

Chapter one

4 Levenstein: Chairman and CEO

4.1 This matter is dealt with in §33.

5 Lurie as chairman

5.1 On 29 September 1999 Levenstein resigned as chairman and Lurie was appointed chairman by the board of directors. (D279)

5.2 Lurie is the brother-in-law of Levenstein. He was involved with Levenstein with the creation of Wingate Holdings Ltd and Regal Bank and he was a non-executive director of the bank from inception. Levenstein's evidence was that Lurie was "... too independent... it made it difficult for me to interact with him" (1568). Lurie was appointed because "... we did not find a suitable alternative" (1576).

5.3 On 22 March 2000 Wiese wrote to Lurie, as chairman, calling for a meeting on corporate governance (E32.1).

5.4 At a meeting between BSD and Regal on 17 April 2000, Levenstein said that Regal was considering the appointment of a "totally independent chairman from outside the group" (E40)

- 5.5 In the DT s7 report which was sent to Lurie on 31 October 2000 the point was made that Lurie was Levenstein's brother-in-law and that "the perception of independence is tainted". (DT(1)9).
- 5.6 At a meeting between BSD and EY on 12 February 2001, in reviewing the DT report, BSD found the independence of Lurie questionable because he was the brother-in-law of Levenstein (F32).
- 5.7 On 16 March 2001 Lurie told a meeting of the board of directors of Regal Bank that "he would relinquish his post in order to avoid any potential conflict of interest in view of his familial relationship with the Chief Executive Officer". (K(3)49). Lurie's evidence was that there was no conflict of interest and that the minute is incorrect. He resigned only in order to make way for Cohen who had "immense experience" (2397).
- 5.8 Lurie testified that after he became chairman he telephoned the bank 5 or 6 times a day and went to the bank weekly (2372). He liaised with Davis, then company secretary, and Ms De Castro, the chief financial officer ("CFO") at the time (2372). He was in continual touch with the non-executive directors (2374).
- 5.9 Lurie said J Pollack was chosen as chairman but he became ill and the non-executive directors then asked Lurie to become chairman (2381).

5.10 Lurie testified that he regarded himself as “fearlessly objective and independent of management” (2390).

6 Mark Springett (“Mark”)

6.1 Mark joined RTL on 19 August 1996. He became a director of RTL, later Regal Bank, on 25 September 1996 and a director of Regal Holdings on 27 November 1998. He originally joined the bank in order to start a portfolio management division. The division grew into an asset management division. He recruited Ms Newman and later Kruger. When they started they had no assets to manage. In due course they created Regal Treasury Unit Trust Management Company Ltd (“Manco”) of which he became the managing director. At the date of his dismissal, 14 July 1999, the value of assets under management had grown from zero to about R500m (2184-2190).

6.2 Mark explained that when Regal Bank was listed in February 1999, “Levenstein was very keen on listing the bank by way of introduction. He did not want to offer any shares because he felt that if we placed shares we were going to put a price on what the share would come on at. And he felt that if we listed by way of introduction the share price would come on at a high inflated

value.” Mark disagreed with Levenstein. His view was that the bank had only one institutional shareholder, Worldwide, who owned about 15% of the shares. He was keen on placing some shares with some institutions prior to the listing and when the listing occurred “they would be there to support the share price and buy shares. They had a reason to buy shares.” (2190-2191).

- 6.3 The expectation within the bank was that the shares would list at a high price. A sweepstake was held in the bank. The lowest price was R7.80 and the highest about R50. Levenstein’s assessment was at about R30-R40. One secretary put money on the lowest price. When the share listed, the share price was R7.50. She won the sweepstake. The result was that Levenstein “was under tremendous pressure because the share price had not performed like he said it was going to. He was very, very negative about anyone selling shares because he felt it was going to depress the share price even further. He felt the share price should have been much higher and so anyone who sold shares was really made to feel very uncomfortable.” (2192). Another problem which Mark had with the listing was that the bank had used its own stock broking firm as a sponsoring broker. He was opposed to that. He believed that an independent sponsoring broker should be used, someone with a name in the market, whereas the bank was

sponsoring its own listing and he thought that was poor. There was also no roadshow because Levenstein did not want to set a share price (2194).

6.4 Mark formed the view that many of the clients' portfolios were very heavily skewed in their weightings in holding Regal Holdings shares. The portfolio of some of the clients consisted of 80-90% of Regal Holdings shares. Mark thought it was prudent for an independent asset manager to advise his clients to diversify out of this one single holding into other shares. Whenever he sold shares on behalf of a client and distributed them into other assets he was made to feel very uncomfortable, particularly, by Krowitz, who was head of the stockbroking firm. He was put under "a lot of pressure not to sell clients' shares" (2193).

6.5 Mark's evidence was that on 6 July 1999, Bacher, a portfolio manager, came to him and told him that he had an instruction from Krowitz and Levenstein that "asset management was no longer allowed to sell any shares in Regal Treasury on behalf of any of its clients." While Bacher was telling Mark and Kruger about this instruction, Levenstein walked in and he repeated the instruction. He left and returned later to tell Kruger to investigate the ramifications of informing the client that the client's instructions would not be carried out and telling the client to take

his business elsewhere. A few hours later an investment committee meeting was held, which Mark chaired. Levenstein, who did not normally attend the meetings, attended and said he wished to make a statement. He repeated the instruction to everyone who was in the meeting. Attendees included other executive directors of the bank, executive directors of the stock broking firm, portfolio managers, and so on. Levenstein said that the share price was way too low. One of the portfolio managers asked Levenstein “What happens if the share price rises, can we then start selling shares for our clients”. Levenstein said “No, not without my express permission” (2194-2196).

6.6 Mark and Kruger decided to consult Peter Springett, Mark’s father. Peter’s advice was that the instruction was unlawful and unethical. They then decided to consult an attorney, Michael Krawitz. The first time they were able to see him was on the 12th or 13th of July 1999. His advice was that Mark should write a letter setting out his version and his concerns. The further advice of Krawitz was that the asset management company had a duty to manage the portfolios in the interest of their clients, not in the interests of the bank (2198-2199).

6.7 The letter that Mark drafted is dated 14 July 1999 (G181). Mark set out in detail his version of what had transpired on 6 July 1999

and he raised a further concern, namely, the dual position of Levenstein as chairman and CEO. At about 11:00, Mark and Kruger met with Levenstein. Levenstein read the letter. His response was one of hostility. He said he could no longer have a personal relationship with Mark and that Mark had breached his fiduciary duties by disclosing to Kruger and Newman the fact that the Reserve Bank was concerned about his holding both the chairmanship and CEO roles. He called in Radus and Krowitz. He told them that he wished to place on record that he was “removing Mark as CEO of the asset management division and as managing director of the unit trust management company”. Levenstein said he wished to place on record that he was not firing Mark but that he would recommend to the board that he be dismissed. Mark then left to consult his attorney. Levenstein instructed Krowitz to search the bags of Kruger and Mark. He was very loud and aggressive (2203-7).

- 6.8 Michael Krawitz drafted a letter which Mark took to the premises (G185). Mark met with Levenstein. Levenstein said: “Look, I think we can sort this all out”. Mark suggested that they take time “to cool out and to cool down” and discuss the matter the next day. Levenstein insisted that they have the discussion there and then. When Mark refused, Levenstein handed Mark an envelope,

containing a letter (G190) in which Mark was dismissed for breach of fiduciary duty as a director of Regal Bank and for grossly insubordinate behaviour. Krowitz then accompanied Mark to his desk, inspected what Mark took with him, and escorted him off the premises (2207-9).

- 6.9 Mark thereafter made contact with three non-executive directors, Lubner, Schneider and Nhleko. He tried, too, to call an urgent board meeting for 11 August 1999. On 11 August 1999 at 09:00 Mark arrived at the bank for the meeting. He had sent out notices for the urgent board meeting. He was met by Krowitz. Krowitz refused him entry on the basis that Mark was no longer a director, was not entitled to call a board meeting, and was not allowed on the premises (2211-18).
- 6.10 A round-robin resolution was taken by the directors of Regal Holdings in the period 4 – 10 August 1999 (T116), in which Mark's dismissal from Holdings was confirmed. All the directors, save for Mark, Lubner and Schneider signed the resolution.
- 6.11 Mark informed the director of surveillance of the inspectorate division of the Johannesburg Stock Exchange, the FSB and the Reserve Bank of what had happened. As allegations were made by Regal Bank against Mark, he reported them to those institutions (2219-20).

- 6.12 Regal Bank laid charges against Mark at the Office of Serious Economic Offences. When that office declined to entertain the charges, Regal Bank went to the South African Police Services with a copy of the Ernst & Young report, which had been prepared at the request of the bank. The allegations which were made against Mark were that he had stolen between R5m and R10m, fraud and theft of clients' money. Civil actions were instituted against Mark. He took the bank to the CCMA for unlawful dismissal. Having dismissed Mark, the bank attempted to recover the shares Mark was entitled to in terms of his contract of employment and to hold him to a restraint of trade agreement. All the litigation was eventually channelled into an arbitration, which was ultimately settled (2221-6).
- 6.13 The allegations against Mark were investigated by EY. On 28 April 2000 EY produced a draft report on behalf of Regal Bank in which Mark, Kruger and Fatima Newman were accused of conducting accounts on such a basis that "funding practices constitute misappropriation and misuse of client funds"; that client shares had been traded "off-book" for personal gain and that certain accounts were used as "slush funds". It was recommended that the matter be handed to the commercial branch of the SAPS (G235, G237-8).

- 6.14 On 28 September 2000, an accountant, Harvey Wainer, produced a letter for Michael Krawitz in which he said that EY had misunderstood how a bank operates and that even on EY's own version, there was no misappropriation of funds (G356).
- 6.15 On 28 September 2000 Springett, Kruger and Newman prepared a detailed response to the EY report (G117) in which they disputed that there had been any wrongdoing.
- 6.16 At a meeting of the board of directors of Regal Bank on 31 January 2001 it was recorded that the "Springett case" would be settled out of court (K(3)42). Levenstein testified that Cohen accused him of being too litigious and that the case against Mark should be settled. Accordingly, the criminal case was withdrawn and the case against Mark was settled on the basis that he and his colleagues retained a certain portion of their shares. The case against Mark, Peter and Kruger cost the bank R806 945.69 (vdW371).
- 6.17 Levenstein testified that prior to 14 July 1999 he and Krowitz suspected that Mark had manipulated or misused trust funds (1181). He denied that he had placed a blanket embargo on trading (as alleged by Mark). He testified that he told Mark to stop "front running", which he described as "... using Regal shares inappropriately ... this process where Regal shares will be

pushed down artificially” (1208-9). Levenstein said that, acting on the advice of a labour lawyer, he had offered Mark a hearing prior to his dismissal, which Mark had refused to attend (1213).

6.18 When Levenstein was questioned on why he did not call a board meeting before dismissing Mark, he said that “when client funds go into debit ... because we knew that an individual would be used here to wreak havoc, to destabilise the bank, to distribute disinformation into the market place it was dealt with in a particular manner to accommodate very unusual circumstances” (1226).

6.19 On being questioned about why the demand was made on Peter Springett (referred to in §7.9 hereof) Levenstein said that it was “a matter of pure unadulterated warfare ... this was not a Mark Springett, this is essentially a Peter Springett issue” (1230).

6.20 Mark’s evidence was that: “What we did there is that it was simply a case of facing the bully in the schoolyard and eventually the day they had to put their money on the table for the collapse fee they crumbled and they signed a settlement agreement.” (2226). In terms of the settlement agreement (T44.1), all the allegations of criminal conduct were withdrawn against Mark and “Regal” undertook to pay Mark R1.3m. When asked, in evidence, what the litigation had cost him, Mark did not want to measure it in monetary terms. “You know, the money was one thing, but ... my wife and I were planning on starting a family. We had to put that on hold. My father ... aged a lot. They

made unbelievable allegations against us. ... At the end of the day ... [Levenstein] has a lot of things to answer for and – yes, it was very unpleasant” (2228-9).

- 6.21 Mark’s version of what transpired in the period 6 – 14 July 1999 was corroborated in every material respect by the evidence of Kruger (2082-2096). Kruger was an executive director of Manco.
- 6.22 Kruger’s further evidence was that he went to work on 15 July 1999, after Mark had been dismissed the previous day. He was asked questions about Manco and how it operated. He was cold-shouldered the rest of the week until he resigned on 26 July 1999 (2098-2100). In the letter of resignation (T41), which was directed to the chairman and directors of Regal Holdings, Kruger stated:

“1. On the 6th July 1999, I received a direct instruction from the chief executive officer (CEO) of the Bank, Jeff Levenstein, not to sell or facilitate the sale of Regal shares on behalf of managed clients, pension and provident funds, our unit trusts and private clients, whether acting on what we deemed to be in the best interest of our clients or on behalf of direct instructions received from our clients. I was further instructed by the CEO to investigate the legal ramifications of refusing to act on behalf of a client wishing to sell shares in Regal, handing back our mandate with the client and closing the account.

I consider the above instructions to be unethical and not in the best interests of our clients, shareholders, staff, directors and the bank as a whole.”

- 6.23 Three companies in the Regal Group sued Kruger for the return of the shares and to enforce an implied restraint of trade. The action against Kruger formed part of the arbitration referred to earlier. The claims against him were settled in terms of the same deed of settlement. “Regal” undertook to pay him R372 000 in full and final settlement (2102-7).
- 6.24 The version of Mark and Kruger about the events of 6 July 1999 were corroborated, in turn, by the evidence of Ms Newman (2349-50). At the time she was an executive director of Manco. She resigned on 26 July 1999. When she was sued for the return of her shares, she returned her shares, in order to avoid the costs of litigation (2350-1).
- 6.25 Nhleko signed the round-robin resolution on 10 August 1999 confirming the dismissal of Mark. Mark had phoned him to tell him about his dismissal. Nhleko’s view was that it should be dealt with by the board. He was then briefed by Levenstein and Krowitz and told their version of various allegations against Mark (2318-2326). He went along with the CEO and the majority of the bank, who had signed the resolution before he did (2326). At the time he signed, he did not know that Schneider and Lubner had resigned (2334).

- 6.26 Lurie was away from 14 – 31 July 1999. On his return, Levenstein told him that Mark was guilty of round tripping and “money had gone astray within the unit trust division”. Lurie was not told at the time about Mark’s allegations against Levenstein (2519-20). He found out later when Mark delivered documents to his home (2521). He accepted Levenstein’s version (2522). He could not recollect Mark calling for a special board meeting on 11 August 1999 (2523). He could not recall that Schneider and Lubner had supported Mark’s call for the matter to be debated at a board meeting (2525). Lurie was one of the directors who signed the letter confirming Lubner’s resignation (N91).
- 6.27 Diesel signed the round-robin resolution on the information that was presented to him by Levenstein. Diesel was aware that Mark had requested the fact of his dismissal to be discussed at a board meeting. He conceded that it was wrong not to grant Mark such opportunity (2678). He was not aware that Schneider and Lubner had refused to sign the resolution and had demanded that the matter be discussed at a board meeting (2678).
- 6.28 Buch agreed “with hindsight” that Mark’s dismissal should have been discussed at a board meeting. He accepted Levenstein’s version that Mark had been involved in “some fraudulent activities”. He knew that Mark had called for a board meeting but

he did not know that Schneider and Lubner had done so (2790-4) and that they had refused to sign the round-robin resolution (2798).

6.29 Krowitz testified that he was present when Levenstein said: “I do not want the stockbrokers – the Regal Treasury stockbrokers – to sell Regal shares. Sell your Regal shares use somebody else. Now he was vehement about this” (2927). A few days later, Krowitz was called into a meeting between Levenstein, Mark and Kruger at which Mark was handed the dismissal letter (2929). After the meeting, Krowitz accompanied Mark to collect his belongings in his office (2930). It was Krowitz who initiated the investigation into the asset management accounts because “an asset management account cannot ever run in debit” (2932). He was not aware at the time that Schneider and Lubner had refused to sign the round-robin resolution and had insisted on a board meeting (2934-5).

6.30 J Pollack could not remember the dismissal of Mark (3017).

6.31 Kaminer did remember Mark’s dismissal. Mark saw him and gave him documents. He went to a game reserve over that period. On his return, Radus and Krowitz told him that Mark was in the wrong. He saw the evidence the bank had against Mark, and on that basis he signed the round-robin resolution (3027-8).

6.32 Radus said he overheard the instruction which was given by Levenstein to Mark and Kruger. Levenstein told Mark and Kruger “to try and avoid selling Regal shares through Regal Treasury Securities because it looked bad that we were selling our own shares. But they could sell them through other brokers with pleasure.” (3121). Radus was asked how it came about that he overheard the conversation. His answer was “I could have been sitting at Jeff’s desk. I could have been sitting in Mark’s office. I could have been sitting in Carl Kruger’s office, I just – it is possible. You know, it might have been just outside my office. It was all open plan and these discussions took place everywhere.”(3122). He later said the instruction was given in Levenstein’s office (3123).

6.33 Radus testified that he was called to the meeting during which Mark handed Levenstein the first letter of 14 July 1999. The letter was “very insulting to Jeff”. Levenstein was very calm. Mark and Kruger left. A labour lawyer was consulted. He drafted two letters: in the one letter Mark was disciplined but not dismissed; in the other Mark was dismissed “for breach of his fiduciary duties and things like that”. Later that afternoon Radus telephoned Mark with the request that he return to the bank. Mark returned “very arrogant and very angry”. Mark refused to sit

down. He handed Levenstein a lawyer's letter. Levenstein then dismissed Mark (3118-3120).

7 Peter Springett ("Peter")

- 7.1 He is 70 years old, a veteran of the banking industry. He commenced his career in 1950 and retired in 1989 as a director of companies within the First National Bank group ("FNB") (A30-33).
- 7.2 He commenced his relationship with Levenstein in the Wingate group in 1990 and was non-executive chairman from 1990 to 1994 (A33).
- 7.3 In 1996 he was appointed executive chairman of RTL. He was a shareholder of RTL (A27).
- 7.4 Peter's evidence was that he worked a 12 hour day for no remuneration as executive chairman. He had a good working relationship with Levenstein. There were no problems with corporate governance. In mid-1997 Peter went overseas. On his return, he found that Levenstein's attitude towards him had changed. Levenstein did not want to report to Peter. "He wanted to run it as a one man bank". Peter found it impossible and unpleasant to work. The majority of the board supported

Levenstein. In Peter's words, it was a "classic case" of a lack of corporate governance leading to problems (2171-2).

7.5 In mid-1997 Peter changed his role from executive chairman to non-executive chairman.

7.6 Peter illustrated the lack of corporate governance by giving two examples. Firstly, Levenstein put the idea to the board that the bank should start a brokerage. At a meeting of the board Peter called for a business plan and financial projections before approval could be given. The board agreed to postpone its decision. Levenstein then canvassed the directors privately and individually who in turn put pressure on Peter not to be the sole dissenting voice at the next board meeting. Peter agreed not to oppose the idea; Levenstein then obtained board approval, without a business plan and financial projections (2173-4). Secondly, Peter was chairman of the remuneration committee. The committee never met. Levenstein unilaterally decided on salary increases, bonuses and share incentives, which had to be awarded to the staff and to himself. When Peter expressed his opposition to Levenstein's conduct, Levenstein replied that he was the CEO and he would decide what the employees would be paid (2175).

7.7 Peter resigned on 22 January 1998 ((K2)103; 2180).

- 7.8 At a meeting between Regal and BSD on 18 February 1998 Levenstein alleged that there was constant disagreement between him and Peter on strategic issues (C14).
- 7.9 The day after Levenstein dismissed Mark, attorneys Werksmans acting for Regal Bank, sent a letter of demand to Peter (G207) in which it was claimed that during the period of his chairmanship (17/08/95 – 22/01/98) he had, without the authority of or disclosure to the board of directors of Regal Bank, caused to be issued to himself 925 000 shares. On 16 July 1999 Michael Krawitz responded on behalf of Peter (G213) by saying that the allegations were “laughable” as the shares had been issued with the knowledge of the board of directors, certificates were signed by duly authorised officials of Regal Bank and issued in tranches over a period of two years (2176-7).
- 7.10 Various companies in the Regal Group of Companies thereafter sued Peter in the High Court in which they sought return of their shares. That action was subsequently combined with claims against Mark, Kruger and Ms Newman and the various claims and counterclaims were all referred to arbitration. The arbitration was settled. The claim against Peter was settled on the basis that he was entitled to keep the proceeds of the shares, which he had sold by then (2177-9).

- 7.11 While the settlement agreement amounted to a complete vindication of Peter's right to the shares, the litigation cost him about R500 000 in legal costs (2177).
- 7.12 Levenstein justified the letter to Peter shortly after the dismissal of Mark on the basis that he did not know the facts until after the dismissal. He said the letter was "designed to put pressure on Mr Peter Springett who was co-ordinating the dissemination of disinformation into the market place" (1234). Levenstein admitted that the allegations made in the letter of 16 July 1999 of Michael Krawitz were correct (1236). He said he did not know whether the demand was pursued to finality or not.
- 7.13 The costs for the bank in litigating with Peter and Mark Springett and Kruger, including legal costs and the costs of the forensic audit, came to R806 945.69 (vdW371).

8 Nhleko

- 8.1 Nhleko is one of the finding shareholders of Worldwide. He is executive chairman of the company. He has been a director of other listed companies. He became a non-executive director of Regal Bank on 22 October 1998 and a non-executive director of Regal Holdings on 27 November 1998. He represented

Worldwide on those boards, Worldwide having approximately a 15% shareholding in Regal Holdings.

8.2 Nhleko attended only one board meeting in 2000 on 31 January 2000. His explanation was that he received a copy of Levenstein's letter of 29 December 1999 in which Levenstein requested the R2m bonus and 5m Regal Holdings shares. Nhleko could not remember attending a meeting held on 25 January 2000 of the non-executive directors, though it is clear that he did so. He wrote a letter on the following day, 26 January 2000 (U58), in which he referred to the meeting on the previous day and stated his views on Levenstein's request as follows:

"I hereby confirm that in principle I have no qualms with Jeff Lievenstein's remuneration structure being reviewed together with a re-assessment of Regal's restraint agreement with Jeff. However, I am of the view that this review needs to be put into context on the following basis:

- Regal needs to establish a remuneration committee in accordance with the "King code" for corporate governance.
- The committee should be tasked not only with the review of Jeff Lievenstein's package and contractual arrangements, but more broadly to set a workable market related remuneration structure which can be applied annually to all company employees. Quite obviously, in order for the committee to establish a market related remuneration structure suitable for Regal, the committee members would have to access the information and expertise in this area."

Nhleko denied in evidence that he had agreed to Levenstein's request. Accordingly, he disputed that Lurie's note on the letter (DT175) and Levenstein's letter of 27 January 2000 (DT176) correctly reflect that all the non-executive directors agreed to the bonus and share allocation (2290).

- 8.3 Nhleko testified that Levenstein threatened to resign within days if his demands were not met. Nhleko found Levenstein's attitude "abrasive". He came to the conclusion that "his role on that board was inappropriate" (2286).
- 8.4 Nhleko received a letter dated 31 January 2000 (U1) from Levenstein in which Levenstein castigated Worldwide and Nhleko. Nhleko was accused of making "derogatory and potentially damaging statements about my harsh and unrelenting style". Levenstein referred to Nhleko "evading your fiduciary duties". Levenstein "placed on record" that Worldwide and Nhleko had "grossly misrepresented your group's capacity for fuelling Regal's annuity and fee flows".
- 8.5 Nhleko responded on the same day (U3) in which various allegations were denied. Nhleko posed the question: "Is it really tenable to continue to serve on a board where I am perceived to be of "danger to the culture" of the company, particularly if the

CEO is of the view that I have not grasped the ‘conceptual strategic and operational nuances’ inherent in his approach?”

8.6 Levenstein admitted that Nhleko had not attended board meetings. His explanation was that Worldwide were required to bring in a R1bn of asset management to Regal Bank and when Worldwide failed to do so, Levenstein raised the issue at a board meeting. Nhleko was “... unbelievably aggrieved by the fact that I had effectively embarrassed him in front of other board members” (1594-5).

8.7 Nhleko played no further role in the affairs of the bank in 2000. Yet he did not resign as director. He simply abdicated his responsibilities as non-executive director.

9 Lubner

9.1 Lubner, represented by attorney Levenburg, applied in camera for his evidence to be heard in camera. Four grounds were advanced.

Lubner was said to be concerned about:

- (a) previous intimidation that might affect him and his family;
- (b) confidential discussions at various stages between the Reserve Bank and himself;

- (c) publication of his evidence of his evidence might give rise to actions in the nature of defamation actions and so on;
- (d) embarrassment he might be caused by events which occurred at Regal Bank after he had resigned.

Evidence was led in some detail in support of grounds (a) and (b). It was ruled that those grounds constituted good cause for hearing the evidence in camera, but not grounds (c) and (d). There is no reason for not disclosing the balance of this report in respect of Lubner.

- 9.2 Lubner is a very experienced businessman and director of companies. He entered the Lubner family business in 1950. He was a director, joint chief executive officer and eventually chairman of the group at the time of his resignation in 1991. For 15 years he served on various boards in the Nedbank group of companies (2136).
- 9.3 Lubner and his brother were approached by Peter Springett to become investors in Regal Bank. Peter indicated that he was to become chairman. Lubner knew Peter Springett and was impressed by him (2136-7).
- 9.4 Lubner was subsequently appointed a director of Regal Holdings on 27 October 1998 and a director of Regal Bank on 24 October 1996.

9.5 Lubner's evidence was that there was no personal animosity between him and Levenstein prior to the events of late July 1999.

There were, however, strong differences of opinion:-

- Lubner was originally impressed by the strong corporate governance attitude of Peter Springett. When the relationship between Levenstein and Peter became strained, Lubner and other directors tried "to find a working relationship". After Peter resigned, Lubner felt "very strongly" that there should be "an independent chairman and a separate CEO". He expressed that view at board meetings (2137).
- Another matter of concern for Lubner was that the boards were not "really independent". There were too many executive directors and a number of the directors had close personal ties to Levenstein (2138).
- Lubner did not approve of the impression that was created by the bank that it was a Jewish bank. It was not the reality and was not beneficial for the bank (2139).

9.6 In July 1999 Lubner was telephoned by Mark Springett. He requested an urgent meeting. Lubner agreed, reluctantly, because he was in mourning for his brother who had recently died in France. At the meeting Lubner advised Mark not to take further action until he had spoken to Levenstein. Lubner telephoned

Levenstein. Levenstein agreed that the matter would be discussed at a board meeting. Lubner thought that the appropriate time to discuss the matter was at the board meeting of 28 July 1999 before or after the meeting with the SARB. Lubner wanted “all sides of the story” to be heard by the board. Mark was “highly considered by the board” (2142 – 2145).

9.7 On or about 26 July 1999, Radus telephoned Lubner and told him that a round-robin resolution had been prepared confirming Mark’s dismissal. Lubner said that that was contrary to his agreement with Levenstein and he insisted on the matter being debated at a board meeting (2146).

9.8 On 27 July 1999, Radus again telephoned and repeated Levenstein’s strong request or instruction that Lubner should sign the round-robin resolution. Lubner refused (2147). On the same day Lubner wrote a letter to Levenstein (N101) in which he dealt with his interaction with Mark Springett. He said that Radus had phoned him and asked him to sign a board resolution confirming the dismissal of Mark but he felt that a meeting should be held prior to the board meeting without Mark and Levenstein present “to allow the board to have a free discussion with all executive and non-executive directors present.”

- 9.9 On the morning of 28 July 1999 Radus telephoned Lubner and told him *not* to attend the board meeting that afternoon. Lubner said he *would* attend. On his arrival at the bank, Lubner introduced himself to members of the SARB. Levenstein called him one side and in the presence of Krowitz, Levenstein, in a flaming temper, accused Lubner of disloyalty and said “You have officially resigned and we accept your resignation” (2149). Lubner disputed that he had resigned. Krowitz interrupted to say he had heard Lubner resign. Levenstein said that “... If you come into this board meeting I will embarrass you and the board and I will declare the meeting closed until you leave the meeting.” Lubner left. On returning home, he wrote a letter dated 28 July 1999 in which he confirmed that he had arrived at the board meeting to be advised by Levenstein that he had resigned and that his resignation had been accepted and he therefore could not attend the board meeting (N99; 2147-51).
- 9.10 On 29 July 1999 Lubner wrote to Levenstein in which he invited face-to-face discussions (N98). On 6 August 1999 Lubner wrote to Levenstein in which he denied that he had sought the chairmanship of the company but stated that he was of the view that “we should have an independent and prestigious personality as chairman, which view I still strongly hold.” (N96)

- 9.11 Levenstein responded on 11 August 1999 (N85) in which he set out the allegations against Mark Springett and then threatened to sue Lubner for damages “with vigour”. On the same day a second letter was written in which Levenstein said that had Lubner not “resigned with dignity I would have removed you from the board” for various reasons (N86). On the same day a number of directors sent letters in similar terms to Lubner (N87 – N92).
- 9.12 Lubner at no stage formally resigned. He testified that at a point in time he accepted that he would resign (2150-1).
- 9.13 At a meeting between BSD and Regal on 17 April 2000 Levenstein admitted getting rid of Lubner (E40). On 25 August 2000 a meeting was held at the residence of Lubner with the Registrar of Banks and Martin. Lubner said that Levenstein “had a very difficult management style and if confronted by opinions differing to his, he often acted irrationally and had the person or persons differing from him removed from their positions on the board or from management.” (E168). On 9 September 2000 at a meeting between BSD and DT it was conveyed to BSD that Lubner had been dismissed after he had refused to sign the dismissal of Mark Springett on a round-robin basis. (E184). The DT report of September 2000 refers to the dismissal of Lubner, presumably setting out the version of Levenstein. Lubner’s behaviour on the board was described as

“destructive”. (E229). At a meeting between Regal Holdings, BSD and DT on 23 October 2000 Levenstein said that Lubner had been concentrating on driving a personal agenda at the expense of the bank – he wanted the chairmanship; that Lubner’s termination had been well debated; that Lubner had been afforded the opportunity to defend himself, but had refused and that Regal had complied with procedures with regard to Lubner’s termination (E208).

- 9.14 Levenstein in evidence accused Lubner of being part of the Peter Springett/Birrell/Lubner clique on the board which behaved in a “divide and rule” manner on the board (1241). Lubner was said to be a party to a “predator strategy ... that would have eroded confidence in the bank” (1251). The specific complaint was that Lubner had not gone to the bank as he had been requested to do to consider the evidence against Mark (1244). Lubner testified that at that time he was in the seven day mourning period after his brother’s funeral and he did not want to be influenced by anyone until the board meeting (2158). Levenstein insisted that Lubner orally told Radus that he resigned (1247, 1255). He denied that he had orchestrated the letters of the non-executive directors (1260) and repudiated statements that he had made in correspondence and to

DT that Lubner had been removed and dealt with “in tandem” with Mark (1264).

9.15 Lurie was one of the directors who signed a letter confirming Lubner’s resignation (N91), despite having no personal knowledge of the facts. He did so “to give support to my CEO” (2531). He denied that Levenstein had orchestrated the letters to be sent on the same day, 11 August 1999 (2535).

9.16 Buch had the good grace to admit that it was at Levenstein’s request that he had written the letter of 11 August 1999 to Lubner. Before sending the letter he had discussed it with Slender and Lurie (2801).

9.17 Krowitz was in the office of Radus when he heard Lubner say that he would resign (2936). He heard a “small portion” of the conversation. He did not know the context (2936). Krowitz was present on 28 July 1999 when Levenstein called Lubner into an office as Lubner arrived for the board meeting. Krowitz’s description of what happened was “Jeffrey effectively denigrated Bertie Lubner, took his dignity, attacked him. It was ... disgraceful. It was something that I am still ashamed about” (2936-7). Krowitz was asked what he thought about the way Lubner was treated. He replied: “Your hands were effectively tied by Levenstein at that point in time because

it is double jeopardy with him, you know at the end of the day either you comply or you are right in the firing line” (2938).

- 9.18 The evidence of Radus was that when he telephoned Lubner with the request that he sign the round-robin resolution, he told Lubner that he should inspect the information at the bank which the bank had against Mark Springett. Lubner, having said that he would not go to the bank, said “Well I think I’m going to resign from the bank”. The next morning Radus reported the conversation to Levenstein. Levenstein instructed Radus to telephone Lubner to tell him that “we accept his resignation”. Radus telephoned Lubner. During that conversation, part of which Krowitz overheard, Lubner said “well I will resign”. Radus accepted the resignation (3125). Radus said he did not know that Lubner wanted the matter discussed at a board meeting (3127). Radus was present when Lubner was prevented from attending the board meeting on 28 July 1999 (3130-1).

10 Lopes

- 10.1 Lopes, represented by attorney Michael Krawitz, applied in camera for his evidence to be heard in camera. The case that Michael Krawitz sought to make out was that Lopes had “a very

real fear” that the evidence of Lopes would enrage Levenstein and that as result harm would come to Lopes and his family. The evidence was that on 9 January 2000 Levenstein wrote a letter to attorney Larry Kalmeyer in which he stated that: “I will kill for Regal – literally ... Colin ... appeared reticent to accept the challenge of launching an offensive against a colleague ...”. Levenstein carries a .375 magnum pistol. A mysterious bomb incident occurred at premises adjacent to Sasfin. Lopes believes the bomb was somehow connected to Regal Bank and destined for Sasfin. Lopes gave evidence of what occurred to him after he resigned on 18 August 2000, which is dealt with fully below. On 23 September 2001 he received an anonymous telephone call with this message: “Be careful what you have to say Lopes”. (1999–2007).

- 10.2 On the basis of that evidence I was satisfied that Lopes made out a case that his evidence should be heard in camera.
- 10.3 Lopes is 44 years old. His career commenced with Standard Bank in January 1978. At one time he was employed by Mercantile Bank. According to the initial application for the registration of RTL (15 April 1996) he was meant to become joint managing director (A58). He held 975 000 shares in RTL (A60). Lopes was a director of RTL and Regal Holdings from inception. He was an executive director.

10.4 Lopes described his job as director of operations, which included setting up the bank in premises; liaising with the IBF, the Reserve Bank and the Banking Council; overseeing the payment of salaries, arranging the terms of employment of employees and resolving disputes between the bank and employees (2020-1).

10.5 On 14 August 2000 Lopes met with the Registrar of Banks (E149). Some of the allegations made by Lopes were:

- board members who did not agree with Levenstein were removed from the board;
- the bank had lost about 25 staff members within the past three months, at least 10 of them in senior positions;
- about 95% of Holdings shares were being purchased by Regal Bank;
- anyone who questioned Levenstein's branding idea was threatened (E149). Lopes testified that he gave the Registrar a document containing 35 points (similar to (G83.2), and proposed a solution, namely, that the chairman and the CEO should be suspended and a hearing should be held on the accusations that he was making (2036). Although he had not told anyone at Regal Bank that he was going to see the Reserve Bank, he had discussed his concerns as documented with Lurie, Joe

Pollack, Slender and Diesel (2038). On his return from the Reserve Bank, he did not tell anyone of Regal Bank, except his secretary, that he had been to the Reserve Bank (2040).

- 10.6 On 16 August 2000 a meeting was arranged between BSD and DT to discuss the Lopes allegations and the way forward (E149).
- 10.7 On 17 August 2000 Lopes saw Store and Schipper of DT and told them what he had told the Registrar of Banks (2041).
- 10.8 On 18 August 2000 Lopes went to work. While he was in his office Levenstein approached him on three separate occasions. The essence of the message which Levenstein gave Lopes was, in the words of Lopes, “if I do not fit in with his culture and his methodology and agree with him 150% all the way in connection with the branding and everything he does, I can pack my stuff and leave immediately.” After the third visit by Levenstein, Lurie telephoned Lopes and said: “You are supposed to be working on the annual report, why are you upsetting Jeff? Why do you not support Jeff 150%?” (Lopes 2041 – 2042). Lopes then resigned. He was not dismissed (2042-3).
- 10.9 On 21 August 2000 the BSD reported to the Deputy-Governor of SARB on the Lopes allegations (G91). On the same day Lurie

informed Martin that Lopes had been dismissed by Levenstein on 18 August 2000 (G104) and Lurie and Levenstein sent Martin a document prepared by Radus (G105 – 107). Altogether about 29 specific allegations of misconduct were levelled against Lopes, including sexual harassment, taking kickbacks, unlawfully suppressing the share price, incompetency, dishonesty, lying, fraud and corruption: all allegations which pre-dated Lopes' visit to SARB on 14 August 2000 (2045-7).

10.10 On 23 August 2000 a meeting was held between Regal Bank and BSD. Lurie led the Regal team. All he said about Lopes was that Lopes "had not applied his mind" in regard to the financial statements (E160).

10.11 On 24 August 2000 Levenstein wrote to Martin alleging that Lopes had sold his shares a few weeks before his dismissal and was about to leave the country (G103).

10.12 On 30 August 2000 Levenstein informed the Registrar that Lopes had "fraudulently misrepresented to both SARB and Regal that he has a B. Com. degree" (G101).

10.13 On 7 September 2000 Jonathan Myers, representing Regal, replied to a letter of Michael Krawitz of 5 September 2000 in which he alleged that, *inter alia*, Lopes had unlawfully

suppressed or caused a reduction of the share price of Regal Holding's shares on the JSE and that Regal Bank or Holdings was quantifying its damages in order to sue Lopes (G97). At the meeting between the BSD and DT on 6 September 2000 Schipper in essence cleared Lopes' name (E183). The various allegations of Regal against Lopes are repeated in the DT s7 report at E229.

10.14 At a meeting between BSD and DT on 4 October 2000, Martin informed the meeting that Lopes had been arrested on fraud charges and had been jailed for two nights (E195).

10.15 At a meeting between BSD, Regal Holdings, Rooth & Wessels and DT on 23 October 2000 Radus enquired what steps were being taken against Lopes by BSD "since he had submitted false information to the Registrar of Banks" (E208).

10.16 Lopes described what happened to him after he resigned. Initially, he was merely telephoned and told to return to the bank a computer he had at home. He then received a telephone call in late September 2000 from an attorney, Jonathan Myers, representing Regal Bank, in which Myers said that if Lopes would sign a letter supporting Levenstein, describing him as a good CEO, and confirming that he had not been to the Reserve Bank, Regal Bank would not proceed with various criminal

charges which the bank had laid against Lopes. The charges which were mentioned by Myers included fraud. Lopes refused to agree to the blackmail (2043-4). Lopes denied the various allegations of misconduct (2045-7). The only one he admitted was that he had stated in the application for a bank licence that he had a B.Com. degree (2047). He admitted that he did not have a degree, but said that Levenstein was aware that he had no degree. In fact, it was at Levenstein's suggestion that instead of describing the degree as "uncompleted", Levenstein insisted that the word "uncompleted" be removed (2010-11). One night Lopes was arrested at home at 21:30. The police said that fraud charges had been laid against him by Levenstein and he was accused of having two passports. The accusation was that he was about to leave the country. Lopes spent the night in gaol and was released on bail only the next day after counsel threatened to bring an application in the High Court for bail. Bail was set at R10 000. The criminal charges were of fraud. Lopes appeared in court four times. He never received a charge sheet and eventually the charges were withdrawn against him (2002-3, 2052-4). During the period from his resignation until the charges were withdrawn, Lopes and his wife received many telephone calls. At one stage he received 46 calls on his answering machine, a minute apart.

“We did not answer any of them. There was nobody on the other side”. Lopes was advised by Oosthuizen, who was employed by Regal Bank, that his telephones were being bugged (2003).

10.17 At a meeting of the board of directors of Regal Bank on 31 January 2001 Levenstein informed the board that the criminal charges against Lopes had been withdrawn and the matter settled out of court. (K(3)42).

10.18 Levenstein commenced his evidence on the basis that prior to the date of the resignation or dismissal of Lopes, he had had no quarrel with Lopes (1273-4). Lopes, according to Levenstein, became part of a new “divide and rule” scenario with Steen (1274). Lopes was targeted as a catalyst for causing chaos and mayhem (1275). Lopes resigned. He was not dismissed (1273, 1284). As his evidence progressed, however, Levenstein changed his evidence. He said that prior to 18 August 2000 he had “certain suspicions regarding kickbacks etc etc” (1276-7). He took no steps against Lopes because he had been accused by the Reserve Bank of being too dominant, too quick to remove people (1278).

10.19 Levenstein testified that he did not know, until giving evidence, that Lopes had been to the Reserve Bank on 14 August 2000. He

thought Lopes had gone to the Reserve Bank after he had resigned on 18 August 2000 (1280).

10.20 When Lurie's letter of 21 August 2000 (G104) was put to him, Levenstein at first was adamant that the letter was wrong: he did not dismiss Lopes (1285). The DT s7 review (E229) was put to him in which Schipper recorded that Levenstein had told him that he had fired Lopes (1286-7). Levenstein again denied that he had dismissed Lopes. Until his resignation, Lopes had received his unconditional support (1287).

10.21 Levenstein changed tack and testified that the allegation of a dismissal was "tactically to minimise the misinformation ... it could have been tactical ... when a bank fails, people commit suicide, people have heart attacks etc. ... a tactical theme would have been conveyed to [Lurie] ... I probably ... conveyed to Jack Lurie in order to minimise the threat against the bank" (1288 – 1296).

10.22 At the Regal Bank board meeting on 25 October 2000 it was minuted that Lopes was fired as a staff member ((K2)(245)). Levenstein said that was "an extension of the tactical issue ... I would have made a decision [before the meeting] to protect the bank ... and it is the responsibility of the CEO to manage these highly sensitive issues ... it would have been the information I conveyed to the board ... a white lie ... to protect the bank ... with a man going out into the market place to literally bring a

bank to its knees, which to me is an act of treason and terrorism, to bring a South African institution to its knees ... I believe that it calls for unusual action in the way as President Bush has to respond to the status quo ...”
(1298 – 1302).

10.23 Radus headed up the initiative to have Lopes arrested. Criminal charges were laid against him. All the charges were withdrawn against Lopes as Levenstein “was advised to bring these things to finality as it was not in the best interest of the bank to pursue litigation” (1304).

10.24 Lurie testified that Lopes resigned. Any document, such as a letter or minute of a meeting, recording that Lopes had been dismissed, was incorrect (2539-41).

10.25 Radus gave evidence that he was not at the bank when Lopes left. There was “always a debate whether he resigned or whether he was dismissed”. After Lopes left, private investigators were appointed by the bank to investigate Lopes. That is how the discovery was made that Lopes did not have a B. Com. degree. Levenstein instructed an attorney, Jonathan Myers, to lay a charge of fraud against Lopes. Lopes was investigated “because Jeff wanted to get back Lopes’ restraint shares” (3138-9).

10.26 Radus prepared a memorandum (G106) at the request of Levenstein which contained various allegations against Lopes. When questioned about the content of the memorandum, Radus testified that he kept a black book in which he wrote “all the lies and stories that Zack Lopes told”. Behr, who was the chief legal officer at the time, kept the book. Radus showed Levenstein the book “many times” (3143).

10.27 To litigate with Lopes (and Steen) cost the bank R232 550,50 in legal costs (vdW371).

Brian Levenstein (“Brian”)

11

11.1 Brian is Levenstein’s brother. He is a qualified attorney. He joined the Regal Group in May 1998. He regarded himself as an employee of the “Group”. He was a director of some of the subsidiary companies.

11.2 Between May and August 2000 he and Lopes tried to “steady the ship” of the bank, rebuild staff morale and improve the public image of the bank (2355).

11.3 One day in August 2000, which we know must have been the 18th, Lopes informed Brian that he was resigning. “My heart went

into my shoes”, testified Brian. Shortly thereafter he was called into a meeting in Levenstein’s office. He was advised that Lopes had been dismissed. Levenstein called for “our total loyalty”. Brian found this to be provocative and unnecessary as he thought it went without saying that he was loyal. In the words of Brian: “Things got a bit heated and I might have even used a few expletives which I do not normally do... I just knew that the dismissal of a director would now re-ignite sort of the focus on Regal and cause future turbulence and I told [Levenstein] so in no uncertain terms.” Levenstein told Brian that he was being insubordinate. Brian said “Well in that case you must fire me”, which Levenstein did (Brian 2355-2357; Levenstein 1583-1585).

- 11.4 The dismissal of Brian caused severe strain in his family. He and Levenstein agreed that he would return, not as a director of any companies, but as his “personal assistant, if you want to call it that” (Brian 2359). He left the bank in February 2001 and became a part time consultant.

Schneider

12

- 12.1 Schneider was appointed a non-executive director of Regal Bank on 24 January 1996 and of Regal Holdings on 27 November 1998.
- 12.2 On 19 July 1999 Mark Springett visited Schneider after Schneider had been overseas for two months. He handed Schneider a bundle of documents including Mark's letter of 14 July 1999, which contained the allegation that Levenstein had issued an instruction not to sell shares (and Levenstein's reply). Schneider was disturbed about that allegation and the controversy surrounding Levenstein's failure to separate the roles of chairman and CEO. Schneider took the view that the allegations should be discussed at a board meeting as a matter of urgency (1981-5). On the following day, Mark telephoned Schneider and told him that he was trying to arrange a board meeting for 21 July 1999. Mark telephoned later to say that he had been told that no board meeting would take place until the meeting scheduled for 28 July 1999 between the board and BSD (1985-6).
- 12.3 On 26 July 1999 Buch told Schneider that a round-robin resolution was being circulated "to remove Springett". Schneider

told Buch that a full board meeting should take place. On the same day Radus telephoned Schneider about the round-robin resolution. Schneider again adopted the stance that a board meeting should discuss the issue. Radus said “that they were investigating charges of impropriety against Springett” and that Springett had to be removed before the next board meeting (1986-7).

- 12.4 On 27 July 1999 Schneider received a faxed copy of the agenda for the following day’s board meeting. The only items on the agenda related to a presentation to BSD (1988).
- 12.5 On the night of 27 July 1999 Radus telephoned Schneider and told him that he should resign as a director with dignity. His motivation was that Schneider’s “loyalty to [Levenstein] is not evident” (1990).
- 12.6 Schneider decided not to attend the meeting on 28 July 1999. On that day Mark telephoned Schneider and told him various things, including that he had been told that he could not attend the board meeting (1992).
- 12.7 On 29 July 1999 Krowitz telephoned Schneider and said that if Schneider did not resign with dignity, they intended to send him a letter accusing him of a breach of fiduciary duty (1994).
- 12.8 On 2 August 1999 Schneider resigned as director (1995).

- 12.9 On 18 August 1999 at a joint Regal Holdings and Regal Bank board meeting it was minuted that: “the effective removal of B Lubner and G Schneider from the Board and their resignations ratified and confirmed” ((K(2)196)).
- 12.10 Levenstein testified that Schneider resigned because they had a fall-out over the Mark Springett issue; Levenstein had a brief altercation with him; and in any case Schneider was too busy with his practice (1586). Schneider, too, was criticised for not coming to the bank to look at the case against Mark Springett. Levenstein wanted his immediate participation, whereas Schneider wanted to see his attorneys (1587).
- 12.11 Krowitz denied that it was he who had telephoned Schneider. He said it must have been Radus (2942).
- 12.12 Radus testified that Krowitz took the round-robin resolution to Schneider. Schneider then telephoned Radus and said that he first wanted to consult his attorneys, Werksmans. When Radus reported the conversation to Levenstein, Levenstein was “not very happy” with that answer and instructed Radus to telephone Schneider and accuse him of being in breach of his fiduciary duties for not examining the information which they had against Mark Springett. Radus described the conversation as “really unpleasant”. Schneider thereafter resigned. Radus denied

knowing that Schneider wanted the matter to be discussed at a board meeting (3126-7).

13 The appointment of Cohen

13.1 Cohen was approached by Levenstein and Rabins in about mid October 2000 to identify weaknesses in the bank and to produce a plan to rectify the weaknesses. He commenced in about mid November as a part time consultant (1832-3). He worked his way through the DT s7 review. Cohen's initial findings and recommendations were:

- the whole issue of corporate governance had to be looked at expeditiously;
- the additional risks referred to in the new regulations under the Banks Act which were about to be published had to be managed by a new “corporate governance model”;
- to appoint more bankers to the boards of directors;
- to write charters for the committees of the boards;
- to introduce staff policies, a matter on which Van der Walt was working at the time;
- to address the issue of the personal expenditure of Levenstein and others;

- to address the lack of succession planning;
- to remunerate non-executive directors properly;
- to introduce an effective internal audit function (1833-5).

13.2 During the course of 2001 Cohen was appointed a director of both Regal Holdings and Regal Bank, officially from 28 March 2001, but practically from January. He became chairman of Regal Holdings on 28 March 2001, chairman of Regal Bank on 1 May 2001, chairman of the risk management, credit, and HR committees and was a member of the corporate governance committee. He served as chairman of the audit committee until he became chairman of the bank (1828-31).

13.3 Cohen arranged for the appointment of Oosthuizen, a former Deputy-Registrar of Banks, and Scheepers, formerly of PWC, as directors. Oosthuizen became chairman of the corporate governance committee. Scheepers became chairman of the audit committee after Cohen (1864-5).

13.4 During late 2000 and early 2001 a number of improvements were made: charters for the committees were prepared; the taking of minutes was outsourced; the human resources function was assumed by a division of DT; PWC became internal auditors; a financial director, Zarca, was appointed; and Taylor was appointed compliance officer.

13.5 In Diesel's opinion, Cohen strengthened the board with his appointment of Oosthuizen and Scheepers. "Proper corporate governance was introduced with committee structures being put in place" (2623).

14 Cohen as Chairman and Levenstein as CEO

14.1 Cohen found Levenstein to be an extremely bright person who did "not like people contradicting or opposing him". There was no room for healthy debate in board meetings, "it just became a shouting match". Many people were scared of Levenstein. Some directors, however, such as Van der Walt and Diesel, did stand up to Levenstein (1836).

14.2 Levenstein's non-adherence to corporate governance norms was illustrated by Cohen in relation to the Sempres transaction (1837-42); see §30.2 hereof.

14.3 Cohen's perspective of two of the Mettle transactions was described by him in these terms. After he had read the FM article of 25 May 2001 and various negative newspaper reports, he became "extremely suspicious". Consequently, on 30 May 2001 he met with Prinsloo and Collins of Mettle. Two concerns of Cohen were debated. The first was that Cohen thought there was

an unconditional or irrevocable undertaking by Mettle to buy 93 Grayston for R600m at the end of 10 years. During the meeting Cohen for the first time came to know of the right of Mettle to offer to put 93 Grayston to Regal Bank for R1.2bn at the end of 15 years. The second concern was how it had come about that the price of Regal Holdings shares had gone *up* after the negative publicity. Cohen discovered in the meeting that although Mettle had a discretion what shares to buy for the managed portfolio, it so happened that 80% of the portfolio consisted of Regal Holdings shares (1844-8).

14.4 Later that day, 30 May 2001, at the joint meeting of the Regal Holdings and Regal Bank boards (K(3)13), Cohen sought an explanation from Levenstein of the Mettle portfolio (K(3)19). Levenstein said that there could be no share price manipulation because the portfolio was independently managed by Mettle. The boards agreed that an opinion on the structure would be sought from Prof. Vorster (1848-9).

14.5 After the meeting, on Strydom's return from Germany, Cohen and Strydom agreed to call a meeting with Prof. Vorster and Mettle on 28 June 2001 (1845, 1849).

14.6 Cohen's evidence was that he and his fellow directors (save for Levenstein), in common with Strydom and EY, did not know the

full extent of the 93 Grayston structure (1854). The directors' knowledge was based on what was conveyed to them at the Regal Bank board meeting of 31 January 2001 (K(3)42): "The Grayston Drive project will be completed by October or November 2001 and has been sold for R610m to Mettle, with payment in ten years time in terms of a contractual agreement with no risk to Regal and with rental income during this period accruing to Regal." (1853-4).

14.7 Another element of the 93 Grayston structure which was not disclosed to the board was that "there was a R610m ... to fund the transaction at the end of 10 years by Regal ... that would have meant an impairment of capital of 1% for the next 10 years" (Cohen 1859).

14.8 On 21 June 2001 Levenstein cancelled the meeting with Mettle and EY as "the auditors had no right to meet with the bank's commercial partners" (Cohen 1850).

14.9 On Tuesday, 26 June 2001, according to Cohen, he received a number of SMS messages from Levenstein calling on Cohen to retract what Cohen had said the previous night on the Moneyweb radio programme. Levenstein telephoned Cohen that morning. Levenstein was fairly agitated. Levenstein demanded that Cohen apologise to him or he would be a "dead man" (1924).

14.10 Van der Walt testified about a perceived power struggle between Levenstein and Cohen. Levenstein told Van der Walt that he did not trust Cohen and that he would tolerate him because of his apparent contacts and networking abilities. Levenstein constantly spoke of a conspiracy involving the Reserve Bank, past directors of Regal Holdings and Cohen. Van der Walt gave examples of behaviour that made the de facto management of the bank almost impossible. One of the examples given by Van der Walt was when it was decided at a meeting between Cohen, Levenstein and Van der Walt to initiate disciplinary proceedings against a member of staff and a consultant to the bank. It was decided that the contracts of the two persons would be suspended. A statement had to be taken from Van Zyl, the bank's chief intelligence officer. When Van Zyl was asked by Van der Walt to make a statement, he declined to do so, on the basis that Levenstein had told him that he need not do so as he (Levenstein) had only humoured Cohen by initially agreeing to the suspension of the employees (2569-70).