

Monday, 21 November 2011

(10.15 am)

(Proceedings delayed)

(10.35 am)

MRS JUSTICE GLOSTER: I'm sorry to have kept you waiting gentlemen, I had a meeting in the building which I had to go to.

Discussion re Timetable

MR SUMPTION: My Lady, can we start, before we call the next witness, Mr De Cort, with a discussion about the timetable.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: We have produced, and Ladyship may have had a chance to look at it --

MRS JUSTICE GLOSTER: I've had a quick look at it.

MR SUMPTION: This is our draft timetable. The witnesses of fact and the expert witnesses are substantially agreed. The timetable follows upon consultation with others, and I think all of us think that that is feasible, and particularly with a day for expert overflow on 5 December.

As regards witnesses of fact, I must ask your Ladyship for leave to rely on the witness statement of Mr Bulygin as hearsay evidence since the earliest he can be available is the 15th and even that is contingent on

the state of his health after his really quite serious operation. So it seems the sensible thing is to rely on that as hearsay evidence.

MRS JUSTICE GLOSTER: Is that opposed?

MR SUMPTION: It is not as I understand it.

MRS JUSTICE GLOSTER: But obviously any questions as to weight will be left until submissions.

MR SUMPTION: Of course.

There are two other witness statements which your Ladyship may not be conscious of; one, they both relate to what one might call the costume issue. Mr Berezovsky has put in a seventh witness statement, or seeks to put in a seventh witness statement on that --

MRS JUSTICE GLOSTER: I've read that de bene esse.

MR SUMPTION: There is also a witness statement from a Mrs Gill about Mr Berezovsky's movements in the morning and at lunchtime.

MRS JUSTICE GLOSTER: I've read that too.

MR SUMPTION: As regards Mrs Gill, we are happy that that should go in as unchallenged evidence, it seems uncontroversial.

As regards Mr Berezovsky, I have floated this with my learned friend, although I don't know what his position on it is. What I suggest is that rather than putting my learned friend to the trouble of recalling

Mr Berezovsky so that I can simply formally put to him that his evidence is wrong because it is countered by three other witnesses who were present, that your Ladyship should, by agreement, deem that evidence to be challenged. There would be no substantial cross-examination other than putting it to him that the recollection of others is different. So that we suggest that it be dealt with in that way.

Now, the one area of substantial dispute on this timetable concerns closing speeches.

MRS JUSTICE GLOSTER: Just before you get to that. The accountancy valuation evidence, for reasons that I know about, has gone and is being held over potentially to another day.

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: The only issue I had on that, and it's because I haven't yet read the accountancy valuation evidence, is whether there's anything in that evidence that goes to the issue as to whether the payments that Mr Berezovsky and Mr Patarkatsishvili did receive relate in any way to the actual revenues or profits, however you define it, of Sibneft or Rusal.

MR SUMPTION: We have considered that. It's certainly our position, and I don't think that this is disputed but Mr Rabinowitz will say if it is, we don't think that

there is an overlap because nobody suggests, whether the 1.3 billion be regarded as a purchase price for shares or as a pay-off of final payment of krysha, we don't believe that anybody suggests that it was a scientifically calculated figure or that anybody did, even informally, a DCF calculation in relation to it.

MRS JUSTICE GLOSTER: So nobody is going to be saying: oh, look at the EBITDA in that accountant's report. That relates percentage-wise to what Mr Berezovsky was receiving, or wasn't.

MR SUMPTION: They clearly by definition aren't going to be saying that because they say it's a huge undervalue, so the question is are we going to be saying it, and the answer is --

MR RABINOWITZ: My Lady, my learned friend may be at cross-purposes with your question.

The valuation report simply relates to the value of Sibneft and indeed Rusal, so it won't touch on the question that your Ladyship asked about whether the payments that they received relate to profits made in any particular --

MRS JUSTICE GLOSTER: I'm happy, if everybody is agreed that that's so --

MR RABINOWITZ: I'm just informing your Ladyship that the reports are simply about the value of Sibneft as at 2001

and as at other periods, and indeed the value of Rusal, so it does not touch on the point that your Ladyship raises and therefore won't assist your Ladyship on that point.

MRS JUSTICE GLOSTER: As long as nobody is going to be asking me to look at any of the contents of the accountancy reports in relation to issues of liability, that's fine. But I wouldn't want there to be, as it were, some sort of mix-up here and suddenly I was being invited to look at them.

MR RABINOWITZ: No, your Ladyship will not be asked to look at aspects of that.

MR SUMPTION: Nor by us.

MRS JUSTICE GLOSTER: Fine.

MR SUMPTION: My Lady, that leaves, as the one issue of principle, the question whether final speeches should be heard this term. Now, in our submission, there is no reason, now that the valuation side has gone for the moment, to defer any final speeches beyond the end of this term.

If I can just make three short points on that --

MRS JUSTICE GLOSTER: Were you still proposing to go first?

MR SUMPTION: If all final speeches are done before Christmas then I would suggest that we use the usual order with my learned friend going first. But if my

learned friend's final speech is deferred until next term then I would ask to go first as had been informally discussed earlier.

The present point that I am making is that I suggest that all final speeches should be dealt with in this term, and I make that suggestion for essentially these reasons. First of all, it seems perfectly feasible, we are quite satisfied that we will be able to do it, including producing a full document with evidence references in advance of the final speeches actually being delivered. We in fact have a running draft at the moment. But in any event, even on the footing that Mr Rabinowitz may not have started his, I don't know what the position is, he has three weeks and a team of nine counsel in which to do that and we submit that it is entirely feasible to do it if one prioritises one's work properly.

MRS JUSTICE GLOSTER: The problem about that is, up until today or yesterday, he's been operating -- or up until whenever you raised this point, he's been operating in the happy belief that he's going to have the Christmas break to prepare them, so maybe he hasn't been doing a running draft. Isn't that the problem?

MR SUMPTION: My Lady, we have never conceded that position because we have always reserved the possibility of all

the final speeches being delivered this term if the timetable worked out that way, and indeed the original purpose of your Ladyship sitting on Fridays, for example, was to leave that possibility open.

Now, I wouldn't have been pressing this point if the valuation evidence, which would have been quite time-consuming to cross-examine on, both in terms of preparation and court time, was still going to be dealt with this term, but that's not now the position. And, in our submission, it has always been a distinct possibility that the timetable might permit final speeches to be made this term.

One also needs, in my submission, to bear in mind both the expense to the parties of keeping their team on foot, particularly when some of them come from Russia, over a significant period in January in order to deal with this, and indeed the implicit expense to the court and other litigants in taking up the timetable for any longer than is really necessary on the assumption of efficient management of litigation.

My learned friend has three weeks from now in which to deal with this on the timetable that we have proposed and a very large team for that purpose.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: My Ladyship those are my points.

MRS JUSTICE GLOSTER: Right. Mr Rabinowitz.

MR RABINOWITZ: My Lady, first on the question of Mr Berezovsky and Ms Gill's evidence about the Dorchester Hotel, your Ladyship has read it and I don't need to tell your Ladyship what it says. I have indicated to my learned friend that Mr Berezovsky obviously disputes this completely, and your Ladyship has seen that, and he's absolutely willing to go and give evidence to this effect. If my learned friend wants to deal with him in the way he has suggested, I'm content that that's the way it should be done.

On the timetable, my learned friend says it's perfectly feasible that we can be in a position to put in written closings and orally close before the end of the term, and he does that in part on the basis that he is in a position to do it.

The point that your Ladyship made to my learned friend about Mr Sumption, really from the outset, your Ladyship knows that the first discussions we had about this were on the basis that Mr Sumption would, for perfectly understandable reasons, want to close this term and that we would not.

Now, the consequence of that has been that we have not, as Mr Sumption has been, preparing on ongoing draft. And, indeed, however big the team is they have

been occupied on other things, and fully occupied. We are simply not in a position where we will be able to produce a written document. My learned friend wants it to be done by 9 December, that is I think three days after we finish with evidence, on the basis that we then have oral closings thereafter. That, I have to say, is just something we cannot do.

In my respectful submission, the earliest that we're likely to be able to produce something in writing is very much later in December.

Now, I say that, my Lady, in the context of what is, as your Ladyship knows, an absolutely huge claim where there has been a great deal of evidence which needs to be analysed, facts have moved on very substantially since the written opening, and your Ladyship will be greatly assisted by a written document which properly does that rather than having, as my learned friend seems to suggest, seven days of oral closing. That can only be on the basis that he understands that, certainly on our part, we will not be able to produce a written document which properly assists your Ladyship.

MRS JUSTICE GLOSTER: If Mr Sumption were to make his oral closings before you did, what would be the position in relation to the Chancery defendants? Would they follow you or would they follow Mr Sumption?

MR RABINOWITZ: They want to go after me.

Now, one possibility -- sorry, just to go to another point. The first time that my learned friend has raised this possibility with me was this morning, I think, and I think it does follow from the fact that the valuation evidence has gone, it may have been Friday, but it's really a consequence of the valuation evidence going. And indeed, until your Ladyship had received the letter explaining the circumstances, and dealt with it, we were not in a position where we would know one way or the other whether this was at all possible.

I am not suggesting that we could not get in written closings before the end of the term but, in my respectful submission, we would not be in a position, with the best will in the world, to be able to do that until very shortly before the end of this term. In my respectful submission, if my learned friend, as he needs to, wants to close his case and do an oral submission at the end of this term, then so be it.

But given the stakes, my Lady, and given the complications in this case, we respectfully submit that we should not be rushed on this. My learned friend makes some point about the fact that there is a Russian angle and people might have to arrange to come from Russia; given the costs already incurred and the amounts

at stake, in my respectful submission, that really doesn't carry much weight. Your Ladyship will be much better assisted if the parties are given a proper length of time to produce written closings, and then indeed a proper length of time to read them before we come back to address your Ladyship on the oral submissions.

MRS JUSTICE GLOSTER: Right.

Do you want to say anything else, Mr Sumption?

MR SUMPTION: My Lady, I would just say this. If your Ladyship is minded to accede to Mr Rabinowitz's suggestion that his closing speech should be deferred until next term, we would wish to take him up on the suggestion that he made a moment ago, that his written closing could at least be in, and to suggest that if your Ladyship is attracted by that idea, then if his written closing -- we would produce our written closing rather earlier than that, we would produce our written closing probably around the 12th.

If his written closing were to be available by the 16th, the Friday, and I were to deliver my oral closing in the following week, the last three days of term, though I will actually only be a day to a day and a half, then we would at least have the ability to take into account his points when delivering our oral submissions, albeit not our written ones.

I put that forward as a compromise solution if your Ladyship is not minded to have all closing speeches this term.

MRS JUSTICE GLOSTER: Thank you.

Do the Chancery defendants want to make any submissions?

MR MALEK: Just this, my Lady, that as Mr Rabinowitz mentioned a moment ago, as far as we're concerned, we would prefer the usual order so that our submissions will come at the same time as Mr Rabinowitz's, and our oral submissions will come after Mr Rabinowitz's oral submissions.

But as to the question as to whether all the submissions can be done before the end of term, it's easy for us to say yes because we've got less issues to deal with. Our preference would be if that's possible, but if that's not possible then we would suggest that our submissions go in the usual order as I've just indicated.

MRS JUSTICE GLOSTER: What, with you after the claimants?

MR MALEK: Yes.

MRS JUSTICE GLOSTER: Mr Adkin?

MR ADKIN: My Lady, our position is exactly the same as that outlined by Mr Malek.

MRS JUSTICE GLOSTER: Mr Rabinowitz, I'm not going to

require you to make your oral closings before the end of this term because I think that would put unfair pressure on you in circumstances where your team has been conducting cross-examination.

MR RABINOWITZ: I'm grateful, my Lady.

MRS JUSTICE GLOSTER: I also think that it's important that the court has as much assistance as possible and therefore, as it were, in the court's own interest I think it's preferable I give you the time you say you need.

Having said that, I think I would be assisted to have your written closings prior to hearing from Mr Sumption in closing, so would it be feasible to have yours served by, say the 16th?

MR RABINOWITZ: My Lady, again in the spirit of compromise, can I go for the Monday which at least gives us the extra weekend, so you'll --

MRS JUSTICE GLOSTER: That doesn't give them much time to take it on board, that's the problem.

MR RABINOWITZ: Well my learned friend was perfectly happy to do this on the basis of not seeing anything. The submissions are for your Ladyship rather than for my learned friend. My learned friend's original proposal, indeed his proposal until this morning, was that he would make submissions in a sense blind as to what we

were going to say.

MR SUMPTION: Well, no, because my original proposal was that all submissions in writing should be served by the 9th so that I would have had the weekend to study my learned friend's.

MR RABINOWITZ: When I say original proposal, I mean proposal up until today.

As your Ladyship knows, a weekend can make a huge difference to the quality of the submissions, particularly -- in a sense we're only getting two weeks from the end of evidence to do this. Now, I'm not saying that we can't make a start on it, but the timetable -- we're still going for quite a tight timetable here, sitting on Fridays, and really belting on so that we can finish.

This is in part obviously because we want to be as efficient as possible, but, in my respectful submission, your Ladyship will be assisted rather than the other way around by allowing that extra weekend so that we can make sure it's as good as we can hope to make it.

MRS JUSTICE GLOSTER: Well, you will obviously have the ability to put in post-hearing submissions in the sense of post-Mr Sumption, both sides will have that, because it's unrealistic to assume that you will have, I would have thought, taken on everything that he's served by

the 12th if you're being required to serve by the 16th.

So, as it were, the story book isn't closed on the 16th if you're required time to serve your written submissions by then.

MR RABINOWITZ: In a sense, what will happen is if he puts in something on whenever he says he's going to put it in --

MRS JUSTICE GLOSTER: He's suggesting the Monday.

MR RABINOWITZ: That will serve as a distraction rather than anything else for us because your Ladyship, I suspect, will expect us to take on board those points.

MRS JUSTICE GLOSTER: No, not necessarily.

MR RABINOWITZ: All right.

MRS JUSTICE GLOSTER: I think it is important to me that the defendant responds to your written case in the three days that are available for Mr Sumption to make his closing submissions, so I think that I am going to require you to serve your written closings by say 4 o'clock on the 16th, but I obviously will, if you wish to do so, allow you to serve a further document that deals with anything you feel you haven't had time to deal with. And that would be on the basis that the claimants serve theirs by -- can you serve yours by the 9th, Mr Sumption, or are you looking --

MR SUMPTION: Yes.

MRS JUSTICE GLOSTER: You can serve yours by the 9th, so that does give ...

Right, 4.00 pm for the defendants on the 9th; 4.00 pm for yours on the 16th.

Can I say something, please, and it's this, it would assist me if the evidence and the closing submissions is structured by reference to the list of issues so that I'm not -- obviously you can analyse the evidence referentially, I don't need it repeated each time, but I don't really want to go, as it were, picking up through other bits of evidence which aren't pegged to the particular issue.

In other words, if you want me to look at something in another part of the document, I need to be told that it also relates in your view to issue A1(b) or whatever it is.

MR RABINOWITZ: Very good.

Your Ladyship hasn't fixed a time for the evidence from Mr Malek's client or the other Chancery defendants. Mr Malek has indicated to me that he would be content to put in his document on the 16th as well.

MRS JUSTICE GLOSTER: Yes. I think the Chancery defendants and the claimant's written closings by 4.00 pm on the 16th, Mr Abramovich's by 4.00 pm on the 9th.

MR RABINOWITZ: In terms of setting a time for next term,

does your Ladyship intend to --

MRS JUSTICE GLOSTER: For next term?

MR RABINOWITZ: In a sense for oral closings, if we're going to put in a written document on the 16th --

MRS JUSTICE GLOSTER: Yes, for your oral closings, the first day of term is the 11th, I think, isn't it?

The first day of term is I think Wednesday, the 11th. I'm off on compensatory leave on the 12th and 13th so I suggest that we start on the Monday if that suits.

MR RABINOWITZ: That suits. I'm grateful, my Lady.

MRS JUSTICE GLOSTER: That's the 16th.

MR RABINOWITZ: My learned friend, Mr Malek, is asking how many days. Neither your Ladyship nor ourselves are in a position to say with certainty. If your Ladyship has had a long written document, I don't suspect your Ladyship will want very long oral closings.

MRS JUSTICE GLOSTER: I will fix the number of days but I need to do it on an informed basis, and if you can't tell me I'm certainly not going to lay down times at this stage as to what the timetable should be.

I mean, I'm either going to be listening to this case or I'm going to be writing the judgment so it's no problem so far as I'm concerned, although I know I've got one day when I'm doing another case which my clerk

will inform you of the date.

MR RABINOWITZ: I'm grateful, my Lady.

MR ADKIN: My Lady, the only point I think that was left out of that was the order of closings on the 16th. Is your Ladyship content with what was suggested by Mr Malek?

MRS JUSTICE GLOSTER: Yes, I was. I thought Mr Rabinowitz was not opposing that.

MR RABINOWITZ: On the 16th, I think Mr Malek was suggesting that we all give --

MR ADKIN: Sorry, of January?

MRS JUSTICE GLOSTER: No. So far as order of closings is concerned, you're going first and the others are following.

MR RABINOWITZ: Indeed.

MR ADKIN: My Lady, I'm grateful.

MRS JUSTICE GLOSTER: And then Ms Davies will have an opportunity to reply. Well, we'll see how we go after that.

MR RABINOWITZ: My Lady, just on that, I think what has been agreed is that the opportunity to reply will have to be limited to new points. That's what we agreed on the basis of Mr Sumption going first. Obviously there will be a potential for disagreement as to what is a new point given that we are serving our document early.

MRS JUSTICE GLOSTER: I don't think I'm going to lay down

precisely what the protocol --

MR SUMPTION: It depends how much we've been able to take in of their document over that weekend but we will obviously do our best.

MRS JUSTICE GLOSTER: I think in a big case like this, we will just see how we go, and obviously none of you are going to be unnecessarily prolix, I'm sure.

MR SUMPTION: I'm sure that's right, my Lady. I have no doubt that it's right that Mr Rabinowitz should have the last word, whatever happens, but we would welcome the opportunity, ideally in writing in the case of detailed points, to respond to things that have not been sufficiently dealt with before.

MRS JUSTICE GLOSTER: Very well. Thank you.

MS DAVIES: My Lady, our next witness is Mr De Cort. Before I call him, can I just pick up on a point that arose at the end of Friday in relation to the further disclosure that we made on Friday night.

Just to explain the genesis of that, because there's a privilege point connected, if I can just hand up the letter that we sent with the further disclosure.

(Handed)

MRS JUSTICE GLOSTER: Do you want me to read this now?

MS DAVIES: Yes, my Lady. (Pause)

Essentially, when we call Mr De Cort, we accept

there will be a limited waiver of privilege in relation to the instructions that he received but that waiver of privilege does not go further, and in particular does not cover the legal advice that he provided.

MRS JUSTICE GLOSTER: Right. Well if an issue arises on privilege I will deal with it, as it were, as and when it arises.

MS DAVIES: My Lady, I'm grateful. Then I will call Mr De Cort.

MR ANDRE DE CORT (affirmed)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MS DAVIES

MS DAVIES: Mr De Cort, could you be provided with bundle E2, open at tab 9, please E2/09/269. You should find there your second witness statement in these proceedings which is your only witness statement for this trial. Is that correct?

A. Yes, that's correct.

Q. And if you turn to page 294 E2/09/294, is that your signature?

A. That is my signature.

Q. Now, you should find on the table in front of you a few pages headed "Corrections to the Second Witness Statement of Andre De Cort", and you should find there that you wish to make corrections to paragraphs 29, 33,

38, 39, 41, 49, 50 and 52, is that correct?

A. Yes, it is correct.

Q. Subject to those corrections, is your witness statement true?

A. Yes, it's true.

MS DAVIES: There will be some questions. Thank you.

Cross-examination by MR RABINOWITZ

MR RABINOWITZ: Good morning, Mr De Cort.

A. Good morning.

Q. Mr De Cort, you are a lawyer by training, aren't you?

A. Yes, I am.

Q. And you were admitted to the Brussels bar in 1986?

A. Yes, indeed.

Q. And between 1990 and 2002, you worked for Skadden Arps, firstly in Brussels, and then from 1993 onwards in Moscow?

A. That is correct.

Q. You joined the Moscow office of Mr Abramovich's company, Millhouse Capital UK, in December 2002 as head of the international legal department, is that correct?

A. That is correct.

Q. And then in January 2004, you moved to Millhouse Capital's London office where you held, and indeed still hold, the position of legal counsel, correct?

A. That is correct.

Q. Presumably you would not wish to be involved, given your background as a lawyer, with creating false or misleading contractual documents, would you, Mr De Cort?

A. That is correct.

Q. And you would not knowingly want to misrepresent the true position to banks or financial institutions or other third parties?

A. That is correct.

Q. Now, I'd like to ask you some questions about your involvement in confirmations of certain dividend payments totalling \$177.5 million to Blue Waters and Rich Brown, and you deal with these matters -- you don't need to turn it up -- but you deal with these matters in paragraphs 6 to 14 of your witness statement E2/09/270.

In your witness statement, certainly prior to the amendment that you made very late last night, you had accepted that the entities to which these dividends were being paid, \$177.5 million dividends, Blue Waters and Rich Brown, were entities associated with Mr Berezovsky and Mr Patarkatsishvili. Correct?

Do you want to remind yourself of what you had said at paragraph 38 of your witness statement? You'll find this if you go to page 282 E2/09/282].

A. At the time I made this declaration I wasn't aware who those entities belonged to.

Q. Well, shall we just look at what you said, Mr De Cort, and that will help you answer the question I asked.

You are dealing here, and that's in paragraph 38, with concerns you had about giving a warranty later on. Mr De Cort, I'm taking you to your original witness statement, not your correction. And what you say there is:

"An additional concern in regard to warranting the beneficial ownership of shares held by Madison in particular, given that based on my own involvement with the source of funds letter for Blue Waters (described above) I understood that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and ... Mr Patarkatsishvili."

So you were making it very clear in your witness statement that you did understand that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and Mr Patarkatsishvili. That's right, isn't it?

A. No, that's not correct. When I was reviewing my witness statement in preparation for giving evidence today,

I discovered that it could be misread that way and that's why I've made the clarification.

- Q. I suggest to you it's not a question of misreading it that way, that is what you were saying?
- A. That is not what I meant to say.
- Q. All right. We'll come back to it because I suggest you were very well aware of the fact that Blue Waters and Rich Brown were entities associated with Mr Patarkatsishvili and Mr Berezovsky.
- A. That is not correct.
- Q. All right. Now, you also, just staying with the payment of these dividends, tell us -- this is at paragraph 9 of your witness statement -- that you were at no time told of the reason for the payment of the \$50 million which was paid to Blue Waters, is that right?
- A. That is right.
- Q. Did you ask anyone what the reason for the Blue Waters payment was, Mr De Cort?
- A. No, I did not. The reason for that is I was only asked for a very limited reason to give a letter clarifying what the source of funds was.
- Q. You see, Mr De Cort, I suggest to you that's a little bit surprising. Did you not want to know why one of Mr Abramovich's companies, Madison, was making this dividend payment to companies associated with an entity

that you would have understood had nothing to do with Mr Abramovich's companies?

- A. I was at this point in time very new at the company. I was only there for about six months, and people said that they were making a payment to someone and they need to provide a source of funds letter. I think it is important to go probably to the instruction that I received from Denton Wilde Sapte as the purpose of this letter.
- Q. I'll ask my question again. Did you not want to know why Mr Abramovich's company, Madison, was making this dividend payment to companies associated with this entity that you would, at the very least, have understood was not owned by Mr Abramovich?
- A. I didn't see the need to know that for purposes of the request that I received to make the source of funds letter.
- Q. Was it not a matter of some concern to you, Mr De Cort, as the newly appointed head of the international legal department of Millhouse Capital, that these dividend payments were made to companies that you would have known had nothing to do with Mr Abramovich's companies?
- A. There was no question to me that there was an honourable reason why this payment was being made.
- Q. So we can take it that nobody in Mr Abramovich's team

ever suggested to you at this time that the reason for the payment of the \$50 million to Blue Waters was to do with an earlier transaction that had been concluded between Mr Abramovich and Mr Berezovsky and Mr Patarkatsishvili?

A. No one ever mentioned it to me at the time.

Q. And no one would have -- no one mentioned it to you at that time, that it was a part payment to compensate Mr Berezovsky and Mr Patarkatsishvili for commission that they had had to pay in order to get their money into the west?

A. That is correct.

Q. And presumably you would have had no reason to suspect that this payment of the \$50 million to Blue Waters was anything other than what it purported to be, namely a dividend payment paid via Madison and Espat to Blue Waters, ultimately deriving from Madison's own entitlement to profit distributions from Rual Trade Limited, the trading arm of Rusal group, is that right?

A. I was asked to describe the source of funds, and I described the source of funds accurately in my letter.

Q. And presumably -- I'm going to repeat the question -- you would have had no reason to suspect this payment of the \$50 million to Blue Waters was anything other than what it purported to be, namely a dividend payment via

Madison and Espat to Blue Waters, ultimately deriving from Madison's own entitlement to profit distribution from Rual Trade Limited, the trading arm of Rusal group, correct?

A. I was only told that we had to make a payment to a third party and that it would be structured this way.

Q. I've asked the question twice, I'm not going to ask it again.

Can you go, please, to bundle H(A)62 and turn up page 19 H(A)62/19. Do you see there an attendance note dated 16 July 2003 made by Mr Nick Keeling of Denton Wilde Sapte, Mr De Cort?

A. No, that's not this document.

Q. Are you at H(A)62, page 19?

A. Oh, 19?

MRS JUSTICE GLOSTER: I am, and it's not the document.

A. 19 or 90?

MR RABINOWITZ: Page 19 H(A)62/19.

MRS JUSTICE GLOSTER: The [draft] transcript had said 90.

A. Yes, that is the attendance note.

MR RABINOWITZ: Does your Ladyship have it?

MRS JUSTICE GLOSTER: Yes, I've got it now.

MR RABINOWITZ: Ms Khudyk in her evidence accepts that she took part in a conference call with you and Mr Keeling at around this time and so I take it you don't dispute

having taken part in this conference call, Mr De Cort?

A. I do not dispute this, I don't know the exact date, but given that I sent a letter afterwards, on 8 August, I assume that might have very well been in mid-July.

Q. We can see from this attendance note that it starts, this is the first paragraph, by recording that:

"NK [that's Mr Keeling of Denton Wilde Sapte] attending SLC [that's Mr Curtis] in Gibraltar and discussing the proposed arrangements for payment of a dividend out of Russian Aluminium."

That's Rusal, is it not, Mr De Cort? You may not know but --

A. Russian Aluminium is abbreviated often as Rusal, but the dividend payment eventually was sourced from Rual which is a trading arm.

Q. A trading arm of Rusal, correct?

A. Yes, indeed.

Q. Thank you.

So Mr Keeling and Mr Curtis appear to have been under the impression that the reason for the payment that was the subject matter of discussion here was the payment of a dividend out of Russian Aluminium, correct?

A. I don't know whether it derives from this document.

I know that it was being structured as a payment of a dividend out of Rual. And actually I describe the

structure, if you look at the attendance note on the third paragraph or fourth, depending on how you count the paragraphs, it says that I explained the structure for the payment.

Q. We'll come to that, Mr De Cort. I'm just asking for your evidence as to whether you accept that their understanding, as reflected in this document, was that the reason for the payment that they were discussing was the payment of a dividend out of Russian Aluminium?

A. Can you point me to the paragraph where their understanding is reflected?

Q. Well, look at the first line:

"NK attending SLC in Gibraltar and discussing the proposed arrangements for payment of a dividend out of Russian Aluminium."

A. That's what it says indeed, yes.

Q. And we can see from the next paragraph that the conference call had been set up by RF, which is Mr Fomichev, with yourself, do you see that?

A. I did not know Mr Fomichev at the time and the phone number that is listed is not my phone number. It's the phone number of Ms Panchenko.

Q. All right. Presumably Ms Panchenko could have brought you into the phone call?

A. I would have assumed that her secretary might have

organised it, yes.

Q. Since you don't dispute you were involved in this phone call, that really doesn't take matters very much further, does it? It was a conference call set up by --

A. Yes, it was a conference call set up. I remember there was at least -- there was more than one person at the other side of the telephone line. I don't remember particularly the names of who was there, but I do remember that it was with the office of Denton Wilde Sapte.

Q. Presumably Mr Fomichev would have said something about who Mr Keeling and Mr Curtis were and why they were calling you, Mr De Cort?

A. I don't recall it, I don't recall Mr Fomichev's name. I didn't remember that there were three people at the other side of the phone call, I know there was more than one, I had an impression it was two but there might have been a third one as well.

Q. Although your name is spelt incorrectly because Mr Keeling doesn't appear to have met you, I think that's your evidence as well, you are correctly described as in-house counsel for Millhouse, yes?

A. That is correct.

Q. I think it's common ground that it appears as if Mr Keeling was labouring under a misapprehension that

Millhouse held Mr Abramovich's ownership interests in Rusal, you can see that recorded in the second para of this memo.

A. Yes, that is definitely a misapprehension.

Q. In fact the true position as at July 2003 was that Madison, Madison Equities Corp, a bearer share BVI company, was used as the holding company of 50 per cent of the interests in the Rusal group, that's right, isn't it?

A. Yes, that is correct.

Q. Can I just ask you this: who did you understand at the time of this conversation in July 2003 physically held the bearer shares in Madison?

A. Mrs Khudyk.

Q. Mrs Khudyk?

A. Mm-hm.

Q. Thank you.

A. It was not confirmed to me but I assumed that based on the fact that she was dealing with the shares.

Q. Just then going back to Mr Keeling's memorandum --

A. And I was referring there to the physical holding of the certificate.

Q. Who did you understand Mr Curtis, Mr Keeling and Mr Fomichev to be representing on this call with you, Mr De Cort?

- A. The other party that was supposed to receive the payment.
- Q. The other party that was supposed to receive the payment? Were you not interested to know who they represented, the individuals who they represented, Mr De Cort?
- A. No. My involvement, as I said, was very limited. I was at the time in the midst of the Yukos/Sibneft merger, the second one, that is, and the only involvement I had with this payment was for the source of funds letter which had to come from the in-house legal counsel.
- Q. You were discussing with them a payment of \$50 million, and your evidence is, is it, that you were not interested at all in who the individuals were lying behind these entities, or this entity, to whom the payment was made, is that your evidence?
- A. That is correct.
- Q. I suggest to you that that is very unlikely to be the truth, Mr De Cort.
- A. I disagree with that. It is the entire truth.
- Q. Now, just going back to the memo, do you see that there is a portion of the memorandum which has been indented and that appears, does it not, to be the part of the memo that Mr Keeling attributes to information provided by you?

- A. From Mr -- from the way Mr Keeling has prepared this attendance note, it is very clear that it contains a lot of information that isn't properly attributed. It is indeed -- visually it looks like all of this is information from me, but there is again clearly information that I have not provided to him.
- Q. Mr De Cort, when you were having this discussion, were you not concerned to know that the payment that was being made was at least a payment which was being made for a lawful and not an unlawful purpose?
- A. I was asked to comment on the source of funds, where these funds came from, and that is what I wrote the letter about.
- Q. So is the answer to my question that you were not concerned to know whether the payment was being made for a lawful or unlawful purpose?
- A. I was not paying attention to that.
- Q. Now, just looking at the points, the four paragraphs which Mr Keeling attributes to you, can I invite you to read those for yourself, or have you recently reminded yourself of this and don't need to re-read it? (Pause)
- A. I have read it.
- Q. I think it's common ground that there is a mistake in the third paragraph similar to the mistake we've already seen Mr Keeling made at the start of the memorandum,

where he says:

"Millhouse may sit between Rusal and Rual Trade. We are awaiting clarification from Curtis & Co (James Jacobson) as to Millhouse's position in this structure."

You point out, that's at paragraph 13 of your statement E2/09/272, that Mr Keeling's supposition regarding Millhouse had no foundation, and you say it is odd that he should have thought that Curtis & Co or Mr Jacobson could shed light on that matter, and that if any such suggestion had been made in the call you would have corrected it; that's correct, isn't it?

A. That is correct. It clearly indicates that note doesn't correctly reflect the discussions, and it attributes words to me which I have not said.

Q. Well, it contains one or two mistakes, Mr De Cort. Indeed, apart from that, just focusing if you would on the first two paragraphs, you do not suggest, do you, Mr De Cort, that the structure which Mr Keeling has noted you as describing there is wrong?

A. No, that is indeed correct. I'm not disputing everything that is in his memo, I am just pointing out that there are a number of mistakes and a number of attributions made that are clearly not correct.

MRS JUSTICE GLOSTER: So the first two paragraphs are

correct, are they?

A. Indeed, yes.

MR RABINOWITZ: And again, although there are errors,

Mr De Cort, I think you've confirmed more than once that you don't dispute that you did take part in this telephone conversation?

A. Yes, indeed I took part in this telephone conversation.

Q. Do you recall explaining this structure, at least as reflected in the first two paragraphs, to Mr Keeling and Mr Curtis in the course of the telephone conversation?

A. I do have a vague recollection of that, yes.

Q. And just going to the fourth paragraph, what about this fourth indented paragraph, Mr De Cort? Did you not explain the dividend routing to Mr Keeling on this occasion? Wasn't that the purpose of the call?

A. Yes, I would assume I had explained it to him.

Q. And then just looking down at the bottom of the page, Mr De Cort, the final paragraph on page 19 we can see says this H(A)62/19:

"[Nick Keeling] and [Mr Curtis] emphasised in the conference call the legal requirements as to due diligence in relation to the proposed transactions. In particular this would involve identifying the various parties involved and also identifying the source of funds and receiving acceptable confirmation that they

are of non-criminal [origin]."

Do you see that, Mr De Cort?

A. Yes. And actually the second sentence very clearly identifies what it is that they were looking for: identifying the parties involved, identifying the source of funds, and confirmation that the funds are from non-criminal origin, and that is exactly what my letter confirms. And that was my limited involvement in this conversation.

Q. Indeed. And it's right, isn't it, that you were subsequently asked to provide a source of funds letter confirming these matters, do you recall that?

A. Yes, indeed.

Q. We'll turn that up in a moment, but before we leave this document we can see that in the last paragraph, just after the passage we've been looking at, Mr Keeling says this:

"Mr De Cort confirmed that the funds in question constituted properly earned profits arising from trading activities on behalf of Rusal."

Do you see that?

A. Yes, indeed.

Q. And you've said, at paragraph 13 of your witness statement E2/09/272, that you regard this as incorrect, because as you confirmed in your final source

letter, the source of funds were Rual's trading activities?

A. Yes, indeed.

Q. Mr De Cort, is that really a fair criticism of this part of Mr Keeling's note? Don't you explain at paragraph 8 of your witness statement that Rual was the trading arm of Rusal group?

A. I'm not trying to create a false impression that Rual and Rusal are significantly different, they are two separate legal entities, and so if someone asks me to confirm the source, where the funds come from, I want to identify the correct legal entity.

Q. All right. So if Mr Keeling had --

A. Overall it relates to the Rusal business in the broad sense of the word.

Q. Indeed, so if Mr Keeling had recorded you as saying that these funds were properly earned profits arising from trading activities on behalf of the Rusal group, you would not have objected to that?

A. With the words "on behalf of the Rusal group", you could indeed say that that includes Rual, yes.

Q. And I think we can agree on this: what you are certainly not recorded as saying anywhere in this memorandum is that the \$50 million payment to Blue Waters was all to do with an earlier transaction between the parties and

was to compensate Mr Berezovsky and Mr Patarkatsishvili for commission that they had to pay to a third party for getting the money into the western banking system?

A. I had no knowledge of that at the time. I was not enquiring about that because, as I said, my role was quite limited.

Q. Now, can I ask you now, please, to turn on in this bundle to page 26, H(A)62/26.

A. Yes, I have it.

Q. This is the letter written by you about three weeks after your conference call with Mr Curtis and Mr Keeling, dated 8 August 2003, correct?

A. That is correct.

Q. And it's a letter that was signed, as one sees, by you, Mr De Cort, on Millhouse Capital paper, correct?

A. Yes, indeed.

Q. And we see also you've signed as head of the international legal department, correct?

A. That is correct.

Q. And you see the heading "Re: Espat Ventures Limited -- Declaration of Dividend", and you've addressed it to Curtis & Co, that's right, isn't it?

A. Yes, indeed.

Q. Do you want an opportunity just to remind yourself of what this letter said by reading it to yourself,

Mr De Cort?

A. Yes, please. (Pause)

I have read it.

Q. And we can see from the second paragraph of this letter, can't we, Mr De Cort, that you were representing to Curtis & Co that Blue Waters held 50,000 shares in Espat representing the entire shareholding of Espat, yes?

A. Yes indeed.

Q. And Bluewater, certainly in terms of what you had been saying at paragraph 38 before your correction, was an entity which you understood to be associated with Mr Berezovsky and Mr Patarkatsishvili?

A. No, I did not understand that at the time. I had no knowledge of that.

Q. Now, as we've already discussed, Espat is of course the company that sat atop of Madison, and Madison was, of course, the company that sat atop and held 50 per cent of the Rusal group, including both Rusal and Rual Trade Limited, correct?

A. Espat was temporarily interposed as parent of Madison, and the reference to Madison holding both Rual and Rusal at that point in time was only focused on Rual Trade.

Q. Sorry, but Madison did hold both Rual and Rusal, correct?

A. I didn't know about Rusal.

Q. Okay. Now, we can see from the third paragraph of this letter that you were also representing to Curtis & Co that Epat would:

"... fund this dividend payment from a dividend entitlement from its 100 per cent owned subsidiary Madison ..."

A. Yes, indeed.

Q. And you can see from the third paragraph of the letter that you were also representing to Curtis & Co that Madison would in turn fund this dividend payment from a dividend entitlement arising from its 50 per cent shareholding in Rual Trade, a company which you describe as the trading arm of Rusal group?

A. Yes, indeed.

Q. Now, can we just have a look at paragraph 8 of your witness statement where you explain how this is going to work.

A. Coming back on an earlier question, I would like to point out that the reference to "entities associated with Mr Patarkatsishvili and ... Mr Berezovsky", in paragraph 38 E2/09/282, is all in connection with a discussion of a transaction in 2004, while the dividend declaration that I'm referring to earlier in my witness statement happens in 2003, so there was no intention whatsoever to associate one with the other.

Q. Well, I understand that, Mr De Cort, and I understand why it gave rise to sensitivities in 2004. But just looking at paragraph 38 again E2/09/283, and I don't for a moment dispute that that is the context in which you mention it.

What you say, and it's about being concerned about warranting the beneficial ownership of shares held by Madison, was that you had a concern about it because you understood -- you say:

"... given that based on my own involvement with the source of funds letter for Blue Waters ... I understood that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and ... Mr Patarkatsishvili."

You see, that is why you say you have a sensitivity about making this representation about beneficial ownership, because you understood these entities were associated --

A. No, the sensitivity was -- results from the fact that the shareholding had been transferred to a third party outside Mr Abramovich's control.

Q. All right, we will come back to that in detail, but can we just have a look at paragraph 8 for the moment E2/09/271. You see, in paragraph 8, you're talking

about how -- what you were describing in the letter of 8 August 2003 was to operate, just going about eight lines down. You say that you recall specifically having it explained to you that:

"... temporary transfers of ownership would be involved such that Espat was to be appointed on a temporary basis as the 100% owner of Madison to receive the dividends, and that Blue Waters would in turn become the temporary shareholder of Espat which would declare a dividend to Blue Waters."

Do you see that?

A. Yes, I see that.

Q. And then you go on to say that:

"In order to achieve this, Espat's 50,000 bearer shares would be transferred into the ownership of Blue Waters on a temporary basis and then re-transferred once the dividend had been declared."

A. Yes, indeed, I see that.

Q. Do you say that the same was to be done with regard to Madison, Mr De Cort; were the bearer shares that had been transferred on a temporary basis to Espat going to be retransferred once the dividend had been declared?

A. That was my understanding, yes.

Q. And to whom were the bearer shares in Madison going to be retransferred, Mr De Cort?

A. I had at that point in time no understanding of that but I assumed it was Mr Abramovich.

Q. Is that how it worked in practice, Mr De Cort, to the best of your knowledge? Presumably these share transfers did take place?

A. These share transfers were actually documented, yes.

Q. So you say they did take place because, if they didn't, otherwise the representations you were making to Curtis & Co in the source of funds letter would have been false, would they not?

A. That is correct.

Q. And so you knew, did you not, Mr De Cort, as a result of the Blue Waters dividend transaction and your involvement in it that you could not subsequently provide any warranty to the effect that Mr Abramovich had, since 15 March 2000, been the sole ultimate beneficial owner of Madison or, through Madison, the Rusal group?

A. That was indeed a concern.

Q. And that is what you say at paragraph 38 of your witness statement E2/09/282. We've just had a look at that, haven't we, Mr De Cort?

A. Yes, indeed.

MR RABINOWITZ: I don't know whether your Ladyship was proposing to take --

MRS JUSTICE GLOSTER: I'll go on for another quarter of an hour just because we were late in starting.

MR RABINOWITZ: All right.

Now we will come and deal in due course with the warranty position, but before we do can we just identify the context in which this question of providing a warranty about Mr Abramovich's ownership of Madison or the Rusal group arose.

I'm right, am I not, that you're talking here about the second Rusal sale in June and July 2004, and Mr Hauser's insistence that his principal, Mr Deripaska, should have confirmation of the ultimate beneficial ownership of Rusal Holdings Limited from March 2000 up to the date of transfer?

A. Yes, that is correct.

Q. Just for the record, Rusal Holding Limited had by this time come to replace Madison, and Mr Deripaska's company Eagle Capital Group, as the intermediate holder of the six BVI companies through which the Russian Aluminium interests were held, is that right?

A. I'm sorry. (Pause)

I understood Rusal Holding at that point in time to be the entity that overall owned the aluminium assets. I didn't do any particular diligence as to how the restructuring took place.

Q. Let's just go then if we can to paragraph 38 of your witness statement, page 282 E2/09/282, it's five lines up from the bottom. Again:

"An additional concern was in regard to warranting the beneficial ownership of shares held by Madison in particular, given that based on my own involvement with the source of funds letter for Blue Waters ..."

Just pausing there, the source of funds letter is the one we've just looked at, isn't it, the 8 August letter?

A. Yes, indeed.

Q. Then we have the bit that you've corrected:

"I understood that Madison had been involved in previous payment arrangements involving dividends declared for the benefit of entities associated with Mr Berezovsky and/or Mr Patarkatsishvili."

Then you say this:

"Although I was not involved in the specific mechanics concerning those payments, I was generally aware of them from my participation in providing the source of funds letter described above and thus had to tread carefully with regard to any requested warranty concerning [the] beneficial ownership of shares held by Madison. For [this reason], in a follow-up email sent to Mr Hauser --"

A. I'm sorry, I have to correct you, it says "for these reasons".

Q. I do apologise.

"For these reasons, in a follow-up email sent to Mr Hauser on 17 June 2004, I stated that there would be no warranties about beneficial ownership."

Okay?

A. Yes, I see that.

Q. Let's just see if we have understood this correctly.

Your point here is that you were concerned in 2004 about providing historical warranties of ownership of Madison, in particular from 15 March 2000, correct?

A. I generally had an adverse reaction to giving a historic warranty. In all my years of practice, I've never seen anyone ask for a warranty of title historically in connection with a transfer of shares.

Q. Just see if I can get my question answered: your point here is that you were concerned in 2004 about providing historical warranties of ownership of Madison, in particular from 15 March 2000, is that correct?

A. Actually we're not referring to beneficial ownership of Madison, we're talking about beneficial ownership of the Rusal shares.

Q. All right, but subject to that?

A. Subject to that it's correct, yes.

Q. Thank you. And that concern you say arose in part out of your involvement in the 8 August 2003 source of funds letter, correct?

A. Yes, that is correct.

Q. And in particular, it arose out of the fact that you had been involved in producing a letter which concerned the payment of dividends declared for benefits plainly not associated with Mr Abramovich, leave aside whether you knew that they were for Mr Berezovsky or Mr Patarkatsishvili. Is that correct?

A. Yes, that was one of the concerns.

Q. And those --

A. Although, as I've indicated in my witness statement, it was an additional concern.

Q. Yes. I think what you're saying here is that because of this you were concerned in 2004 about providing Mr Hauser with confirmation that his client Mr Deripaska was looking for, namely that since 15 March 2000, Mr Abramovich had at all times been the ultimate beneficial owner of the remaining 25 per cent stake in the Rusal group, because you would have known that that would have been --

A. Yes, that was one of the additional concerns, indeed.

Q. Because you would have known that would have been a false representation, given what you knew about what

had happened in August 2003?

A. Yes, indeed.

Q. At the very least.

Now, the other difficulty which you refer to at paragraph 38 of your witness statement E2/09/282 was compounded, was it not, by another difficulty which arose at the time, Mr De Cort, and that's the Rich Brown correspondence, do you recall that?

A. The Rich Brown correspondence, I only vaguely recall it, but, yes, I do -- I think you remember -- do you mean to the other letter that you --

Q. Indeed.

A. I only vaguely recall it. I didn't -- it was only in the disclosure here that I -- my attention was drawn. I didn't have any particular recollection of it without having seen the documents.

Q. But you were involved in that?

A. I had -- it is obvious that I might have looked at that, or that I probably looked at that at the time, yes.

Q. That was, of course, an attempt by Mr Jacobson of Curtis & Co to get you to produce another letter similar to the one that you had produced for Blue Waters?

A. As far as it can derive from the documents disclosed, yes, indeed.

Q. Now, can we then just look -- my Lady, I'm going to move

on to a slightly different part of the story. I'm very happy to keep going but --

MRS JUSTICE GLOSTER: Okay, I'll take a break now. Ten minutes.

(11.40 am)

(A short break)

(11.57 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Mr De Cort, just one last point in relation to the Rich Brown correspondence that arrived, I think, at the very same time as you were engaged in drafting the second Rusal sales transaction, and Mr Hauser was pressing you for warranties concerning the beneficial ownership of the Rusal group since 15 March 2000. Do you recall that Mr Jacobson of Curtis & Co was writing, chasing for the letter, the source of funds letter?

A. I don't think he was writing to me but, as I said, until I see the -- saw the disclosure here I've not entirely remembered this second request for a letter for Rich Brown.

Q. Ms Khudyk in her evidence says that she passed the correspondence on to you to deal with?

A. That is very well possible.

Q. Do you recall that the amounts that were involved in the Rich Brown source of funds letter was -- I think it was

\$127.5 million?

A. I don't recall but I'm not disputing that.

Q. My question is really this: would you not have been concerned to know who was behind that transaction, given again the amount of money involved?

A. As I said, I had no recollection from that except for the correspondence that's been disclosed, and I don't deny that I might have looked at that at the time, but I have no recollection about it.

Q. Very well. Let's move then to 2004 and your involvement with the second Rusal sale.

Can I perhaps begin by just asking you to look at a couple of newspaper articles which appeared in the Russian press just before you became involved in the second Rusal sale, and about which you say you have a vague recollection.

Can you go, please, to bundle H(A)74 at page 127 H(A)74/127.

Now, you should have in front of you an article from Vedomosti dated 2 June 2004. Do you have that?

A. Yes, I do.

Q. You can see that the article is entitled:

"Berezovsky does not agree with the sale of shares [in] Russkiy Aluminiiy."

Do you see that?

A. I see that.

Q. Then if you look at the first paragraph, below the italicised introduction, we can see that the article starts by saying:

"As the Vedomosty has learnt Roman Abramovich, Chukotka Governor, is going to sell his remaining shares in RusAl to his partner Oleg Deripaska. However for the deal to be successful Abramovich has reached an agreement with the oligarch in disgrace Boris Berezovsky. The negotiations will be difficult: the partners have clash of opinions on the number of RusAl shares belonging to Berezovsky."

You see that?

A. I see that.

Q. Then if you look at the next paragraph, we can see what the clash of opinions was:

"As the Vedomosty has learnt Oleg Deripaska can become a sole owner of RusAl within this month. A source close to Abramovich says that the sale to Deripaska of 25% RusAl shares remaining under control of Millhouse Capital has been practically decided and the deal can be closed within a month. However the source has specified that Abramovich does not control the entire 25% holding, the final beneficiaries of its 15% are the disgraced oligarch Boris Berezovsky and his

friend and old business partner Badry Patarkatsishvili that is why the deal conditions should be agreed... with them as well."

I take it you're not able to shed any light on whom the source close to Mr Abramovich might have been, are you, Mr De Cort?

A. No, I have not seen this article until it was produced in these proceedings.

Q. So this is not one of the articles you have a vague recollection of seeing?

A. No, it was an English language article, and I understand there is an article in the Moscow Times that's in these proceedings and I assume, but I'm not 100 per cent sure, but I assume it would have been that article.

Q. We'll have a look at that shortly.

Just skipping over the next paragraph which deals with the first Rusal sale and Mr Deripaska's pre-emptive rights, you see that Vedomosti claims to have spoken to another source. The article continues:

"One more source ..."

Do you see that paragraph?

A. Mm-hm.

Q. "One more source close to the shareholders of this company confirmed to the Vedomosty the information that Berezovsky is the owner of 15% RusAl shares. For a long

time Berezovsky kept claiming that he had a stake in Rusal, without specifying its amount. Rusal and Base Element emphatically deny any connection with Berezovsky."

Again, I take it you don't know -- you can't shed any light on who that source is?

A. No, not at all.

Q. Just looking at the next paragraph, we can see what Mr Berezovsky's response is:

"Yesterday the disgraced oligarch said to the Vedomosty that Badry Patarkatsishvili and he owned not only 15% but all 25% [of] RusAl shares [remaining] under Millhouse management and he had no intentions to sell them."

Then in the next paragraph, various quotes from Mr Berezovsky, he says:

"'Nobody has talked to me, I have received no offers from Abramovich and Deripaska' ..."

Then:

"'Though the shares belonged to him (Abramovich) and he independently conducted negotiations I believe it incorrect. It destroyed the balance (between the shareholders) and allowed Deripaska to form a controlling stake'."

The article then notes that Mr Berezovsky said that

he:

"... reserved [the right] to challenge the deal in Court."

Do you see that?

A. I see that.

Q. You had as of 2 June 2004 moved to Millhouse's London office and taken up your position as legal counsel to Millhouse. That's correct, isn't it?

A. That is correct.

Q. And this article surely would have been brought to your attention, wouldn't it, Mr De Cort?

A. No, this article was not brought to my attention.

Q. A possible threat of legal proceedings had been made by Mr Berezovsky arising out of the way in which the first Rusal sale had been handled, and you say that it wouldn't have been brought to your attention?

A. No, this has not been brought to my attention.

Q. Another article, I think you say, was brought to your attention, or at least other articles were brought to your attention, I think that's what you say at paragraph 29 E2/09/279, is that right?

A. My meeting with Mr Hauser, yes, he referred me to an article, an English language article, which I believe might very well have been the article that was published in the Moscow Times.

Q. You say at paragraph 29, on page 279 E2/09/279:

"I have a vague recollection from that period of press reports referring to claims by Mr Berezovsky to a share in Rusal."

You say:

"One of [the] reports may ... have been the Moscow Times report ... which has recently been drawn to my attention."

A. Yes, "recently", just meaning like I didn't remember it was the Moscow Times, so...

Q. Now, if you still have the article in front of you, the Vedomosti one, you see there's a quote from Millhouse.

It says:

"Millhouse manages 25 per cent of RusAl shares as before. We cannot disclose who the beneficiaries of this holding are, though [they're] neither Berezovsky, nor Patarkatsishviliy among them."

Do you see that?

A. Yes, I see that.

Q. You see, Mr De Cort, whatever was being said here, you knew because of your involvement in the source of funds letter in August 2003 that there was some connection between Madison and the Rusal group and Mr Berezovsky and Mr Patarkatsishvili, did you not?

A. No, I did not.

Q. I suggest that that is the position because you knew, as you had been saying at paragraph 38 E2/09/282, that Mr Berezovsky and Mr Patarkatsishvili were connected to Blue Waters?

A. No, that is a misconception of my words.

Q. Now, the other newspaper report that you referred to, Moscow Times, of 3 June 2004, you can see at bundle H(A)74 at page 129. H(A)74/129

A. Yes, I see that.

Q. And just remind yourself of it, Mr De Cort.

This is the article, is it, that you recall seeing?

It's the one you refer to at paragraph 29 E2/09/278?

A. I assume that that might have been the article, yes.

Q. And, again, you can see in the article that Mr Berezovsky is indicating not only that he had 25 per cent but that he's reserving -- he's making it clear that he might challenge the Rusal transaction in court, isn't he, Mr De Cort? Fourth paragraph from the end he says that. He says he could appeal the transaction in court?

A. Yes, I see that.

Q. As the head of Millhouse's international legal department that would have been a matter of some concern to you, wouldn't it?

A. Yes, as I say, this -- that article was drawn to my

attention during my meeting with Paul Hauser on 15 June, yes, and it was a matter of concern.

Q. Did you speak to anyone at Millhouse about it?

Mr Tenenbaum or Ms Panchenko or Ms Khudyk?

A. From what I've been able to reconstruct, I know that I had discussions internally. From what I've been able to reconstruct, we had discussions internally, and it's also clear from the correspondence, including the correspondence that had been disclosed on Friday.

Q. Yes, because we know that you did subsequently ask Mr Tenenbaum whether Mr Abramovich could give a warranty to Mr Deripaska that these claims which Mr Berezovsky had advanced in the press in relation to Rusal were baseless, do you recall that, Mr De Cort?

A. Can you point me to the document, please?

Q. Can you go, please, to bundle H(I) tab 10, page 39.

My Lady it's a new bundle which has been added to Magnum. These are the documents which were disclosed very late on Friday night. H(I)/10/39.

A. Yes, I see that.

Q. This is an email from yourself to Mr Tenenbaum dated 12 July 2004, and you say this towards the end of your email:

"... are we willing to state that the claims in the public domain to our knowledge have no basis?"

And that is obviously a reference, is it not, to the claims that we've seen in the press about Mr Berezovsky having 25 per cent?

A. Yes, indeed.

Q. If you then turn to the next tab, tab 11, page 42 H(I)/11/42, again this is one of the documents we received on Friday night.

A. Yes, and I think Mr Tenenbaum's answer is quite unequivocal, it says:

"It has no basis."

Q. I think he says:

"I don't think we should say that it has no basis."

A. No, you are misreading it. My email has two paragraphs, the first paragraph doesn't request a comment, the second paragraph has two prongs to it, and Mr Tenenbaum responds to both prongs of the second paragraph of my email:

"... are we willing to give it ..."

His answer is:

"I don't think we should say that."

Full stop.

"... are we willing to state that the claims in the public domain to our knowledge have no basis?"

He says:

"It has no basis."

Q. I suggest to you that what you are asking him here is:

"... are we willing to state that the claims in the public domain to our knowledge have no basis?"

And he is saying:

"I don't think we should say that it has no basis."

And that the full stop is a typo.

A. No, that is not what it says, you are misreading the punctuation.

Q. All right. Well, I don't want to debate that with you.

A. I think it is very important.

MRS JUSTICE GLOSTER: There is a full stop, is there?

A. There is indeed a full stop, my Lady. I think Mr Rabinowitz is entirely misconstruing this correspondence.

MR RABINOWITZ: You see, I suggest to you that if he meant what you say he meant it's difficult to see why he should have started the email by saying:

"I don't think we should say that."

A. It is very clear, I think, what it says.

I am asking, as regards the second paragraph, two questions:

"... are we willing to give it ..."

And he says:

"I don't think we should say that."

And:

"... are we willing to state that the claims ...
have no basis?"

And he says:

"It has no basis."

These are two separate questions -- two separate
answers, separated by a full stop. How much clearer can
it be?

Q. I'll tell you why I disagree with you, Mr De Cort, for
what it's worth. The "I don't think we should say that"
responds to what you asked him about saying. And what
you've asked him about saying is to state that the
claims in the public domain have no basis.

Otherwise he would have said, "I don't think we
should give it," not "I don't think we should say it."
But again that's a matter of interpretation and I don't
want to spend any more time with you on this.

A. I definitely disagree with your interpretation. That's
not the way I understood it.

Q. All right. Can we at least agree on this, that
ultimately you did not give any warranty or
acknowledgement to Mr Deripaska that the claims in the
public domain had no basis, did you, Mr De Cort?

A. No, because they had no basis we didn't want to give
them any credibility by even referring to them.

Q. Well, it doesn't give them credibility by referring to

them and saying "it has no basis," in fact it removes --

A. Actually we need to go back, we need to go back to when I was writing to Mr Tenenbaum.

Q. Well, it's set out at the bottom of the email that you have at tab 11, isn't it?

A. No, it's the attachment to tab 10, second paragraph, starting at the end of the second line H(I)10/40:

"... other than any that are in the public domain, no Claims were properly asserted in respect of the [Rusal] shares ..."

So I make a carve-out regarding -- I propose a carve-out regarding the claims in the public domain, and he says they have no basis, we shouldn't even say that.

MRS JUSTICE GLOSTER: I don't think we've got the attachment, have we?

A. Yes, it is at tab 10, the second page. It's H(I)10/40.

Q. Can you just repeat that answer, Mr De Cort? I think we're all struggling to see where you're referring to.

A. The second paragraph of the attachment, at the end of the second line -- there's two elements to this thing:

"To [my best] knowledge and belief ..."

And then he talks first about encumbrances on the first line and the beginning of the second line, then he

goes on in the end of second line and in the third line about claims. As regards claims, what we're saying is that:

"To the best of my knowledge and belief ... other than [those] that are in the public domain, no Claims were properly asserted ..."

That was the proposed language. And the response of Mr Tenenbaum is that the claims have no basis and we should not say that.

- Q. But Mr Berezovsky's claims were in the public domain, were they not?
- A. Yes.
- Q. So you seem to be saying, other than those in the public domain there were no claims which were properly asserted? Isn't that suggesting that you were accepting that Mr Berezovsky's claims were properly asserted?
- A. That was my proposal to limit the liability of Mr Abramovich in respect to the warranty he gives. And the response, the instructions, this is the conservative approach of me as a lawyer, the instructions that I get from Mr Tenenbaum is that those claims have no basis whatsoever so we should not make that carve-out.
- Q. But we can agree with this, that ultimately you did not give any warranty or acknowledgement to Mr Deripaska that the claims in the public domain had no basis, did

you, Mr De Cort?

A. We need to go back then to the final documentation.

This was not to Mr Deripaska, this was to Eagle Capital, I believe. I need to go back which document. But the claim -- sorry, excuse me, the warranty regarding encumbrances and claims was not in the document -- in the deed of acknowledgement, it was in other documents. And indeed there is no carve-out for claims in the public domain.

Q. Indeed. So you did not give --

A. No, we gave actually a full warranty about no claims.

Q. The claims in the public domain having no basis?

A. No, if you read it correctly what I was proposing is we were asked for a warranty that there were no claims. I wanted to carve out from that warranty the claims in the public domain so that we would not give a warranty about those.

Mr Tenenbaum says we should not carve that out and we should give a flat no claims warranty, which is eventually what happened. And the reason he said that is that the claims in the public domain, my wording that I had proposed gave them some credibility while his position was they have no basis whatsoever, therefore we should not carve them out from our warranty.

Q. You see, I suggest that you were well aware, and indeed

Mr Tenenbaum was well aware, that there was a basis to these claims and that is what explains why Mr Tenenbaum is telling you, as I suggest he is, that we should not say that it has no basis, but you disagree with that, do you?

A. I disagree with that because, eventually, we did give a warranty that there are no claims.

Q. Very well.

Now, you tell us, this is at paragraph 23 of your statement, three lines down E2/09/277, that on 11 June 2004 you received two documents via email from Mr Mishakov who, as you explain, led Mr Deripaska's team and worked closely with Mr Deripaska, correct?

A. I don't -- yes, indeed.

Q. Can we just have a look at H(A)74, page 223, which is one of the two documents that you received H(A)74/223.

A. Yes, I'm there.

Q. Can you confirm that this is one of the two documents that you received from Mr Mishakov?

A. It looks like it, yes.

Q. This is a transaction chart that Mr Mishakov, Mr Deripaska's lawyer, the lawyer leading his team, had produced, and you can see that the top half of the page shows the transaction structures, a series of boxes and numbered steps, do you see that?

- A. Yes, I see that.
- Q. And the numbered steps are then explained in the bottom half of the page, do you see that?
- A. Yes, I see that.
- Q. And just can you help me with this, can we just identify which companies are named in the boxes on the page?
- RH Limited at the bottom, that's a reference to Rusal Holding Limited, is it not?
- A. Yes, it is.
- Q. And again you'll tell me if I'm wrong, but Rusal Holding Limited was the holding company which since September 2003 held 100 per cent of the stake in the Rusal group, that is both Rusal itself and its trading arm Rual?
- A. I don't know these details, but it is in my view the top holding company of whatever the Rusal group is, yes.
- Q. All right. And as a result of the first Rusal sale, 75 per cent of Rusal Holdings was by the summer of 2004 held by Mr Deripaska's company, Eagle Capital Group, that's right, isn't it?
- A. I assume so, yes.
- Q. And ECG on the left-hand side is a reference to Eagle Capital Group?
- A. That is correct, although the chart doesn't indicate that it owns the other 75 per cent, but yes.

Q. No, that's right. Now, the remaining 25 per cent, that's to say the 25 per cent not held by ECG, was held in the summer of 2004 by M, that's the bearer share BVI company that we saw featured in the source of funds letter; that's right, is it not?

A. That is Madison, yes, indeed.

Q. And M is Madison, thank you very much for that.

In broad terms, the purpose of the second Rusal sale was ultimately to transfer the remaining 25 per cent stake which Madison held in Rusal Holdings Limited to ECG, Mr Deripaska's company, Eagle Capital Group, that's right, isn't it?

A. That is correct, yes.

Q. But the shares were not to pass directly from Madison to Eagle Capital Group, were they, Mr De Cort, just looking at this chart? You can see that they were first to pass through two other companies identified as P and Beneficiaries' Company, correct?

A. That is correct.

Q. And that was so, was it not, Mr De Cort, even though Eagle Capital Group had a right of pre-emption under the deed of pre-emption of 2003?

A. That is correct. This is all part of an arrangement between the three parties.

Q. And that is why there had to be a waiver by ECG of its

pre-emption rights which we see in this diagram is the arrow identified as step three in the process. You can follow that point if you look at note 3.

A. Yes, that is correct.

Q. The point is also picked up at note 3 at the bottom, is it not?

A. Yes, that's correct. If I'm not mistaken, the waiver was conditional or it was drafted in such a way that the shares couldn't actually leave. They would eventually end up with ECG. I forget the exact wording but that was the concept at least.

Q. Now, P -- again, tell me if I'm wrong -- that was to be a parent company which sat above Madison, something like Espat?

A. Yes, a temporarily appointed parent company, indeed.

Q. So step one involved the stake in Rusal being passed by Madison to its parent, correct?

A. Yes.

Q. And then at the second stage, P Company, was to pass the 25 per cent stake in Rusal Holding on to the Beneficiaries' Company, correct?

A. Yes, indeed.

Q. And this is not in Mr Mishakov's note but can you just confirm that, initially, the Beneficiaries' Company was intended to be a company called Finance & Investors or

F&I?

- A. It was not identified at this stage, it was much later that it was identified as Finance & Investors, yes, initially.
- Q. And in fact because of problems I think with F&I's holding structure in the Marshall Islands, a different company called Cliren came to be used?
- A. I don't know what the reason was but indeed a different company called Cliren came to be used.
- Q. And in due course, in the draft sale documentation which we're about to look at, what is referred to here as the Beneficiaries' Company was often simply referred to as B, was it not, Mr De Cort?
- A. I believe that's correct, yes.
- Q. So just again looking at this, steps one and two are the transfer of the 25 per cent stake in Rusal Holding from Madison via the parent company to the Beneficiaries' Company, that's right?
- A. That is correct.
- Q. And then step three was to be the waiver of Eagle Capital Group's pre-emption rights?
- A. That is correct.
- Q. And then step four, which we can see is what Mr Mishakov wanted as explained in the numbering below, was a guarantee from RA -- that's Mr Abramovich, isn't it,

Mr De Cort?

A. Yes, indeed.

Q. We can see that the guarantee that Mr Abramovich was to provide was a representation and warranty that the beneficiaries -- and I'm looking now at note 4 -- the beneficiaries, B&B, are the ultimate beneficiaries of 25 per cent of Rusal Holding's shares. Do you see that, note 4?

A. Yes, I see that.

Q. I'll come back to that in a moment, Mr De Cort. But working through the diagram, the next step, step five, was to be the share purchase agreement between Eagle Capital Group and the Beneficiaries' Company, correct?

A. Yes, indeed.

Q. And by this, the Beneficiaries' Company would sell the 25 per cent stake in Rusal Holdings to Eagle Capital Group, correct?

A. Correct.

Q. And by that way the Eagle Capital Group, owned by Mr Deripaska, would ultimately end up with 100 per cent of the ownership of Rusal Holding?

A. That is correct.

Q. And then, just looking at the sixth and final step, this, as we see if we look at the notes, point 6, was for a release to be executed by the Beneficiaries'

Company jointly with the beneficiaries B&B, in which they would warrant that they were the beneficiaries of 25 per cent of Rusal Holdings and by which they would release Eagle Capital Group, Rusal Holding and Mr Deripaska from any claims relating to the establishment and management of Rusal Holdings?

A. Yes, I see that.

Q. And you received this memorandum, you tell us, via email from Mr Mishakov on 11 June 2004. That's right, isn't it?

A. I believe that to be correct, yes, together with the memorandum of Paul Hauser dated 9 June, also addressed to Mr Mishakov.

Q. We can see that second document, Mr Hauser's memorandum, if you go to page 219 H(A)74/219 and just briefly look at that.

A. Yes, I see that.

Q. That is, as you see, the memorandum dated 9 June 2004 which was sent by Mr Hauser to Mr Mishakov, correct?

A. Yes, indeed.

Q. This is what Mr Mishakov then sends on to you and we can see from the first paragraph that Mr Hauser says that this memorandum summarises the procedure by which the 25 per cent stake of "Rual Holdings" and I think that's a typo for Rusal Holdings because there was no Rual

Holding Company.

"... owned ... Madison ... would be sold to Eagle Capital Group..."

That's right, isn't it?

A. I can see that about the typo. I leave it up to you but it's probably likely a typo, yes.

Q. Mr Hauser says that his memorandum is intended to supplement Mr Mishakov's transaction diagram that we've just been looking at, which Mr Mishakov had sent to Mr Hauser earlier in the day. Do you see that?

A. Yes, I see that.

Q. That's why I suggest it's pretty clear that the reference to Rual should have been a reference to Rusal.

A. Yes, it's very likely, yes.

Q. Then just looking at what Mr Hauser says in bullet point 1, he says:

"We are advised [Mr Hauser and Mr Mishakov have taken instructions from someone] that Madison ... has bearer shares, all of which are currently in the possession of its parent [company] ('P'). The shares of P would be transferred to a company ('B') which is owned by ... ultimate beneficiaries ..."

Who Mr Hauser refers to as "BB", do you see that?

A. Yes, I see that.

Q. And I don't want to spend time going through this whole

document with you, Mr De Cort, but we can see --

A. I am broadly familiar with it.

Q. All right. We can see that there are further references by Mr Hauser in this memorandum to "BB". For example, if you look at bullet point 5 over the page H(A)74/220, you see towards the end that he's talking about a guarantee to be given by "each of BB", do you see that? "... on the part of B, the selling company", the penultimate line of point 5?

A. Yes, and so BB refers to the beneficiaries of company B.

Q. Yes. But there's plainly more than one that he has in mind?

A. Yes, he uses a plural.

Q. Yes. You see it again at bullet point 6, there's a reference to "any of BB", "it is expected that each of BB". He says --

A. Yes, he used the plural tense.

Q. And just looking at the italicised bit below point 6, bullet point 6, Mr Hauser says:

"We would expect to prepare Deeds of Release and Indemnity to be executed by each of BB [et cetera] ... to include an assurance that BB were the only persons who have ever been beneficially entitled to the Shares."

Now, it's fairly clear that when Mr Hauser is referring in his memorandum to the persons he refers to

as BB, those are the same persons which Mr Mishakov identifies on his diagram as the beneficiaries B&B. I think that reflects your own evidence?

A. It looks like that, yes. I just would like to note that this memorandum and the structure chart does not include any input from anyone on our side. This was purely done on Mr Deripaska's side.

Q. I was going to just check that with you. When Mr Hauser says at the start of his memorandum "We are advised", that advice hadn't come from you; that's what you're saying, is it?

A. That did not come from me, no.

Q. All right.

A. I had not spoken with Mr Hauser at that point in time, I believe.

Q. All right but you would have received this document from Mr Hauser?

A. No, I didn't receive it from Mr Hauser, I received it from Mr Mishakov.

Q. Indeed but you would have received Mr Hauser's document --

A. Yes, indeed.

Q. And when you received this document from Mr Mishakov, who did you believe Mr Mishakov and Mr Hauser were referring to when they referred to B&B or BB as the

ultimate beneficial owners?

- A. I don't think I paid particular attention at that point in time to this aspect of the transaction. I was focusing on how the shares moved around.
- Q. Are you really saying that you gave no thought at all to who it was they were saying were the beneficial --
- A. The very first time that I received this memorandum I did not pay any attention to this at all. I think I probably at first might have paid attention to this after my meeting with Mr Paul Hauser.
- Q. So you'd previously seen newspaper reports which suggested that --
- A. No, I had not seen previously newspaper reports. The newspaper reports were presented to me by Mr Hauser during our meeting.
- Q. Mr De Cort, I had understood from your evidence that you had seen the Moscow report, Moscow Times report of 3 June?
- A. No, it was Mr Hauser that brought it to my attention.
- Q. And when that had been brought to your attention, you understood that the reference to B&B were to Mr Berezovsky and Mr Patarkatsishvili?
- A. I now don't have any particular recollection but it is very possible that I could have understood it that way, yes.

- Q. It's fairly obvious that you would have understood it that way, isn't it?
- A. Yes, I said it's very likely that I would have understood it that way.
- Q. And what did you do at that stage to find out more about the position in relation to B&B as beneficiaries of this 25 per cent of Rusal, Mr De Cort?
- A. We had some internal discussions and I was told at some point in time clearly that the Rusal shares belonged to Mr Abramovich. They were being passed along to Mr Patarkatsishvili to compensate him for his involvement and that there was no truth to Mr Berezovsky's claims.
- Q. Mr De Cort, if you really had had those discussions and you really had been told by someone internally that there was no truth to the claims and therefore no basis for any reference to B&B as being the beneficiaries of these shares, can you explain why it was that you did not immediately go back to Mr Mishakov or Mr Hauser and explain that the memoranda that they had produced were just completely wrong?
- A. I'm sure that I addressed the issue of the ownership of the shares with Mr Hauser at some point and then the discussion all turned around to warranties that would be given.

Q. You see, Mr De Cort, it's absolutely plain from the documentation that you do not at this stage go back, either to Mr Mishakov or to Mr Hauser, and say: you have completely misunderstood, there are no beneficiaries sitting behind this 25 per cent stake, it is all owned by Mr Abramovich. But we find nothing at all from you passing at this stage to either Mr Mishakov or Mr Hauser to that effect.

A. I'm sure that I've passed the information on to them and that it was made clear, but the focus of our attention was on the warranties that were going to be given in this transaction.

Q. You see, there is no correspondence saying -- no documentation at all saying that that is what you have told them.

A. I disagree with that.

Q. All right. Can we next then, please, go to bundle H(A)75 and turn to page 37 to see what happens next H(A)75/37.

Now, you should, I hope, have at H(A)75, page 37 a document headed "Document Diary for Documentary Closing". Do you have that, Mr De Cort?

A. Yes, I have that.

Q. Were you the author of this document or do you think it was more likely produced by Bryan Cave, Mr Hauser?

- A. I was definitely not the author of this document. I'm not even sure I saw it at the time.
- Q. It has come from your disclosure though, do you see that?
- A. Yes, but I believe that that might have been provided to us at some point in time by people acting on behalf of Mr Patarkatsishvili, in connection with these proceedings. By the -- on the side of Mr Anisimov, I'm sorry.
- Q. I think if that were so, it would have a reference to the Anisimov defendants in the disclosure --
- A. No, what I'm saying, that it was provided at some point in time to us as a courtesy and eventually then ended up in our disclosure.
- Q. Now, we can see that as at 10 June 2004, when this document diary was produced, it was envisaged that a number of documents would have to be drawn up. Do you see that?
- A. Yes, I see that.
- Q. The purpose of this document diary appears to have been to identify those documents which needed to be produced and to assign the initial drafting of them to a particular party. Do you see that? That's correct, isn't it?
- A. That is obvious from the document, but I just want to

clarify that prior to these proceedings I had not seen this document.

Q. All right. But just see if you can help us with some things which arise out of this document. If you look down the right-hand column, headed "Responsible Party", you can see that the task of drawing up the document has been allocated to various people. Can you help us with this, Mr De Cort? "MH", that's likely to be a reference to Millhouse, is it not?

A. Yes, it is.

Q. And that is obviously an indication that your team -- it was envisaged that your team would have the task of drawing up that particular document, you would agree with that presumably?

A. By whoever was preparing the document, yes.

Q. And "Basel", you see that in the fourth box down, that is likely to be a reference to Basic Element, that's Mr Deripaska's company, correct?

A. Yes, indeed.

Q. And "Salford", they were assisting on Mr Patarkatsishvili's side at this time with the documentation of the transaction, were they not, Mr De Cort?

A. I was never aware of any involvement by Salford.

Q. Okay.

Now, again, just looking at the diary, still on page 37, you can see that it was envisaged that a number of parties would be required to enter into the contract. "RA", that's obviously a reference to Mr Abramovich, is it not?

A. I assume so, yes.

Q. And you see references to "B Co[mpany]" under "Sale of RH Shares to ECG," that would obviously be a reference to the Beneficiaries' Company that we saw on Mr Mishakov's chart, correct?

A. That is likely, yes.

Q. And "M" again would be Madison.

A. I would assume so, yes.

Q. And "P" would be Madison's parent, it's the same as the chart --

A. I assume so, yes.

Q. And "OD", which I'm not sure appeared on the chart, that is obviously a reference to Mr Deripaska?

A. That would be logical indeed, yes.

Q. Then do you see there are also references to "B1" and "B2", for example towards the -- the third or fourth last boxes on the page. B1 gives a guarantee, B2 gives a deed of guarantee, do you see that?

A. Yes, I see that.

Q. You see it again in box --

- A. I don't think I had seen the references to B1 and B2 before these proceedings.
- Q. Again one sees references to B1 and B2 on the following page, box 8.
- A. Yes.
- Q. And again, under "Delegation of Authorities" there's a reference to B2 authorising B1 to enter into the negotiations and agreement on his behalf, do you see that?
- A. I see that, yes.
- Q. Again, would you accept that it is reasonable to assume that B1 and B2 here were the same B&B, or BB, that we've seen identified in the other documents produced by Mr Mishakov and Mr Hauser?
- A. That is possible. As I said, I had not seen this document before these proceedings.
- Q. If you go to document number 11 H(A)75/38.
- A. Yes.
- Q. You see it says:
- "RA Deed or Release and Indemnity in favour of RH and its affiliates including an assurance that B1 and B2 are the only persons who have ever been beneficially entitled to RH shares."
- A. I see that.
- Q. Again that strongly suggests that that would be the BB

or the B&B because we saw from Mr Mishakov's --

A. Yes, it is likely that.

Q. And just looking at the last box, page 38, you can see that it was envisaged that a general power of attorney would be issued by B2 in favour of B1 authorising him to act on B2's behalf and to execute any agreements, do you see that?

A. I see that, yes.

Q. And you can see why that is needed if, for example, just looking back up the chart at box -- sorry, at document 8, page 38, you see that B1 is identified in the second box as being the signature person. In order to see what I mean by signature person you have to go back to page 37. The second box along identifies the signature person. And if you look at box 8, you will see that B1 is signing for B2.

A. Yes, indeed.

Q. So would you agree at least with this, that it's plain at this stage that it was envisaged by the author of the document that two ultimate beneficiaries were involved although one would be executing documents for and on behalf of the other, correct?

A. That is correct.

Q. Although I think we know that in fact no power of attorney was ever procured from Mr Berezovsky

authorising Mr Patarkatsishvili to execute deeds in relation to this transaction for or on his behalf, that's right, isn't it?

A. Not that I know of, yes.

Q. Can we just perhaps look at another document that was circulating at around this time, Mr De Cort, one with your mark-up on it. Can you go please in the same bundle to --

A. Page 155?

Q. -- 155, very good. You've done your homework H(A)75/155.

You see that this document had been headed up "Deed of Guarantee" and was to be a guarantee provided by Mr Abramovich, but you, it appears, have changed that language and you've replaced it with the words "Deed of Warranty and Indemnity", and indeed it's no longer to be executed by Mr Abramovich but rather by Madison and Madison's parent, whoever that might be. Correct?

A. Yes, that is correct.

Q. And then just looking at footnote 1, at the bottom of the page, which is an added amendment, it's right, is it not, that that indicates to us that this is your amendment. You put a note to yourself:

"ADC to discuss with [I think it must be Ms Khudyk]."

Is that right?

- A. Yes, all those amendments in this document are my amendments. It's a marked-up version of the document that I sent back.
- Q. Thank you. And if you just look, still on this page, to clause --
- A. Excuse me, the reason for the footnote is at that point in time we were at the very beginning stages of the transaction. I had no information, I had received a memorandum from Mr Hauser and Mr Mishakov, the transaction chart, and then I received this document. So I was really -- I was looking what was going on and where shares would pass, but that's the extent of my information at that point in time.
- Q. Just looking at clause 1.1(a), which is really where you put this footnote to speak to Ms Khudyk, you were saying there:

"In consideration of [Eagle] consenting to the disposal of the shares [that's the 25 per cent stake in Rusal Holdings] by Madison and the subsequent disposal of the shares by P, M&P [that's Madison and its parent] irrevocably warrants ... to ECG that.

"(a) during the period from 15 March 2000 up to and including the B Transfer, the ultimate beneficial owners of the Business Interests (as defined in the DPO)

[that's the 25 per cent stake in the Rusal group] represented by the shares..."

And then you have this:

"... are X and Y and that X and Y have been the beneficial owners since 15 March 2000."

Do you see that, Mr De Cort?

A. Yes, I see that.

Q. Of course we have seen from the source of funds letters and the Denton Wilde Sapte attendance note that you and Ms Khudyk were both involved in the Blue Waters transaction; you had been, hadn't you?

A. If Blue Waters is the one in 2003, yes, then I was -- I mean, involved in the transaction, I provided a source of funds letter.

Q. And you understood, as you tell us at paragraph 8 of your witness statement E2/09/271, you were told at the time of that transaction that it involved a temporary transfer of the ultimate beneficial ownership of Madison, through Madison of the Rusal group to Blue Waters, that's right, isn't it?

A. Yes, that is correct.

Q. And I suggest to you that that is a company that you knew to be associated with Mr Berezovsky and Mr Patarkatsishvili but you deny that?

A. Yes, I deny that. I didn't know that at the time,

I only found it out through these proceedings.

Q. You see, I suggest that is why you're putting down a marker here, as footnote 1, to discuss this warranty further with Ms Khudyk, to check with her that the Blue Waters transaction really had just been a temporary transfer of ownership, or whether it was the case that Mr Berezovsky and Mr Patarkatsishvili had always, since 15 March 2000, been the ultimate owners of the 25 per cent of Rusal as per this warranty?

A. No, the reason I put the footnote, as I just explained to my Lady, is that I was at that point in time just getting involved in the transaction, I did not have any information at all, to check on what basis we could give such a warranty.

Q. You tell us, Mr De Cort, at paragraph 33 of your witness statement, it's at page 281 E2/09/281.

MRS JUSTICE GLOSTER: That's in the new version.

A. No, I don't think I made any changes to paragraph 33.

MRS JUSTICE GLOSTER: Well, only a very small one.

MR RABINOWITZ: Looking at the second last sentence here, you say you cannot recall whether or not you discussed this matter with Ms Khudyk or what her response was.

A. Yes.

Q. You must surely have sought instructions from her, mustn't you, Mr De Cort, given the size of the

transaction?

- A. Eventually, after my meeting with Paul Hauser, yes, I had extensive internal discussions, as is now also evident from the correspondence -- the additional correspondence that was disclosed on last Friday.
- Q. Now, just looking at paragraph 33 again of your statement E2/09/280, you say you sent these revised drafts back to Mr Mishakov on 11 June 2004.
- A. Yes.
- Q. Can we just look at the covering email of 11 June and H(A)75, page 205 H(A)75/205.
- A. Yes, I'm there.
- Q. And again, it's clear from this that when you sent this back to Mr Mishakov you didn't suggest to him that there was a complete misunderstanding, that there were in fact not any two ultimate beneficial owners separate from Mr Abramovich who had owned the 25 per cent stake in Rusal; that's right, isn't it?
- A. That's correct. As I've said, at that point in time I had no information about that whatsoever.
- Q. So Mr Mishakov would, when he received this draft back from you, naturally have assumed that your understanding was the same as his understanding, namely that there were two ultimate beneficial owners, B&B, or X and Y, as they appeared in your draft, or B1 and B2, who had been

owners of the 25 per cent of the Rusal group since 15 March 2000. It's obvious, isn't it, Mr De Cort?

A. I don't think that's obvious. He had sent me a memorandum that indicates that. I had not denied it nor affirmed it and the warranty, I just briefly changed some language, some wording of the warranty but I made a footnote saying that I have to discuss this further. So from that you can very well imply that I'm not comfortable yet with this position.

Q. In fact what you had done was to change his B&B to X and Y?

A. No, actually I did not change B&B to X and Y. X and Y was in the original draft that Mr Mishakov sent to me.

Q. All right, but you didn't take X and Y out, did you?

A. No, because I had no information about it.

Q. We can at least agree about this, that when you sent this revised document back to Mr Mishakov, no one had told you that the purpose of the transaction was simply to compensate Mr Patarkatsishvili for his services and pay him outstanding commission?

A. I don't know exactly at what time I was told about that. It was relatively early on but I was -- I assume at the very latest it must have been around 15/16 June when we had the internal discussions following my meeting with Paul Hauser.

- Q. But I think you're accepting that, when you sent this back, no one had told you that the purpose of the transaction --
- A. So at that point in time indeed --
- Q. -- was simply to compensate Mr Patarkatsishvili for his services and to pay him outstanding commission?
- A. As I -- my evidence was that at the very latest, around the 15th/16th, I would have been told. It is clear from my correspondence that I did not yet know anything about the beneficial ownership of the companies. I don't know what was mentioned about the purpose of the transaction at that time.
- Q. You see, Mr De Cort, it's obvious because if you had been told that the only purpose of this transaction was to compensate Mr Patarkatsishvili for his services and pay him outstanding commission, there is no way you would have sent the document back in this format, unless that is you were happy to be involved in drawing up entirely fictitious paperwork. That is right, is it not?
- A. Logically that is correct, yes. I just -- I cannot tell you at what time I was told. That is correct.
- Q. Well, I think -- I mean, it's not only logically correct, it must be correct.

Anyway, let's see what happened next, Mr De Cort.

You tell us at paragraph 37 of your witness statement E2/09/282 that you recall going to Mr Hauser's office in London for a meeting or perhaps two meetings in mid-June 2004. It's page 282.

A. Yes, I see that that's correct.

Q. And there is correspondence in the files, I don't think we need to turn it up, which suggests that the meetings were on 15 or 16 June or 15 and 16 June in fact?

A. No, I think it is now clear from the additional correspondence that it was on the 15th.

Q. Right, so you think it was just on the 15th and not on the 16th?

A. Yes, I think if you turn to H(I), flag 1 H(I)/01/1, that is my email from 15 June to Mrs Panchenko and Mrs Khudyk in which I say, I had a meeting today with Mr Paul Hauser.

Q. Indeed. I'm not disputing you had a meeting on the 15th. It's really as to whether there was also a meeting on the 16th but you think there was only one meeting?

A. I think there was only one meeting. There's further reference to a meeting on the 16th apparently but it was a meeting in Moscow in which I didn't participate.

Q. All right. Now, you also tell us, this is paragraph 37, still in paragraph 37, about five lines in, that you can

recall that one of the main issues discussed was Mr Deripaska's need for confirmation of the ultimate beneficial ownership of the Rusal Holding shares from 15 March 2000 up to the date of transfer, correct?

A. Yes, indeed. Mr Hauser referred me to the -- to an article which I believe to be the article of the Moscow Times where these claims were being made by Mr Berezovsky and he said that, as a result of that, given that he was on notice, he had to seek confirmation about the beneficial ownership from the start-up of the operations.

Q. If you can go to a document, still in bundle 75, that you will see at page 228.001 H(A)75/228.001, that sheds some light on what it was --

A. It's H(A)75?

Q. Still in H(A)75, page 228.001, it's a very bright orangey colour.

A. Why are those in orange, if I may ask?

Q. They were added in after the trial bundle was put together I think, so that people could recognise that they had been added in late but that may not be right.

A. I don't think I've seen this document ever before.

Q. Well, can I just show you the document and you can --

A. Sure.

Q. It's a document headed "Madison Representations and

Warranties". If you go to page 004 H(A)75/228.004, you will see that it appears to have been produced by Bryan Cave, so that would be Mr Hauser --

A. Yes. I'm quite sure I've never seen this document before.

Q. -- on 14 June 2004. So that was a day before you say you met him?

A. Yes, it looks like.

Q. Can I just ask you then to go back to page 228.001 H(A)75/228.001?

A. Yes.

Q. You see, because if you look at the table at 228.001, we can see the warranties that Mr Deripaska was looking to receive both from RA, Mr Abramovich, and from the beneficial owners in the second and third columns. Do you see that?

A. I see that, yes.

Q. And then there is a column 4 for comments next to it. Do you see that?

A. I see the column, the "Comments" column, yes.

Q. Are you sure that Mr Hauser would not have shown you this document which he'd obviously just produced prior to meeting with you on the 15th?

A. I'm almost 100 per cent certain, yes.

Q. You see, you have said that the main item discussed at

the meeting was warranties in respect of beneficial ownership interests and here we have a document produced by Mr Hauser covering exactly that ground just before the meeting. I suggest to you it is likely that he would have shown you the document.

- A. No, it is highly unlikely that I've seen it. We had a discussion, he showed me a newspaper article and we had an overall discussion but I don't think he had produced any document particularly for the meeting.
- Q. I suggest that at the very least he would have raised with you the matters that he had set out in this document, which I'll show you.
- A. I think I've set out in my email what I -- in my witness statement what I believe the three main matters were that he wanted to cover, one of which was clearly the warranties regarding beneficial ownership from 15 March.
- Q. Let me show you what the document says because this may help trigger a recollection as to whether, even if he didn't show you the document, he would have raised with you the matters that the document sets out.

If you look at the first column, do you see the heading "Objective"?

- A. Yes.
- Q. And then under that Mr Hauser sets out his objective which is the:

"Need to confirm ultimate beneficial interest of shares from date of first agreement establishing Rusal to the date Shares acquired by Eagle Capital."

Do you see that?

A. I see that. That definitely does not ring a bell.

Q. Although you acknowledge that that was the main matter that you were there to discuss?

A. No. I mean, the first agreement that's referred to is not something I was aware of. I just was aware of the date 15 March 2000.

Q. All right. If you look at the next column, you can see that the warranty that was being sought by Bryan Cave was a warranty from Mr Abramovich that:

"During the period from 15 March 2000 up to and including the Final Transfer, the ultimate beneficial owners of the Business Interests (as defined in the [deed of pre-emption and option]) represented by the Shares were the Beneficial Owners."

Do you see that?

A. I see that.

Q. If you look to the next column, headed "Coverage from [the] Beneficial Owners", you can see that the corresponding warranties were also going to be sought by Mr Deripaska from the beneficial owners. Do you see that? Just have a read of that.

A. Yes, I see that, although I find it quite surprising that the people that are represented to be the beneficial owners would only give such warranty with respect to their knowledge. If they really are the beneficial owners, then it's a bit surprising.

Q. Well, if you look at the comments, you may have some insight into that. If you look at the comments in the fourth column, it says:

"We need to know ultimate beneficial ownership because if we do not know precisely who the beneficial owners are:

"(1) the buyer cannot be sure he is getting comprehensive releases from everyone with an interest in Russian Aluminium; and

"(2) the buyer cannot be sure that he is getting representations and warranties as to share ownership from the people who can give them.

"RA should be able to give unqualified assurance as to ultimate beneficial ownership because he was the trustee holding the Business Interests. Trustees can hold only for known, not for unknown beneficiaries.

"X and Y can give only a 'knowledge and belief' assurance as to ultimate beneficial ownership because they cannot know whether RA might have held the Business Interests for someone else. While trustees have to know

who their beneficiaries are, beneficiaries do not necessarily need to know that the trustee is holding something on their behalf (indeed, it is not uncommon for beneficiaries not to know that a trustee is holding assets in trust for them).

"It is possible in theory for X and Y to have held their beneficial interests for someone else or to have encumbered their beneficial [interest] without telling the RA that this was the case. In such a case, RA would hold the interest as trustee for X and Y who in turn would hold the interest as trustee for someone else. We need to know that this was not the case here and the only persons who can give such assurances are X and Y, not RA. However, this can be covered by a 'knowledge and belief' standard as X and Y will know whether they have been holding interests for a third party."

A. We had no discussion whatsoever about trusts or trustees. The word "trusts" and "trustees" was not used at all during our meeting, I'm quite certain about that.

Q. But what is clear from this, Mr De Cort, is that Mr Hauser went into your meeting on 15 June at which you recall the question of warranties as to beneficial ownership being discussed under the clear impression that Mr Abramovich was holding the 25 per cent stake in Rusal on trust for X and Y. That's right, isn't it?

- A. That looks like it from the document but we had no discussion whatsoever about trusts or trustees.
- Q. And presumably these matters would have been discussed between you and Mr Hauser, Mr De Cort?
- A. We had no discussion about trusts or trustees. We discussed beneficial ownership, that is correct, the warranties relating to beneficial ownership.
- Q. You say that notwithstanding what you say in paragraph 37, that one of the main issues discussed was Mr Deripaska's need for confirmation of the ultimate beneficial ownership of Rusal?
- A. Yes, as I say, we discussed ultimate beneficial ownership and warranties regarding ultimate beneficial ownership. We did not discuss any type of trust or trustees.
- Q. If you're talking about ultimate beneficial ownership of Rusal, doesn't that almost inevitably raise issues of trusts and trustees?
- A. We were discussing the type of warranty that was required. Ultimate beneficial ownership can take many forms.

MR RABINOWITZ: My Lady, that may be a convenient moment.

MRS JUSTICE GLOSTER: Very well.

Mr De Cort, you understand that you're not to talk to anybody about the evidence?

THE WITNESS: Yes.

MRS JUSTICE GLOSTER: Your evidence or about the case generally.

Very well. 2 o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: Just before we broke, Mr De Cort, I had asked you about the meeting you had with Mr Hauser on 15 June at which you discussed the question of warranties in respect of beneficial ownership going back to 15 March 2000. But you tell us, this is at paragraph 38 E2/09/282 of your witness statement, that you were reluctant to give the warranties that Mr Hauser was seeking, and do have paragraph 38 open, but you mention two concerns there, don't you, Mr De Cort?

The first concern that you mention was Mr Hauser's reference to the press reports which we've looked at in which Mr Berezovsky was alleging that he had an interest in Rusal, and you say you were concerned that anything Mr Abramovich might say about beneficial ownership might come back to haunt him, is that right?

A. Yes, it's correct, it's what I say.

Q. You give as an example a situation in which there was an

IPO of Rusal in a few years' time and Mr Berezovsky would halt the process, making a claim on some or all of the assets, correct?

A. Yes, that's what I say.

Q. Just pausing there, the warranty that Mr Hauser was looking for at this stage was a warranty from Mr Abramovich that Mr Berezovsky and Mr Patarkatsishvili would have been the ultimate beneficial owners of 25 per cent of Rusal since 15 March 2000, that's right, isn't it?

A. That is correct.

Q. And if Mr Abramovich had given that warranty to Mr Deripaska, and it was mirrored by similar warranties from Mr Berezovsky and Mr Patarkatsishvili, which is what we've seen Mr Hauser was looking for in his 14 June warranties chart, then there would have been no prospect of Mr Berezovsky sticking a spanner in the works at a subsequent IPO, would there? You would have given Mr Deripaska his own warranty about beneficial ownership and entered into a release?

A. I don't understand the last sentence of your question.

Q. Well, if you had given the warranty that Mr Hauser was looking for --

MRS JUSTICE GLOSTER: Which page are we looking at in terms of the warranty that Hauser is looking for?

MR RABINOWITZ: If your Ladyship goes back to his warranty chart?

MRS JUSTICE GLOSTER: Yes, that's where I am.

MR RABINOWITZ: It's 001 H(A)75/228.001.

MRS JUSTICE GLOSTER: Yes, I'm there. Whereabouts? It's "Coverage from Beneficial Owners"?

MR RABINOWITZ: Indeed. Effectively saying that they were the only -- sorry, H(A)75.

MRS JUSTICE GLOSTER: I mean, it's "Coverage from Beneficial Owners", you're looking at that column?

MR RABINOWITZ: Indeed.

So in effect if you had a warranty from Mr Abramovich saying that the owners of the shares were the beneficial owners, and the beneficial owners said they were the only beneficial owners, then you couldn't have Mr Berezovsky throwing a spanner in the works because accompanied by those warranties, and we saw this from Mr Mishakov's structure chart, would have been a release.

A. But that would not have represented the true position.

Q. Well, I suggest to you, Mr De Cort, that it would have represented the true position.

A. No, what I was told, following my meeting with Hauser, we had internal discussions and I was told in no uncertain terms that these shares belonged to

Mr Abramovich and only to Mr Abramovich, that there was no truth to the claims of Mr Berezovsky, and that Mr Abramovich ever had any dealings with Mr Patarkatsishvili in connection with the aluminium assets.

MRS JUSTICE GLOSTER: Mr Rabinowitz, can I be clear, are you putting the suggestion that the problem would have been removed if a warranty had been given by Mr Berezovsky and Mr Patarkatsishvili? Is that the suggestion you're making to the witness, that they should have asked Mr Berezovsky and Mr Patarkatsishvili to come up with some sort of warranty?

MR RABINOWITZ: The main warranty would be a warranty by Mr Abramovich saying that Mr Berezovsky -- that the beneficial owners were the beneficial owners. If you had that and you then had Mr Berezovsky also saying that, to their knowledge, they were the only beneficial owners, accompanied by a release given to Mr Deripaska and indeed to Mr Abramovich, it's difficult to see how Mr Berezovsky could later come along and disrupt events because he would have been brought into the transaction, which is what Mr Hauser was envisaging --

A. There is now a very nice theoretical construct from Mr Abramovich. If you go back and look at H(A)75/196, that is an email from Mr Streshinsky -- from Mr Mishakov

to me in which he very clearly indicates that Mr Streshinsky was not ready to give any type of warranties whatsoever about the shares, except from the day that company B would take ownership over the shares.

We can discuss many theoretical constructs here today. We need to look at the facts, and the facts are what they are.

Q. Well, let's just look at what you say at paragraph 38 E2/09/282, because that's the first of the grounds that you give, concern that Mr Berezovsky could throw a spanner in the works.

The second of the grounds that you identify in your witness statement is the one we've already touched upon which is the concern you had arising out of your own involvement in the source of funds letter for Blue Waters as a result of which you knew that on a temporary basis, at the very least, Blue Waters had been the ultimate beneficial owner of Madison, and through Madison the Rusal group, correct?

A. Not fully correct. It would have been the beneficial owner of Madison but probably not the ultimate beneficial owner, and ultimate beneficial ownership typically goes to an individual.

Q. All right. And I've already suggest to you that you knew that Mr Berezovsky and Mr Patarkatsishvili were

associated with that entity and I know that you deny that?

A. I did not know that at the time.

Q. But we now know, do we not, Mr De Cort, in light of the documents that were disclosed for the very first time on Friday, that there was in fact another reason, indeed I suggest to you this was the real reason, why you were not prepared to give Mr Hauser the warranties on beneficial ownership that he was seeking.

Can I ask you, please, to go in bundle H(I) to tab 4, page 17-18 H(I)/04/17.

A. Before we turn there, maybe I can just clarify 38 and the two reasons I give, if I may.

MRS JUSTICE GLOSTER: Yes, go ahead.

A. I was told, as I've already explained, in no uncertain terms that these shares only belonged to Mr Abramovich. There was no truth to the claims being made by Mr Berezovsky. At the same point in time, I knew that the shares had temporarily transferred and therefore we could not cover that period definitely. In addition, given that the claims were being made by Berezovsky, I did not want to expose Mr Abramovich to any liability and, therefore, for those purposes did we not give a warranty as to historical ownership which, in addition, as I've explained before, is an extremely

unusual warranty to ever give in a corporate transaction.

Eventually, this was resolved as a matter of risk allocation between the parties in the deeds of acknowledgement which we at some point in time probably will turn to.

MR RABINOWITZ: Yes, we will get to that, Mr De Cort. Can you in the meantime, please, go to bundle H(I) tab 4, page 17 where I suggest we will see the real reason that you did not want to give the warranty H(I)/04/17.

Do you see at page 17 an email from yourself to Ms Panchenko dated 16 June 2004, also copied to Mr Tenenbaum at a couple of addresses; do you have that?

A. Yes, I see that.

Q. This would have been just after your meeting with Mr Hauser at which the warranties were discussed, correct?

A. After my meeting with Mr Hauser and after our internal discussions.

Q. All right. Let's just look at what you say. You say:

"Dear Irina [that's Ms Panchenko].

"Following our conversation earlier this afternoon, I enclose a draft reply to the Bazel's ..."

That's Mr Deripaska's counsel, Base Elements. And then you carry on with the email:

"You will note that I have left two variants with respect to the 1st item regarding beneficial ownership. Having discussed this further with Eugene, we feel that we would rather not give this warranty as we would not want to further document BB's beneficial ownership."

Do you see that, Mr De Cort?

A. Yes, I see that.

Q. If you then look over the page H(I)/04/18, you see at the first numbered item, we see the two variants of the beneficial ownership since 15 March that you were considering warranting, variant A and variant B. And:

"Variant A -- Madison can warrant to the best of its knowledge regarding its ultimate beneficial owner being [BB]."

Then:

"Variant B -- Madison will not give any warranties regarding its ultimate beneficial owner."

So just looking back at the first page, the covering email, it looks as if, having spoken with Ms Panchenko and then more recently with Mr Tenenbaum, Mr Tenenbaum's preference was that there should be no warranties on beneficial ownership, that's to say variant B. And that, as you document here, is because you do not want to further document BB's ownership. Is that what Mr Tenenbaum told you, Mr De Cort?

A. No, this is the conclusion that I came to based on our discussion. As I've explained, I was told in no uncertain terms that those shares solely belong to Mr Abramovich. The reference to further documenting is a reference to the document that you find at H(A)75/155, which is a draft of deed of guarantee and indemnity that we've looked at earlier in which the other sides, without our initial participation, made such a warranty.

And I, coming to the conclusion -- having the information I then had, I said there is no reason that we would want to say anything that any third party could misconstrue, even if that was possibly to assist banks, as we now know the -- Mr Anisimov and his colleague Mr Streshinsky were dealing with banks and trying to pass information to banks, and I did not want there to be any ambiguity that there was any truth to such a statement.

Q. You see, Mr De Cort, I suggest your concern about not further documenting the beneficial ownership of BB is not to do with a draft that you had produced, but it has to do with the source of funds letter that you had drafted in August 2003 and your knowledge that those entities were related to Mr Berezovsky and Mr Patarkatsishvili. That is right, isn't it?

- A. That is not correct at all. I only understood Blue Waters to be associated with Mr Berezovsky and Mr Patarkatsishvili as a result of those proceedings here.
- Q. Can you explain, please, why at paragraph 38 of your witness statement E2/09/282 you nowhere mentioned this reason about not wanting to further document the beneficial ownership of Mr Berezovsky and Mr Patarkatsishvili?
- A. Because I did not -- obviously those documents were harvested from our computers, from our PCs, but in preparing my witness statement these documents were not particularly drawn to my attention, probably as a result of the fact that they were initially considered privileged, and I've probably not considered them fully at the time, otherwise I would have gladly included it in my witness statement.
- Q. You see, you must have been conscious that this document existed at the time you were drafting your two reasons, Mr De Cort? I suggest to you that you have deliberately not referred to this, which I suggest is the real reason?
- A. No, that is not correct. That is not correct.
- Q. You see, Mr De Cort, what I suggest is that the email that you have disclosed in fact gives us an insight as

to what the internal thinking within Millhouse was, and that is this: that you never wanted to document Mr Berezovsky's beneficial ownership in relation to Rusal, just as in relation to Sibneft, not because that did not accord with the true position but because you were concerned that Mr Berezovsky would use any such documentation as a basis to bring claims which you knew were fully justified against Mr Abramovich both in relation to Sibneft and Rusal. That's right, isn't it?

A. That is wrong. As we've previously also discussed this morning, the BB reference here is not a reference to Mr Berezovsky, it is a reference to the beneficiaries, the B company.

Q. B&B, Mr De Cort, as I thought you had accepted already, was very likely to have been a reference to Mr Berezovsky and Mr Patarkatsishvili, and you knew that, did you not?

A. That is correct, but in your question at [draft] page 104, line 3 of the transcript, you said:

"... [not want] to document Mr Berezovsky's beneficial ownership ..."

Q. Yes, but it would have been obvious, Mr De Cort, that when you came to produce the final documentation, that would have been a reference to Mr Berezovsky and Mr Patarkatsishvili?

A. Yes, and there was no truth to that.

Q. Well --

A. And that's the reason why it was not to be documented.

Q. Can we then just have a look at another document that you have only just disclosed, and that is at bundle H1 (sic), tab 1, page 1 H(I)/01/1.

A. Yes, I see that.

Q. This is an email from yourself to Ms Panchenko and Ms Khudyk referring to your meeting with Mr Hauser on the 15th. You say:

"I had a meeting today with Paul Hauser... counsel to Base Element, to discuss the principal outstanding issues."

Then you explain that at your meeting with Mr Hauser he wanted to lay out what his client was looking to receive, and the first item that Mr Hauser was looking for was confirmation of the ultimate beneficial ownership of the Rusal shareholding from 15 March 2000, you can see that in your first point there.

A. Yes, I see that.

Q. Then if we look further down the page, below the redaction, the first big redaction and before you get to the second redaction, we can see what you say in relation to item 1. You say that you've discussed the matter with Natalia, that's presumably Ms Khudyk, isn't

it, Mr De Cort?

A. Yes, that's correct.

Q. And she says that as the matter "is not known to P", that's Madison's parent, isn't it, Mr De Cort?

A. Yes, it's a temporary company with nominee director, employee directors who don't have any knowledge of this information.

Q. She's saying, Ms Khudyk, that P would not want to make any statement; that's correct, isn't it?

A. That is correct, as I explained, because P is a temporary company with either nominee directors or employee directors who have no involvement with these matters, so they would not have any knowledge to make such statements.

Q. Then look at the second point, you say:

"I have already indicated to the other side that if we were to make any statement in this respect, such statement would be limited to 'the best of our knowledge' as we don't know whether B Company (BB) is maybe acting as a front for other ... beneficial owners."

Do you see that?

A. I see that, and I can explain if you'd like.

Q. Now, do you see, Mr De Cort, that what you are saying in this email to Ms Panchenko, in terms of the issues that

you discussed with Mr Hauser, very largely corresponds to what Mr Hauser had identified as being the matters to be discussed with you in the document that we looked at earlier, Madison representations and warranty documents.

- A. Yes, and I confirm categorically that I have not seen this document.
- Q. Do you not think that, in light of the fact that you are responding in a way which corresponds with the issues that Mr Hauser raised with you, you may well have seen the document, or at least that he put these points to you from that document?
- A. He put those points to me but he did not show me any document, and I have not seen this document until this morning actually.
- Q. All right, but let's just go then back to what you say --
- A. And in my witness statement, the way I have put those points, I have actually derived that from my email of 17 June that is also in the disclosure, it's referenced in my witness statement. That's the basis on which I made the statement in paragraph 37 E2/09/282, I believe, where I identify the matters we most likely discussed.

I, at that point in time, had not seen this email that we are now looking at.

Q. Just looking at what you say, just above the larger redaction towards the bottom of the page:

"I have already indicated to the other side that if we were to make any statement in this respect, such statement would be limited to 'the best of our knowledge' as we don't know whether B Company (BB) is maybe acting as a front for other ultimate beneficial [shareholders]."

What is at least clear from this email, Mr De Cort, is that when you had your discussion with Mr Hauser on the 15th you did not say to him: what are you talking about? There are no ultimate beneficial owners called BB or represented by BB. This stake just belongs to Mr Abramovich?

A. Indeed I didn't tell him that. As I've already explained a few times today, when I went -- the first time that Mr Berezovsky's name in connection with Rusal was mentioned to me was in that meeting. I went into that meeting blind, I had no information. It's after that meeting that we started internally discussing the situation.

Q. Are you really saying that you went to this meeting blind without having taken any instructions from anyone in Millhouse as to what the position was?

A. Yes.

- Q. I suggest to you that is simply --
- A. That is entirely the truth.
- Q. Right. I suggest to you that is not the truth.
- A. That is the truth. I disagree with you.
- Q. Can we at least agree on this, that what this document indicates, at least at this point, is that your understanding was that there were other ultimate beneficial owners, referred to as BB, who owned the 25 per cent stake of Rusal, and the only thing you were not sure about is whether they were acting as a front for other beneficial owners?
- A. I at that point in time had no information whatsoever, but indeed I made that statement, I write it here. But I had no information at all what the position was.
- Q. Well, your understanding at least was that there were other beneficial owners, referred to as BB, who owned the 25 per cent stake of Rusal, and the only thing that you were not sure about, on the base of your understanding, is whether they were acting as a front for other beneficial owners.
- I'm just asking you about your understanding,
Mr De Cort.
- A. This is a reflection of what I said to Mr Hauser, yes, that's correct.
- Q. And what was your understanding at that time?

A. I had basically no information, I was just commenting on a warranty that he was asking me to make, and I commented just as a draftsman would comment on a warranty without having any information, saying: there's probably carve-outs that are needed, et cetera.

I was working in a vacuum at that point.

Q. You say you were working in a vacuum and that you had received -- not bothered to get any information at all?

A. No, because this transaction started for me as a transaction just to transfer ownership of the shares. I did not consider -- I had not assumed when we started this transaction there would be requests for ultimate beneficial ownership et cetera, and eventually we'd have to do the due diligence on that to determine what the situation is.

As a draftsman, a corporate draftsman, not every draft is like a signed witness statement. These are drafts based on the information, the best information at that point in time you have, and that information may be very little.

Q. If this was your understanding at the time, can you tell us what your understanding was based on?

A. I had basically no understanding about the ownership structure of Rusal, I was just looking at the drafted warranty, and where probably there would be limitations,

such as saying something should only be to our knowledge et cetera. It's just a pure drafting exercise.

But it became clear from the meeting that there were issues based on the article that Mr Hauser referred me to, and after that we had an internal discussion, which then led to my email of 17 June to Mr Hauser.

Q. Now, I want to ask you next, if I may, about the revised structure of the Rusal sale transaction which arose on 17 June 2000 which you refer to in paragraph 39 of your witness statement, that's page 283 E2/09/283.

We saw, Mr De Cort, from Mr Mishakov's transaction chart, we looked at that this morning, that the second Rusal sale was originally going to be structured with a transfer from Madison via its parent company, P, to the Beneficiaries' Company, B. Do you remember that, Mr De Cort?

A. Yes, I do.

Q. But we know that on 17 June 2004, Mr Streshinsky, who was instructed on Mr Patarkatsishvili's side of the transaction, sent two emails to Ms Khudyk suggesting a revised transaction structure, is that correct? Do you remember that?

A. Yes.

Q. I wonder if we could just turn to the first email that Mr Streshinsky sent to Ms Khudyk, bundle H(A)76, page 54

H(A)76/54.

A. It's also in the H(I) bundle, I think.

Q. All right. Well, H(A)76, page 54.

A. Yes, I'm there.

Q. Now, we can see there that Mr Streshinsky was proposing a simplified structure split into two parts, relating to dividends and shares. Under the first paragraph, Mr Streshinsky says:

"BP (an individual) and B (a company with B as the sole shareholder) on the one hand, and M on the other hand, shall conclude the Deed of Accounting and Release, which would approximately state the following."

Just pausing there, we know that Mr Streshinsky's evidence is that the reference to B in the parenthesis he is going to say was a typo; that's not something that we accept, but that's a matter I'll have to take up with Mr Streshinsky and not let that detain us with you, Mr De Cort.

A. Mm-hm.

Q. What we then see Mr Streshinsky proposing was that the parties, including Madison, should provide the following acknowledgement, that:

"... according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of

shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery and also in the establishment and capitalisation of R Holding, and at the time of the establishment of R Holding they became and still are [the] beneficiary owners of 25% of shares of R Holding, who, among other things, have the right to receive all dividends payable on the above 25% of shares in R Holding and the right to receive such shares, whereas M was and still is the nominal holder and the trustee in respect of such shares, and holds them for the benefit of B/BP."

Do you see that?

A. Yes, I see that.

Q. So Mr Streshinsky, like Mr Hauser, was also suggesting that there should be a warranty, or a reference at least, to the historic beneficial title, wasn't he, Mr De Cort?

A. Yes, I see that.

Q. Mr Streshinsky, like Mr Hauser, was also suggesting that there was a trust relationship, and that B/BP, whoever those persons or entities might be, were the ultimate beneficial owners of 25 per cent of Rusal, and indeed had been since 15 March 2000; that's right, isn't it?

A. That is what's written here, yes, but we will have to discuss this when we look at the next document.

- Q. Mr Streshinsky's email, to which this letter was attached in Russian, was sent to Ms Khudyk at 10.05 on Thursday morning. You can see that if you go to page 23 of the same bundle H(A)76/23.
- A. I think 1.05 on Thursday afternoon but -- which page?
- Q. Page 23. You see it says 10.05 BST?
- A. Yes, British time, that time, yes. 10.05 British time, 1.05 Moscow time.
- Q. All right. We now know from Ms Panchenko's evidence that Ms Khudyk must have shown Mr Streshinsky's email to her because Ms Panchenko has acknowledged that it was she who had a telephone conversation with Mr Streshinsky that day. Just for the transcript, that is at Day 27, page 8, line 2.

Following the telephone conversation with Ms Panchenko, Mr Streshinsky then sent through, later on 17 June 2004, a revised version of the simplified structure. You can see that if you go to page 65 H(A)76/65. That's the covering email. We have the text itself at page 57, a few pages back H(A)/76/57.

- A. Yes, I see that.
- Q. And if you have page 57, we can see that Mr Streshinsky starts this letter by saying:

"As discussed over the phone [and that's obviously a reference to the conversation with Ms Panchenko], in

order to meet the representations that you previously made to the banks, please find below an alternative structure."

Do you see that, Mr De Cort?

A. I see that.

Q. And then if you go down below to paragraph 1, we can see how this has now changed. The first five lines about the agreement of the 10 and 15 March 2000 and oral and other arrangements have stayed the same. But whereas before the parties were to expressly acknowledge a trust relationship and beneficial ownership in favour of B/BP, we now see that the acknowledgement is to be this:

"M undertook to pay [to] BP and B the amounts equal to those received as income on 25 per cent of shares in R Holding, including dividends payable on such 25 per cent of shares and amounts/assets received from any sale of such 25 per cent of shares ..."

Then in brackets, one for the lawyers:

"Therefore, it was solely a right in personam rather than a trust or a right in rem -- a lawyer's comments."

Do you see that, Mr De Cort?

A. Yes, I see that.

Q. So Ms Panchenko seems to have told Mr Streshinsky that the deal should be structured differently, and in particular we can see that it appeared she was unhappy

with the first proposal that Mr Streshinsky was making which would have involved a formal acknowledgement of a trust relationship between Madison and B and BP, that's correct, isn't it?

A. I disagree with that.

Q. Right, can you tell me why you disagree with that?

A. Yes, I can, because you're missing one piece of the puzzle. And the piece of the puzzle you're missing is the first email that Mr Streshinsky sent to Ms Khudyk.

It is clear from the cover email, it is at H(I)6/21, it is clear from that email that the first proposal that Mr Streshinsky sent was a proposal he sent after a meeting the preceding day with people on our side, most likely Ms Panchenko and possibly also Ms Khudyk. So the very first proposal that Mr Streshinsky sent was following a discussion with our side.

Now, it is extremely unlikely that Ms Panchenko would have said on one day, "Yes, there is a trust," and then the next day called back saying, "Oh no, there is not a trust." So the more likely version of events here is that Ms Panchenko described exactly what is described in the second version of the Coalco letter, namely that there was an entitlement to get the proceeds of those shares, there was no trust, and that the lawyers on the

side of Mr Streshinsky had misunderstood this.

I think that is a much more likely event -- events that took place.

Q. Well, I suggest that, in fact, what has happened is that Mr Streshinsky did understand there to be a trust arrangement but, as a result -- and I accept that it's as a result of what Ms Panchenko said to him at some point, presumably during the telephone conversation -- he has redrafted the scheme so as to suggest that the 25 per cent entitlement to which B/BP should have in the Rusal shares should be in personam and not in rem?

A. He indeed corrected it after the telephone call because Ms Panchenko called him saying, "This is not what we discussed yesterday. There is no trust. You are entitled to receive the proceeds of those shares."

Q. Do you see --

A. Otherwise Ms Panchenko would have said one day that there is a trust and the next day there is no trust. I think that is extremely unlikely.

Q. Well, if you look at the top of the letter, do you see that Mr Streshinsky says:

"As discussed over the phone, in order to meet the representations that you previously made to the banks, please find... an alternative structure."

That suggests that the reason Mr Streshinsky was

given by Ms Panchenko for the change in structure was because of representations that Millhouse or Madison had previously made to banks, correct?

A. And those representations to banks represented the truth, there was never any trust, and so when Mr Streshinsky wrote it in the form of a trust, Ms Panchenko said: sorry, we can't say that because that is not a truth. The representations have also been made in line with those -- with the facts as they are, namely that these are Mr Abramovich's shares, and Mr Patarkatsishvili is only entitled to the economic benefit that he will now receive by means of those shares.

Q. If what Ms Panchenko was saying to Mr Streshinsky was, "Look, you got it wrong, what you have put down in your structure doesn't represent the true position," that is what she would have said to him. But what she has instead said to him is, "Because of representations we have made to banks we need to change the structure."

A. No, she probably said "It's entirely wrong. We amongst others have made representation to banks that contradict this".

Q. Well, I suggest the position is --

A. You're not saying that these two lines are exact -- the literal transcription of the telephone conversation

between Mr Streshinsky and Ms Panchenko I would assume?

- Q. I suggest the position is perfectly clear from what Mr Streshinsky says in his letter, Mr De Cort?
- A. I disagree with that.
- Q. Can I ask you this, Mr De Cort, can you tell me, was the concern that Ms Panchenko mentioned to Mr Streshinsky the real concern, that any representations would conflict with representations previously made to banks, or was the real concern the one that we've seen recorded in your email to Ms Panchenko, following your conversation with Mr Tenenbaum, namely that you should not make any representations that would further document BB's beneficial ownership?
- A. No, we didn't want to mislead anyone. The shares were Mr Abramovich's shares, and we did not want to create any documents that would show anything different because there was no basis for that.
- Q. Can I ask you next, Mr De Cort, please, to go to page 69 in bundle H(A)76 H(A)76/69.
- A. Yes, I'm there, sorry.
- Q. It's an email from yourself to Mr Hauser timed at 19.50 hours CEST. CEST stands for what?
- A. I think it's Central European Standard Time, that's Paris, Brussels time basically.
- Q. Thank you. And you are sending this email after

Mr Streshinsky's revised letter and the telephone conversation to which it refers. We can see, looking at your email to Mr Hauser on the evening of 17 June, that you say this:

"Dear Paul.

"I tried to call you but did not get an answer at the Basic Element [office] and your mobile was answered but then shut off.

"This is where we are on the issues we discussed.

"1. There would be no personal undertakings/guarantees. Only Madison (and, if relevant, P) would warrant/undertake.

"2. There would be no warranties about beneficial ownership."

Just pausing there, up until this point, the transaction as we've seen had been proceeding happily on the basis that there were to be warranties to the effect that X and Y or BB had been the ultimate beneficial owner since 15 March 2000, that's right, isn't it?

A. No, that's not right, the transaction wasn't proceeding happily. There was barely any process. It had just started.

Q. All right. We've certainly seen that Mr Hauser was looking for that sort of warranty, that's right, isn't it?

- A. That is correct.
- Q. And we saw that your amended deed, which you sent back to Mr Mishakov on 11 June, contained a warranty about X and Y being beneficial owners, correct?
- A. In absence of information, I was just amending briefly the wording, but I had no base -- no information to know whether or not this is something we would eventually be able to give.

In a corporate transaction things are often drafted and negotiated and in the process, in parallel, or subsequently, before they get signed, people do the due diligence to make sure that the warranty can be given.

- Q. So on this day, 17 June, when Ms Panchenko, having understood what warranties were to be given, telephoned Mr Streshinsky telling him that those warranties could not be given because of representations made to the banks, you on that same day then email Mr Hauser and, certainly for the first time in any written communication that we have seen, you tell him that, contrary to the drafts which have passed between you, there are now going to be no warranties about beneficial ownership?
- A. Yes, indeed. Following our internal discussion it became clear that these were Mr Abramovich's shares. We could not give anyone the impression that they belonged

to anyone else. At the same point in time, given the claims being made, I advised that we better do not give any warranties so we don't expose ourselves.

There's a number of reasons for that. Warranties about the historical beneficial ownership I've never seen in any other transaction, they were quite unusual, particularly also about the ultimate beneficial ownership. Furthermore typically warranties are limited to the amount of the purchase price to be received. Here the purchase price on Mr Abramovich's side was zero, so we wanted zero exposure. We were willing to assist, to pass(?) the shares along, but we were not going to take on additional liabilities.

- Q. Would it be right to assume, Mr De Cort, that what has happened here is that Ms Panchenko, as well as speaking to Mr Streshinsky on 17 June and telling him that the beneficial ownership warranties would not be given, also speaks to you on 17 June and told you that you were to make it clear that no beneficial ownership warranties would be given?
- A. I think it follows from my email on 16 June that I wrote to her and that we've looked at previously that, yes, we did have a discussion. I don't think that she specifically told me not to give the warranties, that was something that more likely is a decision that I took

as the lawyer -- or not more likely, I'm quite certain about that. But yes, we had a discussion overall about the transaction.

- Q. Can we then go back to the document at H(I) tab 4, please H(I)/04/17. This is where you set out variants A and B. She obviously has come back to you and said, "Go with variant B." That's right, isn't it?
- A. No. If you see from the cover email, it's very clear that I indicate my preference to go for variant B, and then as a project manager of course I discuss that with her and that's the way we proceed.
- Q. Of course, from this point on, it is fair to say, is it not, that any possibility of Mr Berezovsky being mentioned in any contractual document simply disappears?
- A. There was no basis for that.
- Q. Okay.
- A. And actually, as we've seen before, when we looked at a document at H(I), tab 11, I at some point in time suggested to make a reference to the press reports but eventually that got taken out.

And for reference, for the transcript, the document, the deed of settlement, is at H(A)86/53, that's where Madison gives the warranty about no claims.

- Q. Now, the position as to what could be said about beneficial ownership remained an issue between you and

the people acting for Mr Deripaska for a little while after that, didn't it, Mr De Cort?

A. Yes, because we had to deal with the allocation of risk. Warranties are ultimately an allocation of risk between parties to a transaction.

Q. They, in general terms, wanted some sort of representation or statement about beneficial ownership and were not content for nothing at all to be said, that's right, isn't it?

A. Yes, but we made sure that in no document there was a document that could possibly be shown to banks or elsewhere, there would be any reference -- that there would be anything included that was untrue. Therefore this was done in separate documents, the deed of acknowledgement only between the three principals who knew with their eyes wide open that this was solely for purposes of risk allocation.

Q. Do you recall, Mr De Cort, that the position regarding the beneficial ownership warranty started to be resolved following a telephone call between yourself and Mr Mishakov which took place on 2 July 2004? You refer to this very briefly in footnote 46, page --

A. I recall that there was somewhere a reference to a phone call, yes.

MRS JUSTICE GLOSTER: What paragraph?

A. I don't recall that particular phone call but --

MR RABINOWITZ: It's footnote 46 on page 288, my Lady
E2/09/288.

A. This phone call is purely a reconstruction.

Q. Okay. We can turn up the email that I think you're
reconstructing from, if you go to bundle H(A)79 at 139,
please H(A)79/139.

A. Can I put this back?

Q. Yes, you can, sorry.

So this is an email from yourself to Mr Mishakov
dated 6 July 2004. Can I ask you just to read that
email briefly to yourself, please. (Pause)

A. Yes, I've read it.

Q. Thank you. So what we can see you saying here, on the
second paragraph, is that on Friday, that is
2 July 2004, the issue which was identified was that
Mr Mishakov was concerned that Millhouse would say one
thing now but subsequently say another. Do you see
that?

A. Yes.

Q. And in order to address that concern, you explained
that, while you were not prepared to make any statement
about beneficial ownership for the past and in
particular you were not ready to make any representation
or warranty, you were willing to sign a document,

deposition, which would freeze the position and not allow Mr Abramovich subsequently to say something inconsistent; that's right, isn't it?

A. That is correct, and that shows exactly how open we were about this.

Q. If you then look at paragraph 47 of your witness statement, page 288 E2/09/288, you tell us, this is five lines from the end, that this was a matter that you may have discussed -- or that you believe you discussed with Mr Tenenbaum and had agreed with him as an appropriate way forward. Correct?

A. Yes.

Q. In this email to Mr Mishakov at page 139 H(A)79/139, you tell him that you can live with him turning the deposition into a deed of acknowledgement but that you don't want to include any reliance language because you were concerned that, by doing so, this might effectively turn it into a warranty which is what you wanted to avoid, correct?

A. Yes. As I said before, my purpose was, although I knew exactly well that these were the shares belonging to Mr Abramovich, my purpose was to avoid any type of liability.

Q. Then with regard to content --

A. But at the same point in time, to make it clear what the

facts were, I was willing to enter into a deed of acknowledgement to explain what the facts were.

Q. Then with regard to content, you say that you had indicated that you could state only that you had dealt with one person, and who that person was, and you set out a sample statement, correct?

A. That's correct.

Q. We can see from that sample statement that you were proposing -- just looking at the last few lines of it, at this stage it simply said that it should say that:

"... [Mr Abramovich] only dealt and interacted with..."

And then you were going to give a name, in connection with the 25 per cent stake of Rusal. That's the last two lines on page 139.

A. Yes, that's correct.

Q. And the name that I think you were contemplating was Mr Patarkatsishvili's name at this stage, correct?

A. Yes, indeed. I was told at some point in time, mid-June probably, that the transaction was to compensate him for his involvement in the original Rusal acquisition -- aluminium acquisition.

Q. Well, I suggest to you that that's not true but that's a matter that I've already taken up with Mr Abramovich.

Just again staying with this document, what you were

offering of course did not touch at all on the question of beneficial ownership. The statement that you were proposing at this stage did not include, you will see that this comes in later, into the final version of the deed of acknowledgement, a statement that whoever the name says is the beneficial owner of the shares, is the beneficial owner of the shares.

That was not at this stage something that you were offering, do you see that?

A. That is correct, yes.

Q. If you then go to page 140, the following page H(A)79/140, we can see what Mr Mishakov's reaction was to your suggestion, Mr De Cort. His email back to you later that day, as you see, says:

"Dear Andre.

"I have taken out any statements concerning the transfer of the Shares. The only thing which is left is the confirmation of the beneficial ownership. Andre, we have not talked about the confirmation of whom [Mr Abramovich] was dealing with, we are not interested in his statement of his interactions. We need the confirmation of beneficial ownership. We cannot take anything else, otherwise the whole matter becomes useless. Please contact your principal to discuss my proposal. I hope that my approach toward compromise

will be met from your side. If you want I can talk to Eugene or Irina myself."

So Mr Mishakov was saying that your statement about Mr Abramovich's interactions did not go far enough, it needed also to go on to say something about beneficial ownership, correct?

A. That is correct.

Q. And Mr Mishakov was suggesting that, if necessary, he could talk to Eugene, presumably that's Mr Tenenbaum?

A. Yes, indeed.

Q. Or -- Ms Panchenko would be Irina, wouldn't it?

A. Yes, indeed.

Q. Can we just see then what happens next. Can you go next please to bundle H(A)81 at page 145, please H(A)81/145.

A. Can I put this bundle away?

Q. Yes, I think so. If you get rid of everything but your witness statement and H(A)81 you'll be fine.

A. H(I) also?

Q. You can put that to one side.

So at H(A)81, page 145, we have an email chain. Can we focus on the first in time email, which is the one that starts towards the bottom of the page, and that's an email which you sent to Mr Hauser on 9 July 2004.

A. Yes, indeed. Yes, I see that.

- Q. We can see that you say to Mr Hauser, who is acting for Mr Deripaska of course, that you have been trying to come up with something that would be acceptable both to Mr Deripaska and to Mr Abramovich. You then set out your proposed wording, correct?
- A. Yes.
- Q. What you then suggest is that Mr Abramovich should state and acknowledge that he has reviewed the warranties and representations in clause 3.1.1 of the deed of release. That was of course a reference to the warranties and representations that were to be made by Mr Patarkatsishvili in the deed of release, correct?
- A. Yes.
- Q. And what you indicate that you will consider Mr Abramovich saying about this, this is at clause 2.1, or point 2.1, is that, to the best of Mr Abramovich's knowledge and belief such warranties and representations are true and correct in all material respects, correct?
- A. Correct.
- Q. This was the genesis, was it not, of the acknowledgement that we ultimately see whereby Mr Abramovich acknowledges that whomever Mr Patarkatsishvili says is the beneficial owner of the 25 per cent stake in the Rusal shares, that person is indeed the beneficial owner of those shares, and indeed had been since March 2000?

A. This was my proposal that had not yet been reviewed internally, but he was trying between the lawyers to see whether he could come to some compromise that at the lawyers' level we could possibly find agreement with an intention then to submit it to the principals, yes.

Q. I follow that, Mr De Cort, but this was, was it not, the genesis of what eventually became the acknowledgement that we ultimately see?

A. The second part of that acknowledgement, yes.

Q. Then if we just look at the top of page 146 H(A)81/146, we can see that you also wanted to add, so that's over the page, you wanted to add in this language after Mr Abramovich's acknowledgement:

"For the avoidance of doubt the statements and acknowledgements in this Clause 2 do not constitute a representation or warranties by [Mr Abramovich], but are given as part of a due diligence investigation into historic dealings with the Business Interests referred to in said Clause 3.1.1 of the Deed of Release."

Again this reflects, does it not, your anxiety that this acknowledgement should not have the status of a warranty and be actionable at Mr Deripaska's behest?

A. Yes, that's correct. As I've explained to you, we were engaging in a risk allocation exercise here.

Q. And then if we look back to page 145, just to see

Mr Hauser's response, page 145, he makes it clear in fact in an email which he is sending to Mr Mishakov, you see it says "Dear Stalbek", it's obviously gone to you by accident. He says:

"The avoidance of doubt stuff is not acceptable. If Andre deletes that, I think we can live with the rest of it."

A. I see that.

Q. If you then go to page 147, same bundle H(A)81/147, you then very politely, if you look right at the bottom of the page, the first email in the chain, you wrote back to Mr Hauser and you pointed out his mistake.

A. Sorry, where is that?

Q. If you look right at the bottom of page 147, you say:

"It seems you have replied this to me rather than forwarding [it] to Stalbek."

A. Yes, I see that.

Q. Then you say:

"I'm not sure why we can't express what we've been discussing since the beginning, [that is] that these are not representations and warranties."

This then leads to Mr Hauser sending directly to you, the same day, a further email, which is the one we see at the top of page 147, in which he explains why he's not happy with the avoidance of doubt language that

you wanted to include.

Can you read that to yourself, please, Mr De Cort?

A. The whole email, you mean?

Q. There are only three points. It's just points 1 to 3 at 147. I can take you through it if you prefer.

A. No, I'll read it, thank you. (Pause)

Yes, I've read it.

Q. So Mr Hauser's first point was that the statement you were proposing was not entirely accurate, the information is not being sought just for due diligence purposes but to nail down Mr Abramovich's position in the event of a subsequent dispute. Correct? That's what his first point says, is it not?

A. Yes, that's correct.

Q. Then his second point is that, as soon as you started putting in the document what the statement was not, he would have to start by specifying what it positively was. By way of example, he suggests that he would want to include an estoppel, possibly liability for any tortious misrepresentation in the event that Mr Abramovich was found to have told a deliberate untruth, and Mr Hauser says that he doesn't want to go round the houses with you on that one, correct?

A. That is correct.

Q. Then Mr Hauser's third point was that the principals had

not agreed to put any gloss on the statement, in his view for good reason, given the "can of worms" that would otherwise be opened up as per his first and second points. Do you see that?

A. Yes, I see that.

Q. We can see what happens next if you go to page 150 of the same bundle, please H(A)81/150.

Again, just starting with the email towards the bottom of the page, we see that you again reply to Mr Hauser's email and you suggest an alternative acknowledgement which would be made on behalf of Mr Abramovich.

What you suggest that Mr Abramovich might acknowledge instead is that -- "BP" is obviously Mr Patarkatsishvili, so:

"[Mr Patarkatsishvili] and his Affiliates and Associated Persons were the only persons (other than [Rusal Holdings, Mr Deripaska] and their respective Affiliates and Associated Persons) with whom he and his Affiliates and Associated Persons had any dealings, arrangements or understandings with respect to the [Rusal Holding] Shares (including predecessor shares) and the interests and business represented thereby."

Do you see that?

A. Yes, I see that.

- Q. The reason you proposed that alternative wording for the acknowledgement, Mr De Cort, was that you knew that this was in fact closer to the truth, because you knew or at least very strongly suspected, as a result of your involvement in the source of funds letter that we saw earlier, that Mr Abramovich had not only had dealings and arrangements with Mr Patarkatsishvili in respect of the 25 per cent stake in the Rusal group, but that he had also had dealings and arrangements with companies associated with Mr Berezovsky; that's right, isn't it?
- A. No, I did not know that at all at the time.
- Q. And indeed you understood that the parties that had earlier been identified as BB were the ultimate beneficial owners of the 25 per cent stake in Rusal although you did not know if they might also turn out to be fronting for someone else. We saw that, you will recall, in the document you disclosed on Friday, the document at H(I)/01/1.
- A. I was just in abstracto, in a vacuum, making some comments on the language of a warranty. I had no knowledge at that point in time.
- Q. And that is why you were trying to propose, or you were proposing, this alternative wording for the deed of acknowledgement?
- A. No, that is not correct. This alternative wording was

basically based on what I was told internally that the only people Mr Abramovich ever dealt with was Mr Patarkatsishvili.

Q. Or his affiliates and associated persons?

A. No, he dealt with Mr Patarkatsishvili, but we made eventually the language broader, yes, that's correct.

Q. We can see how Mr Hauser reacted when you tried to explain the scope of Mr Abramovich's acknowledgement to people other than Mr Patarkatsishvili. If you look at page 150 H(A)81/150, he writes back and he says:

"Dear Andre.

"Thanks. The problem with this is the use of the term 'Affiliates' and 'Associated Persons' which raises again the relationship between BP and B2."

Of course, you understood that Mr Hauser, referring to B2, was very likely referring to Mr Berezovsky, correct?

A. That is correct.

Q. Mr Hauser then goes on:

"For example, might B2 [Mr Berezovsky] argue that he was a 'predecessor' or a 'successor' to BP. Might it be argued that the Business Interest was held on behalf of some other company of which BP and B2 were joint shareholders, and that the company was thus an 'Affiliate' of BP as being under BP's control due to an

'agreement with any other Person'; eg, B2

[Mr Berezovsky]?"

And that was true of Blue Waters, was it not?

A. Until this date they still don't know who actually owns Blue Waters, I know it's been disclosed but I just don't have any focus. I know it was one or the other, I don't know.

Q. And it was true of Rich Brown which was the other company in respect of which a source of funds letter was sent?

A. I didn't know at the time, I didn't recall the Rich Brown letter, but eventually I -- I've apparently looked at it at the time, but I had no knowledge whatsoever who was associated with that company.

Q. Just looking at the final paragraph, he says:

"You appreciate my problem; I'm not trying to be paranoid about the world at large nor am I raising theoretical issues about things that are unlikely ever to occur. I have a specific issue that I need to address, which is [Mr Berezovsky]."

So Mr Hauser was adamant, wasn't he, that he was not now going to allow you or Mr Abramovich to row back on the acknowledgement you'd previously suggested which involved saying that Mr Patarkatsishvili was the only person with whom Mr Abramovich had dealt and had

understandings?

- A. Mr Hauser has made it clear from 15 June that he, as a result of the press articles, he had an issue, he was on notice of certain claims that were being made in the press, and we were all in a vacuum about that. We had never received any type of letter or clarification whatsoever from Mr Berezovsky saying that he had a claim, he just made some allegations in a newspaper. It's a form of blackmail.
- Q. Mr Hauser was resisting -- you're now putting forward a different acknowledgement on behalf of Mr Abramovich whereby Mr Abramovich acknowledged that he had dealings not just with Mr Patarkatsishvili, but also that he had dealings with Mr Patarkatsishvili's affiliates and associates, correct?
- A. Yes, he seemed to have problems with that.
- Q. And you would obviously have preferred to use this "affiliates and associates" language, and I suggest that that was because of your involvement with the source of funds letters; you dispute that?
- A. I dispute that. At that point in time I was not at all thinking about a source of funds letter. I did not associate one with the other.
- Q. In fact, Mr De Cort, although you say you were not thinking of the source of funds letter, the source of

funds letter in relation to Rich Brown was happening at around the same time as you were trying to deal with the beneficial ownership warranties, was it not?

A. That might be correct but I was not associating one with the other.

Q. Well, Ms Khudyk tells us that she referred that correspondence to you to deal with.

A. As I said, I might very well have dealt with that at that point in time, but I was not putting one and one together. Rich Brown is not an entity that is ever mentioned in connection with Rusal group transaction. I didn't know who was the owner or were the owners of Rich Brown, and I didn't put that together with Rusal at all.

Q. They were being paid with the Rusal dividends, were they not?

A. Yes, that was a payment mechanism.

Q. From Rusal, or Rual --

A. From Rual I believe.

Q. Which is the trading arm of Rusal, correct?

A. Yes.

Q. But you didn't put two and two together?

A. One and one together, yes. I don't know; my involvement with the Rich Brown letter was very limited, I think there may be only one email or something. Really this

letter didn't go anywhere. I might have at some point in time shown a draft, made an initial round of comments on it, and that was it.

Q. Well, there's more than one email, Mr De Cort, but I'm not going to take you through all of those.

MRS JUSTICE GLOSTER: Choose your moment for the break, Mr Rabinowitz.

MR RABINOWITZ: My Lady, now is as good a time as any.

MRS JUSTICE GLOSTER: Very well, ten minutes.

(3.14 pm)

(A short break)

(3.30 pm)

MR RABINOWITZ: Now, in paragraph 53 of your statement E2/09/291, Mr De Cort, you tell us that before you signed off on the final wording for Mr Abramovich's statement in the deed of acknowledgement you had to get the approval of Ms Panchenko, who was the project manager; is that right?

A. Yes, that's correct.

Q. And you also explain, still at paragraph 53, that Ms Panchenko also made it clear that you would also need to get Mr Tenenbaum's approval before she could sign off as project manager, is that correct?

A. That is correct.

Q. Did you, so far as you can recall, seek Mr Tenenbaum and

Ms Panchenko's approval?

A. I'm sure I did, yes.

Q. Can we just have a look at the final wording for the deed of acknowledgement. You set it out at paragraph 54 and we can take it from there:

"[Mr Abramovich] states and acknowledges to [Mr Deripaska] that with respect to the Shares (including predecessor shares) and the Business Interests represented thereby (as defined in the Deed of Release) (other than [Mr Deripaska], the Company and their respective Affiliates and Associated Persons), he had only had discussions, arrangements and understandings with, and he only interacted and [dealt] with [Mr Patarkatsishvili]."

Of course Mr De Cort, as a result of the Blue Waters transaction and the source of funds letter, you were aware that Mr Abramovich's company, Madison, through which the interests in Rusal were held, had been involved in arrangements involving dividends declared for the benefit of entities, and I suggest you knew that those were entities associated with Mr Berezovsky as well as Mr Patarkatsishvili?

A. No, I did not know that at the time.

Q. I suggest also, as we've seen from the document disclosed late last week, that you understood that

Millhouse's understanding was that BB, which you knew to be a reference to Mr Berezovsky, was indeed the ultimate beneficial owner and had been that since 15 March 2000, but that nothing should be done to further document that beneficial ownership?

A. No. As we've discussed this morning, BB stood for the beneficiaries of B company, and the further documentation refers just to the fact that drafts had been prepared without our involvement, referring to beneficial ownership interests of various people. After my internal discussion it became clear what the real situation was, and then indeed there was no reason, no justification, no basis on which we would further document that.

Q. I suggest that you were in fact aware of the arrangements and understandings relating to the Rusal shares which involved not just Mr Patarkatsishvili but companies which you either knew or strongly suspected to be associated with Mr Berezovsky?

A. No, that is not correct. Mr Berezovsky's first association with Rusal was from the press article that Mr Hauser showed me.

Q. Well, I suggest that what happened is that you agreed on this occasion to be overruled by your superior, Mr Tenenbaum, didn't you, Mr De Cort? You felt you were

not in any position to question his judgment as to what should be said here? And that you let the deed of acknowledgement go through in its final form even though you knew that it did not accurately state the position?

A. No, I was told that Mr Abramovich only ever had dealings with Mr Patarkatsishvili in respect of the aluminium assets.

MR RABINOWITZ: My Lady, I have no further questions for Mr De Cort.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: I have no questions, my Lady.

MR ADKIN: I have no questions, my Lady.

Re-examination by MS DAVIES

MS DAVIES: Mr De Cort, just two matters. First of all, you were asked this morning about your email exchange with Mr Tenenbaum on 12 July in relation to the warranty about the basis of claims in the public domain. You said that eventually a warranty that there are no such claims was given?

A. Yes.

Q. And this afternoon, you referred to a document, I just want to check that we've all seen it and that it's the right document. It's H(A)86/53, if you could be given that. H(A)86/53.

MRS JUSTICE GLOSTER: Is this the reference made at [draft]

T30/62 by the witness, because I have a question like that?

MS DAVIES: Yes, my Lady.

MRS JUSTICE GLOSTER: It's [draft] page 62 of the transcript, that's where I picked up the point.

MS DAVIES: That's right, my Lady. Then this afternoon, during the course of his evidence, Mr De Cort came back to this issue and -- I'll just find the reference -- made a reference to the document at H(A)86/53 in this context.

I can't find the reference to where it is -- [draft] page 123 I'm being told.

MRS JUSTICE GLOSTER: Yes, I remember it.

MS DAVIES: So if we could just look at H(A)86, page 53, which is the document you referred to this afternoon where you said:

"... that's where Madison gives the warranty about ... claims."

A. Yes, that's correct.

Q. Could you just --

MRS JUSTICE GLOSTER: Hang on, can I just get there, please.

MS DAVIES: I do apologise, my Lady.

MR RABINOWITZ: Just before one goes off on a false premise, Mr De Cort's evidence, as I understood it, was about giving that warranty to Eagle Capital, whereas these

seem to be to a different company.

MRS JUSTICE GLOSTER: Well, you tell us, please, Mr De Cort.

If you want to scroll back through the transcript, the first page where I certainly had a note to ask you about it, if counsel didn't, was at [draft] page 62.

Have you scrolled back on the screen? You have to press the stop button.

A. To [draft] page 62?

MRS JUSTICE GLOSTER: Yes, go back to [draft] page 62, just the last few lines of page 61, Mr Rabinowitz says at line 24 on [draft] page 61:

"You see, I suggest that you were well aware, and indeed Mr Tenenbaum was well aware, that there was a basis to these claims and that is what explains why Mr Tenenbaum is telling you, as I suggest he is, that we should not say that it has no basis, but you disagree with that, do you?"

You say:

"I disagree with that because, eventually, we did give a warranty that there are no claims."

I'm just interested in which document you were referring to when you said that?

A. I thought it was in the deed of settlement but, of course, yes indeed there is a contract with the Cliren party on behalf of Mr Patarkatsishvili, and I'm just

trying to recollect whether there was another document that we signed with a deed of release of some sort that we signed with the Deripaska side but I'm not sure.

Maybe I was mistaken.

MS DAVIES: Can I take this in stages, Mr De Cort. Can you first of all point us, in the deed of settlement, to the clause you had in mind when you referred to it this afternoon.

A. The clause I was referring to is clause 3.

Q. Any particular part of clause 3?

A. Clause 3, sub-clause (iii), where I refer in the third to last line, "rights and claims of third parties".

MRS JUSTICE GLOSTER: Sub-clause 3?

A. Clause 3, sub-clause (iii).

MS DAVIES: And that we can see from the beginning of clause 3 is a representation and warranty provided by M, who is?

A. Madison.

Q. To B, who is B?

A. B is Cliren, Mr Patarkatsishvili's company. And the representation is made to the best of the knowledge of Madison and Madison's affiliates and associated persons, and that includes Mr Abramovich. Because the affiliates or associated persons definition includes the ultimate beneficial owners. The associated persons definition on

page 2, top of page 2, means a party's ultimate beneficial owners. So it basically says that to the best of Madison and Mr Abramovich's knowledge there are no rights and claims of third parties.

Q. And then if you could look at --

MRS JUSTICE GLOSTER: So are you referring to 3(i), are you?

A. No, 3(iii).

MRS JUSTICE GLOSTER: 3(iii), thank you.

A. At the end of the third line:

"... to the best of [Madison's] and [Madison's] Affiliates' and Associated Persons' knowledge [which includes Mr Abramovich], rights and claims of third parties ..."

Q. If you could now be given bundle H(A)77, at page 109, you should find an email from Mr Streshinsky to Mr Hauser and yourself H(A)77/109.

Do you have that?

A. Yes, I have that.

Q. And it says:

"In the meantime please see attached summary of open points drafted by Artem."

And refers to an attached file, "Table of Warranty Issues Eng.doc".

If you turn forward to page 110 H(A)77/110.

A. Yes.

Q. You see a heading "Issue 1: Scope of warranty of title"?

A. Yes.

Q. And three columns, and there's a column headed "M". Who does M represent in this document?

A. Madison.

Q. And could you read that? (Pause)

A. Aloud?

Q. Now, can you recall whether or not this statement of Madison's position was accurate as at 23 June 2004?

A. Yes, eventually I think there is a further version of this document that was circulated after our conference call in which the square brackets were removed from the position of Madison, and that I'd signed off on that.

Q. Thank you.

Just one other matter, Mr De Cort, you were just asked some questions this afternoon about the payments to Blue Waters and Rich Brown which you had some involvement in, the source of funds letters.

A. Yes.

Q. Can you just clarify for us whether those payments to Blue Waters or Rich Brown involved payments of dividends by Rusal or Rusal Holding Limited so far as you are aware?

A. The one to Blue Waters, which was in 2003, was from Rual Trade. The one in 2004 I really have no recollection.

I mean, it never got off the ground so I really didn't go into the details of who was making which payments, or would have been making which payments.

Q. And can you help us with the question of whether there was a corporate relationship, and if so what, as between Rusal and Rual?

A. I know that Rual was a trading arm and I think that eventually it was incorporated into Rusal Holding but I don't know exactly the form of that restructuring.

MS DAVIES: Thank you very much, Mr De Cort.

MRS JUSTICE GLOSTER: I have no questions. Thank you very much indeed for coming along to give your evidence.

THE WITNESS: Thank you.

MRS JUSTICE GLOSTER: You may be released.

(The witness withdrew)

Are you going to start with the next witness tomorrow?

MR SUMPTION: Yes, tomorrow we are. He is appearing under a witness summons and he will be here for a clean start at 10.15.

MRS JUSTICE GLOSTER: Yes. Apart from Mr Bulygin who, as you've indicated, you will be applying for leave to serve as a hearsay notice, that is the end of the evidence, is it?

MR SUMPTION: That is right. I had taken it from this

morning that in the absence of opposition from my learned friend your Ladyship was giving me leave to rely on that as a hearsay statement.

MRS JUSTICE GLOSTER: Is that right, Mr Rabinowitz?

MR RABINOWITZ: That is right.

MRS JUSTICE GLOSTER: Very well, fine.

Okay, so it's not anticipated that I'll be sitting this Friday, is that right?

MR SUMPTION: That is right.

MRS JUSTICE GLOSTER: I'm doing another case on Monday, 16 January, which has been in the diary, it's a criminal case, for some time so I won't start on the Monday.

I think my clerk has sent an email.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Tomorrow, do we need to start at 10.15? I'm in your hands if you'd like to --

MR RABINOWITZ: I don't think we need to. 10.30 would be adequate.

MR SUMPTION: I'm sure that's fine.

MRS JUSTICE GLOSTER: 10.30.

(3.45 pm)

(The hearing adjourned until
Tuesday, 22 November 2011 at 10.30 am)

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