is on the 22nd of November 2015. Was he referring to ORE?

MR PAMENSKY: No, I asked him specifically when he said we.

ADV SELEKA SC: Yes.

MR PAMENSKY: I said: Mr Gupta, it was not on the agenda of ORE. And he said to me it is not ORE who is purchasing it. That was the end of our conversation.

ADV SELEKA SC: Yes. But I wonder whether it makes a difference, whether it is ORE or ORI of the investment or of the resources because they are inter-related companies.

MR PAMENSKY: First of all they are not inter-related companies. They are standalone companies.

10 **ADV SELEKA SC:** Ja?

MR PAMENSKY: ORE is listed on the Johannesburg Stock Exchange.

ADV SELEKA SC: Ja?

MR PAMENSKY: All our transactions are at arm's length with any company even its related party. So these are arm's length transactions.

ADV SELEKA SC: Ja.

MR PAMENSKY: The difference is Chair if it was ORE, the difference is I sit on the Board of ORE and there will be
20 different JSE and implications on that by me sitting on the Board of ORE.

ADV SELEKA SC: Yes, but they are related entities, as you say, and you find the same people or some of the same people in the same entities. The Gupta brothers would have been in the same entities.

MR PAMENSKY: I cannot comment on that but the chairman was an ORE.

ADV SELEKA SC: Yes.

MR PAMENSKY: And Mr Varun Gupta was an ORE.

ADV SELEKA SC: Yes.

MR PAMENSKY: I am not sure the other vehicles that – or companies that they were in but they were definitely directors of other companies. I am not sure which ones.

ADV SELEKA SC: Okay. So you are not given a direct
10 answer as to which of the Gupta entities has decided to purchase OCM?

MR PAMENSKY: No. He just said to me it is not... I asked him specifically is it ORE because it was not on the agenda and he said no it was not ORE.

ADV SELEKA SC: Ja, okay. So let us go back to the email, that paragraph.

“In terms of the Investment Committee, I am available to start straight away...”

Which Investment Committee is that?

20 **MR PAMENSKY:** Chair, this is the one I explained to you when Mr Nazeem Howa suggested that we form this Investment Committee for the holding company to oversee invest and monitoring investments, governance. So this would be that committee because it is specifically an acquisition.

ADV SELEKA SC: Yes. And Mr Nazeem Howa is the...
Did you say he is the CEO of Oakbay Investments?

MR PAMENSKY: That is correct.

ADV SELEKA SC: Yes. So that would have meant you
are dealing with people at – both in Oakbay Investments
level and Oakbay Resources level?

MR PAMENSKY: Yes, that is correct.

ADV SELEKA SC: Yes. And then the paragraph
continues:

10 “...as I am at the tail end of the main
 acquisition of Optimum Coal.

 Please ensure that a condition precedent is
 that the R 2 billion plan from Eskom is
 withdrawn or it becomes the seller’s
 problem...”

 What are you talking about there?

MR PAMENSKY: Chair, first of all. I am available to start
straight away, means that I have not been involved in this
transaction Chair, number one. Because it is the first time
20 I have heard of it, I am coming in at the tail end. So I am
not involved in this.

 In appearing for the Commission, on the 11th of
November which is 12-days before, I picked up from
Glencore’s affidavit that Oakbay Investments had signed a
terms sheet already with Optimum Coal. If I am correct.

So just... No, I think it read the terms of the penalty. So I am just not involved. So my comment there is a very simple comment.

In terms of the condition precedent, I do not believe that this – I do not believe that the purchaser should acquire the entity with that penalty.

In other words, to not detract from the value is that the purchaser shall ensure Chair that is a condition precedent for this deal to go through that the file is either
10 withdrawn and the miner tender withdrawn. I will get to it in a minute. Otherwise it becomes there problem.

So in terms of the transaction, I wanted the penalty to come to an end in terms of this transaction. So I suggested that the seller procure either the settlement of the farm or it takes on it within its balance sheet purely to ensure that we do not detract from an underlying entity of OCM. So those were my words.

ADV SELEKA SC: Okay let us start to contextualise this so that we understand exactly what you are talking about.
20 I think – what I wish to say to you is this. Just give the Chairperson the facts as they happen. And I will put this to you so that I see whether we are talking the same thing in this regard.

Eskom has a contract with OCM. It is a coal supply contract. This contract, at least with OCM dates back to

2012 but it is a contract that has been ongoing for quite some time. Glencore took over from the previous owner.

In the process of OCM having this contract with Eskom and particularly in 2014/2015, there is an issue about penalties that Eskom raises with OCM in the region of R2.1 billion, R2.17 billion and the penalties are said to arise from OCM not supplying coal with is up to spec. Is that the penalty you are talking about?

MR PAMENSKY: That is the penalty I am talking about,
10 Chair.

ADV SELEKA SC: Yes. Okay. Now that penalty was sought to be enforced against OCM by Mr Molefe and Mr Koko acting on behalf of Eskom. I add that so that it does not appear – it does not get to be interpreted as being in their personal capacity. So the penalty is sought to be enforced against OCM and particularly at a time when Oakbay/Tegeta is also, on the other hand, seeking to acquire OCM.

It was clear on the part of Eskom that whoever
20 acquires OCM will take that liability as well. So when your write here:

“In November 2015...”

You would have known about that liability or the penalty, you would have known that Eskom’s position is that whoever acquires OCM is the one taking that liability and

...[intervenes]

MR PAMENSKY: Sorry, can I correct you there?

ADV SELEKA SC: Yes, please.

MR PAMENSKY: As you know, the Optimum Coal transaction never came to the board. What I did know was that in the press that I read in August that Eskom was fanatical that Mr Molefe said that we will collect this fine because why can we not collect from Soweto or the municipalities. So that is all I knew from the press, Chair.

10 I had no idea, was your second point, where you are saying that they were enforcing it, I would not know that. My mindset was at the time that Eskom was very vocal that it will collect its money.

ADV SELEKA SC: Oh, so you knew from the press, from the media that Eskom's view was that whoever takes over OCM will be also taking that liability?

MR PAMENSKY: No. What I am saying was Eskom was very vocal in August when the first time I picked up that there was this penalty and this arbitration came out in the
20 press and that is when I asked Mr Molefe what is going on. So I knew at that time in Eskom's head we are going to collect this money because Brian said we are going to collect this money. I knew nothing about new purchasers or anything, all I knew on that day, that Eskom was very vocal that it will collect its money.

ADV SELEKA SC: Okay. No, I understand what you are saying. Whether you came to know through Mr Molefe or you came to know through what you say did not happen, a discussion in the board, it is neither here nor there. I think the fact of the matter is when you write this email in November you had knowledge of Eskom's position that whoever takes – or acquires OCM will also be liable for that penalty.

MR PAMENSKY: That is correct.

10 **ADV SELEKA SC:** Yes. So when you are writing then ...[intervenes]

MR BLOU: Sorry, Chair. Mr Seleka has put a compound question twice, that he knew about the claim and that he knew about who would assume liability for the claim as between buyer and seller and he is – it is a compound question been put twice and Mr Pamensky has now given an answer seems to me he does not answer the question. Can it put separately?

CHAIRPERSON: Okay, Mr Seleka, I think the request is if
20 you could put the question separately because you may have put them both at the same time.

ADV SELEKA SC: Yes, no, I – if I understand my learned friend, it is I was saying whether he came to know it from Mr Molefe or whether he came to know it through board discussions, which he says it does not happen. Is that the

one?

MR BLOU: Sorry, the line of questioning started that he knew about the fact that there was a penalty that Eskom was claiming. In the same question, when he started, he said and he knew that it would be the responsibility of the buyer. In other words, whichever – who the acquiring entity was, namely Oakbay Investments, whoever was buying would assume the penalty. You put that to him as a compound proposition. They are not the same question.

10 He says he knew about the transaction from the press. Whether he knew about the fact that the purchaser that had already been agreed in Eskom that the purchasers and who I believe is a separate question that he must answer separately.

CHAIRPERSON: Maybe you might just want to put them one by one before you put the final proposition.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: You may have been saying he knew about this and that because you know from his evidence
20 that he does but you might wish to – you might wish to confirm to say you knew this or you did not know this, you not know that and then maybe then once those have been confirmed, one way or another, you might wish to put the proposition that you wanted to put.

ADV SELEKA SC: Yes. Yes, no, Chair, I thought it was

quite clear to the witness so ...[intervenes]

CHAIRPERSON: Maybe it was, I may have missed something but...

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, maybe what you can do is repeat what you said to him.

ADV SELEKA SC: Yes.

CHAIRPERSON: And repeat what his answer was.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** And then let us take it from there.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because I think on the one hand, Mr Pamensky – well, my question really was that prior to writing this email you would have known Eskom's position that whoever acquires OCM will also take up the responsibility in respect of the penalties.

CHAIRPERSON: Let us get him to confirm he knew that.

MR PAMENSKY: No, I do not agree with that, Chair.

20 **ADV SELEKA SC:** No, I am just asking a question.

MR PAMENSKY: Oh. No, I had no idea what Eskom's position was in connection with a transaction that is going to purchase that entity, I do not know. What I knew Eskom's position was, was from the press that they wanted to collect their money. So Eskom was adamant in its head

that it wanted to collect its money. That is what I knew.

ADV SELEKA SC: Okay, so what you are saying then is you did not know that Eskom's position was whoever takes OCM will also be responsible for the liability. That one you did not know.

MR PAMENSKY: That is correct.

ADV SELEKA SC: Okay. So did you know about Pembani's offer to acquire OCM?

MR PAMENSKY: No, I did not.

10 **ADV SELEKA SC:** You did not know that. So you did not know that the collapse of that offer was on the very basis that Pembani was told if you take OCM you also take the responsibility for the 2.1 billion. You did not know that.

MR PAMENSKY: No, I am not involved in that transaction, do not know.

ADV SELEKA SC: Yes. So if you did not know that, help us understand your sentence here where you write to Mr Atul Gupta and you say make – ja, please ensure that a condition precedent is that the R2 billion from Eskom is
20 withdrawn or it becomes the seller's problem. Let us understand why do you write along those lines?

MR PAMENSKY: Chair, maybe the word withdrawn is the correct thing, my attorneys tell me that the word withdrawn means for no value, it was never my intention at all. My intention was very simple, that the seller should either take

on the liability and settle it or it becomes their problem. In other words, it comes on their balance sheet .

So, in other words, the acquiring should not take on this liability as it would detract from the value. As a simple term to tell you, if I am purchasing your house, there is a buyer and a seller, the seller had the relationship with the bank. It does not make sense to purchase the house with the liability, so the seller must go and settle or procure that liability is paid. So that was the context of my exact
10 meaning here, sir.

And just to reiterate, sir, I just have to say this. It was impossible that my mind could have the mindset that it could have been for nil value. First of all, it did not cross my mind.

Secondly, Eskom was extremely vocal. When Mr Brian Molefe's newspaper article is out, was there, that they were always going to collect. So it never crossed my mind and I always knew that Glencore had a guarantee, so Glencore – Glencore – Eskom had a guarantee from
20 Glencore and they were always going to get paid. Again, who was going to bear the risk? I said that should be the seller, should bear that risk, Chair.

ADV SELEKA SC: Okay ...[intervenes]

MR PAMENSKY: Mr Seleka, sorry, just Mr Seleka, so in order for this transaction to occur, I am saying to the

purchaser do not buy this asset unless the seller resolves those two issues and if he does not, do not take on this transaction because I do not believe it takes the underlying value. But also, Chair, it is a very high level comment, you know, it is on here, I am just given a comment here and you can see it is all dealt with before, so it is not intended for that meaning at all and I am not involved in Eskom that does board tender committees, that does penalties and all that, fine. I sat here last time and I heard you guys. I left
10 Eskom in November 2016. This penalty was resolved post my event, just for the record. So I had no involvement, not nothing. Sorry.

ADV SELEKA SC: No, that is alright. Okay, I have difficulty if you say your attorneys have told you what withdrawn mean there because when you were writing the email I do not suppose for one moment that they would have been there with you helping you to draft this email.

MR PAMENSKY: That is correct, Mr Seleka. My mind – withdrawal does not mean for no value in my mind.
20 Withdrawal means that they take on that liability.

ADV SELEKA SC: No, no, no, I am not fighting with you.

MR PAMENSKY: Oh, sorry. Sorry, sorry, sorry.

CHAIRPERSON: Well ...[intervenes]

ADV SELEKA SC: I am just pointing out.

CHAIRPERSON: Maybe let me ask this question. Is the

position not that when you wrote this letter your knowledge as far as this R2 billion claim by Eskom was concerned was that Eskom wanted the OCM to pay this amount and therefore it is reasonable to think that if there are negotiations for sale, this issue would arise, namely the R2 billion claim and therefore you were concerned that the purchaser, as far as you are concerned, should under no circumstances enter into a deal where this R2 billion would be the purchaser's problem.

10 **MR PAMENSKY:** That is correct, Chair. Normally like a house bond, Chair. If you go and buy a house and you are a purchaser, you tell the homeowner you go and settle your liability, I do not want to take on your house with that liability, it does not make financial sense to me.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes. Did you talk along those lines with your board members, your fellow board members at Eskom?

20 **MR PAMENSKY:** No, Chair, this was a commercial transaction between the buyer and seller, this had nothing to do with Eskom, my comment in that sense. And no, I never discussed any of my conversations, I never shared anything out of the boardroom, so I never discuss any of these comments with any of my Eskom board members.

ADV SELEKA SC: Yes, no, sure.

CHAIRPERSON: Can I follow with – please do not forget your question, Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: How had you acquired the knowledge of this claim by Eskom?

MR PAMENSKY: Chair, I gained my knowledge roughly in August 2015 when it was in the press. You know, there was all the press going around that Glencore and Eskom are having this fight. So that is when I first learnt.

10 What occurred after that was, there was a board meeting set in September where I wanted to ask Mr Molefe and we got an email to say it is cancelled and in my email back to them, say thank you, but I have been reading in the press in the press and all of that, have we got a problem with our coal, is everything okay?

 So I gained my knowledge from there. That is where I gained my knowledge, it was not from Eskom, it was never discussed with us at Eskom as you hear, so that is where I gained my knowledge from, Chair.

20 **CHAIRPERSON:** Is that answer to the effect that you gained your knowledge particularly from the press but also partly from your interaction with Mr Molefe via email?

MR PAMENSKY: No, no, no, no one responded to my email, Chair.

CHAIRPERSON: Oh.

MR PAMENSKY: So I will tell you – if you – do you want me to tell the story what happened?

CHAIRPERSON: Not necessarily.

MR PAMENSKY: Okay. It is in the pack.

CHAIRPERSON: So is the position that you acquired the knowledge the press full stop?

MR PAMENSKY: That is correct.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: No but you did say also you spoke to
10 Mr Molefe.

MR PAMENSKY: Yes, I did.

ADV SELEKA SC: Yes. And he also told you – what did he say to you?

MR PAMENSKY: No, Mr Molefe informed me that this deal was not in the best interests of Eskom.

ADV SELEKA SC: Yes.

MR PAMENSKY: And it was unaffordable. And from that perspective they could not agree on price or quantity. That is all he told me.

20 The second thing he told me, I said are we all okay for coal? He said we are all okay for coal. I said to him I see there is penalty, he says yes I raised the penalty because it would prescribe. And that was our conversation.

ADV SELEKA SC: Yes. Yes, in your answer I hope the

question still has the force it requires. You were saying the transaction has nothing to do with Eskom, you did not discuss this matter with your fellow board members but the penalty had everything to do with Eskom. It was an Eskom matter and it is in that context that I am asking you whether this issue of the penalty, which you were raising here, did you discuss it with your fellow board members or even the executive, I might add, in Eskom, like Brian Molefe, Mr Brian Molefe, to say well look, this is my view
10 on this matter.

MR PAMENSKY: No, I did not.

ADV SELEKA SC: Well...

MR PAMENSKY: Sorry, Mr Seleka, why would I have – sorry, Chair, also, why would I have discussed my view with the management of Eskom. This was a – just sorry, this was a transaction between a buyer and seller and I am not telling Eskom to withdraw its claim, I am telling that the buyer must pay Eskom and resolve it, end of story. I am missing your question maybe, sir.

20 **ADV SELEKA SC:** No, I am only asking you to explain to the Chairperson whether the same conversation you have here ...[intervenes]

MR PAMENSKY: No.

ADV SELEKA SC: ...you would have had within Eskom.

MR PAMENSKY: No.

ADV SELEKA SC: Ja, because – I mean at that stage Eskom is adamant that OCM must pay this penalty, this 2.17 billion penalty and you say you had left – what happens ultimately with this penalty, is that it gets to be recalculated on the basis that there were errors in the calculation. Partly errors in the calculation but also that there is a period which had already been paid, so we are not going to charge for that period.

And it gets riddled down to what becomes a payable
10 amount, some R255 million. Even of that R255 million, Tegeta does not pay the full amount, it pays only R171 million and then it goes into business rescue.

But when you read the affidavit from CDH, the attorneys for Eskom at the time, they had already given Eskom advice that you will face challenges in your claim. Did you know about that?

MR PAMENSKY: No, completely unaware, Chair, nothing to do with Optimum Coal or any coal after I recused myself came forward to me. So I was not involved, I recused
20 myself and everything, I left in December 2016. I understand that in December from Ms Daniels' affidavit is when she started engaging in arbitration and all of that. I was not involved, I had left Eskom. And again, it never came to me.

ADV SELEKA SC: Okay, so just finally on your use of the

words:

“Please ensure a condition precedent that the claim is withdrawn.”

Just from your explanation, what did you mean by that?

MR PAMENSKY: Clearly that a condition precedent must be in terms of that fine, it is settled. So, in other words, that Glencore, which is the seller entity, must settle their claim. If it does not settle their claim it must take it on its balance sheet.

10 **ADV SELEKA SC:** Ja, but the settle is the subsequent sentence. There is first withdrawn, so I want your explanation of withdrawn.

MR PAMENSKY: Yes, R2 billion penalty must be settled. If it is not settled, then they must take it on their balance sheet . So if Glencore does not settle Eskom their money or goes to arbitration - said the context, sorry, withdrawal...

ADV SELEKA SC: Ja.

20 **MR PAMENSKY:** Withdrawal is said to me in the context of an arbitration, Chair. I am not a lawyer, Chair, but in terms of an arbitration, in my mind it is settled, dismissed or closed out or resolved. So, as I said was, in terms of this arbitration we all knew as the seller who is a party to the arbitration, he is the person, he must go and settle the matter of arbitration. What does settle mean? I do not

suggested that Eskom should withdraw the settlement, it never crossed my mind, Eskom is not a party to this negotiation and I do not have the authority to speak on Eskom's behalf and I do not get involved in that, Chair, it sits in board tender, so it is not my place to say that.

CHAIRPERSON: Mr Seleka, I just want to indicate we are at seven minutes past eleven.

ADV SELEKA SC: Oh yes, yes.

CHAIRPERSON: In terms of pacing yourself.

10 **ADV SELEKA SC:** Correct.

CHAIRPERSON: In terms of the rest of your questions.

ADV SELEKA SC: Thank you, Chair, thank you, Chair, I am also keeping my eye on the clock. Ja, but you are saying you are not involved in this but your sentence carries on, the paragraph carries on to say:

20 "I am happy to get involved to assist with this acquisition and monthly monitoring, analysing of all investments from today. I can meet anyone you require. If you need me in India, Dubai to discuss, I will meet you there."

MR PAMENSKY: Yes, Chair, I am happy to get involved in terms of the investment committee to get involved in this transaction, to understand it and everything, maybe there is more information they want to give me. This is a – this must be a huge acquisition for any company that is coming

in, so I was happy to get involved and assist in that sense, my corporate finance skills.

ADV SELEKA SC: Take us through ...[intervenes]

MR BLOU: Sorry, Chair. No, just in fairness, just to speed things along. In fairness to the witness and I just point out, Mr Seleka, the previous statement that he was not involved and could not become involved related to his position at Eskom, so it is not fair to say that there is contradiction in the next sentence. He can just ask the
10 witness to explain. But anyway, the witness has done it. Thank you.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: I think he does the witness has explained, Chair.

MR PAMENSKY: Yes. Sorry, Mr Seleka, if you are asking me that I could assist internally within Eskom and get this withdrawn, resolved, whatever, no, it does not involve me, I does not sit in my committees, it sits in board tender. Remember, this is a huge public outcry that has happened
20 in August, you know, it is a big thing.

And second of all – well, I thought, but there is all red tape within Eskom, there is all internal controls, there is procedures, as all your witnesses have told you, you have got to go up and you have got to prepare the documents. So it was never in my mind that – or could I

ever assist – I could never assist any of the Guptas to get that fine withdrawn, was never my wording. If that is what you are asking, Chair.

ADV SELEKA SC: No, well, I put a statement to you just to comment on.

MR PAMENSKY: Sorry.

ADV SELEKA SC: Ja.

MR PAMENSKY: No, that was never my intention, I was involved in the investment committee to be formed, I would
10 assist with that perspective.

ADV SELEKA SC: Ja, let us go to the next email, the other email.

MR PAMENSKY: Yes. So, Chair, this other email comes. It was publicly announced, this transaction. So again, I am not involved in this transaction, I never have been. What I gained was from the press. Mr Gupta never replied to any emails except this one.

There is nothing untoward about me congratulating him, I strongly believed that this group was growing a huge
20 resource company. You had us who had the gold and uranium we just purchased in Brakfontein, they are purchasing Optimum Coal, then I think this group is going to be a huge resource group. I do not know what is going on in there, so I am sending a congratulation email to him based on what I saw in the press.

ADV SELEKA SC: Yes and let us see that congratulation.

MR PAMENSKY: Let us go there.

MR BLOU: No, Mr Pamensky, please, just then just wait for the question.

MR PAMENSKY: Oh, I am sorry.

CHAIRPERSON: Yes, let us continue.

ADV SELEKA SC: Yes. So the email reads – is that on page 718? Eskom bundle 17. I believe Mr Pamensky it is the bottom one, hey?

10 **MR PAMENSKY:** That is correct, Chair.

ADV SELEKA SC: On 10 December 2015 at 22.32, it is from yourself. It is an email to who? It is no apparent here.

MR PAMENSKY: It would be the Chairman, Mr Atul Gupta.

ADV SELEKA SC: Okay. Say:

Hi Chair, congratulations.”

The Chairman of...?

MR PAMENSKY: I am saying Chair, Hi, it is the Chair of ORE. He is ORE’s Chairman.

20 **ADV SELEKA SC:** I see. Okay, so you are communicating with him in his capacity as the Chairperson of ORE.

MR PAMENSKY: No, I am emailing him – Chair, is how you would respect him. I am emailing him in general to congratulate on an acquisition, I am not congratulating him

as the Chair of ORE.

ADV SELEKA SC: Okay. No, no, I understand that. But did you understand my question? Are you communicating with him in his capacity as Chairperson of ORE?

MR PAMENSKY: No, Chair, I am ...[intervenes]

ADV SELEKA SC: Generally.

MR PAMENSKY: I am giving him a general here to wish him congratulations.

ADV SELEKA SC: Okay, thanks. You say:

10 “Hi Chair, congratulations, *Mazel tov*.”

That is congratulations, is it not?

MR PAMENSKY: Yes, it is Jewish word for *mazel tov*, yes.

ADV SELEKA SC: That is right.

MR PAMENSKY: Yes, sorry, Mr Seleka, I did not put up my hands like you thought, sorry.

ADV SELEKA SC: Well, you did not.

MR PAMENSKY: There was no board meeting, I am sending the email, I know nothing is wrong, I do not yes, yes, I really think it is a - but let us go, sorry.

20 **ADV SELEKA SC:**

 “It is on a brilliant and well-thought out, planned and strategise that position of the Optimum Group of Companies. Well done, I am proud of you all.”

That where it sounds like you are putting your fist in the air there.

“This is only the beginning of the resources group growth and many more to come into play.”

So this is very deal with are talking about, Tegeta acquiring OCM and – well, ultimately it became OCH that they acquired. And you are congratulating him for that, this is on the 10 December 2015. That is the same date that they signed the agreement which had suspensive conditions. So you knew about that.

MR PAMENSKY: No, what I knew was from the press. I
10 knew nothing, everything I gained was from the press.

ADV SELEKA SC: So what did you know from the press?

MR PAMENSKY: The press said that they have one a transaction, I think it was the business rescue practitioners put out a press release, so that is what I knew from it.

ADV SELEKA SC: So you did not know from Mr Atul himself?

MR PAMENSKY: No, no one informed me, no one replied to my emails, I was not involved, I have never been involved in this transaction.

20 **ADV SELEKA SC:** No, I ...[intervenes]

MR PAMENSKY: Fortunately not.

ADV SELEKA SC: Okay. Yes, I – so you – the BTC 659 prepayment you were not involved as well ...[intervenes]

MR PAMENSKY: No, I was not involved.

ADV SELEKA SC: You did not serve on BTC.

MR PAMENSKY: No, as I said to you before, I also recused myself with coal or coal procurement-related.

ADV SELEKA SC: Ja, no, but I am saying you did not serve on ...[intervenes]

MR PAMENSKY: Oh, I never served on BTC.

ADV SELEKA SC: Yes.

MR PAMENSKY: And I was unaware of it.

ADV SELEKA SC: Ja. That is fine, so that is – Chair, I am trying to finalise this. So you know from the fact –
10 well, I do not know whether you know, but the evidence that has cropped up from the Public Protector, from the parliamentary portfolio committee and here before the Commission that decisions that were being made by Eskom and in particular in regard to the submissions that were made to the board, one to the board and the other to the BTC for these prepayments that were meant to go to Tegeta seem to have been made in order to assist Tegeta in acquiring OCH, OCM. I accept that you did not take part in the decision-making in December 2015, explain to you
20 that the evidence as it emerges appears to point to an assist – an effort on the part of Eskom to assist Tegeta in the acquisition of OCH, financially. Do you think you have any comment on that?

MR PAMENSKY: I cannot speculate Chair, that is unfortunately your role, I cannot speculate, I have been

watching but I cannot speculate Chair, I can only say I am not involved in those transactions.

ADV SELEKA SC: Yes. Thank you Mr Pamensky. You have dealt also with this issue in your affidavit of the cooperation agreement, I mean you did mention it as you were talking about this transaction.

MR PAMENSKY: Sorry Chair, sorry Chair, I have never known about the cooperation agreement, it has never been mentioned to us, all that we are aware is the 4th
10 Addendum.

ADV SELEKA SC: The 4th Addendum.

MR PAMENSKY: That is ja sorry.

ADV SELEKA SC: No that's fine for that correction, because the other board members have mentioned a cooperation agreement, or the negotiation process that was ongoing at the time when Mr Molefe comes to Eskom. To cut a long story short that matter comes to the Board on the 23rd of April 2016, no 2015.

MR PAMENSKY: 2015, correct.

20 **ADV SELEKA SC:** And we heard evidence that the Board was met in Cape Town and that this was a more of an informal meeting, can you recall that?

ADV SELEKA SC: Can I stop you there, not an informal meeting, I heard it yesterday, I re-looked at the minutes again, you can see there's three topics there, you have the

Corporate Plan so you have to have the management and all that there otherwise it would be impossible, you had also, the war room, the people who were engaged in the war room were Management, not the Board, we weren't involved and I even went a step further Chair, if you don't mind. Chair this will come as a revelation to me too, whether it's in the Bundle or not we'll all find out right now. So, yesterday I heard it was an...[intervenenes].

CHAIRPERSON: [Laughter], sometimes you get
10 something like this, and you get very useful information.

ADV SELEKA SC: Yes, and we're here seeking the truth, so I've got no difficulty, Mr Pamensky, is this in the Bundle?

MR PAMENSKY: No, it's not, but I'll just tell you now that I did it this morning, so, to let you know straight away is, yes I heard yesterday it was an informal – it's impossible, I re-looked at the minutes there's resolutions, there's everything and then I looked at the email from the company Secretary, Wayne Venter to determine the Board meeting
20 and you can see everyone is on it, all Executives and everything to that extent. So, they would have had to be there to present who was going to present to us, so I went to look at that, so it was definitely not an informal Board meeting, so.

ADV SELEKA SC: You say you looked at the minutes, you

saw that none of the Executives names are on...[intervenes].

MR PAMENSKY: No, they are, if you go look in the Executives, when you go look in it...[intervenes].

ADV SELEKA SC: Mr Singh is there and...[intervenes].

MR PAMENSKY: No, no, no this is 2015, 23rd of April 2015.

ADV SELEKA SC: Yes.

MR PAMENSKY: Mr Singh's not there.

10 **ADV SELEKA SC:** Yes, no correct, you're right.

MR PAMENSKY: But if you look in the minutes the GE for Generation is talking to us, so they must have been there, no-one's going to talk to us about – and make decisions without management, that's the only people who are going to give us the information.

ADV SELEKA SC: Yes, but we're talking now in respect of the issue of the addendum, the addendum that gets to be referred to Mr Molefe.

MR PAMENSKY: Oh yes, yes.

20 **ADV SELEKA SC:** So, that matter gets to be referred to Mr Molefe?

MR PAMENSKY: That's correct.

ADV SELEKA SC: You have explained in your affidavit, you don't know who asked for it to be referred to Mr Molefe.

MR PAMENSKY: That's correct.

ADV SELEKA SC: Ja because he was fairly new there. Why do you think it was referred to him and not to the team that was negotiating the matter?

MR PAMENSKY: Well, first of all Chair, you always, from the Board go through the CEO, you don't speak, as my understanding, when you go to there, you speak to the CEO, the CEO goes and resolves it, so the CEO will go and speak to the PD Department or whoever he needs to, to
10 gather that information. You don't go, as I – my experience is, you don't go and instruct the other Managers you go to the CE and the CE deals with it...[intervenes].

CHAIRPERSON: You speak to the leader.

MR PAMENSKY: Yes, you speak to the leader, correct and he handles it Chair. It was also, just to let you know, Mr Zola Tsotsi was very formal at the beginning when we first joined and said, all communication must go through him and the CEO because that's the protocol within this
20 organisation.

ADV SELEKA SC: Okay, so your – from your point of view it was not an issue – it was not an issue relating to the negotiating team or the Executive not being able to answer questions that the Board had, it was not about that, do you understand my question?

MR PAMENSKY: Can you just rephrase your question to me, are you saying to me, sorry, that we referred it to Mr Molefe regardless...[intervenes]?

ADV SELEKA SC: No, no, no I'm saying, from your point of view the referral of the matter to Mr Molefe was not because the negotiating team or the Executives involved in the negotiations were unable to answer questions which the Board had, from your point of view was, well here we have a leader let's refer it to him.

10 **MR PAMENSKY:** No, no Chair, the truth of the matter is, I can't really remember that – I can't go and tell you that perspective.

ADV SELEKA SC: That's fine and I see from your affidavit that you clearly say, the Board did not, what is it...[intervenes].

MR PAMENSKY: Accept or reject.

ADV SELEKA SC: That's right, did not accept or reject, approve, or disapprove, it simply refers the matter to Molefe, and it refers to him, with the understanding that he
20 will come back, is that your understanding?

MR PAMENSKY: That is my understanding, ja.

ADV SELEKA SC: You heard the other Board members say that he didn't come back, they picked up this, either in some report in September and by that time he had already terminated the negotiations. What's your recollection, did

he come back?

MR PAMENSKY: Chair my recollection was this, I think I explained to you earlier. My recollection from my side was, we had a Board meeting set, I then got an email to say the Board meeting has been postponed and it was there that I was noticing on the press, with Glencore the month before, I wanted to find out what's happening, what's going on. Anyway, I wrote an email, can someone please tell us what's going on you know, what's the
10 Delegation of Authority say, you know, at least tell us, and let us know what is going on. There was no response to that and then – and I think the date would have been, for me, when Mr Molefe filled me in when he said it was not in the best interest and unaffordable and it does accord with my initial impressions, would have been the 10th or 11th of September because we are onboard Breakaway and I don't interact with the CE you don't phone him and you don't have that relationship, you know.

ADV SELEKA SC: Ja, is the Chairperson able to hear,
20 are you able to hear Mr Pamensky, Chairperson?

CHAIRPERSON: I'm hearing him.

ADV SELEKA SC: Okay thank you Chair. Right, Mr Pamensky did you, prior to you hearing from the media, when was that, when you heard and then you sent an email?

MR PAMENSKY: At the beginning of August was a lot of this going on and then our Board meeting was set, I think, for the 14th or 18th of September and on the 27th we got a notification to say the Board meeting is going to be postponed.

ADV SELEKA SC: Yes, so when do you make your enquiry about what you've – you hear in the media?

MR PAMENSKY: I do my enquiry in that email, I wanted to speak to the Board...[intervenes].

10 **ADV SELEKA SC:** In September?

MR PAMENSKY: In September.

ADV SELEKA SC: Okay, I see because my question, like I did all the Board members is, when you referred the matter to Mr Molefe on the 23rd of April 2015, which is a matter of significant importance it would appear, did you follow up with him because he's given an assignment, go get information and come back, report back to the Board, give us feedback because we haven't – we have neither rejected nor approved this thing, does the Board make a
20 follow-up with him?

MR PAMENSKY: Chair, I can't talk the Board, but I made the follow-up, you know, the next time our quarterly Board meetings come would be – the quarterly meeting was one in May and then there was one in September. So, the first time he came back, I saw in the press is when I asked but

also to your question, Mr Seleka, you know, if there's a problem with coal or the supply, management will come to us in that sense but to answer your question, yes, I did ask.

ADV SELEKA SC: Yes, but we couldn't find anything to show that any Board member made enquiries before Mr Molefe terminated this cooperation...[intervenes].

MR PAMENSKY: Oh yes, none of us knew the transaction, none of us – we weren't involved, we didn't
10 know. I found out from the press what transpired, we didn't know that he had terminated whatever his negotiations were, we were unaware.

ADV SELEKA SC: Ja, because my question was in relation to that, whether there was any follow-up with him from the part of the Board, prior to him terminating?

MR PAMENSKY: Oh, no.

ADV SELEKA SC: Thank you. Chair I – I think I've exhausted this part, the - the suspension issues are little bit longer, but I would have like to have summarised them
20 with Mr Pamensky except that we know that time is not necessarily on our side.

CHAIRPERSON: There is – you can still have about 15 minutes before we might need to make a...[intervenes].

ADV SELEKA SC: Okay, thank you Chair. Yes, Mr Pamensky, quickly on the suspensions, just a few points

there, Mr Pamensky and you deal with it in your affidavit, maybe I should turn to that affidavit so that if you need to make reference to anything in your affidavit you can use it. You will provide us with that document, you read from, in due course, the one you pulled out from your bag.

MR PAMENSKY: Yes, I'll just hand it to – I'll give you a copy as well.

ADV SELEKA SC: Okay, so quickly on the suspensions, I think you deal with them – you deal with that on page 375
10 of your affidavit onwards. This is the evidence before the Commission, on the 9th of March 2015 – well there's a cancellation of a meeting on the 26th of February, a scheduled Board meeting and you complained about it. On the 9th of March, a meeting is convened, 9 March 2015 by Mr Tsotsi by email on the evening before, the 8th of March. He had been, on that day, the 8th of March which is a Sunday, he had been at a meeting with the President in Durban and he comes to the meeting on the 9th, I think you joined the meeting by telephone, you were not there in
20 person and a discussion ensued about what Mr Tsotsi says was his meeting with the President and what the President requires of the Board.

MR PAMENSKY: Yes.

ADV SELEKA SC: In that meeting, we have – well about that meeting we have had some – well I think the Board

members are unable to recollect, whatever the position is, but some have given various versions about what transpired in that meeting. I've seen in your affidavits and I want to ask you a few questions, so that you can tell the Chairperson. Other than the inquiry – the request for an inquiry, did the Board members discuss the issue of suspensions, on the 9th of March 2015?

MR PAMENSKY: No, we did not.

ADV SELEKA SC: You didn't, thank you, Mr Pamensky.

10 **CHAIRPERSON:** I think, almost all the witnesses, Mr Seleka, have said that that on the 9th there was no discussion on the suspensions, some of the Executives were in that meeting.

ADV SELEKA SC: Yes, I've had to put that to them Chair, when we get it from the Executives, the Executives said they were there, they didn't discuss the – how can they discuss the suspensions of themselves...[intervenes].

CHAIRPERSON: Yes, the point I'm making is, don't you want to go to points where there seems to be disputes on
20 the issue of suspensions because with regard to whether the suspensions were discussed at the meeting of the 9th, my recollection is that nobody says they were discussed.

ADV SELEKA SC: Yes, no Chair, that's – we have overcome that hurdle, you are correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: Because they were saying, some of them, the suspensions were discussed...[intervenes].

CHAIRPERSON: Okay, ja.

ADV SELEKA SC: And then comes the meeting of the 15th – of the 11th sorry, Mr Pamensky, 11 March 2015 where the Minister is present and the Minister, again, as I've seen from your affidavit...[intervenes].

CHAIRPERSON: Can I put this question to him while you are looking at your question?

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: I've looked at your affidavit Mr Pamensky, one of the things that you don't say in your affidavit which some of the Board members have said is that in that meeting between the Minister and the Board, on that day, that morning, the Minister did specify the portfolios whose heads would need to be suspended. Now, I'm saying, need to be suspended but a number of the Board members said the Minister said, I'm not instructing, I can't instruct the Board as to who to suspend but for
20 example, I think Mr Khoza made it clear that it was quite implied that, that's what she wanted. So, do you recall that, or do you not recall that?

ADV SELEKA SC: Chair my recollection is, she mentioned the four areas, and she mentioned the four areas that were affected within the four departments. I

don't remember her specifically saying – but I remember something very clearly in my head, I will not protect them.

CHAIRPERSON: Yes.

MR PAMENSKY: So, in my mind was, it was a moot point because we had to decide on the suspensions but in my mind exactly what I said to you, was we had a support but I can tell you now, the seed or the first time that the principle of the four Executives to, you know, we shouldn't have a problem with us putting them to step aside if you
10 want to put it, was in that meeting, that's where it came alive.

CHAIRPERSON: Yes, yes and one of the things that has been said or that has emerged is that apart from Mr Tsotsi who had been to the Durban meeting on the 8th where this issue of the suspension of the Executives came up as well the issue of an inquiry, apart from him it doesn't appear that, officially, any Board member knew about the idea of the suspension of Executives until the Minister raised it.

MR PAMENSKY: That is correct Chair.

20 **CHAIRPERSON:** That is correct?

MR PAMENSKY: That is correct Chair.

CHAIRPERSON: Obviously there may or not have been some Board members who might have known, unofficially but in terms of what I've heard, that's when this whole idea it wasn't of a suspension or stepping aside was mentioned

for the first time to the Board.

MR PAMENSKY: That is correct.

CHAIRPERSON: And when, later on, after the Minister had left, Mr Tsotsi spoke, he also spoke, obviously about the suspension but everybody knew what the Minister had said, you know, and of course he was telling the Board also about what he had heard at the Durban meeting, he might not have said there was a Durban meeting but he, clearly, was talking about interactions involving the
10 Presidency and so on, is that right?

MR PAMENSKY: No, Chair, the only time he mentioned the Presidency was on the meeting of the 9th, he said clearly that, A, he drafted this submission he'd seen the President three times as recently as yesterday and the President has instructed him and us to do an inquiry.

CHAIRPERSON: Okay, on – are you saying on the 11th he didn't refer to his interactions with the Presidency in relation to the inquiry and the suspensions?

MR PAMENSKY: No, on the 11th it started off the
20 meeting, it was clear he was pushing for four he explained misdemeanours of three, I don't recall the misdemeanours of three. We, as a Board pushed back, what was told in that meeting was, Mr Tsotsi told us that he'd been – that the Presidency had been working on this for months, he was given a thick report like this, it's in a thick report like

this that covered all the bases and all of that and he had obtained a legal opinion that the Executives could, lawfully be suspended, he didn't mention anything about the talk in Durban or anything, Chair.

CHAIRPERSON: What about the evidence that I've heard, I think from Mr Tsotsi and from other Board members, I think Dr Ngubane is one of them, that the discussion by the Board of the suspensions of the Executives was on the basis that it was – the suspensions were not linked to any
10 allegations of misconduct, that the idea was simply to say, we are not making any allegations against the Executives, allegations of misconduct but we are simply saying, in order for the inquiry or the investigation to proceed smoothly, we would like them to be suspended or to step aside, do you remember that discussion?

MR PAMENSKY: Yes, Chair I think that was at the meeting I was at, remember I left at 1h30 and we only agreed three resignations, not four. Sorry could you repeat your question?

20 **CHAIRPERSON:** Yes, do you remember....[intervenes].

MR PAMENSKY: Sorry, you're right, the idea was to let them step aside without any charges or looking for wrongdoing that was it, it was to step aside so that they don't impede or slow this investigation down.

CHAIRPERSON: Yes, yes now, against that background,

to the extent that, as I recall, but Mr Seleka might correct me, as I recall, Mr Tsotsi seems to have denied having told the Board about misdemeanours of Executives to support suspension, Mr Seleka is that correct?

ADV SELEKA SC: Yes, he has denied giving them a list...[intervenes].

MR PAMENSKY: Can I answer that Chair.

CHAIRPERSON: No, no before you say anything. You are not the only one, you are not the only Board member who
10 says he told the Board about allegations of misconduct by some of the Executives or all of them, I'm not sure, but I'm wondering why he would talk about that if the understanding was that the suspensions were not going to be based on allegations of misconduct, do you want to comment on that?

MR PAMENSKY: Sorry Chair, I don't think I'm fully understanding that question, what I'm thinking is...[intervenes].

CHAIRPERSON: Let me say, I'm saying you and some of
20 the Board members maybe all of them, those that have testified have said that Mr Tsotsi did tell the Board members about allegations of misconduct on the part of some, at least, I don't know if all...[intervenes].

MR PAMENSKY: Three.

ADV SELEKA SC: Ja, some of the Executives that were

sought to be suspended. So, my question is, I wonder why he would be telling the Board members about allegations of misconduct in circumstances where it was understood, within the Board, that the suspensions were not going to be based on allegations of misconduct.

MR PAMENSKY: May I answer that Chair? He first started off pushing for suspension with charges. Mr Baloyi, as I recall, was quite against it so he came in with the concept to push for charges, you know, and the Board
10 members felt that there was not sufficient information to do charges, we'd rather step aside at that point in time. I just answer you one last question Chair, sorry I don't want to take your time. On the meeting of the 19th, if we didn't have this recording, I think we would all be in trouble here. In that recording, as clear as daylight, what I put down there, that he admitted to all these items in black and white it's in the recording, so he can't deny it, thank you.

CHAIRPERSON: Okay, thank you.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** There might be room for one...[intervenes].

ADV SELEKA SC: One or two – yes, talking about that, Mr Pamensky, his, what is it, admissions or concessions are not in relation to the charges that he alleged, misdemeanours, I've seen what you set out in your

affidavit. One is that Tsotsi – Mr Tsotsi told us that the President had the report, that investigation and in there was a report about misdemeanours but he didn't produce that report, do you recall that, that's page 389?

MR PAMENSKY: Yes, sir.

ADV SELEKA SC: 389 of your – of the Bundle where you're dealing with the removal of Mr Tsotsi and he admitted to having erred by not properly introducing Mr Linnell to the Board, that's one of the reasons. He did say
10 that you're right, but we know that from the evidence of – and in particular, Ms Klein say we did embrace we didn't reject and Mr – no not Mr but Dr Ngubane said, look Mr Linnell we are contracting with you and after that, after the meeting of the 11th, whichever last meeting it was, Mr Linnell received an invitation to assist the Audit and Risk Committee and the new build and programme of Dr Pat Naidoo. So, the Board did, even invite him after the 11th of March.

MR PAMENSKY: Chair, I can't comment on that I'm not
20 aware of any of those meetings, first I'm coming to be aware of all of this is on the 19th where he admits to me, on the 19th, he didn't follow Procurement, he admits that he didn't engage Nick Linnell without properly introducing him to us, he told us in that meeting, for the first time, this man was given by the President, we didn't know we felt it

was imposed on us, I think people were quite upset and he also admitted to engage in the services of Mr Nick Linnell without the Board approval, so it's there, he admitted to it but I don't know those meeting before, sorry.

CHAIRPERSON: Okay I think we've run out of time for today, but I think it's going to be important for Mr Pamensky to come back.

ADV SELEKA SC: Indeed, can we arrange it mutually?

MR PAMENSKY: Ja.

10 **CHAIRPERSON:** Ja because there are matters that, I think, he feels strongly about, in terms of different versions that need to be canvassed.

ADV SELEKA SC: Yes.

CHAIRPERSON: What I would like you to do, Mr Pamensky, in the meantime also, is to look at what I put to some of the Board members including Ms Naidoo yesterday when I was saying...[intervenes].

MR PAMENSKY: I was hoping to do that today, Chair, I've got it all written down, I've got a point for you on all of
20 it...[intervenes].

CHAIRPERSON: [Laughter] you're ready

MR PAMENSKY: I'm ready, Chair.

CHAIRPERSON: Okay, alright, so if – before you come back, if you could put what you wanted to put to say in relation to that in a supplementary affidavit, an affidavit

that would be helpful but when you come back it doesn't mean I won't give you a chance to say it...[intervenes].

MR PAMENSKY: Chair if I may, Chair, I hear your request but if you look at my affidavit, I think it covers it. I think it's for me to speak to you, each level, to say listen Chair, I could not recall why, I'm not involved here, I'm not involved here, I'd love to give you that opportunity...[intervenes].

CHAIRPERSON: No, if it's covered in the affidavit, you don't have to do another affidavit, then when you come
10 back you can – we deal with it. What I didn't mention to Ms Naidoo, I forgot to mention is, also how Mr Tsotsi was kicked out, I say kicked out, but I know that in the end he resigned but I think it's quite clear that he resigned because the Board didn't want him anymore. Looking at the charges you may or may not have heard the questions that we have put to other Board members about the charges. I can say to you that, I have difficulty with, I think almost all the ...[intervenes].

MR PAMENSKY: Yes, Chair, the problem I have with it, I
20 can't answer you it was left to PMG and the lawyers drafted it, so I can't answer you on that question, unfortunately.

CHAIRPERSON: Yes, no, no that's fine but when you deal with the question that I put to – the picture that I put to Ms Naidoo, all I'm saying is that I didn't factor in how Mr

Tsotsi was kicked out, it's part of that picture. You might say, on that part I have no comment but on the other parts of the picture I'm able to comment, this is my comment, and you'll do that when you come back when you come back.

MR PAMENSKY: Chair I just want to say two things quickly before you leave, number one, yes what you were saying was, the enabler to come into this business to allow these people to come in and then the transactions so that's
10 what you were asking for, I can do that. Number two, I just want to thank you for the opportunity, Chair, I've waited five years to explain these emails I have been lambasted, I've been kicked out of the Jewish community let them hear, on these emails people think I was involved in this transaction, I've never been involved in this transaction. So, at least I had my chance to come forward and tell it all today, and I think it's in that supplementary that you've got. So, for me, it's a big, big thank you from my side.

CHAIRPERSON: No, that's fine but the real point that I
20 was talking about, certainly you will deal with the issue of the transaction but what I was really talking about in terms of the picture I put to Ms Naidoo is the one of saying, it looks like there may have been people from outside of Eskom who were influencing what the Board was doing and people within the Board were doing, so if you can listen

again to that part of the question and then to the extent that you are able to when you come back you can deal with it.

MR PAMENSKY: I look forward to deal with it Chair.

CHAIRPERSON: Okay, alright.

ADV BLOU: Chair we will also assist in that regard, I haven't been following this like it is a running a brief, I think Mr Pamensky would be complaining about insolvency if I was on a daily basis following all the evidence in the
10 Commission, but we will get the record of the matters that you have referred to and we will either, if it hasn't been covered by the affidavit at all we will consider with Mr Pamensky's consent dealing with it on affidavit, in a short supplementary, or we will deal with it orally.

CHAIRPERSON: Yes, yes.

ADV BLOU: We will assist in that regard. Chair might I just say one other thing before the irrepressible Mr Pamensky says something else, is in relation to the Melrose Arch question I think we will engage with the
20 Commission's investigators directly and Mr Seleka, I do not believe it is the sort of matter that has to be on the record given the type of investigation that you wish to clarify in that regard, I think it is probably best simply supplied.

CHAIRPERSON: Oh you said in relation to?

ADV BLOU: Into the Melrose Arch address. I don't think

it should be necessarily on the record, I think it should be given to the – or you can put it on the record if you wish, but we will give those details directly to the investigators because it might be that they want to use it for purposes before it becomes public.

CHAIRPERSON: Ja, no, no, no I think you are right ja, ja. You will deal with Mr Seleka and then we will take it from there. No, no, you are right.

ADV BLOU: Thank you Chair.

10 **CHAIRPERSON:** Thank you. Okay we are going to adjourn for now, we have to adjourn because I have got another commitment so we won't be able to sit for the rest of the day, I apologise to all concerned for any inconvenience. Tomorrow also we won't be able to start at ten as normal, but as soon as my commitment is over I will rush back to the hearing and we should be able to start at about one o'clock so those who will be involved I hope they are listening while not here, they should have their lunch between twelve and one.

20 **ADV BLOU:** Might I just confirm that we are not on the agenda for tomorrow?

CHAIRPERSON: Ja, ja, no.

ADV BLOU: Thank you for that.

CHAIRPERSON: So we will probably start at around one o'clock and I will sit up to about four or five or

thereabouts.

Okay, thank you very much to everybody, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 12 FEBRUARY 2021

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