

**COMBINED SUMMONS
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 35689/20

In the matter between:

ESKOM HOLDINGS SOC LIMITED

SPECIAL INVESTIGATING UNIT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2020 -08- 03
JUDGE'S SECRETARY REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

First Plaintiff

Second Plaintiff

and

BRIAN MOLEFE

First Defendant

ANOJ SINGH

Second Defendant

MATSHELA MOSES KOKO

Third Defendant

SUZANNE MARGARET DANIELS

Fourth Defendant

MOSEBENZI ZWANE

Fifth Defendant

BALDWIN "BEN" NGUBANE

Sixth Defendant

CHWAYITA MABUDE

Seventh Defendant

MARK VIVIAN PAMENSKY

Eighth Defendant

RAJESH "TONY" GUPTA

Ninth Defendant

ATUL GUPTA

Tenth Defendant

AJAY GUPTA

Eleventh Defendant

SALIM AZIZ ESSA

Twelfth Defendant

To the Sheriff or his/her Deputy:

INFORM:

BRIAN MOLEFE, an adult male and former Eskom Group Chief Executive currently residing at 759 Camelford Road, Cornwall Hill Estate, Irene.

(hereinafter referred to as the **FIRST DEFENDANT**)

ANOJ SINGH, an adult male and former Eskom Chief Financial Officer currently residing at 21 Silversands Avenue, Wendywood, Sandton.

(hereinafter referred to as the **SECOND DEFENDANT**)

MATSHELA MOSES KOKO, an adult male and former Eskom Interim Chief Executive and Group Executive: Generation currently residing at 683 Saranton Estate, Cedar Avenue West, Fourways.

(hereinafter referred to as the **THIRD DEFENDANT**)

SUZANNE MARGARET DANIELS, an adult female and former Eskom Senior

General Manager: Legal and Compliance currently residing at 467 Nicholson Street, Brooklyn, Pretoria.

(hereinafter referred to as the **FOURTH DEFENDANT**)

MOSEBENZI ZWANE, an adult male politician with his principal place of business at the National Assembly, Parliament Street, Cape Town.

(hereinafter referred to as the **FIFTH DEFENDANT**)

BALDWIN "BEN" NGUBANE, an adult male and former Eskom Board Chairperson currently residing at 32 Bond Place, Midstream Estate, Midrand.

(hereinafter referred to as the **SIXTH DEFENDANT**)

CHWAYITA MABUDE, an adult businessperson and former Eskom Board member currently residing at 304 Jubilee Drive, Blackheath, Johannesburg.

(hereinafter referred to as the **SEVENTH DEFENDANT**)

MARK VIVIAN PAMENSKY, an adult male businessman and former Eskom Board member currently residing at Unit 42, the Regency, Daisy Street, Sandton.

(hereinafter referred to as the **EIGHTH DEFENDANT**)

RAJESH "TONY" GUPTA, an adult male fugitive from justice in South Africa who is presently residing in Dubai.

(hereinafter referred to as the **NINTH DEFENDANT**)

ATUL GUPTA, an adult male fugitive from justice in South Africa who is presently

residing in Dubai.

(hereinafter referred to as the **TENTH DEFENDANT**)

AJAY GUPTA, an adult male fugitive from justice in South Africa who is presently residing in Dubai.

(hereinafter referred to as the **ELEVENTH DEFENDANT**)

SALIM AZIZ ESSA, an adult male fugitive from justice in South Africa who is presently residing in Dubai.

(hereinafter referred to as the **TWELFTH DEFENDANT**)

THAT -

ESKOM HOLDINGS SOC LIMITED, a state-owned company incorporated in accordance with the laws of South Africa and having its principal place of business at Megawatt Park, 1 Maxwell Drive, Sunninghill, Johannesburg; and

SPECIAL INVESTIGATING UNIT, an independent statutory body established in terms of section 2 of the Special Investigating Units and Special Tribunals Act 74 of 1996 by Proclamation No. R 118 of July 2001, with its principal place of business at Rentmeester Building, 74 Watermeyer Street, Meyerspark, Pretoria.

hereby institute action against the First to Twelfth Defendants ("**the Defendants**") in which action the Plaintiff claims the relief and, on the grounds set out in the Particulars of Claim annexed hereto.

INFORM the Defendants further that if the Defendants dispute the claim and wish

to defend the action, the Defendants shall -

1. Within **TEN (10)** days of the service upon the Defendants of this summons, file with the Registrar of this Court at Paul Kruger & Madiba St, Pretoria Central, Pretoria, notice of the Defendants' intention to defend, and serve a copy thereof on the Plaintiffs' attorneys in which notice shall be given of Defendants' full residential and business address and an address (not being a post office box or *poste restante*) referred to in Rule 19 (3) for the service upon Defendants of all the notices and documents in the action;
2. Thereafter, and within **TWENTY (20)** days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon Plaintiffs' attorneys a Plea, Exception or Notice to Strike Out, with or without a counterclaim.

INFORM the Defendants further that if the Defendants fail to file and service notice as aforesaid, Judgment as claimed may be given against the Defendants without further notice to the Defendants, or if, having filed and served such notice the Defendants fail to plead, except, make application to strike out or counterclaim, Judgment may be given against the Defendants.

AND immediately thereafter serve on the Defendants a copy of this summons and thereafter return the same to the Registrar with whatsoever you have done thereupon.

DATED at WENDYWOOD on this 2ND day of **AUGUST 2020**

REGISTRAR OF THE ABOVE COURT, PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2020 -08- 03
JUDGE'S SECRETARY REGISTERS KLERK GRONKIE VAN DIE HOE HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA



MICHAEL MOTSOENENG BILL

Plaintiffs' Attorney with right of appearance
in terms of section 4 (2) of the Right of
Appearance Act, 1995.



MOTSOENENG BILL ATTORNEYS INC

First and Second Plaintiffs' Attorneys
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Ref: **MAT744**

C/O MANAMELA MAROBELA AND ASSOCIATES INC

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PARTICULARS OF CLAIM

THE PARTIES

1. The first plaintiff is Eskom SOC Limited ("Eskom"), a state-owned company incorporated in accordance with the laws of South Africa and having its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg.
2. The second plaintiff is the Special Investigating Unit ("SIU"), an independent statutory body established in terms of section 2 of the Special Investigating Units and Special Tribunals Act 74 of 1996 by Proclamation No. R. 118 of 31 July 2001, with its principal place of business at Rentmeester Building, 74 Watermeyer Street, Meyerspark, Pretoria.
 - 2.1. The SIU is a juristic person that was established for the purpose of *inter alia* investigating serious malpractices or maladministration of State Institutions, State assets and public money and any conduct which may seriously harm the interests of the public as well as instituting and conducting civil proceedings in any court of law or a Special Tribunal in its own name or on behalf of State institutions.
 - 2.2. The SIU institutes the present action pursuant to the investigation conducted by it under Proclamation R11 of 6 April 2018, read with Proclamation R3 of 31 January 2020.
3. The first defendant is Brian Molefe ("Molefe"), an adult male and former Eskom Group Chief Executive currently residing at 759 Camelford Road, Cornwall Hill Estate, Irene.
 - 3.1. Molefe was seconded from Transnet to Eskom on 20 April 2015 and held the position of Acting Group Chief Executive from this date until he was appointed

Group Chief Executive on 25 September 2015. Molefe resigned from Eskom on 31 December 2016.

3.2. Molefe was previously the Group Chief Executive for Transnet SOC Limited ("Transnet") from 17 February 2011 until April 2015.

4. The second defendant is Anoj Singh ("Singh"), an adult male and former Eskom Chief Financial Officer ("CFO") currently residing at 21 Silversands Avenue, Wendywood, Sandton.

4.1. Singh was seconded to Eskom from Transnet on 1 August 2015 where he became Eskom's Acting CFO. He was officially appointed to the position of Eskom CFO on 15 September 2015 and remained in the position until his resignation on 22 January 2018.

4.2. Prior to joining Eskom, Singh was the Group CFO for Transnet, which position he held from 6 March 2009 until 31 July 2015.

5. The third defendant is Matshela Moses Koko ("Koko"), an adult male former Eskom Interim Chief Executive and Group Executive: Generation currently residing at 683 Saranton Estate, Cedar Avenue West, Fourways. Koko held the following positions at Eskom:

5.1. Acting Group Executive: Technology and Commercial – April 2014 to November 2014;

5.2. Group Executive: Technology and Commercial – 1 December 2014 to 31 October 2015;

5.3. Group Executive: Generation – 1 November 2015 to 15 January 2018; and

- 5.4. Interim Group Chief Executive – 1 December 2016 to 14 May 2017.
6. The fourth defendant is Suzanne Margaret Daniels (“Daniels”), an adult female and former Eskom Senior General Manager: Legal and Compliance currently residing at 467 Nicholson Street, Brooklyn, Pretoria.
 - 6.1. Daniels held the position of Senior General Manager: Company Secretariat at Eskom from 2016 to 31 July 2017.
 - 6.2. She was thereafter appointed to the position of Senior General Manager: Legal and Compliance which position she held from 1 August 2017 until her summary dismissal on 20 July 2018 following a disciplinary process.
7. The fifth defendant is Mosebenzi Zwane (“Zwane”) an adult male politician.
 - 7.1. Zwane is currently a Member of Parliament with his principal place of business at the National Assembly, Parliament Street, Cape Town.
 - 7.2. Zwane was Minister of Mineral Resources from 23 September 2015 until 26 February 2018
 - 7.3. Prior to 23 September 2015, Zwane was a Member of the Executive Council (“MEC”) of the Free State Provincial Government and held the following portfolios:
 - 7.3.1. Member of the Free State Provincial Legislature;
 - 7.3.2. MEC for Agriculture and Rural Development; and
 - 7.3.3. MEC for Economic Development, Tourism and Environmental.

8. The sixth defendant is Baldwin "Ben" Ngubane ("Ngubane"), an adult businessperson and former chairperson of the Eskom Board of Directors ("Eskom Board") currently residing at 32 Bond Place, Midstream Estate, Midrand.
 - 8.1. Ngubane was appointed to the Eskom Board on 11 December 2014 and became acting chairperson of the Eskom Board on 30 March 2015.
 - 8.2. On 1 October 2015, Ngubane was appointed chairperson of the Eskom Board and resigned from the position in June 2017.
9. The seventh defendant is Chwayita Mabude ("Mabude"), an adult businessperson and former member of the Eskom Board currently residing at 304 Jubilee Drive, Blackheath, Johannesburg.
 - 9.1. Mabude served on the Eskom Board from 28 June 2011 until 23 June 2017.
10. The eighth defendant is Mark Vivian Pamensky ("Pamensky") an adult male businessman and former Eskom Board member currently residing at Unit 42, the Regency, Daisy Street, Sandton.
 - 10.1. For the period 11 December 2014 to 16 November 2016, Pamensky served on the Eskom Board as a non-executive Director.
 - 10.2. Whilst on the Eskom Board, Pamensky sat on the Investment and Risk Committee from December 2014 to July 2016.
 - 10.3. He also sat on the Audit and Risk Committee from July 2016 to November 2016.
 - 10.4. During Pamensky's tenure on the Eskom Board, he also served as a director on the boards of, or had business interests in, the following entities:

10.4.1. Oakbay Resources and Energy Ltd ("Oakbay") (for the period September 2014 to May 2017);

10.4.2. Shiva Uranium (Pty) Ltd (for the period 27 November 2015 to 7 July 2016);
and

10.4.3. On or more of the Trillian group of companies ("Trillian"), namely Trillian Capital Partners (Pty) Ltd, Trillian Asset Management (Pty) Ltd, Trillian Financial Advisory (Pty) Ltd, Trillian Management Consulting (Pty) Ltd, Trillian Securities Ltd and Trillian Properties (Pty) Ltd (later renamed Trillian Shared Services (Pty) Ltd).

11. The ninth defendant is Rajesh "Tony" Gupta ("Tony Gupta").

11.1. Tony Gupta is an adult male fugitive from justice in South Africa who is presently residing in Dubai.

11.2. An application will be made to attach assets of Tony Gupta to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

12. The tenth defendant is Atul Gupta ("Atul Gupta").

12.1. Atul Gupta is an adult male fugitive from justice in South Africa who is presently residing in Dubai.

12.2. An application will be made to attach assets of Atul Gupta to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

13. The eleventh defendant is Ajay Gupta ("Ajay Gupta")
 - 13.1. Ajay Gupta is an adult male fugitive from justice in South Africa who is presently residing in Dubai.
 - 13.2. An application will be made to attach assets of Ajay Gupta to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.
14. Tony, Atul and Ajay Gupta are collectively referred to as the Gupta Brothers in these particulars of claim.
15. The twelfth defendant is Salim Aziz Essa ("Essa").
 - 15.1. Essa is an adult male fugitive from justice in South Africa who is presently residing in Dubai.
 - 15.2. An application will be made to attach assets of Essa to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

THE CONSPIRACY

Introduction and Background

16. Over the period 2012 to 2018, the defendants conspired together with other persons, being Ashok Narayan ("Narayan"), Ashu Chawla ("Chawla"), Sanjay Grover ("Grover"), Iqbal Meer Sharma ("Sharma"), Eric Wood ("Wood"), Niven Pillay ("Pillay"), Kuben Moodley

("Moodley"), Malcolm Mabaso ("Mabaso"), Joel Raphela ("Raphela"), Clive Angel ("Angel"), Regiments Capital (Pty) Ltd ("Regiments"), Trillian and Albatime (Pty) Ltd ("Albatime").

17. The object of the conspiracy was the corrupt, alternatively irregular, diversion of resources from organs of state in South Africa, and, in particular, South African state-owned enterprises, improperly to benefit the Gupta brothers, their family ("the Gupta family") and entities controlled by the Gupta brothers and/or Essa ("Gupta entities").
18. Pursuant to the conspiracy, the following acts were performed by the defendants and other conspirators unknown to Eskom:

The Diversion of Public Funds of the Free State Government to Gupta entities

Zwane, Mabude, Essa, Narayan and Innova

- 18.1. In the first half of 2014, Essa, Narayan and Zwane procured that Mabude's company, Innova Management Services (Pty) Ltd ("Innova") was awarded a contract by the Free State Government so that she could use it as a vehicle to launder Free State public funds for the benefit of the Gupta family.
- 18.2. From amounts paid to Innova out of Free State public funds, Mabude used Innova as a vehicle to launder the following amounts on to the Gupta entity, Homix (Pty) Ltd ("Homix"):
 - 18.2.1. On or about 28 March 2014, Innova transferred R2 679 000.00 to Homix;
 - 18.2.2. On or about 16 May 2014, Innova transferred R1 881 000.00 to Homix;
and
 - 18.2.3. On or about 27 June 2014, Innova transferred R1 824 000.00 to Homix.

- 18.3. On or about 12 September 2012, Zwane, in his capacity as Member of the Executive Council for Agriculture, authorised the conclusion of a 99-year lease agreement between the Free State Department of Agriculture and the Gupta entity, Estina (Pty) Ltd ("Estina"), a company that had ostensibly been engaged by the Free State Department of Agriculture to conduct a dairy farm near Vrede, but which served to channel public funds from the Free State Government to entities controlled by the Gupta family.

Zwane, Tony Gupta, Narayan, Chawla and Estina

- 18.4. In or about October 2012, Tony Gupta, Narayan and Chawla arranged for Zwane and 24 members of his church choir to be taken on a week-long tour of India at the expense of the Gupta brothers.
- 18.5. Over the period June 2012 to May 2016, Estina received R280 202 700 in public funds of the Free State Government from which it laundered US\$ 14 471 360.98 to the Dubai based Gupta entity, Gateway Limited ("Gateway") as follows:
- 18.5.1. On 12 June 2012, the Free State Department of Agriculture paid Estina R30 million;
- 18.5.2. On 18 April 2013, the Free State Department of Agriculture paid Estina R34.95 million;
- 18.5.3. On 26 April 2013, the Free State Department of Agriculture paid Estina R30 million;
- 18.5.4. On 3 May 2013, the Free State Department of Agriculture paid Estina R19.05 million;

- 18.5.5. On 7 August 2013, Estina paid Gateway US\$2 million;
- 18.5.6. On 4 September 2013, Estina paid Gateway limited US\$3 million;
- 18.5.7. On 23 September 2013, Estina paid Gateway US\$3348 800;
- 18.5.8. On 20 December 2013, the Free State Department of Agriculture paid Estina R29 950 000;
- 18.5.9. On 25 July 2014, the Free State Government paid Estina R30m;
- 18.5.10. On 8 May 2015, the Free State Government paid Estina R60m;
- 18.5.11. On 7 August 2015, Estina paid Gateway US\$702 560.98;
- 18.5.12. On 14 August 2015, Estina paid Gateway US\$2.8m;
- 18.5.13. On 5 May 2016, the Free State Government paid Estina R46 252 652;
- 18.5.14. On 9 May 2016, Estina paid Gateway US\$300 000;
- 18.5.15. On 11 May 2016, Estina paid Gateway US\$300 000;
- 18.5.16. On 17 May 2016, Estina paid Gateway US\$1.9m; and
- 18.5.17. On 18 May 2016, Estina paid Gateway US\$120 000.

Molefe, Singh, Essa, Regiments and the China South Rail, China North Rail kickbacks

- 18.6. On dates unknown to Eskom, the Gupta brothers arranged that the Chinese locomotive manufacturers, China South Rail ("CSR") and China North Rail

("CNR"), would pay Gupta entities kickbacks of 21% on the purchase price paid by Transnet in respect of locomotives procured from CSR or CNR.

- 18.7. CSR and CNR now form part of the same group under the Chinese registered holding company CRRC Corporation Limited ("CRRC").
- 18.8. Annexure "1" is a schedule of payments aggregating to over \$145 million made by CSR, CNR, CRRC and related companies to two Gupta entities registered in Hong Kong, being Tequesta Group Limited ("Tequesta") and Regiments Asia Limited ("Regiments Asia"). The payments in question were made into HSBC Hong Kong accounts of Tequesta and Regiments Asia, which bank accounts were opened by Essa.
- 18.9. In or around August 2012, Essa, Moodley, Pillay and Wood agreed that –
 - 18.9.1. Essa would procure the appointment of Regiments
 - (a) as supplier development partner to McKinsey and Company ("McKinsey") in its contracts with Transnet, and
 - (b) as primary contractor appointed by Denel SOC Limited ("Denel") to raise capital for it, and
 - 18.9.2. Regiments would pay
 - (a) Essa, or a company nominated by him, 50% of all amounts paid to Regiments by Transnet or Denel in return for procuring the appointments of Regiments that gave rise to these payments, and

(b) Albatime, which was wholly owned by Moodley, 5% of all amounts paid to Regiments by Transnet or Denel in return for introducing Regiments to Denel.

- 18.10. Vikas Sagar ("Sagar") of McKinsey colluded with Essa to procure McKinsey's consent to the inclusion of Regiments as a supplier development partner to McKinsey in its contracts with Transnet.
- 18.11. In or about October 2012, Singh recommended to Molefe the appointment of a consortium led by McKinsey, and in which a 14% interest was held by Regiments, to advise Transnet in relation to the procurement of 1064 locomotives by Transnet.
- 18.12. Molefe approved Singh's recommendation in or about November 2012.
- 18.13. Over the period July to October 2013, Tony Gupta and Essa facilitated an attempt by Sharma (who was then Chair of the Transnet Board Acquisition and Disposals Committee) and Ngubane to bribe officials in the Central African Republic to award oil rights to Gade Oil and Gas, a company in which Ngubane and Sharma had an interest.
- 18.14. In or about October 2013, Sharma prevented Transnet from procuring 100 electric locomotives from the Japanese Mitsui Corporation, with the intention that by so doing, they would facilitate the award of the contract for these 100 electric locomotives to CSR.
- 18.15. On or about 24 January 2014, Sharma, Singh and Molefe persuaded the Transnet Board to approve the award of the 100 electric locomotives to CSR on a confinement basis without any competitive bidding.

- 18.16. In or about January 2014, with a view to providing for an award of contracts to CSR and CNR, Molefe, Singh and Sharma persuaded the Transnet Board –
- 18.16.1. to split the award of the electric locomotives to two bidders and to split the award of the diesel locomotives to two bidders, and
 - 18.16.2. to authorise negotiations with four shortlisted bidders on the 1064 locomotives tender, two of which were CSR (an electric locomotive manufacturer) and CNR (a diesel locomotive manufacturer).
- 18.17. In February 2014, Regiments replaced McKinsey as transaction advisor to Transnet in relation to the procurement of 1064 locomotives by Transnet.
- 18.18. In the course of February and March 2014, under the advice of Regiments, the aggregate price for the 1064 locomotives increased from R38.6 billion in the approved business case which the Transnet Board had adopted in April 2013 to over R50 billion.
- 18.19. Regiments justified this increase on the basis that it was necessary to provide for inflation and hedging costs which had not been accommodated in the business case approved by the Transnet Board, but to the knowledge of Sharma, Molefe, Singh, Regiments, Wood and Pillay, this justification was false and calculated to inflate the purchase price paid by Transnet by at least R9 billion.
- 18.20. On or about 17 March 2014, Molefe, on behalf of Transnet signed contracts with CSR and CNR for the purchase of 359 electric locomotives and 232 diesel locomotives respectively.

Molefe, Singh, Regiments, Albatime, Wood, Narayan, Essa and Moodley and the Gupta Regiments Laundry Payments

- 18.21. In or about October 2013, Essa, Narayan, Singh and Molefe procured the appointment of the McKinsey Regiments consortium on a confinement basis without any competitive bidding to advise Transnet on capital optimization.
- 18.22. Over the period March to April 2014, Essa, Narayan, Singh and Molefe procured the appointment of the McKinsey Regiments consortium to four new Transnet advisory contracts on a confinement basis without any competitive bidding:
- 18.22.1. an advisory contract for services in relation to “maximization of the coal line”, also called the “breakthrough” project;
 - 18.22.2. an advisory contract for services in support of the Transnet Manganese execution programme director;
 - 18.22.3. an advisory contract for services in relation to the Transnet NMPP pipeline programme; and
 - 18.22.4. an advisory contract for services in relation to the renegotiation of the Kumba Iron Ore Contract.
- 18.23. In respect of the period March to December 2014,
- 18.23.1. Regiments invoiced Transnet for aggregate amounts of R206 617 357.10 in respect of these and other contracts awarded to it through the intervention of Essa and Narayan;

18.23.2. Essa and Narayan invoiced Regiments on behalf of the following Gupta entities for kickbacks in respect of these Transnet payments to Regiments:

(a) Homix invoiced Regiments an aggregate amount of R21 910 560;
and

(b) Chivita Trading (Pty) Ltd ("Chivita") invoiced Regiments an aggregate amount of R96 125 481.90.

18.23.3. Moodley invoiced Regiments on behalf of Albatime in an aggregate amount of R7 114 302.21 for introducing Regiments to Essa and thus indirectly facilitating the Transnet payments to Regiments.

18.24. A spreadsheet identifying the individual kickbacks from Regiments to Homix, Chivita and Albatime and the relevant invoices from Regiments to Transnet to which these kickbacks related is attached as Annexure "2".

18.25. Singh authorised payment by Transnet to Regiments of the invoices listed in Annexure "2", despite the fact that he was aware of the kickbacks to Homix, Chivita and Albatime described in Annexure "2".

18.26. Over the period May 2014 to July 2015,

18.26.1. Essa, Narayan, Singh and Molefe procured the extension of the appointments of Regiments by Transnet, which appointments have been described in paragraphs 18.17, 18.21 and 18.22 above;

18.26.2. Essa, Narayan, Singh and Molefe procured the appointment of Regiments by Transnet to additional contracts as reflected in Annexure "3" hereto; and

18.26.3. Essa, Narayan and executives of Denel unknown to the plaintiffs procured the appointment of Regiments to advise Denel on capital raising.

18.27. Over the period March 2015 to February 2016

18.27.1. Regiments Capital were paid an aggregate amount of R429 044 942.02 by Transnet and Denel as described in the column headed "Movement" in Annexure "3",

18.27.2. From the aggregate amount of R429 044 942.02, Regiments Capital paid aggregate amounts of R274 154 718.11 to Albatime and Gupta entities identified by Essa or Narayan as described in the column headed "BD Partners" in Annexure "3".

The Trip by Zwane with Essa and Tony Gupta in 2014 to India, Dubai and Zurich

18.28. On 13 September 2014, Zwane flew first class to Delhi, India where he stayed with Essa and Tony Gupta at the Oberoi Hotel from 14 to 16 September 2014.

18.29. On 16 September 2014, Zwane, Essa and Tony Gupta flew first class from Delhi to Dubai.

18.30. On 17 September 2014 Zwane, Essa and Tony Gupta flew first class from Dubai to Zurich where they stayed at the Baur au Lac Hotel until 19 September 2014.

- 18.31. On 19 September 2014, Zwane flew first class back from Zurich to Johannesburg via Dubai, arriving in Johannesburg on 20 September 2014.
- 18.32. Chawla, alternatively Chawla and Grover, arranged the flights and accommodation for Zwane on his trip to Delhi, Dubai and Zurich, and the Gupta entity, Sahara Systems (Pty) Ltd ("Sahara"), alternatively another Gupta entity or entities unknown to Eskom, paid for all of Zwane's flights and travel expenses on this trip.

The Travel by Singh and Koko to the Oberoi Hotel in Dubai

- 18.33. Sahara, alternatively another Gupta entity or entities unknown to Eskom, paid, in whole or in part, for the following trips of Singh and Koko to the Oberoi Hotel in Dubai:
- 18.33.1. a trip by Singh on or around 1 May 2014;
 - 18.33.2. a trip by Singh on or around 6 to 9 June 2014;
 - 18.33.3. a trip by Singh originally booked for 7 to 12 August 2014 and subsequently postponed to dates later in August 2014;
 - 18.33.4. a trip by Singh from 7 to 9 November 2014;
 - 18.33.5. a trip by Singh from 24 to 26 February 2015;
 - 18.33.6. a trip by Singh from 12 to 15 June 2015;
 - 18.33.7. a trip by Singh from 17 to 24 December 2015; and
 - 18.33.8. a trip by Koko and his family from 4 to 5 January 2016.

18.34. Essa arranged United Arab Emirates visas for Koko and his family in respect of the trip to Dubai in January 2016.

18.35. The other trips described in paragraph 18.33 above, and payment therefor, were arranged by Chawla, alternatively Grover, alternatively Essa.

The Leaking of Confidential Eskom Documents to Essa by Koko, Daniels and Ngubane

18.36. Over the period July 2015 to June 2016, Ngubane, Daniels and Koko leaked confidential Eskom documents to Essa and allowed Essa secretly to influence Eskom Board decisions, more particularly:

18.36.1. On 20 July 2015, Koko leaked to Essa an Eskom document entitled "Internal Consulting Directive2.pdf" which was Eskom's internal directive of July 2014 on how it was to implement a National Treasury Instruction in relation to Cost Containment specifically with regards to the engagement of consultants;

18.36.2. On 20 July 2015, Koko leaked to Essa an Eskom document entitled "exco resolution.pdf" which was a round robin resolution adopted by the Eskom Board on 5 March 2014 relating to the engagement of McKinsey on the Top Engineers Programme;

18.36.3. On 20 July 2015, Koko leaked to Essa an Eskom document entitled "top-engineers-2.pdf" which contained a summary of approval conditions agreed to by Singh and Koko on 26 June 2015 in relation to the Eskom Top Engineers Development Program which was a program in which McKinsey had been involved at Eskom;

- 18.36.4. On 8 August 2015, Koko leaked to Essa an Eskom document with the title "On-line Vending.pdf" which was a submission in relation to on-line vending that was due to be placed before the Eskom Board on 18 August 2018. Koko's covering email to Essa stated: "*We did not finish our discussions about this transaction.*";
- 18.36.5. On 21 September 2015, Koko leaked to Essa an Eskom document entitled "Disciplinary Intention to suspend PED 31 08 2015 SNP.pdf". This document related to Koko's suspension of one of the Eskom employees responsible for coal tests that had revealed that the Gupta entity, Tegeta Resources and Exploration (Pty) Ltd ("Tegeta") was delivering to Eskom coal from the Brakfontein Colliery that failed to meet the specifications required in terms of Eskom's Coal Supply Agreement ("CSA") with Tegeta at Brakfontein;
- 18.36.6. On 28 September 2015, Essa emailed Ngubane a draft of an urgent request to be sent to Eskom Board members to adopt, by round robin, a resolution terminating Eskom's contact with the Mail and Guardian, City Press and Sunday Times;
- 18.36.7. Ngubane immediately forwarded to Daniels, Essa's email with the draft documents attached and Daniels returned a revised copy of the draft resolution less than an hour later;
- 18.36.8. On 30 September 2015, Koko leaked to Essa a photographic copy of a letter that Ngubane had written to the then Minister of Public Enterprises, Lynne Brown, relating to Eskom's suspension of contact with the Mail and Guardian, City Press and Sunday Times;

- 18.36.9. On 4 November 2015, Koko leaked to Essa a copy of a letter from Just Coal (Pty) Ltd ("Just Coal"), dated 30 October 2015, complaining of Eskom's termination of CSA 4600057172 with Just Coal. The significance of this email is addressed in paragraphs 42 to 43 below.
- 18.36.10. On 5 November 2015, Koko leaked to Essa a privileged legal opinion that Eskom had received on its inability to have the business rescue practitioners removed;
- 18.36.11. On 14 November 2015, Koko leaked to Essa an Eskom document entitled "d3.docx.pdf" which was a document reviewing Eskom's loadshedding position;
- 18.36.12. On 25 November 2015, Koko leaked to Eskom a spreadsheet with the self-explanatory title "Total Cost Plus Mine Investments by Eskom (Future fuel).xlsx". Koko's covering email to Essa stated, "*give the boss please.*"; and
- 18.36.13. On 11 June 2016, Essa emailed Ngubane a draft statement to be issued by him as Chairperson of the Eskom Board, in response to a Carte Blanche television programme critical of Eskom's dealings in relation to the Tegeta Optimum Coal Holdings (Pty) Ltd ("OCH") transaction. Following receipt of Essa's draft,
- (a) Ngubane arranged that Essa's draft was circulated to Eskom Board members through Daniels for their comments;
 - (b) Eskom Board members, including Mabude, sent through their comments and Daniels circulated a revised draft; and

- (c) Essa then wrote to Daniels requiring a further change and stating,
"I am then happy that we issue asap".

Pamensky's Conflicted Dealings with Gupta Entities while he was an Eskom Board Member

- 18.37. On or around 18 September 2015, Pamensky addressed an email to Atul Gupta and others recommending that Gupta entities involved in mining *"do a deal with Eskom on the coal plus mines"* and suggesting that he wanted to share *"some good thoughts on these assets"*.
- 18.38. On or around 22 November 2015, Pamensky addressed an email to Atul Gupta advising him that the Gupta entity purchasing Optimum Coal Mine (Pty) Ltd ("OCM") should insist that Eskom withdraws its R2 billion penalties claim against OCM.
- 18.39. On or around 25 November 2015, Pamensky addressed an email to Atul Gupta asking to discuss *"concept on the potential law suit from Eskom to target Co"*.

THE CONSPIRACY AND EVENTS DIRECTLY CAUSING LOSSES TO ESKOM

19. In the section that follows in paragraphs 20 to 128 below, we describe events that led to Eskom suffering losses. All acts performed by the defendants or co-conspirators as

described in these paragraphs were performed by the relevant defendants and co-conspirators pursuant to the conspiracy.

The Tegeta Purchase of the Optimum Mine

Tegeta

20. Tegeta was a Gupta entity in which a majority of shares were held by the Gupta entities, Oakbay Investments Limited and Fidelity Enterprises Limited, a Dubai based Gupta entity.
21. Minority stakes in Tegeta were held by Elgasolve (Pty) Ltd, a company controlled by Essa, and Mabengela Resources (Pty) Ltd, a company in which Duduzane Zuma held a 50% stake and the remaining shares were held by Tony Gupta, Chawla and various Gupta entities.

Tegeta and the Purchase of Optimum Coal Holdings

22. In 2014, Glencore Operations South Africa ("Glencore") owned OCH, which, in turn, owned OCM which operated the Optimum mine, which supplied Eskom's Hendrina Power Station in terms of a coal supply agreement with Eskom ("the Hendrina CSA") which, by 2014, included three addenda. A copy of the Hendrina CSA (including the addenda) is attached as Annexure "4". Under the Hendrina CSA,
 - 22.1. the quantities of coal which OCM was obliged to provide to Eskom were specified in clauses 6 and 13 of the Hendrina CSA, read with clause 3.2. of the First Addendum, as well as clause 3.1.2. of the Second Addendum;
 - 22.2. the quality standards of the coal which OCM was obliged to provide to Eskom were specified in clause 9 read with Schedule 1 of the Hendrina CSA, as well as clauses

3.3., 3.4. and 3.5. of the First Addendum, and clause 3.4 of the Second Addendum

- 22.3. the price which Eskom was obliged to pay OCM for the coal it provided was specified in clause 7 read with Schedule 3 of the Hendrina CSA as well as clause 3.6. of the First Addendum and clause 3.5. of the Second Addendum;
 - 22.4. the annual price escalation index was to be determined in accordance with the formula specified in Schedule 4 of the Hendrina CSA.
 - 22.5. the penalties which OCM was liable to pay Eskom in the event that it failed to provide the contractually specified quantities of coal were specified in clause 15, read with Schedule 1 of the Hendrina CSA as well as clause 3.2.8. of the First Addendum, and clause 3.1.6. of the Second Addendum;
 - 22.6. the penalties which OCM was liable to pay Eskom in the event that it failed to meet the contractually specified quality standards in respect of coal it delivered to Eskom were specified in clause 9 read with Schedule 1 of the Hendrina CSA as well as clause 3.3. of the Second Addendum.
23. On 23 May 2014, Eskom and OCM concluded a co-operation agreement ("the Co-operation Agreement") aimed at resolving issues concerning OCM's difficulties in providing coal to Hendrina Power Station at the cost specified in the Hendrina CSA and a separate dispute

between the parties relating to penalties which Eskom sought to impose on OCM under the Hendrina CSA. A copy of the Co-operation Agreement is attached as Annexure "5".

24. On 26 February 2015, the Eskom Primary Energy Division issued a memorandum ("the PED memorandum") requesting a mandate to negotiate with OCM. The memorandum indicated that Eskom was willing -
 - 24.1. to negotiate with OCM to ensure security of coal supply for the life of the Hendrina Power Station beyond the 2018 termination date of the Hendrina CSA, and possibly to supply power stations other than Hendrina;
 - 24.2. to consider writing off penalties raised against OCM under the Hendrina CSA;
 - 24.3. to engage with alternate suppliers to secure alternative coal supply options for Hendrina should the opportunity arise; and
 - 24.4. to facilitate the purchase of OCM by Eskom or one of the state-owned mining companies.
25. At a meeting of the Eskom Board on 23 April 2015, chaired by Ngubane and attended by Mabude and Pamensky, the Eskom Board resolved to second Molefe from Transnet as Interim Chief Executive of Eskom and to refer the matter of the Hendrina CSA to Molefe.
26. Following the PED memorandum, Eskom and OCM had continued to engage with one another under the terms of the Co-operation Agreement until Molefe, at a meeting on 18 May 2015, indicated that Eskom would no longer engage with OCM in relation to its rights

under the Hendrina CSA, including its claim for penalties allegedly owed by OCM to Eskom under the Hendrina CSA.

27. On 22 June 2015, Eskom, at the instance of Molefe, terminated the Co-operation Agreement by delivering to OCM a letter of termination dated 10 June 2015.
28. At the time of Eskom's termination of the Co-operation Agreement, Eskom's penalties claim was for an amount of R2 176 530 611.99. When Eskom recalculated this claim in 2017 in the context of settlement negotiations over the penalties, it established that it was entitled to claim only R1.17 billion in respect of the relevant penalties.
29. On 10 June 2015, Molefe addressed a letter to Clinton Martin Ephron ("Ephron") of OCM indicating that Eskom was terminating all settlement processes with OCM and would henceforth hold OCM to the provisions of the Hendrina CSA.
30. On 16 July 2015, Eskom, at the instance of Molefe, imposed a penalty of R2 176 530 611.99 on OCM for non-compliances with the Hendrina CSA.
31. In or about July 2015, Molefe and Ngubane unsuccessfully attempted to persuade the then Minister of Mineral Resources, Ngoako Ramatlhodi, to commence proceedings to cancel Glencore's mining right at OCM in a bid to force Glencore to sell OCM.
32. After the boards of directors of OCM and OCH both resolved to institute business rescue proceedings in respect of OCM, business rescue of OCM commenced on 4 August 2015.
33. Piers Marsden ("Marsden") and Peter van den Steen were appointed business rescue practitioners for OCM.
34. On or about 1 August 2015, Zwane had forwarded his curriculum vitae by email to the Gmail address of Tony Gupta.

35. On or about 23 September 2015, Zwane was appointed Minister of Mineral Resources.
36. Shortly after his appointment as Minister of Mineral Resources, Zwane appointed Mabaso and Moodley as his advisors.
37. In the period between 2 August 2015 and 22 March 2016, there were 58 cellphone calls between Molefe and Ajay Gupta.
38. In the period 5 August 2015 to 17 November 2015, Molefe was present at, or in the immediate vicinity of, the Gupta family compound in Saxonwold, Johannesburg, on 19 occasions.
39. On or about 10 September 2015, Oakbay submitted a non-binding offer to the business rescue practitioners to purchase the assets and operations of OCM for R1. The offer was rejected by the business rescue practitioners.
40. On 30 September 2015, Eskom's attorneys, acting on instructions of Eskom emanating from Molefe, informed Marsden that the Eskom penalty claim of R2 176 530 611.99 was non-negotiable and should be settled in full.
41. On or about 1 October 2015, the business rescue practitioners signed a non-disclosure agreement with Joe Singh Group of Companies (Pty) Ltd ("Joe Singh") with a view to exploring the possibility of a sale of the OCM shares to Joe Singh.
42. In or about October 2015, with a view to putting financial pressure on Joe Singh, Koko orchestrated the termination of Eskom's CSA 4600057172 with another company in the Joe Singh group, Just Coal.
43. Later in October, Joe Singh indicated to the business rescue practitioners that they were not going to pursue any offer in respect of OCM.

44. On 4 November 2015, Koko emailed Essa attaching a copy of a letter from Just Coal dated 30 October 2015, complaining of Eskom's termination of CSA 4600057172.
 - 44.1 Koko's email to Essa stated "*Please give the Boss. The fight begins*"
 - 44.2 Essa forwarded Koko's email to Tony Gupta on the same day.
45. On or about 7 October 2015, OCH, with the consent of the business rescue practitioners agreed in principle to sell OCM to the black-owned company, Phembani Group Limited ("Phembani"), subject to the condition that Phembani could secure a new coal supply contract with Eskom for the Optimum Mine.
46. Oakbay and Tegeta were aware of the possible transaction between OCH and Phembani as on 7 October 2015, OCM sent Oakbay a letter indicating that OCM was now engaged in exclusive negotiations with a third party.
47. Molefe prevented the sale of OCM to Phembani by making clear to Phembani that Eskom would refuse to entertain any negotiation of a coal supply contract with Phembani until 2018, and preferred to let the OCM business rescue proceedings and possible liquidation proceedings run their course.
48. Following the frustration of the Phembani offer, the only entity that remained interested in purchasing OCM was Tegeta/Oakbay.
49. On 5 November 2015, Koko wrote to the business rescue practitioners -
 - 49.1 threatening to seek the intervention of the Department of Mineral Resources ("DMR") in the matter;
 - 49.2 threatening that Eskom would review its entire engagement with Glencore; and

- 49.3. urging the business rescue practitioners and OCH to engage with the offer that remained on the table, namely that of Tegeta/Oakbay.
50. On 5 November 2015, Koko forwarded to Essa confidential legal advice that Eskom had received on its inability to have the business rescue practitioners removed.
51. In or about November 2015, Raphela informed Ephron of Glencore that OCH should be selling all of its subsidiaries and not only OCM to resolve the Optimum dispute.
52. On 24 November 2015, an Eskom delegation headed by Koko met with Glencore, the business rescue practitioners and representatives of Tegeta/Oakbay. At the meeting, Koko indicated that Eskom was not convinced that OCM could survive as a going concern, so the sale should relate to OCH and all of its subsidiaries as opposed to only OCM.
53. On or around 22 November 2015, Pamensky had addressed the email to Atul Gupta described in paragraph 18.38 above, advising him that the Gupta entity purchasing OCM should insist that Eskom withdraws its R2 billion penalties claim against OCM.
54. On or around 25 November 2015, Pamensky addressed the email to Atul Gupta described in paragraph 18.39 above, asking to discuss "*concept on the potential law suit from Eskom to target Co*".
55. On 25 November 2015, Ajay Gupta, on behalf of Oakbay, offered to purchase from Glencore the shares of OCH in OCM and all other subsidiaries for R1 billion.
56. On 26 November 2015, Glencore rejected the offer of Oakbay.
57. On 26 November 2015, at the instance of Zwane, Mabaso and Moodley, the DMR issued a notice under section 54 of the Mine Health and Safety Act 29 of 1996 ("section 54 notice")

on the Koorfontein mine owned by OCH, calling for operations to immediately be halted at the Blinkpan shaft.

58. On the weekend of 28 and 29 November 2015, at the instance of Zwane, Mabaso and Moodley, the DMR sent officials to all Glencore mines to conduct inspections. Flowing from these inspections, in the two weeks after Glencore rejected the Oakbay offer, at the instance of Zwane, Mabaso and Moodley, the DMR issued section 54 notices to the following Glencore mines halting operations at the relevant mines or shafts on the relevant dates:

58.1.	Twefontein Opencast mine:	28 November 2015
58.2.	Wonderfontein Colliery:	28 November 2015
58.3.	Goedgevonden Colliery:	30 November 2015
58.4.	Koorfontein (Gloria Shaft):	1 December 2015
58.5.	Graspan Colliery (Shanduka Shaft):	8 December 2015
58.6.	Optimum Colliery (Boschmanspoort Shaft):	10 December 2015

59. On or about 30 November 2015, Glencore took a decision to continue to fund OCH and OCM at all costs and to take it out of business rescue.

60. On 1 December 2015,

60.1. Ephron conveyed Glencore's decision to take OCH and OCM out of business rescue to Koko at a meeting at Eskom; and

60.2. Koko conveyed the decision to Singh.

61. On 1 December 2015, Zwane, Raphela and Essa (posing as an advisor to Zwane) met with Ivan Glasenberg ("Glasenberg") of Glencore in Zurich.
62. At the meeting on 1 December 2015, Zwane informed Glasenberg that Tony Gupta wished to meet Glasenberg on 2 December 2015 in Zurich.
63. On 2 December 2015, Zwane, Essa, Tony Gupta, Glasenberg and Ephron met in Zurich. At the meeting of 2 December 2015, an agreement in principal was reached for Oakbay/Tegeta to purchase OCH for R2.15 billion.
64. On the evening of 2 December 2015, Zwane, Tony Gupta, Essa and Raphela flew in the Guptas' private jet, registration ZS-OAK, from Zurich to Delhi.
65. On 4 December 2015, Zwane, Tony Gupta, Essa and Raphela flew in the Guptas' private jet, registration ZS-OAK, from Delhi to Dubai.
66. Over the period 2 to 6 December 2015, Molefe and Koko sought a pretext formally to approach the DMR on behalf of Eskom to intervene in the matter to pressurize Glencore into selling to Tegeta/Oakbay. To this end, Koko addressed a letter to the DMR dated 6 December 2015 seeking the intervention of the DMR.
 - 66.1. As Koko and Molefe had no legitimate reason for knowing of the agreement that had been reached in Zurich, Koko's letter did not mention that agreement and was written on the basis that Glencore were still committed to taking OCM out of business rescue and honouring the terms of the Hendrina CSA until its conclusion.
 - 66.2. Prior to sending the letter to the DMR, Koko emailed Raphela on the morning of 7 December 2015 stating: "*Boss, I really want to keep this letter factual. Please advise.*"

- 66.3. Raphela replied immediately on 7 December 2015 to Koko's email giving Koko consent to proceed as he had proposed.
- 66.4. After receiving Raphela's consent on the morning of 7 December 2015, Koko formally dispatched the letter dated 6 December 2015 to the DMR.
67. On or about 7 December 2015, Raphela who had been present in Zurich, framed a response to Koko's letter in the name of the Director-General of the DMR ("Director-General") which was written as though the events in Zurich had been the subject of Koko's letter. In the letter of the Director-General,
- 67.1. he committed that the DMR would fast track approvals for transfer of the mining right from OCM to Tegeta//Oakbay; and
- 67.2. invited Eskom to provide for a prepayment to Tegeta/Oakbay for up to a year's supply of coal from OCM to assist Tegeta/Oakbay with "*financial provision due to historical liabilities at OCH level... estimated at R1.7 billion*".
68. On 8 December 2015, Singh and Koko signed a submission for circulation to the Eskom Board, referring to the request in the 7 December 2015 letter from the Director-General and motivating Eskom Board approval for the pre-purchase of R1.68 billion of coal from OCM ostensibly to secure coal supply to the Hendrina Power Station.
- 68.1. The submission by Singh and Koko had been prepared by Wood, and had been forwarded from Regiments Capital to Singh on the afternoon of 8 December 2015, whereafter Singh forwarded it to Koko.
- 68.2. Prior to finalizing the submission, Wood had forwarded an earlier draft of the submission to Essa.

- 68.2.1. The earlier draft forwarded by Wood provided for a submission, not to the Eskom Board, but to the Investment and Finance Committee.
- 68.2.2. The earlier draft also stated that PFMA approval would be required from the National Treasury due to the length and value of the pre-payment contract.
- 68.2.3. At Essa's suggestion, Wood revised the earlier draft to provide that the submission went to the Eskom Board, not the Investment and Finance Committee, because the amount of the proposed prepayment contract exceeded R1.5 billion.
- 68.2.4. At Essa's insistence, Wood removed any reference to the requirement for PFMA approval from the final draft of the submission which Singh and Koko signed.
- 68.3. The submission by Singh and Koko falsely suggested that the proposal for the pre-payment had emanated from the business rescue practitioners.
- 68.4. The submission included a calculation showing an alleged benefit to Eskom of R238.9 million by proceeding with the prepayment.
- 68.5. The submission referred to Regiments Capital as having provided independent verification for the submission.
- 68.6. The resolution sought from the Eskom Board in the submission was one which would delegate authority to Molefe, Koko and Singh to finalise the terms of the pre-purchase with Tegeta.

- 68.7. As OCM was still in business rescue, no-one other than the business rescue practitioners were able to bind OCM to any agreements relating to coal delivery. Despite this fact, the resolution made no reference to any requirement to engage with the business rescue practitioners in relation to the proposed pre-purchase agreement.
69. On 9 December 2015, the Eskom Board, including Ngubane, Mabude and Singh approved the resolution by round robin. Molefe was recorded as being "off sick".
70. The approved resolution authorised Singh as CFO *"to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto."*
71. The board resolution had made no mention of any guarantees to Tegeta. Nevertheless, on 10 December 2015, Singh signed a memorandum committing to approve the issue of a guarantee in favour of Tegeta and to approach ABSA Bank as a counterparty to issue the guarantee.
72. On 10 December 2015, Singh signed an application to ABSA Bank on behalf of Eskom for the issuance of a local guarantee in favour of Tegeta.
73. In the early hours of the morning of 10 December 2015, Essa forwarded to Koko, who, in turn, forwarded to Daniels, an outline of a short agreement to be concluded between Eskom and Tegeta for the pre-purchase of coal for R1.68 billion.
74. In the afternoon of 10 December 2015, Daniels forwarded to Singh, who in turn forwarded to Wood, who in turn, forwarded to Essa, unsigned drafts of the following documents:
- 74.1. an ABSA Bank demand guarantee;

- 74.2. an ABSA Bank performance guarantee; and
 - 74.3. a letter agreement between Eskom and Tegeta providing for Eskom to pre-purchase coal from Tegeta for R1.68 billion and to issue a bank guarantee to Tegeta in this regard for an amount of R1.68 billion.
75. On 10 December 2015, Singh signed the letter agreement between Eskom and Tegeta relating to the pre-purchase. A copy of the letter agreement is attached as Annexure "6".
 76. The guarantee was issued by ABSA Bank on 11 December 2015. A copy of the guarantee is attached as Annexure "7". As appears from Annexure "7", the guarantee had an expiry date of 31 March 2016.
 77. On 10 December 2015, OCH, Tegeta, Glencore and Oakbay concluded an agreement for the sale of shares in OCH to Tegeta for a purchase price of R2.15 billion plus interest until date of payment. A copy of the sale agreement is attached as Annexure "8". The sale agreement was subject to three suspensive conditions which required the consent of Eskom. These were:
 - 77.1. the consent of Eskom to the sale agreement;
 - 77.2. the release by Eskom of OCH from the guarantee it had granted to Eskom; and
 - 77.3. the release by Eskom of OCH and its affiliate companies from any liability relating to the Hendrina CSA.
 78. Eskom's consent to the sale agreement was embodied in a the Fourth Addendum to the Hendrina CSA entered into between Eskom and OCM and Tegeta on 30 March 2016 and signed by Vusi Mboweni on behalf of Eskom, Marsden as business rescue practitioner on

behalf of OCM and Nazeem Howa as Director on behalf of Tegeta. A copy of the Fourth Addendum to the Hendrina CSA is attached as Annexure "9".

79. On 10 December 2015, OCH, Tegeta, Glencore and Werksmans Attorneys (as the Escrow agent) signed an Escrow agreement ("the Escrow Agreement") which provided for Glencore and Tegeta to pay into escrow their respective portions of the outstanding balance on a facility agreement of R2.5 billion that had been made available to OCH by a consortium of lending banks.
 - 79.1. Tegeta's payment under the Escrow Agreement was the purchase price which it was obliged to pay under the sale agreement.
 - 79.2. Glencore's payment under the Escrow Agreement was the outstanding balance on the facility agreement after deduction of Tegeta's payment.
 - 79.3. The Escrow Agreement originally provided for a payment date of three business days after 31 March 2016.
 - 79.4. On 31 March 2016, the First Addendum to the Escrow Agreement was signed providing for the repayment date to be changed to three business days after 18 April 2016.
 - 79.5. On 13 April 2016, the Escrow Agreement was novated and replaced by the "Amended and Restated Escrow Agreement" in terms of which the deadline for Tegeta to pay its portion into the Escrow Account was changed to 14 April 2016.
80. ABSA Bank refused to extend the guarantee beyond its termination date of 31 March 2016 and communicated its decision in this regard to Singh on 30 March 2016 by email.
81. For issuing the guarantee, ABSA Bank invoiced Eskom -

- 81.1. in the amount of R581 700.00 in December 2015; and
- 81.2. in the amount of R662 659.20 in March 2016.
82. The amounts of R581 700.00 and R662 659.20 invoiced by ABSA were paid by Eskom (debited from Eskom's ABSA Bank account) respectively on or about 11 December 2015 and 11 March 2016.
83. On 5 April 2016, Singh forwarded the ABSA Bank email of 30 March 2016 to Koko asking him to take note of the email and *"advise accordingly"*.
84. With the lapsing of the ABSA Bank guarantee, Koko fell back on an alternative plan to finance the Tegeta purchase of OCH out of a prepayment for OCM coal, not for the Hendrina Power Station, but for the Arnot Power Station ("Arnot").
85. On or before 10 February 2016, Koko arranged that the item relating to a mandate to negotiate coal supply to Arnot was removed from the agenda of the Eskom Board Tender Committee ("BTC") meeting of 10 February 2016. This was done to provide a later pretext for concluding a prepayment agreement with Tegeta in respect of coal supply to Arnot so as to facilitate Tegeta's payment of its purchase price to OCH prior to the deadline of 14 April 2016.
86. By the first week of April 2016, Tegeta was hundreds of millions of rands short of the purchase price amount of R2.15 billion that it had to pay by 14 April 2016.
87. On 8 April 2016, Tegeta offered to Eskom that it would provide an additional 1 250 000 tons of coal to Eskom from Optimum over a period of five months at R20.41 per gigajoule if Eskom prepaid Tegeta for that coal.

88. On 11 April 2016, the consortium of banks informed Tegeta, through Marsden, that it was not willing to finance the R600 million shortfall that Marsden conveyed to them was the difference between the purchase price amount raised by Tegeta.
89. On 11 April 2016, Koko arranged with Singh for a submission to be placed before an urgent BTC meeting to be held that night to decide on emergency procurement of contracts for coal for Arnot. The submission, which was signed by Koko,
 - 89.1. sought approval for the conclusion of short-term contracts with Tegeta and Umsimbithi to provide coal to Arnot;
 - 89.2. noted that Tegeta had requested a prepayment and sought approval for a prepayment to Tegeta; and
 - 89.3. estimated the Tegeta prepayment at R586 787 500.
90. Mabude was one of the Eskom Board members forming part of the BTC meeting of 11 April 2016.
91. The meeting adopted a resolution which authorized -
 - 91.1. conclusion of addenda to the short-term coal supply agreements with Tegeta and Umsimbithi;
 - 91.2. Singh to approve the basis for prepayment to secure the fixed coal price for the period of extension under these addenda provided that there was a discount in the price and the supplier offered Eskom a guarantee; and
 - 91.3. Koko to take all steps necessary to give effect to the resolution, including the signing of any contracts or other documentation.

92. On 13 April 2016, Eskom concluded a prepayment agreement with Tegeta.
- 92.1. The prepayment agreement was signed by Koko on behalf of Eskom and witnessed by Singh.
- 92.2. A copy of the prepayment agreement is attached as Annexure "10".
- 92.3. The prepayment agreement provided for Eskom to make a prepayment of R659 558 079.38 for coal supply by Tegeta to Arnot for the period running from 16 April 2016 to 30 September 2016.
93. On 13 April 2016,
- 93.1. Tegeta invoiced Eskom for the prepayment amount of R659 558 079.38; and
- 93.2. Molefe and Singh procured that Eskom pay the amount of R659 558 079.38 to Tegeta before 14h00 on 13 April 2016.
94. On 14 April 2016, Tegeta paid the full amount of the purchase price in terms of the OCH sale agreement.
95. But for the Eskom payment of R659 558 079.38 to Tegeta on 13 April 2016, Tegeta would have been unable to pay the purchase price in terms of the OCH sale agreement by the deadline of 14 April 2016 as stipulated in the Amended and Restated Escrow Agreement.
96. On or around 13 March 2017, Daniels submitted a memorandum recommending that the outstanding penalties on the Hendrina CSA in respect of the period 2012 to 2015 (which had been claimed from OCM under Glencore control in the amount of R2 176 530 611.99) be settled for an amount of R577 million.

97. Singh endorsed Daniels' recommendation on 14 March 2017 and Koko approved the recommendation on 14 March 2017.
98. On 16 March 2017, Eskom's dispute with OCM and Tegeta over the outstanding penalties was settled for an amount of R577 839 105.42 and the settlement was made an award by the arbitrator in the dispute between Eskom and OCM and Tegeta, Adv. Solomon SC. A copy of the arbitration award is attached as Annexure "11".
99. At the time of the settlement of the penalty claim, Daniels, Singh and Koko knew that Eskom's actual justified penalty claim was R1 166 164 713.37 but deliberately settled for the lower amount of R577 839 105.42 to further the interests of Tegeta in accordance with the conspiracy.
100. As appears from Annexure "11", when regard was had to penalties already deducted by Eskom from payments to OCM, the balance due by OCM and Tegeta was R255 400 819.18. OCM and Tegeta have failed to pay Eskom an amount of R133 781 381.48.
101. The total penalty related loss caused to Eskom by the conspiracy accordingly comprises R722 106 989.43 made up as follows:

Penalty Due	R1 166 164 713.37	-
Lesser Penalty Agreed	<u>R 577 839 105.42</u>	
	R 588 325 607.95	+
Unpaid Amount	<u>R 133 781 381.48</u>	
	<u>R 722 106 989.43</u>	

102. Over the period September 2016 to 31 December 2018, being the termination date of the Hendrina CSA, OCM whilst under the control of Tegeta, consistently refused, alternatively was unable, alternatively failed to meet the coal delivery quantity and quality obligations specified in the Hendrina CSA at the time that Tegeta purchased OCM.

103. As a result of OCM's refusal, alternatively inability, alternatively failure to deliver coal the quantity of coal specified in the Hendrina CSA at the time of Tegeta's purchase of OCH, Eskom had to incur additional costs in the aggregate amount of R2 441 161 443 to procure coal from sources other than OCH for the Hendrina Power Station. A spreadsheet setting out details of the additional coal procured by Eskom for Hendrina and the additional cost of such coal is attached as Annexure "12".
104. As a result of OCM's refusal, alternatively inability, alternatively failure to deliver the quality of coal specified in the Hendrina CSA at the time of the Tegeta purchase of OCH, Eskom suffered losses in the aggregate amount of R89 335 464.07, being the aggregate amount of penalties that Eskom did not deduct from purchase payments to Tegeta but would have fallen due to Eskom under the terms of the Hendrina CSA as of the date of the Tegeta purchase, such penalties being an accurate proxy for the cost to Eskom of receiving coal below the contractually specified standard. A spreadsheet setting out details of the unrecovered penalties in respect of sub-standard coal delivered by OCM to Eskom from the Hendrina mine over the period September 2016 to January 2018 is attached as Annexure "13".
105. Eskom has lodged aggregate claims in the amounts of R1 276 031 278.48 and R 358 825 008.55 against OCM and Tegeta respectively to recover contractual penalties from them under the Hendrina CSA.
106. However, OCM and Tegeta are both currently in business rescue and Eskom is unlikely to be able to recover its claims against them.

The Engagement of Trillian to Work with McKinsey at Eskom

107. During the course of 2015, McKinsey was attempting to secure a contract with Eskom under its Top Engineers Programme to work on a turnaround strategy at Eskom.
108. On or about 15 May 2015, Molefe approved a recommendation that Eskom procure the services of McKinsey under the Top Engineers Programme.
109. On 6 July 2015, the BTC approved a mandate to negotiate with McKinsey without a competitive bidding process to advise Eskom on the Top Engineers Programme.
110. On 20 July 2015, Koko leaked to Essa the documents described in paragraph 18.36.1 to 18.36.3 above to assist Essa to procure the appointment of Regiments or some other conspirator Gupta entity as McKinsey's supplier development partner on the Top Engineers Programme.
111. Over the period July to November 2015, McKinsey and Eskom negotiated over the terms of McKinsey's planned appointment but no contract was concluded.
112. In or around October November 2015, Wood decided to leave Regiments and to form Trillian with Essa.
113. Prior to Wood's decision to leave Regiments, McKinsey had planned to use Regiments as its supplier development partner at Eskom. After Wood informed McKinsey that he was leaving Regiments to form Trillian with Essa, McKinsey agreed to use Trillian as its supplier development partner at Eskom.
114. In the first half of November 2015, Essa, Wood and Angel met with Sagar of McKinsey with a view to finalizing arrangements relating to the Top Engineers Programme appointment of McKinsey by Eskom with Trillian as its supplier development partner.

115. On or about 16 November 2015, Angel emailed Sagar making clear that Essa would not arrange any meeting with Molefe for Sagar and Alexander Weiss of McKinsey to finalise the appointment of McKinsey until McKinsey had provided Wood, Angel and Essa with its proposed 50/50 fee split with Trillian and timelines on fees.
116. On or about 18 November 2015, Sagar emailed to Essa a spreadsheet with the proposed 50/50 fee split with Trillian and timelines on fees.
117. On a date unknown to Eskom, but between 18 November 2015 and 17 December 2015, Molefe met with Weiss and Sagar and agreed, on behalf of Eskom, that McKinsey would be given their contract for the Top Engineers Programme with Trillian as its supplier development partner.
118. On 27 November 2015, Sagar emailed Prish Govender ("Govender") of Eskom, copying Koko, forwarding Trillian's details.
119. On 17 December 2015, Govender emailed Koko with a draft of the McKinsey letter of appointment for his review.
120. Later on 17 December 2017, Eskom issued the letter of appointment to McKinsey.
121. At no stage did Eskom or McKinsey ever conclude any contract with Trillian in relation to the Top Engineers Programme and at no stage did Trillian do any work for Eskom on any other programme.
122. On 30 March 2016, McKinsey addressed a letter to Eskom indicating that they would not be engaging Trillian as their supplier development partner in their work at Eskom.
123. Despite the fact that Eskom had no contract with Trillian, and McKinsey had made clear to Eskom that it was not engaging Trillian as its supplier development partner at Eskom,

Molefe, Singh and Koko procured that Eskom paid Trillian aggregate amounts of R595 228 913 as particularized in Annexure "14".

124. Trillian did not provide Eskom for any value in return for these payments.
 125. In March 2018, Eskom launched an application in the High Court of South Africa, Gauteng Division, Pretoria ("the High Court"), *inter alia*,
 - 125.1. for the review and setting aside of the decisions taken to negotiate and conclude the Master Services Agreement under which the payments to Trillian were purportedly made;
 - 125.2. for the review and setting aside of the decisions to authorise the payments to Trillian; and
 - 125.3. for payment by Trillian of R595 228 913, interest and costs.
 126. On 18 June 2019, the High Court handed down judgment in Eskom's favour,
 - 126.1. reviewing and setting aside the decisions challenged by Eskom; and
 - 126.2. ordering Trillian to repay Eskom an amount of R595 228 913.29, plus interest and costs.
- A copy of the judgment is attached as Annexure "15".
127. When Trillian failed to make any payment to Eskom in respect of the Court order, Eskom instituted liquidation proceedings against Trillian on or about 17 January 2020.
 128. In these proceedings, it emerged that the South African Revenue Service has attached the property of Trillian and Wood for its own claims against Trillian.

CLAIM A: DAMAGES CLAIM AGAINST MOLEFE FOR BREACH OF CONTRACT

129. Molefe concluded a written contract of employment with Eskom in terms of which Molefe was appointed as Group Chief Executive with effect from 1 October 2015. A copy of the contract of employment is annexed hereto as Annexure "16".
130. The contract of employment was signed by Molefe on 7 March 2016 in Sandton and by Ngubane, in his capacity as chairperson of the Eskom Board, on 15 March 2016 at Megawatt Park, Sunninghill.
131. In terms of his contract of employment, Molefe had obligations in the course of his duties to Eskom -
 - 131.1. to disclose and get prior written consent if he is interested or engaged in any other business or company other than Eskom (Clause 6.2);
 - 131.2. to use his utmost endeavours to protect and promote Eskom's business undertakings and interests (Clause 6.3);
 - 131.3. to preserve Eskom's reputation and goodwill (Clause 6.3);
 - 131.4. to be true and faithful in all dealings and transactions pertaining to Eskom (Clause 6.4);
 - 131.5. to hold Eskom's confidential information in confidence during and after his employment at Eskom and not to disclose it to unauthorized persons (Clause 16.2.1);
 - 131.6. not to use to his own benefit or for the benefit of any other person any of Eskom's confidential information (Clause 16.2.3); and

131.7. to adhere to Eskom's written procedures and policies (Clause 19.1).

132. In breach of these duties, Molefe -

132.1. performed the acts attributed to him in paragraphs 16 to 128 above;

132.2. failed to disclose the existence of the conspiracy to Eskom;

132.3. failed to disclose to Eskom his involvement in the conspiracy; and

132.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above.

133. As a result of Molefe's aforesaid breach of his contractual duties to Eskom, Eskom has suffered the following losses:

133.1. R581 700.00, being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

133.2. R662 659.20, being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

133.3. R722 106 989.43, being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

133.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;

- 133.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto;
- 133.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.
134. Molefe has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.
135. In the circumstances, Molefe is liable to Eskom for payment of the following amounts:
- 135.1. R581 700.00 plus interest *a tempora morae*;
- 135.2. R662 659.20 plus interest *a tempora morae*;
- 135.3. R722 106 989.43 plus interest *a tempora morae*;
- 135.4. R2 441 161 443 plus interest *a tempora morae*;
- 135.5. R89 335 464 plus interest *a tempora morae*; and
- 135.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM B: DAMAGES CLAIM AGAINST SINGH FOR BREACH OF CONTRACT (TO BE REFINED AFTER CONSIDERING HIS CONTRACT OF EMPLOYMENT)

136. Singh concluded a written contract of employment with Eskom in terms of which he was appointed as Chief Financial Officer with effect from 1 October 2015. A copy of the contract of employment is annexed hereto as Annexure "17".

137. The contract of employment was signed by Singh on 5 March 2016 in Sandton and by Ngubane, in his capacity as chairperson of the Eskom Board, on 15 March 2016 at Megawatt Park, Sunninghill.
138. In terms of his contract of employment, Singh had obligations in the course of his duties to Eskom
 - 138.1. to disclose and get prior written consent if he is interested or engaged in any other business or company other than Eskom (Clause 6.2);
 - 138.2. to use his utmost endeavours to protect and promote Eskom's business undertakings and interests (Clause 6.3);
 - 138.3. to preserve Eskom's reputation and goodwill (Clause 6.3);
 - 138.4. to be true and faithful in all dealings and transactions pertaining to Eskom (Clause 6.4);
 - 138.5. to hold Eskom's confidential information in confidence during and after his employment at Eskom and not to disclose it to unauthorized persons (Clause 16.2.1);
 - 138.6. not to use to his own benefit or for the benefit of any other person any of Eskom's confidential information (Clause 16.2.3); and
 - 138.7. to adhere to Eskom's written procedures and policies (Clause 19.1).
139. In breach of these duties, Singh -
 - 139.1. performed the acts attributed to him in paragraphs 16 to 128 above;

139.2. failed to disclose the existence of the conspiracy to Eskom;

139.3. failed to disclose to Eskom his involvement in the conspiracy; and

139.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above.

140. As a result of Singh's aforesaid breach of his contractual duties to Eskom, Eskom has suffered the following losses:

140.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

140.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

140.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

140.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;

140.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto; and

140.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

141. Singh has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

142. In the circumstances, Singh is liable to Eskom for payment of the following amounts:

142.1. R581 700.00 plus interest *a tempora morae*;

142.2. R662 659.20 plus interest *a tempora morae*;

142.3. R722 106 989.43 plus interest *a tempora morae*;

142.4. R2 441 161 443 plus interest *a tempora morae*;

142.5. R89 335 464 plus interest *a tempora morae*; and

142.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM C: DAMAGES CLAIM AGAINST KOKO FOR BREACH OF CONTRACT

143. In terms of his contract of employment dated 2010 and annexed hereto as Annexure "18", Koko had obligations in the course of his duties to Eskom to:

143.1. act honestly, faithfully, diligently and to the best of his ability to fulfil the duties and responsibilities of the office to which he is appointed (Clause 3.1.1.);

143.2. use his best endeavours to promote, develop and protect the interests, wellbeing, reputation and goodwill of Eskom (Clause 3.1.2);

143.3. carry out his duties in a proper, loyal and efficient manner (Clause 3.1.3);

143.4. maintain the highest standards of conduct, honesty and integrity in carrying out his responsibilities under the contract (Clause 3.1.10);

- 143.5. disclose to Eskom in writing all of his interests which may conflict with those of Eskom (Clause 4.2);
 - 143.6. not, during his employment or thereafter, disclose to any person, any confidential information that has come to his knowledge or into his possession in the course of the performance of the contract (Clause 5.1.1.); and
 - 143.7. use or attempt to use any such confidential for his own personal benefit, or for the benefit of any other person, or organization (Clause 5.1.2).
144. In breach of his contractual obligations to Eskom, Koko -
- 144.1. performed the acts attributed to him in paragraphs 16 to 128 above;
 - 144.2. failed to disclose the existence of the conspiracy to Eskom;
 - 144.3. failed to disclose to Eskom his involvement in the conspiracy; and
 - 144.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above.
145. As a result of Koko's aforesaid breach of his contractual obligations to Eskom, Eskom has suffered the following losses:
- 145.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;
 - 145.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

- 145.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;
 - 145.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;
 - 145.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto; and
 - 145.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.
146. Koko has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.
147. In the circumstances, Koko is liable to Eskom for payment of the following amounts:
- 147.1. R581 700.00 plus interest *a tempora morae*;
 - 147.2. R662 659.20 plus interest *a tempora morae*;
 - 147.3. R722 106 989.43 plus interest *a tempora morae*;
 - 147.4. R2 441 161 443 plus interest *a tempora morae*;
 - 147.5. R89 335 464 plus interest *a tempora morae*; and
 - 147.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM D: DAMAGES CLAIM AGAINST DANIELS FOR BREACH OF CONTRACT

148. Daniels concluded a written contract of employment with Eskom whereby Daniels' current position at the time, being Senior General Manager: Company Secretariat, was recorded. A copy of the contract of employment is annexed hereto as Annexure "19".
149. The contract of employment was signed by Daniels on 24 June 2016 in Pretoria and signed on behalf of Eskom on 24 June 2016 at Megawatt, Sunninghill.
150. In terms of her contract of employment, Daniels had obligations in the course of her duties to Eskom -
- 150.1. to promote, develop and protect Eskom's interests, wellbeing, reputation and goodwill and not to do anything that is harmful to Eskom (Clause 3.1.2);
 - 150.2. to carry out her duties in a proper, loyal and efficient manner (Clause 3.1.3);
 - 150.3. to promote compliance with all statutory obligations imposed upon Eskom and its employees (Clause 3.1.7);
 - 150.4. to maintain the highest standard of conduct, honesty and integrity in carrying out her duties under the contract of employment (Clause 3.1.10);
 - 150.5. to abide by and conform to the personnel and business practices, business ethics, policies and procedures as may be introduced by Eskom (Clause 3.1.11);
 - 150.6. to disclose to Eskom in writing all her interests which may conflict with the interests of Eskom (Clause 4.2);
 - 150.7. not to disclose to any person any confidential information that has come to her knowledge in the course of the performance of the contract of employment (Clause 5.1.1); and

- 150.8. not to use or attempt to use any such confidential information for her own personal benefit or for the benefit of any other person or organization (Clause 5.1.2).
151. In terms of a Letter of Appointment dated 28 August 2017 and signed by the Interim Group Chief Executive, Mr J A Dladla, Daniels was appointed as Senior General Manager: Legal and Compliance effective from 1 August 2017. A copy of the letter of appointment of 28 August 2017 is attached as Annexure "20".
152. The terms and conditions contained in the contract of employment of 2016 as pleaded in paragraph 150 above, also applied to the appointment of Daniels as Senior General Manager: Legal and Compliance in 2017.
153. In breach of her contractual obligations to Eskom, Daniels -
- 153.1. performed the acts attributed to her in paragraphs 16 to 128 above;
 - 153.2. failed to disclose the existence of the conspiracy to Eskom;
 - 153.3. failed to disclose to Eskom her involvement in the conspiracy; and
 - 153.4. failed to take steps to prevent any of the acts of her co-conspirators described in paragraphs 16 to 128 above.
154. As a result of Daniels' aforesaid breach of her contractual obligations to Eskom, Eskom has suffered the following losses:
- 154.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;
 - 154.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

- 154.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;
 - 154.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;
 - 154.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto; and
 - 154.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.
155. Daniels has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.
156. In the circumstances, Daniels is liable to Eskom for payment of the following amounts:
- 156.1. R581 700.00 plus interest *a tempora morae*;
 - 156.2. R662 659.20 plus interest *a tempora morae*;
 - 156.3. R722 106 989.43 plus interest *a tempora morae*;
 - 156.4. R2 441 161 443 plus interest *a tempora morae*;
 - 156.5. R89 335 464 plus interest *a tempora morae*; and
 - 156.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM E: CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST NGUBANE

157. By virtue of his position as a director of Eskom in the period 11 December 2014 to June 2017, Ngubane owed fiduciary duties to Eskom over that period -
- 157.1. to act in good faith and in the best interests of Eskom at all times;
 - 157.2. to disclose and to avoid conflicts of interest with Eskom; and
 - 157.3. to disclose to Eskom all information necessary to protect the interests of Eskom.
158. In breach of those fiduciary duties, Ngubane -
- 158.1. performed the acts attributed to him in paragraphs 16 to 128 above in respect of the period 11 December 2014 to June 2017;
 - 158.2. failed to disclose the existence of the conspiracy to Eskom;
 - 158.3. failed to disclose to Eskom his involvement in the conspiracy; and
 - 158.4. Failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above in respect of the period 11 December 2014 to June 2017.
159. As a result of Ngubane's aforesaid breach of his fiduciary duties to Eskom, Eskom has suffered the following losses:
- 159.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;
 - 159.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

- 159.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;
 - 159.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;
 - 159.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto; and
 - 159.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.
160. Ngubane has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.
161. In the circumstances, Ngubane is liable to Eskom for payment of the following amounts:
- 161.1. R581 700.00 plus interest *a tempora morae*;
 - 161.2. R662 659.20 plus interest *a tempora morae*;
 - 161.3. R722 106 989.43 plus interest *a tempora morae*;
 - 161.4. R2 441 161 443 plus interest *a tempora morae*;
 - 161.5. R89 335 464 plus interest *a tempora morae*; and
 - 161.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM F: CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST MABUDE

162. By virtue of her position as a director of Eskom in the period 28 June 2011 to 23 June 2017, Mabude owed fiduciary duties to Eskom over that period -

162.1. to act in good faith and in the best interests of Eskom at all times;

162.2. to disclose and to avoid conflicts of interest with Eskom; and

162.3. to disclose to Eskom all information necessary to protect the interests of Eskom.

163. In breach of those fiduciary duties, Mabude -

163.1. performed the acts attributed to her in paragraphs 16 to 128 above in respect of the period January 2015 to 23 June 2017;

163.2. failed to disclose the existence of the conspiracy to Eskom; and

163.3. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above in respect of the period January 2015 to 23 June 2017.

164. As a result of Mabude's aforesaid breach of her fiduciary duties to Eskom, Eskom has suffered the following losses:

164.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

164.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

164.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

- 164.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure “12” hereto;
- 164.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure “13” hereto; and
- 164.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.
165. Mabude has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.
166. In the circumstances, Mabude is liable to Eskom for payment of the following amounts:
- 166.1. R581 700.00 plus interest *a tempora morae*;
- 166.2. R662 659.20 plus interest *a tempora morae*;
- 166.3. R722 106 989.43 plus interest *a tempora morae*;
- 166.4. R2 441 161 443 plus interest *a tempora morae*;
- 166.5. R89 335 464 plus interest *a tempora morae*; and
- 166.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM G: CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST PAMENSKY

167. By virtue of his position as a director of Eskom in the period 11 December 2014 to 16 November 2016, Pamensky owed fiduciary duties to Eskom over that period -

167.1. to act in good faith and in the best interests of Eskom at all times;

167.2. to disclose and to avoid conflicts of interest with Eskom; and

167.3. to disclose to Eskom all information necessary to protect the interests of Eskom.

168. In breach of those fiduciary duties, Pamensky -

168.1. performed the acts attributed to him in paragraphs 16 to 128 above in respect of the period 11 December 2014 to 16 November 2016;

168.2. failed to disclose the existence of the conspiracy to Eskom;

168.3. failed to disclose his interest in Trillian; and

168.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above in respect of the period 11 December 2014 to June 2017.

169. As a result of Ngubane's aforesaid breach of his fiduciary duty to Eskom, Eskom has suffered the following losses:

169.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

169.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

169.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

- 169.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;
- 169.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto; and
- 169.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.
170. Ngubane has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.
171. In the circumstances, Ngubane is liable to Eskom for payment of the following amounts:
- 171.1. R581 700.00 plus interest *a tempora morae*;
- 171.2. R662 659.20 plus interest *a tempora morae*;
- 171.3. R722 106 989.43 plus interest *a tempora morae*;
- 171.4. R2 441 161 443 plus interest *a tempora morae*;
- 171.5. R89 335 464 plus interest *a tempora morae*; and
- 171.6. R595 228 913.29 plus interest *a tempora morae*.

**CLAIM H: DAMAGES CLAIM AGAINST ALL DEFENDANTS JOINTLY AND SEVERALLY
(BROUGHT IN THE ALTERNATIVE TO CLAIMS A TO G RESPECTIVELY IN SO FAR AS IT**

IS A CLAIM AGAINST, MOLEFE, SINGH, KOKO, DANIELS, NGUBANE, MABUDE OR PAMENSKY)

172. Eskom repeats paragraphs 16 to 128 above.

173. As a result of the deliberate and wrongful conduct of the defendants and their co-conspirators particularized in paragraphs 16 to 128 above, Eskom has suffered the following losses:

173.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

173.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

173.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

173.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "12" hereto;

173.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure "13" hereto; and

173.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

174. Each of the defendants has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

175. In the circumstances, the defendants are jointly and severally liable to Eskom for payment of the following amounts:

175.1. R581 700.00 plus interest *a tempora morae*;

175.2. R662 659.20 plus interest *a tempora morae*;

175.3. R722 106 989.43 plus interest *a tempora morae*;

175.4. R2 441 161 443 plus interest *a tempora morae*;

175.5. R89 335 464 plus interest *a tempora morae*; and

175.6. R595 228 913.29 plus interest *a tempora morae*.

WHEREFORE THE PLAINTIFFS CLAIM:

A. CLAIMED AGAINST MOLEFE

(i) An order directing Molefe to make payment to Eskom of the following amounts:

a. R581 700.00 plus interest *a tempora morae*;

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae*; and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

B. CLAIMED AGAINST SINGH

(i) An order directing Singh to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae*;

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae*; and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

C. CLAIMED AGAINST KOKO

(i) An order directing Koko to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae*;

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

- d. R2 441 161 443 plus interest *a tempora morae*;
- e. R89 335 464 plus interest *a tempora morae*; and
- f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

D. CLAIMED AGAINST DANIELS

(i) An order directing Daniels to make payment of the following amounts:

- a. R581 700.00 plus interest *a tempora morae*;
- b. R662 659.20 plus interest *a tempora morae*;
- c. R722 106 989.43 plus interest *a tempora morae*;
- d. R2 441 161 443 plus interest *a tempora morae*;
- e. R89 335 464 plus interest *a tempora morae*; and
- f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

E. CLAIMED AGAINST NGUBANE

(i) An order directing Ngubane to make payment of the following amounts:

- a. R581 700.00 plus interest *a tempora morae*;

- b. R662 659.20 plus interest *a tempora morae*;
- c. R722 106 989.43 plus interest *a tempora morae*;
- d. R2 441 161 443 plus interest *a tempora morae*;
- e. R89 335 464 plus interest *a tempora morae*; and
- f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

F. CLAIMED AGAINST MABUDE

(i) An order directing Mabude to make payment of the following amounts:

- a. R581 700.00 plus interest *a tempora morae*;
- b. R662 659.20 plus interest *a tempora morae*;
- c. R722 106 989.43 plus interest *a tempora morae*;
- d. R2 441 161 443 plus interest *a tempora morae*;
- e. R89 335 464 plus interest *a tempora morae*; and
- f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

G. CLAIMED AGAINST PAMENSKY

(i) An order directing Ngubane to make payment of the following amounts:

- a. R581 700.00 plus interest *a tempora morae*;
- b. R662 659.20 plus interest *a tempora morae*;
- c. R722 106 989.43 plus interest *a tempora morae*;
- d. R2 441 161 443 plus interest *a tempora morae*;
- e. R89 335 464 plus interest *a tempora morae*; and
- f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

H. CLAIMED JOINTLY AND SEVERALLY AGAINST ALL DEFENDANTS BUT IN THE ALTERNATIVE TO CLAIMS A TO G RESPECTIVELY IN SO FAR AS IT IS A CLAIM AGAINST MOLEFE, SINGH, KOKO, DANIELS, NGUBANE, MABUDE OR PAMENSKY

(i) An order directing Ngubane to make payment of the following amounts:

- a. R581 700.00 plus interest *a tempora morae*;
- b. R662 659.20 plus interest *a tempora morae*;
- c. R722 106 989.43 plus interest *a tempora morae*;
- d. R2 441 161 443 plus interest *a tempora morae*;
- e. R89 335 464 plus interest *a tempora morae*; and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

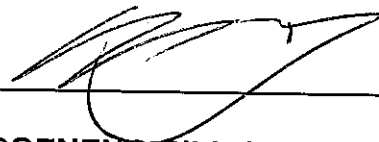
(iii) Costs of suit.

DATED AT WENDYWOOD ON THIS THE 2ND DAY OF AUGUST 2020.



MICHAEL MOTSOENENG BILL

Plaintiffs' Attorney with right of appearance
in terms of section 4 (2) of the Right of
Appearance Act, 1995.



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