Wednesday, 18 January 2012

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Closing submissions by MR RABINOWITZ (continued)

MR RABINOWITZ: My Lady, on Sibneft, I was about to turn next to the legal questions relating to the Sibneft claim. There are in fact very few matters I need to deal with under this head, in part, indeed in the main, because the parties are not very far apart on the law here, and in part because again this is a subject covered in great detail both in our written opening and indeed closing documents.

Can I, however, just say something about the question of the system of law applicable to the Sibneft claim, that's the choice of law issues, where the parties are plainly not in agreement.

MRS JUSTICE GLOSTER: This is section K, is it?

MR RABINOWITZ: It's in section -- I believe it's section K, my Lady, yes.

As your Ladyship will know, the parties plainly are not in agreement about this and it may well be a matter of some significance to the outcome of the claim. In general outline, as your Ladyship knows, we submit that the Sibneft claim falls to be dealt with under French law or English law, whereas my learned friends say

Russian law. We submit that is simply wrong.

So far as the law is concerned, as your Ladyship knows, the relevant statute is the Private International Law Act 1995, and in particular sections 11 and 12 of that act. Your Ladyship has that set out in our -- I think it's in our written opening, I'm not sure we've set it out in our closing.

MRS JUSTICE GLOSTER: It doesn't matter, I can find it in the opening.

MR RABINOWITZ: I can also give your Ladyship a reference, the bundle reference. It's O11 at tab 6 01/1.06/1.

In our opening document, it's section M at B(A)2, page 437 B(A)2/437.

MRS JUSTICE GLOSTER: Thank you. Do I need to go to it?

MR RABINOWITZ: I'm going to take your Ladyship through it, I do need to emphasise one or two points.

MRS JUSTICE GLOSTER: I'm not signed in so let me just look at it in hard copy.

MR RABINOWITZ: The 01/1 --

MRS JUSTICE GLOSTER: So this is section?

MR RABINOWITZ: Page 437, it's volume 2 I think of our written opening. Page 437, section M.

MRS JUSTICE GLOSTER: No, I've got Russian law at section M. Section L?

MR RABINOWITZ: If your Ladyship goes to -- if your Ladyship

is in volume 2 of 2, you should have at page 437 -- is there a paragraph 879, paragraph 880?

Your Ladyship may be looking in our closing rather than in our opening.

I'm told it's on the screen, my Lady.

MRS JUSTICE GLOSTER: I'm in the written closing, I'm sorry. Forgive me.

If it's on the screen, I'll look at it there.

MR RABINOWITZ: It's on the screen.

Now, as your Ladyship sees there, section 9 is where one begins to get choice of law in tort and delict. Your Ladyship needs to start with section 11, which is "Choice of applicable law: the general rule".

As your Ladyship sees, section 11.1 --

MRS JUSTICE GLOSTER: Can we have section 11, please, which is just further down?

MR RABINOWITZ: Page 438 B(A)2/438.

Your Ladyship sees:

"The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur."

Then, as your Ladyship sees, section 11.2 begins:

"Where elements of those events occur in different countries, the --"

MRS JUSTICE GLOSTER: We're in (c), are we?

MR RABINOWITZ: We're exactly -- my Lady, we're (c):

"In any other case, the law of the country in which the most significant elements of those events occurred."

So one is trying to identify the country in which the most significant element or elements of the events constituting the tort occurred, and your Ladyship may wish to note here three particular points, all of which I would submit have been overlooked or ignored by my learned friends in their analysis of this provision.

First, as your Ladyship sees, for the purposes of section 11, what matters is the events or elements of events that constitute the tort which occur. It therefore obviously follows from this that the mere geographical connection of the parties, their nationality for example, are completely irrelevant to section 11. They are obviously not events --

MRS JUSTICE GLOSTER: So you say that it took place -- the threat or the alleged threat was made in France so you say it's French law.

MR RABINOWITZ: It was made in the sense of Mr Berezovsky had it in France, that's where he succumbed to the threat, and that is why France rules. The fact that Mr Abramovich may be Russian and had his residence in Russia, and that Mr Berezovsky may at one point have been Russian, is neither here nor there for the purposes

of section 11.

MRS JUSTICE GLOSTER: The events constituting the tort are the threat and the reliance and the subsequent damage, are they?

MR RABINOWITZ: The threat and the succumbing to the threat and the damage.

MRS JUSTICE GLOSTER: So you say the threat, the succumbing to the threat, and where do you say the actual transfer of the interest took place?

MR RABINOWITZ: Well, that depends on the view your Ladyship takes about the Devonia agreement. If the Devonia agreement is a valid agreement then in a sense that is going to be very relevant to the determination of the choice of law issues, and that has an English choice of law provision.

If your Ladyship disregards that, then --

MRS JUSTICE GLOSTER: Was that the Devonia agreement that was signed in Nobu or something?

MR RABINOWITZ: Exactly that.

MRS JUSTICE GLOSTER: Or handed over, I can't remember.

MR RABINOWITZ: I think it was brought to Mr Berezovsky when he was having dinner in Nobu by one of the solicitors, and he signed it there. Mr Berezovsky was plainly not in Russia, indeed he couldn't go back to Russia at any stage.

It may just be worth my analyse -- teasing out just a little bit further some of the points about this because there are a number of respects in which I would submit that Mr Sumption's submission failed really to apply section 11.

So first, the point is you're looking for events or elements which occur. Now, if something doesn't occur, then it's not relevant for the purposes of section 11. So that, for example, my Lady, a threatened event, this is the focus of Mr Sumption's submission, something which is threatened to occur: we're going to keep Mr Glushkov in jail, something is going to happen in Russia to expropriate --

MRS JUSTICE GLOSTER: You say that's irrelevant because it's not --

MR RABINOWITZ: It's irrelevant, it doesn't occur.

Now, those matters might have some connection if one ever gets into section 12, but for the purposes of section 11 they are irrelevant.

If authority is needed for this proposition your Ladyship has it in Cheshire and North's. We cite that in our written opening at paragraphs 883.4 and 5, which is volume 2, page 44. The relevant extract, my Lady, is also in the authorities bundle at O3.1, tab 2, it's pages 630 and 632 of O3.1 O3/02/630. We've cited it

rather more briefly here -- I would invite your Ladyship actually in due course to go to the full reference in O3.1 because it does make the points that I have been making. I think it's illustrated by the point we make in our written opening about mens rea not being something that occurs.

So that was the first of the points that I wanted to make arising from section 11.1.

The second point -- sorry, section 11.2(b).

The second point about section 11 is that, as your Ladyship will note, there is no question here of considering whether the location of an event was merely fortuitous or happenstance. This may be a point of relevance to section 12, which I'll come to shortly, but for the purposes of section 11, and in particular section 11.2(c), the focus is on the significance of the elements of the events and not on the significance to the parties of the location.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Again, that is relevant to a number of points that Mr Sumption sought to make about this which I'll come to.

Now, the third point to be made about section 11 is this: that factual events, including in relation to the tort of intimidation, may, by virtue of what that tort

involves, not all occur in a single time or in a single place but they may involve ongoing or continuous events.

That was a point that was made by Lord Justice Mance, as he then was, in relation to negligent misstatement claims in a case called Morin v Bonham and Brooks. That's a case we cite again in our written opening. Your Ladyship has that at paragraph 888 O2/4.64/888.

MRS JUSTICE GLOSTER: I've got it in front of me, yes.

MR RABINOWITZ: He referred in fact in paragraph 15, which I'm not sure is set out at paragraph 888, to the continuum of reliance and loss. I think in the passage set out he refers to the continuum of reliance. Again, for your Ladyship's note, that authority in paragraph 15 is at O2/4.64/887.

My Lady, just as reliance can involve an ongoing event, it's obvious that the intimidation or threat itself might involve an ongoing circumstance. Just by the way of example, one of the cases we have in the bundle is a case called Godwin v Uzoigwe, and that is in fact the only decided authority at Court of Appeal level prior to the present proceedings relating to the tort of two-party intimidation. The Court of Appeal dealt with facts in that case where the element of intimidation itself was an ongoing or continuous one.

For your Ladyship's reference, we cite the judgment of Lord Justice Stuart Smith, again this time in our written closing, paragraph 977.1 it's at page 578 of volume 2.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: My Lady, the reason for making this point, as your Ladyship will appreciate, is because in our submission the relevant elements of a threat for the purposes of the tort of intimidation may well include any steps taken by the defendant to create the conditions and context necessary for the threat which he makes to be effective, whether by communicating to his victim the defendant's own position of power or influence, or the victim's position of weakness and vulnerability.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, my Lady, with those principles generally identified, can I next address the application of those principles to this case and in so doing respond to the points that Mr Sumption made about this in his oral closing. First, when it comes to threats, it's perhaps obvious in the context of the tort of intimidation that one does not look solely at the place where the threat was communicated by the threatener, it is plainly relevant also to look to the place where the

threats are received.

I say this because, obviously, a threat is not a threat until the victim actually hears it. If Mr Abramovich had been shouting in an empty room there would have been no threat. If Mr Abramovich had spoken to Mr Patarkatsishvili, but Mr Patarkatsishvili had said nothing to Mr Berezovsky, there would have been no threat made to Mr Berezovsky. There was a threat to Mr Berezovsky only when Mr Berezovsky learned, as he was intended to learn, of what Mr Abramovich had said, understanding the threat that his statements entailed.

Of course, as your Ladyship will recollect, Mr Berezovsky was in France when he received the threats, as he was intended to receive those threats, by Mr Abramovich.

Just on this point about the place where the threats are received being relevant, we've cited at paragraph 885 of our written opening -- I'm sorry to keep flicking between our opening and closing -- but we've recited at paragraph 885 of our written opening an extract from Dicey, Morris and Collins which makes this point in the somewhat analogous case of misstatement. If your Ladyship has that, you see that they say:

"It may be the case that if a negligent or fraudulent misstatement is made by telephone or telefax

in one country but is received and acted upon by the claimant in another country, that applicable law will be the law of the latter country. The same result may also be found to ensue when representations are made by electronic mail or on the internet."

Again, one can perhaps illustrate how it will apply in the context of intimidation by reference to the sending of the letter or the making of a telephone call. If Mr Abramovich in Russia made a telephone call to Mr Berezovsky in France, in which a threat was made then, following Dicey, it may well be the case that the threat made is to be regarded as made in the place where it was received, that is to say France. So too if Mr Abramovich had posted a letter containing the threat from Russia to France.

My Lady, we submit that the fact that the message was passed on via human means, that is in the form of Mr Patarkatsishvili, really makes no difference to this. That is why I would submit there's no warrant, as Mr Sumption appeared to contend, for simply ignoring the communication of the threats to Mr Berezovsky having taken place in France.

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: So that is the first point. The second point is on the question of submission, which is

obviously another element of the tort of intimidation. Submission occurs at the place where Mr Berezovsky comes to submit to Mr Abramovich's threats, and it doesn't occur when Mr Berezovsky's decision to submit happens to be communicated to Mr Abramovich.

That, of course, is because, as your Ladyship will appreciate, communication of a submission forms no part of the tort at all. It's the submission which matters. A victim may well not communicate his intention to submit to a blackmailer, he may simply submit.

So contrary to Mr Sumption's submission at Day 39, page 145, it is irrelevant under section 11 to enquire as to where Mr Abramovich was when he learnt of Mr Berezovsky's intention to submit to Mr Abramovich's threats. It just has got nothing to do with the issue.

What matters here is where Mr Berezovsky was when he submitted to those threats and that, again, was France.

Now, the third point arising from Mr Sumption's submissions that I should say something about is --

MRS JUSTICE GLOSTER: I'm just trying to work out -- I'm looking at page 445 of your opening, at paragraph 891, where you say the threats were made at the meeting at Mr Berezovsky's home at Cap d'Antibes. But that related to the ORT shares.

MR RABINOWITZ: It did, and your Ladyship --

MRS JUSTICE GLOSTER: So how can that be relevant?

MR RABINOWITZ: Your Ladyship is absolutely right to focus on it. It was a point I was going to come to.

Your Ladyship will recall that the third of my points related to the fact that in identifying the elements of this tort, just as a reliance can be a continuum, that's to say you have to look at the elements leading to the reliance, and just as loss can involve a continuum, so too with a threat, it could involve a continuum.

Your Ladyship will recall that our pleaded case, and indeed our case in our closing, is that both at the meeting in France, at Le Bourget and at Cap d'Antibes, Mr Abramovich said and did things which were material to the context in which the threat -- the words used to Mr Patarkatsishvili about Mr Glushkov and about pressure being applied in relation to Sibneft are to be interpreted.

MRS JUSTICE GLOSTER: So you say there's a continuum?

MR RABINOWITZ: Exactly that, which includes what happened both at Le Bourget -- I'm going to say something about it shortly -- and indeed at Mr Berezovsky's home at Cap d'Antibes. That's the relevance of that point, my Lady.

MRS JUSTICE GLOSTER: Yes, I see. This is the point you're

making at paragraph 977 of your closing.

MR RABINOWITZ: Indeed, yes. 977.2.

MRS JUSTICE GLOSTER: And 3, yes.

MR RABINOWITZ: If your Ladyship is content with that, can I move on to the third point arising from Mr Sumption's submissions.

He referred your Ladyship to the decision of the Privy Council in a case called Kwok Chi Leung Karl v The Commissioners of Estate Duty, decided in 1988. Your Ladyship may recall, that was a decision on the legal situs of a debt to which my learned friend referred your Ladyship in an attempt to identify a further event located in Russia, and that was at Day 39, page 146.

Now, my Lady, with respect to Mr Sumption, again that case doesn't assist your Ladyship at all. First, it's an authority which predates the 1995 act, and plainly therefore it wasn't considering what is an event or whether -- where an event has occurred within the meaning of section 11. All it determines, and this is for the purpose of the Hong Kong estate duty ordinance, is the legal situs of a future debt under a promissory note. But, of course, the legal situs of an obligation, and I think Mr Abramovich may have in mind the obligations under the 1995 agreement, is not an event that occurs for the purposes of the tort of

intimidation. It's really just -- it's not an element of the tort.

So even if the legal situs for some purposes of Mr Abramovich's obligation to Mr Berezovsky under the 1995 agreement was Russia, given that this was not something that was ever performed, it's difficult to see how one could regard this as an event of any sort. And this being so, it is very difficult to see how this can be said to be relevant under section 11.

So that's the third point, my Lady.

The fourth point is that Mr Sumption spoke of Mr Berezovsky's location in France. Your Ladyship will have in mind, France was the place, as your Ladyship has already remarked, where Mr Berezovsky was when the threat was made to him and the place where he was when he submitted to the threat.

Mr Sumption spoke of Mr Berezovsky's location in France as being, he said, these were his words, "purely adventitious" and as being "of no significance at all". That was at Day 39, page 151. He said, this is still Day 39, page 151, this is what he submitted to your Ladyship:

"Mr Berezovsky might have taken the call in London or in New York or on his skiing holiday in Switzerland, or in any of the other places where he was wont to

travel. The fact that he happened to be in his sitting room, or wherever, at Cap d'Antibes is of no significance at all."

With respect to Mr Sumption, I would submit that this is another bad point.

First, of course, it is simply nonsense to suggest that it is purely adventitious that Mr Berezovsky was in France. Mr Berezovsky was in France because he lived in France. That's why he was in France. He was not there on a holiday, he wasn't in some anonymous hotel or in an airport meeting room, he was at his home in France.

Your Ladyship may recall that it's not in issue that Mr Berezovsky had been resident in France at that time since the end of October 2000 so that by the end of May 2001 he had been there for some seven months. Your Ladyship may also recall that Mr Abramovich told the court that the meeting at Le Bourget in December 2000 was in France because that was where Mr Berezovsky was then living and, indeed, Mr Abramovich's own pleaded case says that the Cap d'Antibes meeting was at Cap d'Antibes because Mr Berezovsky had told him that he could no longer live in Russia. That's a pleaded part of Mr Abramovich's defence, paragraph 27.1.

Secondly, and whether or not this was adventitious,

the adventitiousness or otherwise of Mr Berezovsky's location is, as I've already submitted, irrelevant for section 11 purposes. Your Ladyship may recall that under section 11 it's the significance of the events which my Lady is called upon to weigh up under section 11, not the significance of the locations. That may be a point for section 12 but it's really got nothing at all to do with section 11.

So even if Mr Berezovsky had just been passing through France, that, the fact that he was just passing through it, at least for the purposes of section 11, would have been irrelevant.

So, in our respectful submission, for the reasons I have been submitting, and indeed for the reasons we set out in section K which, as your Ladyship knows, we give a fuller analysis, we've analysed all the relevant events, we submit section 11 of the act most naturally points towards French law as applying.

I need to deal with section 12 as well which, again, your Ladyship has in our opening. It's paragraph -- it started on paragraph 985 and following of our written closing, and on -- your Ladyship I think has on the screen the opening.

Just again looking at section 12, it's worth focusing on the words used B(A)2/438:

"If it appears, in all the circumstances, from a comparison of --

"(a) the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and

"(b) the significance of any factors connecting the tort or delict with another country, that it is substantially more appropriate [and I emphasise those words, "substantially more appropriate"] for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue ... is the law of that other country."

Then sub 2:

"The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events."

So plainly, as your Ladyship sees, the ambit is very substantially wider for the purpose of section 12 than it is for the purpose of section 11. But the test that one is applying here in section 12 is that section 11

applies unless, looking at the factors pointing to another jurisdiction, one concludes that it is substantially more appropriate for the applicable law to be the law of some other country.

Now, there are three points made by Mr Sumption that I need to address in relation to section 12. First, Mr Sumption said that section 12 admits of a wider range of factors than section 11, and with that we would respectfully agree.

MRS JUSTICE GLOSTER: Can you give me the reference to where Mr Sumption's arguments orally were?

MR RABINOWITZ: Day 39, page 152.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: So it does admit of a wider range of factors.

Mr Sumption was, however, wrong in this context to suggest that it was more appropriate to apply Russian law than any other law to the tort because, I think one of the reasons he gave was that Mr Patarkatsishvili was at the time of the threat a resident in Russia. That was at Day 39, page 152, line 22.

My Lady, there are two points about this. First, Mr Patarkatsishvili is of course not a party to the action. The second point to make about that is that Mr Patarkatsishvili was not, at the time of the tort,

resident in Russia. Indeed, as Mr Sumption had earlier stated in his closing speech, this was at page 62 of Day 39, Mr Patarkatsishvili had himself become a fugitive from Russia before the meeting in May 2001. Mr Sumption said this had occurred in April 2001. Mr Berezovsky's evidence -- this is Berezovsky 4, paragraph 333, that's at D2, tab 17, page 268 D2/17/268 -- Mr Berezovsky's evidence was that Mr Patarkatsishvili had become a fugitive from Russia in March 2001, but either way it was before the tort was complete.

Secondly, Mr Sumption identified the fact that Mr Berezovsky may have had a tax domicile in Russia as being relevant to section 12. This was Day 39, page 153. The tort of Mr Berezovsky having an animus revertendi to Russia. My Latin pronunciation is even worse than my French pronunciation. He talked of Mr Berezovsky having an animus revertendi to go back to Russia, which is of course the hallmark of domicile for tax purposes.

But with respect to Mr Sumption, my Lady, for the purpose of section 12, the fact that Mr Berezovsky at some point in time, perhaps when the regime changes or whatever, would like to go back to Russia, is hardly a point of any substance for the purposes of section 12

in seeking to determine what law should be applied to the tort which was committed at a time when he was --

MRS JUSTICE GLOSTER: So you say, even on the assumption that his domicile remained that of his domicile of birth, that fact is irrelevant?

MR RABINOWITZ: For the purposes of seeking to determine the proper law here, yes, my Lady.

Your Ladyship will have in mind that Mr Abramovich himself says in his evidence that Mr Berezovsky had told him at the time that he could not live in Russia. Those were the words that Mr Abramovich used in his evidence. Mr Berezovsky said he could not live in Russia. And given this, even if it were relevant that Mr Berezovsky hopes one day to return to Russia, I would submit it's of no real significance when deciding the proper law of this tort to look at that when, at the time of the tort, he could not return to Russia.

Now, the third point to make about Mr Sumption's submissions is this: he identified three further factors which he said pointed to Russian law as being substantially more appropriate. This is Day 39, again at page 153, why he said Russian law was substantially more appropriate than French law for the purposes of section 12. We submit that none of these, whether individually or in combination, comes anywhere near the

high standard required to displace section 11, and the factors were these.

The first factor was said to be that Mr Berezovsky and Mr Abramovich and Mr Patarkatsishvili all had their principal business interests in Russia. My Lady, whilst it may be true that they had their principal business interests in Russia we would submit that this is of limited value indeed. After all, why should it matter where their other principal business interests were? They also had interests in other countries. And indeed, my Lady, and this in my submission is a point of some substance, in relation to the assets, the interests which were the subject matter of the tort, all of them had taken steps to ensure that those interests were held offshore.

Your Ladyship will recall the evidence of Mr Abramovich going to Gibraltar and Cyprus to set up trusts to deal with his Sibneft interests and Liechtenstein to deal with his Sibneft interests. All of those structures that he used had some non-Russian law, so he was actually concerned himself that his interests should be governed by non-Russian law.

Your Ladyship will also recall the trusts which Mr Berezovsky and Mr Patarkatsishvili set up, the Octopus and Hotspur Trusts, again set up offshore using

a non-Russian law. So they were very concerned that Russian law should not apply to these interests.

Given that, my Lady, the fact that they may have had other interests in Russia, in my respectful submission, is not a reason why Russian law is substantially more appropriate as the law to apply than some other law which you've determined under section 11.

The second factor that Mr Sumption referred to, and this was at Day 39, page 154, was that he said the substance of the threat was to act wrongfully in Russia, with the wrongfulness of the action being subject to Russian law.

My Lady, we would submit that it's unclear why this makes it substantially more appropriate, or even more appropriate, for Russian law to apply to the tort of intimidation than French law, which is of course the law of the country where Mr Berezovsky was living when he was intimidated and succumbed to the threat. We submit that this is particularly so in circumstances which will always be the case, in relation to intimidation, where the threat was never carried out. That is to say, no conduct of any relevance in relation to these threats actually took place in Russia because Mr Berezovsky succumbed to the threat.

MRS JUSTICE GLOSTER: Is it not a factor that the threat is

to do something in Russia?

MR RABINOWITZ: I'm not saying these things have no weight --

MRS JUSTICE GLOSTER: No, but you say on its own it doesn't amount to substantial --

MR RABINOWITZ: Indeed, on its own -- indeed cumulatively with the others, it doesn't amount to make Russian law substantially more appropriate.

I'm not taking an extreme position and saying your Ladyship can't give any weight to any of these factors at all for the purposes of section 12. For the purposes of section 11 I do say of that. For the purposes of section 12 it's really a balancing exercise, although in the end you have to be satisfied that it's substantially more appropriate that French law should apply.

That then brings us to the third factor which Mr Sumption identified in this context, and that was, he said, this is Day 39, page 154:

"... the whole background to this issue is Russian."

That was, with respect, a rather vague submission because, although it's obviously correct that the history of Mr Berezovsky and Mr Abramovich's relationship and dealings was one based in Russia, that is not the same thing as saying that Russian law would be substantially more appropriate than French law.

Again, as your Ladyship will have in mind, when the tort was committed Mr Berezovsky had left Russia for good, knowing that he would not be able to achieve justice there, that Mr Abramovich came to France repeatedly, which is where he set up his intimidation of Mr Berezovsky, including at the Le Bourget meeting and Cap d'Antibes, and it was also where Mr Abramovich was dealing with Mr Berezovsky via Mr Patarkatsishvili. When he did that, he always did so outside of Russia, including on at least one occasion in Paris.

So, my Lady, we submit that none of those reasons that Mr Sumption has identified either individually or cumulatively, produced a situation where Russian law can be regarded as substantially more appropriate than French law.

That is all I was proposing to say about the choice of law issues. If your Ladyship is with us on the choice of law issues then French law applies and, as your Ladyship knows, the parties are in agreement that your Ladyship should treat French law as being the same as English law for this purpose. The only difference between the two is that French law has no arguable relevant limitation period at all, and so your Ladyship can, in a sense, deal with this as if English law did apply. Now, so far as English law is concerned, there

were, when the matter was before the court in the context of the strike-out application, some very interesting points of the English law relating to the tort of two-party intimidation, and among the points that were at issue was this, namely whether for the purposes of the tort of intimidation the threat of conduct had to be threat of unlawful conduct, or whether it was sufficient that an illegitimate threat was made. Your Ladyship will have seen this referred to in the Court of Appeal judgment.

Your Ladyship I think does not have to worry about that for the purposes of this trial because, under the two possible systems which will govern the question of whether the threat was unlawful or not, Russian law or English law, the parties are in agreement that, as a matter of Russian law, if those threats of conduct were made and Russian law governs, then they were unlawful under Russian law.

So far as English law --

MRS JUSTICE GLOSTER: So it's agreed that if the threats were made --

MR RABINOWITZ: Indeed, then they would have been threats of unlawful conduct, if that is a question, that is to say the question of unlawfulness is to be governed by Russian law. And equally, if that is a question, the

question of whether the conduct was -- the threatened conduct was unlawful, equally, if that is to be governed by English law, we have set out in some detail in our submission why, as a matter of English law, those threats would be unlawful as a matter of English law, and I had not seen any suggestion that that is challenged. Indeed, not even in the 175-page document is there any suggestion that this is challenged.

So given that, on any basis, the threats, if made, were of unlawful conduct, your Ladyship doesn't need to decide the question of whether it is sufficient that the threat be of illegitimate -- sorry, the threat itself be an illegitimate threat. So in a sense it is only if Russian law applies, that is to say if your Ladyship is against us on the choice of law issue, it is only if Russian law applies that there are legal issues, although, having said that, there are certain legal issues arising under Russian law which will apply even if your Ladyship concludes that French law or English law applies to the tort. Because, of course, your Ladyship will recall that one of the issues we had to consider with the experts was whether Mr Berezovsky actually had any rights under the 1995 and 1996 agreements. Because if he didn't have any rights, then there was nothing that he gave up in the tort of

intimidation.

MRS JUSTICE GLOSTER: No, obviously. If he doesn't have any rights --

MR RABINOWITZ: He lost nothing.

MRS JUSTICE GLOSTER: -- then there's no -- well, there may have been an intimidation but there was no submission.

MR RABINOWITZ: Indeed, and that will be a live issue for your Ladyship to decide, even if your Ladyship decides that French law or English law applies. In a sense that goes to the prior issue of whether there were rights that he was intimidated to give up.

Now, your Ladyship has detailed submissions from us on --

MRS JUSTICE GLOSTER: If it's Russian law, it's agreed that -- sorry, if the Russian law governs the tort then there's a debate as to whether, or a dispute as to whether as a matter of Russian law the limitation period is extended, yes.

MR RABINOWITZ: Exactly. I tried to take a shortcut and perhaps I shouldn't have.

There are three potential issues arising under Russian law. The first concerns whether there were any rights that Mr Berezovsky had under the 1995 and 1996 agreement. The second point is whether, if Russian law applies to the tort of intimidation, there is a tort of

intimidation, that is to say, what is the Russian law tort of intimidation? The third issue on Russian law is about the limitation period.

MRS JUSTICE GLOSTER: I thought you said the second was not in dispute.

MR RABINOWITZ: I was about to say exactly that. Of those three issues, the second one is not in dispute.

MRS JUSTICE GLOSTER: Yes, you said if the threats were made, then as a matter of Russian law there's no dispute that those threats were contrary to Russian law.

MR RABINOWITZ: Were unlawful. But there is a different question -- a different question is whether, if you look at all Mr Berezovsky's (sic) conduct, and the question of whether he's committed a tort is one -- the tort of intimidation as a whole is governed by Russian law. Number one, what are the Russian law elements of the tort of intimidation? Number two, will Mr Berezovsky have been able to make those out? That would be a different question to the question of whether the threats were of unlawful conduct under Russian law.

On that issue, that's to say the elements of the Russian tort of intimidation, there is no dispute between the parties, no serious dispute between the parties, as I understand it, and --

MRS JUSTICE GLOSTER: So what is the dispute under the

second issue?

MR RABINOWITZ: **The second issue, that's to say if the law is governed by the Russian law of intimidation?**

MRS JUSTICE GLOSTER: **Yes.**

MR RABINOWITZ: **It's really -- the significant point is the limitation period, which is the third point, it's not really the second point.**

Your Ladyship will recall that the experts were not even cross-examined on the Russian law tort of intimidation. Paragraphs 1025 --

MRS JUSTICE GLOSTER: **I'm just looking at what you said a moment ago because I'm not following this. Just a second.**

You say there's a different question, which I think is the second issue, is the question whether he's committed a tort, whether Mr Abramovich has committed a tort.

MR RABINOWITZ: **Yes.**

MRS JUSTICE GLOSTER: **And that involves obviously looking at the Russian law elements of the tort of intimidation.**

MR RABINOWITZ: **Yes.**

MRS JUSTICE GLOSTER: **At the moment I don't understand what are the disputed issues as to the constituent elements of the Russian tort of intimidation and whether they're present here. You've told me it's agreed that, if the**

threat was made, it would constitute unlawful conduct. What I'm not understanding at the moment is what you say is the Russian law dispute as to the constituent elements of the tort or whether they were present in this case.

MR RABINOWITZ: It is my fault. These questions overlap. Can I just try to separate them out. Your Ladyship has identified them but just if I can then make sure we're on the same page.

What I was addressing earlier when I said there was no dispute between the parties is this: even as a matter of English law there has been thought to be a requirement that you show that the threat should be of unlawful conduct. So let's assume English law applies -- is the proper law of the tort. We say: you made a threat, the threat was of unlawful conduct. The question is was the threat of unlawful conduct? What law governs the question of whether the threat was of unlawful conduct, even if English law governs the tort generally? It could be Russian law, it could be English law. That doesn't matter because on either law it was unlawful conduct.

MRS JUSTICE GLOSTER: What, to threaten to keep someone in jail?

MR RABINOWITZ: Exactly.

A different question is if Russian law governs -- if Russian law is the proper law of the whole tort, what are the elements of the tort and are they made out? We've dealt with that at 1017 and following. I don't understand there to be any issue between the parties -- that's pages 601 to 608 -- I don't understand there to be any issue between the parties about what the elements of the tort are.

Your Ladyship may want to note paragraph 1029 --

MRS JUSTICE GLOSTER: So it's the causation issue?

MR RABINOWITZ: It's the causation issue. The parties didn't even cross-examine the experts because on the facts it's unlikely to make any difference at all. That is the only possible issue of Russian law that might arise there.

I'm sorry, that was rather confused, but it does get rather confusing, my Lady.

So it's the second issue, and I don't want to ignore the limitation point which is also obviously --

MRS JUSTICE GLOSTER: No, I've got that, I appreciate that. It's the other issue I wasn't so clear about.

MR RABINOWITZ: My Lady, that was all I was going to say about Sibneft law, subject to your Ladyship having questions for me about that.

Can I just, before I move to Rusal which is what

I was proposing to do next, deal with the three matters which arose in the course of my submissions yesterday, so I can just wrap up on Sibneft before I move to Rusal.

First, in relation to the question of the drawing of inferences, with regard to witnesses not called, your Ladyship will recall that you asked in the context of the Wisneski case which we cited at paragraph 194, page 142 of our closing submissions, your Ladyship had asked whether there were any cases that lay down the principle as to whose obligation it is to call a witness, or whether there's anything which would assist your Ladyship as to whom, if anybody, had the job of calling Mr Fomichev.

My Lady, we haven't been able to find cases precisely on that point, and we've looked at the standard text and had a go through the authorities. What I am going to hand up to your Ladyship, not with a view to going through this in detail now, are two decisions by Mr Justice Peter Smith who applies the Wisneski principles, and a decision by Mr Justice Burnett which also applies the Wisneski principles. Mr Justice Peter Smith applied the principles in order to conclude that he should draw the inference. Mr Justice Burnett decided he shouldn't.

Now, can I just tell your Ladyship -- we'll get the

cases handed up. They will be put on Magnum. (Handed)

I wasn't proposing to take time going through them now, my Lady, because in the end I would suggest that they're not going to help you terribly much with the point your Ladyship identified, but they will at least give your Ladyship some examples of how other judges recently have applied these principles. In a sense, what your Ladyship will see is that they reinforce the point your Ladyship made to me that this is a terribly fact-based inquiry.

MRS JUSTICE GLOSTER: Yes, that's what I thought.

MR RABINOWITZ: Can I just tell your Ladyship what the cases are then. The first in time case is the Da Vinci Code case, that's the Baigent v Random House case, 2006, EMLR, and that is one of the judgments of Mr Justice Peter Smith. He drew an adverse inference because of the failure by Random House to call Dan Brown's wife. Dan Brown's wife had been involved in research for the book, and he wasn't satisfied that the reason that Mr Brown, Dan Brown, gave as to why his wife was not called was a sufficient reason.

Your Ladyship will find the relevant passages, I'm not suggesting that they will help you enormously, but paragraphs 213 to 215 of that judgment.

The second of Mr Justice Peter Smith's decisions is

the case of Lewis v Eliades number 4, and again Mr Justice Peter Smith was content to draw adverse inferences. Your Ladyship will find the relevant passages between paragraphs 59 and 62. Your Ladyship will see from those that it's very fact-based but, again, I wasn't proposing to go through this because --

MRS JUSTICE GLOSTER: I can read them.

MR RABINOWITZ: -- you can read them and I'm certainly not promising you'll get a lot out of them.

Mr Justice Burnett's decision was in a case called Davies v Global Strategies Group. That was 2009. In a sense, your Ladyship may get more assistance out of this because this was a case where he wasn't willing to draw the adverse inference, and he was dealing with a case in which the people who were not called were either employees or had been employees. So in a sense, at least he's looking at a relationship and saying, well, does the relationship mean that there was some sort of responsibility?

Your Ladyship will see that his conclusion is that it doesn't. He concluded that these -- the people who could have been called as witnesses, one of whom was no longer an employee, he would have been a material witness but he was working in Nigeria and therefore --

MRS JUSTICE GLOSTER: What are the relevant paragraphs?

MR RABINOWITZ: Paragraphs 5 to 7 and then paragraphs 81 to 83.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: Insofar as there is any point remotely approaching the point of principle which emerges out of that, it is that the fact that someone is no longer an employee is not of itself a sufficient reason not to call that person if they have important evidence to give. Your Ladyship will see that between paragraphs 81 and 83.

So that was that point, my Lady. I'm sorry we couldn't assist you with --

MRS JUSTICE GLOSTER: No, that's fine, thank you.

MR RABINOWITZ: The second issue that arose yesterday, your Ladyship asked about the other evidence relating to the procedure by which the parties went through the business of working out what the profit share was. Your Ladyship will recall, this was in the context of the profit share issue.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, in addition to the materials set out at paragraph 264 and 265 of our written closing --

MRS JUSTICE GLOSTER: Just a second, let me go back.

MR RABINOWITZ: Your Ladyship will see that we've set out there, that's pages 179 to 180, we've set out the

evidence your Ladyship has on this from Le Bourget, which is what I mentioned yesterday, and we also provide a transcript reference of the evidence that Mr Abramovich gave to the court, this is on page 181, that he sat down each year with Mr Patarkatsishvili to agree how much was to be paid. That your Ladyship has there.

I should give your Ladyship one other reference which your Ladyship may want to write down at those passages, and that's to paragraph 21 of Mr Berezovsky's fourth witness statement, that's at D4, tab 6, page 36 D4/06/36, where Mr Berezovsky makes the point I made to your Ladyship yesterday about it being Mr Patarkatsishvili -- sorry, fifth statement. Mr Berezovsky makes the point I made to your Ladyship yesterday about it being Mr Patarkatsishvili who dealt with Mr Abramovich's team in relation to profit share.

MRS JUSTICE GLOSTER: Yes, thank you very much.

MR RABINOWITZ: Then the third issue that arose in the context of Sibneft was in the context of the Israel encounter where Mr Abramovich and Mr Berezovsky acknowledged each other and moved on, and your Ladyship will recall in our written closing, paragraph 157.4, that's at page 114, we refer to Mr Abramovich's evidence that the encounter was no more than an acknowledgement,

he says, in light of Mr Berezovsky's negative comments to the press about him.

MRS JUSTICE GLOSTER: Yes, I raised a question on that.

MR RABINOWITZ: Your Ladyship asked for the page reference to any negative comments made by Mr Berezovsky in the newspapers.

Now, we have looked for these. One difficulty with this is that there appears to be no evidence before the court as to when it was that this encounter in Israel took place. Mr Abramovich, paragraph 312 of his third witness statement E1/03/129, just says he had seen Mr Berezovsky on at least one occasion in Israel.

I can tell your Ladyship that Mr Abramovich's written closing at paragraph 372, that's at page 307 of his written closing, has gathered together what appear to be the relevant references, and I can give them to your Ladyship --

MRS JUSTICE GLOSTER: If they're there I can just take them from there.

MR RABINOWITZ: Can I just say this. The first criticism of Mr Abramovich in print appears to have been made in December 2003. Perhaps I'll reference this for the transcript, my Lady. They give these references: H(A)69/3, H(A)69/5 and H(A)69/7.

Then they also refer to something in July 2005 when

Mr Berezovsky told media organisations that he claimed to file a claim against Mr Abramovich. That is at H(A)90, page 52 H(A)90/52, H(A)90, page 55 H(A)90/55, and H(A)90, page 57 H(A)90/57. Of course, my Lady, the first one they can identify is in December 2003 --

MS DAVIES: My Lady, I hesitate to interrupt but it may just be quicker on this point.

There is also a reference in Mr Abramovich's evidence to a press report in December 2002 in which Mr Berezovsky said he did not know Mr Abramovich, and the reference to that is H(A)51, page 83 H(A)51/83.

MR RABINOWITZ: I'm grateful to my learned friend, we didn't spot that one.

Even allowing for that, my Lady, one has almost a full two years which Mr Abramovich said he can't explain by reference to these witness statements. If you go from December -- or January 2001, Mr Abramovich is identifying something in December 2002 with absolutely no contact whatsoever.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, I was about to move on to Rusal. I'm not sure when your Ladyship is proposing to take the morning break.

MRS JUSTICE GLOSTER: I'll rise now.

(11.28 am)

(A short break)

(11.45 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, before I move on to Rusal, just two comments about the reference that my learned friend, Ms Davies, volunteered about the press reports. I'm not inviting your Ladyship to turn it up, it's the document at H(A)51/83. Your Ladyship will see this when you look at it, but the first point is that although Mr Abramovich referred to disparaging remarks in the press, your Ladyship will see this is in fact a television interview.

The second point is that I would invite my Lady to read the interview because, in our respectful submission, there's nothing disparaging here about Mr Abramovich, and this plainly is not what he had in mind when he gave the evidence that we identify in our written submission.

MRS JUSTICE GLOSTER: I'll read it in due course.

MR RABINOWITZ: Can I then turn to Rusal. Your Ladyship will find this dealt with at section N, page 626 of volume 2 of our written closing. We've also provided a summary of Rusal with an overview at section A5 of our written closing. And your Ladyship will perhaps have

discerned that there are probably four key issues arising in relation to Rusal, and they are these.

First, did Mr Berezovsky and Mr Patarkatsishvili have ownership interests in Rusal? Secondly, was Mr Berezovsky and Mr Patarkatsishvili's relationship with Mr Abramovich in relation to Rusal governed by English law? Third, was there an agreement that prevented any of them selling their interests in Rusal without consulting the others?

MRS JUSTICE GLOSTER: When you say ownership interests, are you making a distinction there between proprietary interests in the assets or contractual claims or rights as against Mr Abramovich?

MR RABINOWITZ: I am drawing -- in relation to Rusal, our case is that Mr Abramovich held those interests on trusts for us, so it would be a proprietary interest, and that would carry with it the usual incidence of fiduciary duties and the like.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So the third factor was: was there an interest (sic) that prevented any of them selling their interests in Rusal without consulting the others? And fourth, did Mr Abramovich breach his obligations to Mr Berezovsky, and is he liable to account, pay compensation for their breach, although of course, as

your Ladyship is aware, the quantum issues have been deferred.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As your Ladyship knows, we submit that Mr Berezovsky's claim in relation to Rusal provides an extremely good fit with the contemporaneous materials and the inherent probabilities of the case and that Mr Abramovich's case does not.

We've identified a number of facts and matters which Mr Abramovich needs to explain away if he's to persuade your Ladyship that, as he claims, he alone acquired the aluminium assets and he alone was Mr Deripaska's partner in the merger with Rusal.

In summary, my Lady, as we've explained more fully in the written closing, Mr Abramovich must first overcome, or sorry, must overcome five significant hurdles we say, each of which is fundamentally inconsistent with the case he now puts before your Ladyship.

First, he has to explain away, if he is right about being the sole person with an interest in the aluminium assets and in those shares, why five contemporaneous contracts relating to the aluminium assets and Rusal do not in fact mean what they appear on their face to say. In particular, Mr Abramovich has to explain (a) why

Mr Patarkatsishvili, Mr Shvidler and the four BVI companies were not in fact purchasers of the aluminium assets although that is precisely how they are described in the 10 February 2000 master agreement; (b) Mr Abramovich needs to explain why he warranted to Mr Deripaska in the preliminary agreement -- I shall give your Ladyship precise references to these in a moment, where we deal with them -- (b) why Mr Abramovich warranted to Mr Deripaska in the preliminary agreement of 5 and 6 March 2000 that he had partners whose consent to the Rusal merger he promised that he would obtain, and whose consent we say he did obtain at the Dorchester Hotel meeting on 13 March.

We deal with that, my Lady, at paragraphs 1164 to 1175 of the written closing, page 672. The first point I identified we deal with between paragraphs 1103 and 1117 at page 637.

Third, Mr Abramovich needs to explain why, in both the Rusal merger contract of 15 March 2000 and the amended and restated contract of 15 May 2000, Mr Abramovich warranted that there were other selling shareholders and other P1 shareholders who had legal and beneficial interests in the aluminium assets that were being pooled with those of Mr Deripaska, and who were entitled to a share of the $575 million equalising

payment that Mr Deripaska had to make.

That, as your Ladyship may wish to note, we deal with between paragraphs 1257 and 1276, page 722.

Fourth, Mr Abramovich will need to explain why in the second Rusal sale agreement, that's the one of July 2004, he acknowledged that he was not the beneficial owner of the 25 per cent stake, and he admitted that since 15 March 2000 Mr Patarkatsishvili had had a beneficial ownership interest of 25 per cent.

That's a topic we deal with at paragraphs 1421 to 1422 and also 1532 to 1534, page 791. I'm going to say more about these, my Lady --

MRS JUSTICE GLOSTER: Well, it's all very fully set out.

MR RABINOWITZ: It is, and I therefore propose to take this relatively quickly.

Now, of course, my Lady, Mr Abramovich has tried to come up with explanations for each of these contracts, and he's sought to explain why the provisions in his contracts do not mean what they in fact appear to say; he has had to, in order to defend the extreme position that he's taken in this case, that he and he alone was Mr Deripaska's partner in relation to the Rusal merger. We've analysed those various explanations at length in the written closing and your Ladyship has those.

But, of course, your Ladyship should not lose sight

of the cumulative impact of all of these contractual documents because we submit that, taken in isolation, Mr Abramovich's various explanations for each of these contractual provisions look thin but, when taken cumulatively, we submit that they start to look positively skeletal.

Put another way: although it may be possible for the court to conclude that something has gone wrong with the contractual wording in relation to one particular contract, by the time one gets to the third, fourth and fifth contracts such arguments we submit become less and less realistic. We submit the much simpler and more straightforward explanation for these contracts is that, consistent with Mr Berezovsky's case, Mr Abramovich did indeed have partners who were involved in the Rusal merger with Mr Deripaska and who acquired a beneficial interest in Rusal from 15 March onwards, and Mr Abramovich was not, as he would now have it, the sole legal and beneficial owner of the 50 per cent stake in Rusal.

My Lady, I obviously have to acknowledge that none of the five contemporaneous contracts expressly name Mr Berezovsky either as one of Mr Abramovich's partners in Rusal. But we would submit that is hardly surprising given that, as revealed by the transcript of Le Bourget,

it was understood and accepted as between the three men that there should be no written agreements between Mr Abramovich and Mr Berezovsky.

For my Lady's reference, that's box 460 of the Le Bourget transcript. We've set it out at paragraph 1285 of our written closing, volume 2, page 735.

Of course, as your Ladyship will appreciate, Mr Abramovich's difficulties don't stop with the five written contracts. Mr Abramovich must also, on his case -- first, he needs to explain away the numerous passages in the Le Bourget transcript where he appears to acknowledge Mr Berezovsky and Mr Patarkatsishvili's interest in Rusal and their entitlement to Rusal dividends, and, secondly, he must write off the Curtis notes as a forgery because the Curtis notes, as your Ladyship will recall, record Mr Patarkatsishvili telling Mr Tenenbaum that both he and Mr Berezovsky had beneficial interests in 25 per cent of Rusal, which they were contemplating selling, with no suggestion of any different view being held by Mr Tenenbaum about the position.

Now, I'll come back if I may to the Le Bourget transcript and what we say about it in the context of the Rusal claim.

Can I first just say, so far as the Curtis notes are concerned, I've already addressed your Ladyship on this and explained why we submit they are authentic and your Ladyship can rely upon those. If your Ladyship finds, as we say you should, that the Curtis notes are not a forgery and that they do reflect what was discussed between Mr Patarkatsishvili and Mr Tenenbaum in the presence of Mr Curtis and Mr Fomichev in August 2003, that provides extremely strong contemporaneous proof of Mr Berezovsky's case.

Again we've dealt with this, for my Lady's note, in our written closing in the context of Rusal between paragraphs 1309 and 1376. At page 749, your Ladyship will find, volume 2.

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

MR RABINOWITZ: Now, again, my Lady, Mr Abramovich's difficulties do not stop even there because it's not just the five contemporaneous contracts and the Le Bourget transcript and large sections of the Curtis notes that point against Mr Abramovich's case, there is also of course the following.

First, why it was that substantial dividend payments totalling $177.5 million were made to companies associated with Mr Berezovsky and Mr Patarkatsishvili between 2003 and 2005 from profits made by the Rusal

group.

Secondly, why it was that when Mr Abramovich came to sell up the interests in Rusal that were held by his companies he did so in not one but rather in two stages in the autumn of 2003 and the summer of 2004, and why it was that he surrendered complete control of Rusal to Mr Deripaska in the first stage.

Thirdly, Mr Abramovich will need to explain why it was that in 2004 he agreed to pay Mr Patarkatsishvili an amount of $585 million when, on his case, even on his case, the only amount which he says Mr Patarkatsishvili was entitled to was $115 million, that being the amount allegedly payable under the so-called commission agreements. He will also need to explain why it was necessary to pretend, as is his case, that this was in respect of the sale by Mr Patarkatsishvili of a beneficial ownership interest in the 25 per cent Rusal venture(?) holding.

This of course harks back to the overarching point I made when starting these submissions, that Mr Abramovich's case requires you to accept, both in the case of Sibneft and Rusal, that he was motivated to make huge payments to Mr Berezovsky and Mr Patarkatsishvili not in recognition of legal obligations arising through ownership interests, but out of what we would say, and

indeed what undeniably would be the case, would be remarkable largesse on his part.

In the case of Rusal, to put it in context, the payment of $585 million, which Mr Abramovich said he agreed to pay Mr Patarkatsishvili even though the so-called commission agreements suggested an entitlement of only $115 million, would have represented some 37 per cent of the capital profits Mr Abramovich made on the Rusal transaction.

My Lady may already have done the maths, but the $585 million that Mr Abramovich says he agreed to pay Mr Patarkatsishvili for his assistance constitutes 37 per cent of the $1.578 billion Mr Abramovich says he received through the sale of Rusal to Mr Deripaska.

My Lady may think, and we would submit that your Ladyship would be right in this, that it is quite inconceivable that Mr Abramovich agreed to pay such a large share of capital profits that he would otherwise receive in consequence of his four-year investment in the aluminium industry simply because he was appreciative of the assistance Mr Patarkatsishvili had provided and the investment had been profitable.

Just as with Sibneft, we suggest that my Lady would be correct to find that the scale of the payment is attributable not to any largesse on the part of

Mr Abramovich but rather to an ownership interest and dividend entitlement on the part of Mr Berezovsky and Mr Patarkatsishvili, as is evidenced by the Le Bourget transcript, the Badri proofs and the Curtis notes, as is claimed by Mr Berezovsky.

My Lady, it is a slight variation of the old adage, "follow the money". In much the same way, we submit that much light is to be thrown on where the truth in this case lies by looking at the payments made to Mr Berezovsky and Mr Patarkatsishvili -- as I've already submitted, that is one of the few non-disputed facts in this case -- and asking what the scale of those payments indicates as to the true nature of the interests held by Mr Berezovsky and Mr Patarkatsishvili in the disputed assets.

Now, again, as your Ladyship knows, we've dealt with this in some detail in our written closing. I wasn't proposing to say very much more on them. We deal with -- well, your Ladyship has the notes. I can give your Ladyship the references if it would help but your Ladyship has the documents.

MRS JUSTICE GLOSTER: No, I've got them. It's fully set out.

MR RABINOWITZ: It is.

MRS JUSTICE GLOSTER: I've just got to go away and read it,

I think.

MR RABINOWITZ: Sadly for your Ladyship.

But even that is not the end of the difficulties with Mr Abramovich's case, because a further difficulty which Mr Abramovich faces, and which he must explain away, relates to the fact that the contemporaneous view of virtually all the other participants in the aluminium acquisitions, Rusal merger and Rusal sales, was that contrary to what Mr Abramovich now claims, Mr Abramovich indeed had partners that he was bringing to the merger with Mr Deripaska and who had proprietary interests in the aluminium assets that were being merged.

Again I'm not going into the detail of all these individuals but they include, of course, the original aluminium asset sellers, Mr Reuben, Mr Chernoi, Mr Anisimov and Mr Bosov, and they also include, of course, Mr Deripaska and his advisers, including Mr Bulygin and Mr Mishakov, who also did not believe that Mr Abramovich alone was the acquirer of these assets.

Significantly, they also included Mr Patarkatsishvili himself. I say that because, prior to his death, he consistently told his financial advisers, such as Mr Samuelson, in 2000, as well as Mr Berezovsky's legal representatives at the meetings

between 2005 and 2007, that both he and Mr Berezovsky had acquired a 25 per cent interest, beneficial interest, in Rusal, the other 25 per cent being beneficially owned by their partner, Mr Abramovich.

Then of course, and I know your Ladyship has this, there is the meeting at the Dorchester Hotel on 13 March 2000, a meeting right at the time that the merger with Mr Deripaska was being finalised, and a meeting at which Mr Abramovich, Mr Deripaska, Mr Berezovsky and Mr Patarkatsishvili were all present -- all the principals -- where, as is common ground between Mr Berezovsky and Mr Abramovich, the Rusal merger was specifically discussed. Again that's something I will come back to shortly if I may.

Now, what I propose to do is to run as briefly and quickly as possible through some of the more salient features of the Rusal claim and, if your Ladyship has the point, your Ladyship will tell me and I will move even more swiftly than I was planning to.

MRS JUSTICE GLOSTER: I think -- I've read this, and obviously I've got to go back and do a lot more reading, but I'm quite interested in your submissions, if you have any to add, on issues 24 and 25.

MR RABINOWITZ: Can your Ladyship just remind me --

MRS JUSTICE GLOSTER: That's the release, the Cliren and

Madison documents.

MR RABINOWITZ: In the deed of release?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We're dealing with that, as your Ladyship knows, from paragraph 1681, page 912.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, there isn't anything else, I think we've set out all our points there. We would respectfully submit that the argument -- the reason I wasn't proposing to address your Ladyship on it is Mr Sumption said nothing about it. We have addressed all the points that the other side have made about the deed of release. In our respectful submission, the argument doesn't work at all for a number of reasons that we identify in our written closing. There was nothing I was proposing to add to that.

MRS JUSTICE GLOSTER: Okay. I think what I would find of some assistance would be, again just in your own words: if, as you say, nothing was in writing and Mr Patarkatsishvili was authorised by Mr Berezovsky to deal with Mr Abramovich, why is it that the deed of settlement documents, although of course they don't mention Mr Berezovsky, you say, and don't involve any power of attorney on his part, why do you say that that is not Mr Berezovsky going along with

Mr Patarkatsishvili's apparent signing of a deed of release?

MR RABINOWITZ: **Because, my Lady, in order for that to bind Mr Berezovsky, Mr Patarkatsishvili would have needed the authority of Mr Berezovsky to deal with that as well. And Mr Berezovsky's evidence was very clear to your Ladyship, I don't know whether we've identified it here, I think we have; it was very clear, he gave your Ladyship evidence that he absolutely did not authorise Mr Patarkatsishvili to enter into any such deed of release of that sort.**

MRS JUSTICE GLOSTER: **I'm looking at paragraph 1685.**

MR RABINOWITZ: **Paragraph 1706, my Lady, at page 919.**

MRS JUSTICE GLOSTER: **Yes, okay, thank you.**

MR RABINOWITZ: **I think we've set the argument out very fully there.**

Your Ladyship knows there's a prior point there about the effect of a deed only taking effect inter partes, but again we've set this out at paragraph 1690 and following, and in our respectful submission that again is a complete answer to the point. Indeed I have to say there is a further point which is about the construction of the deed of release --

MRS JUSTICE GLOSTER: **I've got that point.**

MR RABINOWITZ: **-- which also, in my respectful submission,**

is a complete answer to the point because it simply doesn't cover what has happened. That's the point we deal with at 1710 and following.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It simply doesn't get far enough.

Can I just try and then take this as quickly -- subject to your Ladyship having any other points you specifically want me to deal with, I had better just go through as quickly as I can, just in case I ignore something, for example something Mr Sumption said that I need to address.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: It won't take too long and if I don't finish before the short adjournment --

MRS JUSTICE GLOSTER: You're under no pressure as far as I am concerned.

MR RABINOWITZ: I just don't want to waste your Ladyship's time, that's all. I don't feel under any pressure, I just don't want to take up unnecessary time here.

My Lady, so far as the acquisition of the aluminium assets is concerned, that is in a sense the starting point for the whole Rusal issue. Again, your Ladyship has what we say set out at section N3 in detail, and the starting point for the acquisitions was of course Mr Bosov's approach in late 1999 to Mr Berezovsky asking

if he might be interested in purchasing aluminium assets. That we refer to at paragraph 1092.

The approach to Mr Berezovsky (sic) resulted from contacts Mr Berezovsky and Mr Patarkatsishvili had with Mr Lev Chernoi, Mr Anisimov, General Lebed and Mr Bykov, all of whom were key players in the Russian aluminium industry at that time. We deal with that at 1078 to 1081. Your Ladyship will recall that there was a minor dispute as to whether Mr Berezovsky and Mr Patarkatsishvili together approached Mr Abramovich about this, or whether Mr Patarkatsishvili alone did so, but it is a notable curiosity of the case that Mr Abramovich's evidence is that the result was that he alone acquired interests in the aluminium assets.

We submit that the evidence shows that Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich agreed to acquire the aluminium assets in the same proportions as under the 1995 agreement, that's to say on a 50/50 basis. For my Lady's note, the relevant evidence for this is to be found in particular at paragraph 260 of Mr Berezovsky's fourth witness statement, D2, tab 17, page 251 D2/17/251, where Mr Berezovsky explained that the three men had agreed that the purchase price of the aluminium assets would be paid for from their collective entitlement to the

profits generated from the Sibneft interests, and that, as with Sibneft, the interests would be subject to a 50/50 split, this being in accordance with what Mr Berezovsky says was the agreement made regarding future business interests.

Now, Mr Abramovich's counsel did not directly challenge this evidence in cross-examination and yet Mr Sumption, in his closing speech, submitted that there was nothing in the evidence that supported the allegation of any discussion in 1999 that Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich would share their interests in the same way as previously.

My Lady, given what Mr Berezovsky said at paragraph 260, that was with respect a rather odd submission. I say that because paragraph 260 on its face plainly does support the proposition that the parties agreed to share their interests in the usual proportions. What is more, since the parties agreed to pay for the aluminium assets out of their Sibneft profits, they clearly intended to share these assets in accordance with their usual Sibneft division.

Of course, even though, as it turned out, the parties were able to structure the deal so that no cash was in fact paid out by them, because the entire cost was covered by Mr Deripaska's balancing payment, this is

obviously not something which they would have known at the time that they first agreed to move into aluminium.

Nor is there anything in the suggestion that this is all with the benefit of hindsight and that there is no evidence to suggest that Mr Berezovsky and Mr Patarkatsishvili could have paid for their share of the aluminium acquisitions out of the Sibneft profits had they been required to do so. This is a constant theme which runs through the submissions that the other parties have put in.

Now, we've addressed that particular red herring at paragraph 1549.1 of our closing submission, that's at page 857, and we've set out at some length the evidence, primarily in the form of the bolshoi balance, which indicates that the amounts that were due to and in fact paid to Mr Berezovsky and Mr Patarkatsishvili in the course of 2000 under the Sibneft arrangements would have more than covered their share of the contribution to the aluminium acquisitions.

Your Ladyship will recall, the bolshoi balance refers to Sibneft interests -- profits from the Sibneft interests in December 2000 being 900 million, and of that Mr Berezovsky and Mr Patarkatsishvili would have been entitled to, and indeed they did receive, some $450 million under those arrangements, and that would

easily have been sufficient for them to pay for their share of the aluminium assets. Half of 575, or $287.5 million, and that would be so even if there hadn't been an equalisation payment.

Now, still in the context of the original acquisition of assets in 1999, your Ladyship may recall that Mr Sumption, in attempting to suggest that Mr Berezovsky was not involved in the aluminium acquisition, described Mr Berezovsky's evidence as to his involvement in the 1999 acquisition of aluminium assets as the product of what he called disparagingly the:

"... constant and palpable desire to portray himself as the central indispensable figure in every venture that he has touched."

Mr Sumption went on to say that:

"... the contrast between the pretensions and the reality is humiliating."

That was at Day 39, page 10. I would respectfully submit that that was both unfair and completely wrong.

I've already referred to the fact that it was to Mr Berezovsky and to Mr Patarkatsishvili that Mr Bosov came with his proposal that Mr Berezovsky and his partners move into aluminium, and it is, as I've already noted, common ground that in the course of 1999

Mr Berezovsky made a trip to the Krasnoyarsk region in the company of Mr Lev Chernoi and possibly also Mr Anisimov, and that, whilst there, Mr Berezovsky met with Mr Anatoly Bykov, the chairman of the board of the Krasnoyarsk plant; indeed that was Mr Abramovich's own evidence. We provided a reference to all of this at paragraph 1081 of our written closing at page 627. As your Ladyship will appreciate, those were some of the key players in the aluminium industry at the time.

There was of course also Mr Berezovsky's relationship with General Lebed who was the governor of the Krasnoyarsk region. Mr Abramovich's own evidence, that was his third witness statement, paragraph 152 E1/03/81, was that:

"It was important that General Lebed did not oppose our purchase of KrAZ since it would have been extremely difficult to establish and maintain control of the assets we purchased without local political support."

My Lady may recall the graphic evidence Mr Anisimov gave, this was at Day 31 at page 108, as to how the governor had conducted raids on the smelter and interfered with the all-important alumina supplies. He was obviously a critical person to get on board.

Mr Berezovsky also gave unchallenged evidence of his historic dealings with General Lebed. We've given

references to that, paragraphs 1080 and 1081, that's at page 627 of our closing.

Indeed, your Ladyship may recall that there was also evidence about General Lebed too confirming that Mr Berezovsky was involved in the transaction. We refer to that at paragraphs 1099 and 1100. Of course, Mr Sumption, in wishing to advance his case that Mr Berezovsky had absolutely nothing to do with the aluminium acquisition, needed to try and explain away the reference to General Lebed saying that Mr Berezovsky was involved, and the way he sought to do this was to suggest that this was simply something that Mr Berezovsky would have done as Mr Abramovich's political protector, and that this did not mean that he should as a result be regarded as interested in the aluminium acquisition because, as Mr Sumption put it, he was being very handsomely paid for that without any need to give him a gift of a large interest in the aluminium industry. That was at Day 40, page 46.

Now, it was of course contrary to Mr Sumption's general case to even accept that Mr Berezovsky was involved. But, in any event, my Lady, it's rather difficult to follow Mr Sumption's point on this because, of course, on Mr Abramovich's case, the patronage that he says Mr Berezovsky was providing, the political

patronage, was only in respect of Sibneft and never in respect of any other business. That was Mr Abramovich's own evidence at Day 16, page 120, lines 10 to 12, which we set out at paragraph 374.2(a) of our written closing.

So, with respect to Mr Sumption, he really can't use the political patronage argument to try and explain away Mr Berezovsky's involvement in the aluminium acquisition of late 1999.

My Lady, we submit that the only explanation for Mr Berezovsky's undoubted involvement in the aluminium acquisition is that, of course, Mr Berezovsky was indeed involved in the aluminium acquisition deal, contrary to the impression that Mr Abramovich and his witnesses, especially Mr Shvidler, have sought to give.

Now, this of course is what led to the making of the 10 February master agreement and that's a document which, for the reasons we've set out at paragraph 1103 and following of our written closing, that's page 637, is very difficult to square with Mr Abramovich's case that he and he alone acquired the aluminium assets.

Your Ladyship may recall that, when dealing with the 10 February 2000 master agreement, Mr Sumption described this document -- he called it a home-made statement of intent. That was at Day 40, page 9.

In our respectful submission, it was plainly much

more than that. It was a document which was deliberately drafted in and intended to have legal effect, and indeed it was the subject of three amending protocols, all also in legal form and executed by each of the parties, none of which is consistent with it being written off simply as a home-made statement of intent, as Mr Sumption sought to do. We refer to those many protocols at paragraph 1150 of our written closing.

Your Ladyship will recall that the 10 February 2000 master agreement identified both Mr Patarkatsishvili and Mr Shvidler, together with a number of offshore companies, as being with the definition of party 1 purchasers, which of course presents a problem for Mr Abramovich's case that he and he alone invested in the aluminium assets.

My Lady will find the implausible nature of Mr Abramovich's and Mr Shvidler's answers in cross-examination, when they attempted to deal with the party 1 problem, dealt with at paragraphs 1108 to 1112 of our written closing. That's volume 2, page 637. I'm not proposing to go into those now.

MRS JUSTICE GLOSTER: No.

MR RABINOWITZ: Now, the other point to make about the original acquisition of the aluminium assets is that each of the vendors believed that they were selling to

Mr Berezovsky and Mr Patarkatsishvili. Again, my Lady, we've set out at paragraphs 1118 to 1139 of our written closing, that's at page 642, why we say that each of the vendors have acknowledged or given evidence that Mr Berezovsky and Mr Patarkatsishvili acquired the aluminium assets, and, again, I'm not proposing to go through all that again.

I do need to say something about the position of Mr Chernoi -- sorry, Mr Lev Chernoi because Mr Sumption sought to suggest, in effect, that your Ladyship should not be concerned with the evidence that there was about Lev Chernoi's belief about this. This evidence is to be found first in the various press cuttings that we refer to in which Mr Chernoi, or his statement, refer to the people to whom he was selling the assets as the group of Sibneft shareholders. We've set those out at paragraphs 1126 to 1128, page 647 of our closing.

But there is also the evidence of Mr Michael Chernoi.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship will recollect that there was a witness statement served for Mr Chernoi in which he explained -- this was at paragraph 23 -- that his brother had told him that when he referred to the Sibneft owners he understood Mr Berezovsky to be among

them. Now, your Ladyship may recall that Mr Sumption suggested to you that you should ignore this because, they suggested, no plausible reason -- that's what he said -- was given for Mr Chernoi not attending to give evidence. That was Day 40, page 19. This, with respect, was simply not correct.

My Lady, the position is fully set out in a letter of 20 October 2011 from Mr Chernoi's solicitor Decherts, which was provided on that day to Mr Abramovich's solicitors which, for your Ladyship's note, is to be found at bundle L(2011) 29/180 to 182 L(2011)29/180. That explained that Mr Chernoi was not willing to devote the considerable time which would be needed for him to prepare to give evidence to the court but that, in addition, a further and powerful factor was that he wished to avoid the disadvantage which might arise from exposing himself to cross-examination in circumstances where at that time he had no way of knowing whether Mr Deripaska, against whom he was litigating in his own case this year, would also turn up to give evidence. This was, it is submitted, a perfectly reasonable fear for Mr Chernoi to have. Indeed, of course, Mr Berezovsky couldn't require Mr Chernoi to give evidence given his absence from the jurisdiction.

It's respectfully submitted that Mr Chernoi's

evidence as to his brother's understanding in 2000, consistent as it is with contemporaneous newspaper reports, is a matter to which my Lady can give some weight.

MRS JUSTICE GLOSTER: Why couldn't he give evidence by video-link? That was because of the impending trial against Deripaska?

MR RABINOWITZ: Indeed. He at this stage didn't know whether Mr Deripaska would turn up to give evidence or not.

MRS JUSTICE GLOSTER: What's the relevance of that?

MR RABINOWITZ: He didn't want to be cross-examined in a way which would expose him to points when his own trial came --

MRS JUSTICE GLOSTER: What does that have to do with whether Mr Deripaska turns up or not?

MR RABINOWITZ: The view he might have taken was that, if Mr Deripaska was going to do this, then he could see why he should do it as well. But he didn't know at that stage that Mr Deripaska was going to do it and he was concerned that he would do it, Mr Deripaska would then not do it and he would have been at a disadvantage. Of course, we plainly couldn't compel him to do it, to give evidence because he was outside the jurisdiction.

My Lady, there is also Mr Bosov about whom I should

also say something. Mr Bosov said, as your Ladyship may recall, in his witness statement something about wishing to claim commission from Mr Berezovsky arising out of the 1999 aluminium acquisitions. Your Ladyship may also recall that his comments in the press, including an interview he gave with Vedomosti in January 2008, had him saying that he regarded Mr Berezovsky with Mr Patarkatsishvili as having been an acquirer of the aluminium assets.

Now, we have that set out at paragraph 1131.3 of our written closing, page 650. Your Ladyship will recall that Mr Bosov was not in the event called by Mr Abramovich. We have already made the point in our written closing as to the adverse inference that we say should be called in relation to Mr Bosov. It's plain, we submit, that had he been called he would have given evidence totally contrary to Mr Abramovich's case and that is why he wasn't.

Now, there is then also Mr Anisimov. I think we have set out what we say about him at paragraphs 1133 to 1140 of our closing submissions and about his knowledge.

That then brings us to the Patarkatsishvili proofing materials. In our respectful submission, the Patarkatsishvili proofing materials, in the context of Rusal, constitute an important piece of evidence

relating to the acquisition of the aluminium assets which is completely consistent with Mr Berezovsky's case and utterly undermines Mr Abramovich's case.

Mr Sumption in fact had to concede -- this was at Day 40, page 19, he said:

"Mr Patarkatsishvili's interview notes undoubtedly do, as I acknowledge, suggest that by 2005, at any rate, Mr Patarkatsishvili believed himself and Mr Berezovsky to have had an interest in the KrAZ and Bratsk assets, corresponding to their shares in Sibneft."

In fact, my Lady, Mr Patarkatsishvili's belief about his and Mr Berezovsky's interests in the aluminium assets has been consistent and predates 2005 by a considerable margin. What Mr Patarkatsishvili told the solicitors consistently between 2005 and 2007 is, of course, of a piece with other evidence of Mr Patarkatsishvili telling third parties that he and Mr Berezovsky were both interested in the aluminium assets with Mr Abramovich. I include in this the evidence of Dr Nosova and Mr Jenni to this effect, the instructions he gave to Mr Samuelson on Valmet in the course of 2000 and, of course, the Curtis notes in 2003.

Your Ladyship has all of this dealt with, together with references to the key documents, at paragraph 1145, volume 2, page 663, and also between paragraphs 1277 and

1282 of our written closing, volume 2, page 733.

The main response of Mr Sumption to what I would suggest is rather a great deal of evidence pointing in favour of Mr Berezovsky's case about who were the buyers in relation to the 1999 aluminium assets was to point to the commission agreements or protocols which purported to have been concluded with Mr Patarkatsishvili as an agent for the undisclosed intermediary. Your Ladyship will recall this.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Mr Sumption referred to this at Day 40, page 9. Just for your Ladyship's note, the translation of the commission agreement -- I'm not suggesting you turn that up now -- can be found at H(E)1/7, at 7 to 10 H(E)1/7.

Your Ladyship may recall that Mr Sumption asserted that these agreements referred to Mr Patarkatsishvili as an intermediary and facilitator and, on this basis, he asserted that this therefore must have been the true and only role played by Mr Patarkatsishvili in the acquisition of the aluminium assets. We would respectfully submit that that assertion is misconceived. As my Lady will recall, Ms Panchenko accepted, as indeed she had to, that the documents did not accurately or genuinely reflect whatever agreement had been made.

Indeed it was obvious that the agreements were a sham since, despite being produced after the agreement to acquire aluminium assets in February 2000, the agreements purported to have been produced at some different time and suggested that the parties had no knowledge at all whether or not any aluminium acquisition would result. They were plainly a sham.

A further point, my Lady, is that it's clear that it is accepted that those documents were never actually acted upon, reinforcing the sham nature of these agreements. My Lady may recall that your Ladyship actually asked Mr Abramovich about whether they were acted upon and he acknowledged that no payment was ever made under these documents which were really just produced and then, it appears, ignored.

Given the general willingness, my Lady --

MRS JUSTICE GLOSTER: Why does the fact that a payment wasn't made under an agreement mean that it's a sham? It may mean that the parties subsequently decided not to exercise their rights under the agreement? There was evidence, wasn't there, from Mr Abramovich that Mr Patarkatsishvili didn't press because he thought he'd get more and that was right?

MR RABINOWITZ: That's what he said but if your Ladyship looks through all the documents --

MRS JUSTICE GLOSTER: I don't see why it's just a sham because you don't necessarily enforce an agreement at the time.

MR RABINOWITZ: It's not just because of that, my Lady. Had someone tried to act upon it, that would suggest it was a genuine agreement. I accept that it doesn't follow necessarily from the converse that it is a sham but the starting point is the evidence given by Ms Panchenko which in effect shows that these were not genuine agreements. Allied to that is the fact that they were never acted upon. They seem to have been made and, insofar as we can tell, put into a file of documents, together with the explanatory note, intended to be shown to an Austrian bank, Kathrein & Co, with a view to opening up an account there.

MRS JUSTICE GLOSTER: This was the agreement that was notarised, was it?

MR RABINOWITZ: This was the agreement that was notarised. They got that notarised, they seemed to have been put into this box of documents which were intended to be shown to an Austrian bank and in effect forgotten about. Because it's not just that they didn't act upon it, my Lady. Your Ladyship will recall that, even on Mr Abramovich's case, even on his case, when he says he came to pay Mr Patarkatsishvili, the payment which he

made had nothing to do with the suggested amount in the commission agreements. It bore no relationship to that.

As your Ladyship will recall, the maximum amount that the commission agreements talked about I think was $115 million. In fact, on Mr Abramovich's case, he paid Mr Patarkatsishvili for his services $585 million. It's impossible, I would respectfully submit, to reconcile the two. That, again, reinforces the notion that these agreements were a sham. They were created in order to be shown to a bank in order to justify payments which were going to be made to Mr Patarkatsishvili and indeed to Mr Berezovsky as well, as it turns out, to deal with, for example, the aeroplane. Your Ladyship will recall the evidence about the Bili company and it opening accounts.

Now, the other point I think to make about this is we would respectfully submit --

MRS JUSTICE GLOSTER: Just a second, Mr Rabinowitz. The aeroplane, remind me, was the aeroplane a gift on top of the 585 or was the money given to pay for the aeroplane? I can't remember.

MR RABINOWITZ: It was on top of. Your Ladyship will recall, the evidence was -- and I don't think this was disputed -- that at the Dorchester meeting, March 13 --

MRS JUSTICE GLOSTER: I remember that.

MR RABINOWITZ: -- for some reason or other, Mr Abramovich does not dispute this, he agreed to give Mr Patarkatsishvili an aeroplane.

MRS JUSTICE GLOSTER: So it wasn't that he was given the money to buy it? There was 585 plus the aeroplane?

MR RABINOWITZ: Indeed.

Now, so far as the attempt by Mr Sumption to try and rely on the commission agreement to tell the court precisely what it was that Mr Patarkatsishvili was doing and exactly what his role was, in our respectful submission, given the general willingness of Mr Abramovich and his team to produce false documents, that's to say documents evidencing transactions that were intended to create a false impression of the transaction concluded, and I have in mind in this, your Ladyship will recall, the ORT documentation, Mr Gorodilov's suggestion, the younger Gorodilov's suggestion was, your Ladyship will recall, to produce an offshore sale of $10 million and then an option agreement of $140 million.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: That had nothing to do with the true nature of that transaction.

Then of course there was the Rusal second sale documentation. Mr Abramovich's own case there is that

he produced false documents, that's to say documents -- this is his case, not ours -- documents which suggested that Mr Patarkatsishvili was the beneficial owner. Now, it's difficult to see why he should say the commission agreement correctly states Mr Patarkatsishvili's position and the Rusal second sale agreement doesn't.

With respect to Mr Sumption, that point really doesn't carry very much weight.

Then of course one also has the various Devonia documents prepared by Ms Khudyk to justify the payment, again suggesting transactions which didn't actually take place. And given all this, it really hardly lies in Mr Abramovich's mouth, or indeed Mr Sumption's, to say that because there was here a sham document produced that suggested that Mr Patarkatsishvili was just an agent, that this definitively establishes that this is all Mr Patarkatsishvili was.

Now, my Lady, I've already made the point that it is relevant that the sham commission agreements -- or commission agreements, I'll stop using the word "sham", it's our submission that they're sham; the commission agreements were found together with the explanatory note. Your Ladyship will recall the explanatory note. That made clear that, in addition to the payments to be made under the commission agreements, Mr Berezovsky and

Mr Patarkatsishvili actually had an interest in the aluminium assets.

So you have the commission agreements, found together with this note which refer to the commission agreements but also say that they have an interest in the aluminium assets themselves. In our respectful submission, that also makes it very difficult for Mr Sumption simply to say: here are these commission agreements, they tell you the true story.

The fact that those commission agreements were found, as they were, in a box of documents all concerned with the opening of an account at an Austrian bank, Kathrein & Co, in our respectful submission really identifies the real purpose of those agreements.

MRS JUSTICE GLOSTER: Where do you deal with this, please?

MR RABINOWITZ: At paragraph 1227 and following of our written closing we deal with -- page 702 deals with the point about the Kathrein & Co documents, and the sham nature of the agreements --

MRS JUSTICE GLOSTER: No, what I'm really looking for is where do you deal with the note that was found with the commission agreements?

MR RABINOWITZ: Paragraph 1227 and following, it's at page 708. It goes all the way through to and including paragraph 1243 where your Ladyship can see we've quoted

from the explanatory note which identifies the fact that certainly the maker of the note thought that the partners had an interest in the aluminium complex. We've highlighted the relevant extracts there.

MRS JUSTICE GLOSTER: Yes. Thank you.

MR RABINOWITZ: So that is what I was proposing to say about the commission agreement and Mr Sumption's reliance on that.

Can I then turn next to deal with Mr Deripaska and the Dorchester Hotel, the merger with Mr Deripaska and the Dorchester Hotel meeting. Mr Sumption submitted at Day 40, page 22, he said that if Mr Berezovsky didn't have an interest in the KrAZ and Bratsk assets then it is hardly realistic for him to be suggesting that he had a share in the merged business. That was Mr Sumption's admission.

My Lady, that would seem to be a perfectly reasonable point. If we didn't have any interest in the assets, then one can see why it would be reasonably argued that we really were unlikely to have acquired an interest in Rusal. But of course the converse is also true. If your Ladyship forms the view that we did have an interest in the underlying assets, then it would seem to follow that it is extremely unlikely that we wouldn't also have had an interest in Rusal when those assets

were combined with those owned by Mr Deripaska to form that company.

That then brings me on to the Dorchester Hotel meeting. We deal with that at section N5, pages 684 and following.

There are three introductory points to make in relation to the Dorchester Hotel issue, and we've covered this in detail, my Lady. The first introductory point is that, on Mr Abramovich's case, the Dorchester meeting was, we submit, the most remarkable coincidence.

Mr Abramovich would have the court believe that, although he and Mr Deripaska and their respective teams had been in London negotiating the Rusal merger between 7 and 12 March, and although they executed the share purchase and sale agreement on 15 March, very shortly after the Dorchester meeting, in the presence he says of both Mr Abramovich and Mr Deripaska, two men who did not know each other well, accompanied by Mr Shvidler who had led the negotiations for Mr Abramovich in relation to the deal, a meeting in London with Mr Patarkatsishvili and Mr Berezovsky on 13 March at which, as is common ground between Mr Abramovich and Mr Berezovsky, the Rusal deal was discussed, is little more than an amazing coincidence entirely unrelated to the Rusal sale.

In our respectful submission that is simply

incredible.

The second introductory point is that Mr Abramovich, Mr Shvidler and Mr Deripaska have all plainly worked hard to deny what really happened on that day. I have addressed my Lady on the dressing gown allegation, I'm not going to repeat those submissions. The significant point for present purposes is that Mr Abramovich, Mr Shvidler and Mr Deripaska were plainly so concerned about the truth of the meeting -- a meeting which, if Mr Berezovsky's evidence is accepted, will hurt Mr Deripaska in his litigation with Mr Chernoi as much as it will harm Mr Abramovich in these proceedings -- that they came up with an added but, we submit, wholly fabricated detail of the meeting in an attempt to show that no serious business was conducted there.

The third and final introductory point about the Dorchester meeting is simply to remind my Lady of what we would submit was the great difficulty that Mr Abramovich and his witnesses had in explaining how it was that the Dorchester meeting took place at all, and why it was that if Mr Berezovsky really had no interest or involvement in the acquisition of the aluminium assets, Mr Abramovich, Mr Shvidler and Mr Deripaska would all have been willing, at very short notice, to fly to London to meet with Mr Berezovsky having been

told by Mr Patarkatsishvili that Mr Berezovsky wished to talk about the transaction.

Again, your Ladyship has the relevant references set out at paragraphs 1183 and following of our written closing, that's page 683. We also deal with this at paragraphs 474 and 475 of our written opening, volume 1, page 311.

Generally, my Lady, just sort of pausing here to consider the issue whether or not Mr Berezovsky did indeed have an interest in Rusal following the merger which was discussed at the Dorchester meeting, my Lady may recall that in his oral closing Mr Sumption told the court that Mr Berezovsky's written closing on the Rusal aspect of this case he said is based almost entirely on what is at best circumstantial evidence, most of it dating from much later, and also on documents suggesting that persons who in most cases had no particular means of knowing the truth were assuming that Mr Berezovsky did have an interest in Rusal. That was at Day 40, page 45.

With respect to Mr Sumption, that was a wholly incorrect submission. There is, I would suggest, a wealth of evidence that would support Mr Berezovsky's Rusal case.

First, of course, your Ladyship has the evidence of

both Mr Berezovsky and Mr Patarkatsishvili both as to what was discussed at the Dorchester Hotel meeting and, more generally, as to their having an interest in Rusal.

As regards Mr Berezovsky's evidence as to what was discussed at that meeting, for your Ladyship's notes, that's referred to at paragraph 1213 of our written closing, page 701. As regards Mr Patarkatsishvili's evidence of what was discussed at the Dorchester meeting, I've already reminded your Ladyship of the summary evidence of Ms Duncan and Mr McKim.

My Lady, the second reason why Mr Sumption's point was a bad one, quite apart from the direct evidence of Mr Berezovsky and Mr Patarkatsishvili, and the contemporaneous contracts I've mentioned, all of which refer to Mr Abramovich having partners or there being other selling shareholders, is of course because there is the Le Bourget transcript which, as your Ladyship will recall, took place in December 2000 and is, therefore, in my respectful submission, very much contemporaneous evidence as to what the position was with regard to the aluminium assets.

I've already addressed my Lady on the significance generally of the Le Bourget transcript. Mr Sumption, when he made his submissions to your Ladyship -- this was at Day 40, page 49 -- told you that the only

significance of the Le Bourget transcript in relation to Rusal was, he said, the use of the word "we" in reference to the 50 per cent holding which your Ladyship has at box 502.

My Lady, even leaving aside Mr Abramovich's complete inability to give an adequate explanation of why he consistently referred to "we", which certainly appeared to include Mr Patarkatsishvili and Mr Berezovsky when talking about ownership or control of the Rusal interests, this, with respect, completely misstates the significance of the Le Bourget transcript.

In the first place, my Lady, it is important to bear in mind, when considering the Le Bourget transcript and what it tells us about the aluminium interests, that it is of course Mr Abramovich's case that Mr Berezovsky had absolutely nothing to do with Rusal. That's his starting point. If that is right, why then was Mr Berezovsky raising the question of Rusal with Mr Abramovich at the Le Bourget meeting at all? On Mr Abramovich's version of events, Mr Berezovsky would have had no basis at all for asking to be made a formal shareholder in Rusal, which is what he did ask, or indeed for anything whatever to do with Rusal.

And if Mr Abramovich's version of events was correct, one would have expected Mr Abramovich's

reaction to Mr Berezovsky raising Rusal, and the recognition for him of a formal shareholding in Rusal, in a fairly dismissive if polite way.

What one has instead is not Mr Abramovich saying to Mr Berezovsky "What on earth are you talking about?", what he in fact says in response when Mr Berezovsky raises the topic of Rusal is consistent only with Mr Abramovich regarding and treating Mr Berezovsky as a co-owner. This can be seen, my Lady, most clearly perhaps from two passages. Your Ladyship may recall box 500 where Mr Abramovich tells Mr Berezovsky:

"You cannot do anything with Aluminium, that's for sure."

In other words, they're discussing whether they can recognise their rights in relation to aluminium, and Mr Abramovich says to him, "You can't do anything with Aluminium, that's for sure." And the reason he gives is in box 502, he says:

"We only hold 50 per cent there [that is at Rusal], so the other party has to agree [about formally legalising their interests]."

Mr Abramovich has been able to provide no explanation at all for why Mr Berezovsky should have been asking about legalising his Rusal interests, nor indeed why he considered he had anything to do with

Rusal.

It is, we would submit, also fair to say that Mr Sumption also made no serious attempt to grapple with the other obvious difficulty posed by the Le Bourget transcript, namely the passage at box 504 where Mr Abramovich tells Mr Berezovsky, with whom he's speaking at this point, and this is in relation to Rusal:

"... you will have to wait in line for dividends" --

Sorry:

"... you will have to wait in line to receive dividends."

For my Lady's notes, that's E6.1, page 173/4 E6/01/173.

My Lady, why would Mr Berezovsky have any interest in dividends from Rusal if, as Mr Abramovich says, he had nothing whatever to do with the aluminium interests at all? Why would he have to wait in line for dividends from Rusal? There would have been no basis for him to stand in that line at all.

We've dealt with these points in relation to Le Bourget very fully at paragraphs 1287 to 1289, page 737 and following of our closing, my Lady. I'm not going to repeat them all now.

There is, however, also just one further point in

relation to Le Bourget. Your Ladyship will recall boxes 37 and 38, E6, tab 1, page 13 and 14 E6/01/13, your Ladyship will recall the reference in those to 30 million being due to Mr Patarkatsishvili and Mr Berezovsky from aluminium.

That again raises the question for Mr Abramovich as to why this would have been mentioned if neither Mr Berezovsky nor indeed Mr Patarkatsishvili had anything to do with Rusal. We've considered that again at paragraphs 288 to 293, volume 1, page 193.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Again, just to make this point, it was of course only nine months after the Dorchester Hotel meeting that the Le Bourget meeting took place. Indeed it was before Rusal was formally formed, which took place late in December, so that is very contemporaneous evidence indeed.

My Lady, the third reason why we submit that Mr Sumption's suggestion that there is nothing other than noncontemporaneous circumstantial evidence involving people who would not know the true position to support the existence of Mr Patarkatsishvili's and Mr Berezovsky's Rusal interests is wrong is of course because of the Curtis notes, and I've already addressed your Ladyship on those notes and I don't propose to do

so again.

MRS JUSTICE GLOSTER: No, fine.

MR RABINOWITZ: Paragraph 1369 and following is where we deal with that.

Then of course there is, on this same point, the payment of the dividends from Rusal profits. Your Ladyship will recall the dividend of $177.5 million paid to Rich Brown out of the profits of the Rusal group, and the fact that when Rusal came to be sold Mr Abramovich had to do so in two stages.

Can I just mention that, go into that in a little more detail, the question of the stages of the Rusal sale because, in our respectful submission, that also is key evidence in relation to the Rusal issue.

It will not have been lost on your Ladyship that in his closing speech Mr Sumption made barely any reference at all to the sale of the first Rusal tranche. That's the one I want to focus on for the moment, the sale of the first Rusal tranche in the autumn of 2003. Your Ladyship will recall that there are -- I'm just going to give your Ladyship the reference to where we deal with this because it may help your Ladyship.

MRS JUSTICE GLOSTER: Paragraph 1377?

MR RABINOWITZ: 1377 and following, that's correct, my Lady.

Your Ladyship may recall that there were

irreconcilable differences, we would submit, between the evidence of Mr Abramovich and Mr Deripaska as to the circumstances of the sale and, more particularly, as to why Mr Deripaska only acquired half of the holding registered in Mr Abramovich's name at this time. Mr Deripaska's evidence in February 2008 in his litigation with Mr Chernoi was that he had, in 2003, made an offer for the whole of Mr Abramovich's 50 per cent stake but was told that only 25 per cent was available.

Your Ladyship will also recall that this was completely inconsistent with Mr Abramovich's evidence that he and Mr Deripaska reached an agreement in the summer of 2003 relating to the sale of the whole of Mr Abramovich's 50 per cent stake in Rusal but agreed to structure it in two stages because Mr Deripaska did not have sufficient funds available. We deal with that at 1383 to 1386 of our written closing.

Now, the other aspect of this, your Ladyship will also recall Mr Deripaska's evidence was also consistent with what was said by Mr Abramovich's own spokesman. That's a point we deal with at paragraph 1400, subparagraph 1, at page 781. He also said that only 50 per cent was sold because there were other people with interests in the other 50 per cent. But it's not

only Mr Deripaska's evidence in the Chernoi litigation that is impossible to reconcile with Mr Abramovich's case as to what occurred in 2003. Your Ladyship will recall the documents, which evidenced the transaction itself whereby Mr Abramovich and Mr Deripaska's lawyers set out the agreement, suggest that what Mr Abramovich told the court about the deal done with Mr Deripaska in 2003 is simply not true. That we've dealt with at paragraph 1377 and following, that's page 773. Your Ladyship will recall those agreements. There was an option agreement; it was impossible, we would submit, to reconcile that with what Mr Abramovich was saying he had in fact agreed.

There really is just the common sense point about this. If Mr Abramovich really was entitled to dispose of the whole of his Rusal tranche in 2003, it is, we submit, really difficult to understand why, commercially, he would only have disposed of half of that stake. In circumstances where that would leave him at the mercy of a businessman, Mr Deripaska, whom even Mr Abramovich said liked to squeeze his partners. It just does not make sense at all, why Mr Abramovich would do that if he could have done anything different.

That, of course, is why Mr Abramovich had to come up with the story of having disposed of the whole of his

stake and fixed the price for it in the summer of 2003 because he also recognised the commercial incoherence of only having disposed of half of it, leaving him as an unprotected minority in a company controlled by Mr Deripaska. In our respectful submission, once your Ladyship concludes, as your Ladyship must, that Mr Abramovich's story about 2003 is bogus, which it undoubtedly is, that really exposes the thinness of his whole case in relation to Rusal.

Now, can I then just say something about the sale of the second Rusal tranche.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Under that tranche, of course, sale documentation was entered into that provided that, contrary to Mr Abramovich's case, Mr Patarkatsishvili and not Mr Abramovich had been the beneficial shareholder of the 25 per cent interest since March 2000. Again, we've dealt with this in our written closing, page 788 and following, that's paragraph 1418 and following. My Lady may recall that, in his oral closing, Mr Sumption suggested that the documents relating to the second Rusal sale do not assist Mr Berezovsky. We would submit that they do for the reasons we've set out in our written closing but, on any view, they certainly do not assist Mr Abramovich because

they demonstrate that a number of people who were involved in the second Rusal sale transaction understood that (a) Mr Abramovich was not the beneficial owner of the remaining 25 per cent stake in Rusal, (b) that there was at least one, if not two other persons described variously as "BB" or "B plus B" or "B1 and B2", "X and Y", who were beneficially interested in that 25 per cent stake in Rusal, and (c) that at least some people regarded or understood Mr Abramovich was in a trustee and/or fiduciary relationship with those other parties.

Now, whatever Mr Abramovich and the Chancery defendants may now seek to suggest, to the effect that that understanding arose because of newspaper reports, in our respectful submission, that is simply not a tenable suggestion. It's perfectly obvious that the understanding of a number of these representatives was ultimately derived, as one would expect in a transaction of this scale and magnitude, from instructions received from the various principals involved in the transaction and, in particular, the understanding of Mr Deripaska and Mr Patarkatsishvili.

That this was so can perhaps be most readily seen from the fact that Mr Hauser uses the language of advice when setting out his understanding of the factual background in his 9 June 2000 memorandum and the fact

that, as he admitted in the course of his cross-examination, the information set out in that memorandum and others like it was not based solely on the newspaper reports. Again, for my Lady's notes, as your Ladyship has probably picked up, we cover this between paragraph 1441 and 1443 of our written closing, page 802.

I think I said 9 June 2000; it's 9 June 2004 for Mr Hauser's memo.

My Lady, perhaps most significantly so far as concerns the second Rusal sale and the final contractual documentation executed by Mr Abramovich is the deed of acknowledgement in which Mr Abramovich openly acknowledged that he was not and never had been the beneficial owner of the last 25 per cent tranche of Rusal and that the beneficial ownership of that tranche was vested in whomever Mr Patarkatsishvili said it was vested in.

The language of the deed of acknowledgement on this point is so clear that, for once, not even Mr Abramovich can seek to argue that something has gone wrong with the contractual wording or that it should be read subject to some Russian tradition or business understanding. Mr Abramovich is therefore reduced to arguing that he was prepared knowingly to put his name to a false

document and that he was a willing party to a money-laundering scheme designed to deceive western banks and to transfer millions into western bank accounts.

What is therefore notable about this, my Lady, is that Mr Abramovich would rather admit to being a participant in that dishonest scheme rather than to admit the truth, which is altogether more straightforward and which is reflected in much of the other evidence to which I've referred, including for example the Curtis notes, Le Bourget and Mr Patarkatsishvili's proof of evidence. That is that Mr Abramovich never was the sole beneficial owner of the 25 per cent stake in Rusal but rather that he held that stake for and on behalf of Mr Berezovsky and Mr Patarkatsishvili.

My Lady, that is all I was proposing to say about the purely factual issues. As I say, they are set out in great detail.

MRS JUSTICE GLOSTER: Thank you. They've been very comprehensively set out.

MR RABINOWITZ: I was going to move on to deal very shortly with some of the legal issues but perhaps I can return to it --

MRS JUSTICE GLOSTER: After the break, at 2 o'clock. Very

well. 2 o'clock.

(12.58 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, can I say something about the choice of law issues relating to Rusal. For my Lady's note, we deal with this in our written closing at volume 2, page 872 and following, paragraphs 1573 and following. This is again an important issue in the context of the Dorchester meeting and indeed Rusal generally because, as your Lady knows, we submit that English law applies to the arrangements in relation to Rusal, indeed that it was expressly agreed, and that is the matter of some dispute.

My Lady, on the question of whether there was in fact an agreement that English law should apply, your Ladyship of course has direct evidence relating to that from Mr Berezovsky who told the court that he, Mr Patarkatsishvili, and Mr Abramovich discussed the use of English or British law both in advance of the Dorchester meeting and indeed at the Dorchester meeting itself, but there is here the usual conflict in the evidence between the parties.

Mr Sumption in closing chose to describe

Mr Berezovsky's evidence about what happened at the Dorchester Hotel meeting in relation to the agreement to apply English law as "ridiculous". Again, I would submit there was no basis at all for such an overblown submission.

There are three observations that we would make in relation to this, my Lady. First, Mr Sumption sought to persuade the court, as did Mr Abramovich's other leading counsels before him in the course of the strike-out application, that Mr Berezovsky had somehow changed his case on the governing law of Rusal arrangements. And again, as your Ladyship knows, we say that's simply not right. We've set out the details of that, paragraph 1590, page 877 and following and I'm not going to repeat --

MRS JUSTICE GLOSTER: No, it's all set out there.

MR RABINOWITZ: It is.

We also submit, secondly, my Lady, just considering the whole circumstance and what is likely to have happened at the Dorchester meeting, your Ladyship will recall that the whole discussion at the Dorchester meeting would obviously have involved, we submit, Mr Berezovsky and Mr Patarkatsishvili being filled in on where matters had reached following the earlier discussions that had taken place between Mr Abramovich,

Mr Shvidler and Mr Deripaska. It's a point we've made previously, but if in light of that Mr Patarkatsishvili, or indeed anyone else, had asked or provided a summary of what had been agreed, given what was agreed in the preliminary agreement a few days earlier about English law, it's difficult to see why that summary would not have included words to the effect such as "We've also agreed that our merger relations will be governed by English law", because that is precisely what clause 14 of the preliminary agreement said.

Now, the third point we make here is to remind your Ladyship that Mr Berezovsky's evidence about the parties agreeing English law is in fact evidence he gave at a time before any disclosure by Mr Abramovich of the mass of documentation was given which is all consistent with it.

The point is this: my Lady should know that Mr Berezovsky recorded in a second witness statement at paragraph 77 that it had been explained at the Dorchester meeting that all the merger arrangements would be governed by English law. That statement was served in July 2009 although it was in fact in materially identical terms to a version served in mid-April 2009. The only difference between the versions was the deletion of an accidental reference to

a draft witness statement in the first version. So Mr Berezovsky was saying this about English law applying in mid-April 2009.

At that time, that's to say in mid-April 2009, Mr Berezovsky had obtained a copy of the 10 February 2000 agreement which, of course, did not contain any English governing law provision, but what he had not at that time obtained was the preliminary agreement of early March 2000 which did contain an English choice of law provision. He had not yet been provided with the 15 March agreements which also contained English law provisions. He didn't have at that stage the 15 May agreement which also contained English choice of law provisions and, of course, your Ladyship will recall that those were the contracts by which the aluminium assets were merged.

Those were disclosed by Mr Abramovich under cover of Mr Mitchard's third witness statement which was only served on 19 June 2009. That, your Ladyship can see, at paragraph 56 of Mitchard 3, which is at J2/2.11, page 208 J2/2.11/208.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So, my Lady, far from it being Mr Abramovich's evidence -- sorry, Mr Berezovsky's evidence being ridiculous, what Mr Abramovich's case

involves, your Ladyship, to conclude, is that in effect Mr Berezovsky made a very lucky guess when he said, "Oh, we agreed that English law could be applied", a lucky guess which was, as it turns out, supported by all the other documents which were subsequently produced which he didn't have in his possession.

We respectfully submit that your Ladyship should not conclude Mr Berezovsky made a lucky guess here. The fact that all of these documents also contain English choice of law provisions is very strong evidence that that is what the parties had in mind should be the law which governed the Rusal relations.

As for the circumstantial evidence supportive of Mr Berezovsky's recollection, we submit that the evidence about this is overwhelming. We've listed it out for my Lady's note at paragraph 1581, page 874, starting at 1581 and going all the way to 1592 of our written closing.

As your Ladyship will see from that, that evidence includes, for example, first the evidence of Mr Abramovich's increasing use of non-Russian law structures, more particularly the creation in late 1999 of the Cypriot trust through which he held his interests in Sibneft, and the 12 contracts through which Mr Abramovich's companies effected the necessary

transfers, each of which had an English choice of law provision. We've given references to that at paragraph 1089, page 630.

There are also the ten dual language share purchase and sale agreements which were executed at around the same time as the 10 February master agreement relating to the aluminium assets, and again, my Lady has that identified at paragraphs 1148 to 1151 of our written closing, page 666.

Then, thirdly, there is the preliminary agreement which, as your Ladyship will recall, also contained an English choice of law provision. Now, again, that's dealt with at 1158 to 1182 of our written closing, page 671. And the relevant clause, clause 14 is, we would submit, strongly indicative of the approach that Russian businessmen generally, and indeed the investors in Rusal in particular, took to the question of the governing law at this time.

My Lady, the fact that the businessmen at that meeting, that's to say the meeting at the Kempinski which I think then carried on at Mr Abramovich's house, the fact that the businessmen at that meeting themselves concluded that an English choice of law provision should be included indicates, we would submit, that Russian businessmen worried about these things, and indeed

discussed and agreed them even when lawyers were not present. It also indicates the high regard that Russian businessmen quite properly had for English law at that time, and their knowledge that they needed to expressly deal with the question of choice of law by including a provision to that effect in their agreements.

In our respectful submission, my Lady, if this was a matter which would be sufficient to be addressed by the parties at the Kempinski Hotel meeting there is no reason at all why it would also not have been addressed by very similar parties at the Dorchester Hotel meeting very shortly thereafter.

Now, a fourth matter which your Ladyship may regard as relevant in this context --

MRS JUSTICE GLOSTER: Well, Mr Berezovsky wasn't at the Kempinski, was he?

MR RABINOWITZ: No, he was (sic), but the others were. And that was really the point I was about to come on to, because they were all content with English law provisions, they were agreeing them there.

Mr Berezovsky, as your Ladyship will recall, the evidence is that he comes to the Dorchester meeting having just been in the House of Lords dealing with the Forbes litigation. And the evidence he has given to your Ladyship is as to how impressed he had come to be

with the English legal process. He just thought English law and the English legal process was the bee's knees.

MRS JUSTICE GLOSTER: Had he just won in the House of Lords or was it just the argument?

MR RABINOWITZ: I think it was just the argument. I think among the things that impressed him was the bowing and the politeness and the fact that it appeared there was going to be a fair hearing, which may not have been something he was entirely used to.

In those circumstances, where Mr Berezovsky had just spent the morning in the House of Lords attending his jurisdiction battle there, if someone had mentioned the fact that they had agreed to English law to govern the future of merger relations between the Abramovich group and the Deripaska group it would, I suggest, have been entirely unsurprising that Mr Berezovsky would also have readily agreed that English law should govern internal legal relations of the Abramovich group.

This circumstantial evidence, which we submit is strongly supportive of Mr Berezovsky's actual recollection, is, as your Ladyship appreciates, the same evidence as that which would in any event support an implied or imputed choice of law under the Hague and/or Rome Conventions. Again, we've set out all this for your Ladyship at paragraphs 1590 through to 1636,

page 879.

So that is why we say, even if your Ladyship were to conclude that there were no express discussion of choice of law at the Dorchester Hotel meeting, then that does not matter because English law would be the applicable law in any event. That's under Articles 5 to 7 of the Hague Convention.

Now, finally in relation to the claim against Mr Abramovich, your Ladyship will have seen that we deal with our submissions on the law and the resolution of the Rusal issues in some detail at section O in volume 2 of our written closing. Again, I wasn't proposing to repeat those submissions here.

The very short version is that if my Lady is with us on the facts of Rusal, and in particular that Mr Abramovich was not acting alone but that Mr Berezovsky and Mr Patarkatsishvili were his joint venture partners in relation to Rusal, and that their relationship was expressly or impliedly governed by English law, then much as one might expect, there will be no legal impediment to Mr Berezovsky succeeding in his claim. That's what it will come to. There is certainly no legal argument why, if the facts are in his favour, he would nonetheless not succeed.

My Lady, can I then move now to deal with the

Chancery defendants. I propose to say very little about the position of the Chancery defendants.

MRS JUSTICE GLOSTER: Can I just be clear. The claim in relation to Rusal, the claim for compensation or accounting, only relates to the fact that the second tranche was sold, you claim, at an undervalue?

MR RABINOWITZ: Well, it was sold. The point about -- the claim in relation to Rusal --

MRS JUSTICE GLOSTER: Well, it was sold contrary to what you say was an agreement that it wouldn't be sold?

MR RABINOWITZ: They wouldn't sell without permission. In other words, you wouldn't sell in circumstances where you would put the other party into the position of a minority.

MRS JUSTICE GLOSTER: But I'm looking at the issues at page 849 in the second volume of your closing.

MR RABINOWITZ: If your Ladyship picks it up at issue 18, your Ladyship sees 18.2 --

MRS JUSTICE GLOSTER: What I'm not quite clear about is the compensation claim.

MR RABINOWITZ: Right.

MRS JUSTICE GLOSTER: I'm looking at 26, 27. Is the claim for compensation dependent upon there being a breach of what you assert is the obligation not to sell without the agreement of the others?

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: Or is there another type of claim?

MR RABINOWITZ: Well, there's the breach of fiduciary duty as well, that's to say, we've set it out in our written closing, but there is also a breach of fiduciary duty not to compete with those for whom one is standing in a fiduciary position. So that -- it's not just the contract claim, there's a breach of fiduciary duty claim as well, but it is very much related to the fact that Mr Abramovich, we submit, held in trust, and by virtue of his being a trustee, if he sold his interests in a way so as to favour himself over the position of his beneficiaries that also gives rise to a claim.

That's the point we deal with at paragraph 1570, page 870.

MRS JUSTICE GLOSTER: But assume he sold the assets and there wasn't a breach of the obligation, let's assume there wasn't, the court were to find there wasn't an obligation to sell, say, with the agreement of the others, is there still an accounting claim?

MR RABINOWITZ: That would be a breach of trust claim, yes, my Lady. That would also give rise to the claim.

MRS JUSTICE GLOSTER: Because you say that irrespective of whether he should have sold or could have sold or not, he hasn't accounted to you for the proceeds?

MR RABINOWITZ: Well, he's favoured himself in the sense that he sold his share for 1.5 billion, which made our share worth --

MRS JUSTICE GLOSTER: Yes. And he should have sold you say pari pasu your shares and his shares.

MR RABINOWITZ: Precisely.

MRS JUSTICE GLOSTER: Yes, I'm not quite clear, if that's right -- well, no, I can see the argument on quantum.

And you don't accept that whatever was paid to Mr Patarkatsishvili was an appropriate accounting so far as Mr Berezovsky was concerned?

MR RABINOWITZ: Definitely not, my Lady.

MRS JUSTICE GLOSTER: So no credit is to be given for the money that was paid --

MR RABINOWITZ: Ah, sorry. You would give credit for that money in a sense that -- as I understand the law, we have an election, we can actually say, "You've sold our share because we were your beneficiaries", the 1.5, whatever it is, but that is not to say that there's some part of the 580 or 570 --

MRS JUSTICE GLOSTER: 585.

MR RABINOWITZ: 585 including, that you wouldn't be able to take into account by way of a deduction.

MRS JUSTICE GLOSTER: Would you just direct me? I'm afraid I haven't read quite to the end of this, which I still

have to do.

Can you tell me where you make the point on accounting in relation to the 585? It's not quite clear how you put your case on this.

MR RABINOWITZ: No, I follow, my Lady.

MRS JUSTICE GLOSTER: I can see the claim that you say Mr Abramovich wouldn't have sold at all, or that he shouldn't have told his stake, in inverted commas, at a higher price without selling part of your holding as well. And I can see that you've got an accounting claim, or that you say you've got an accounting claim. What I'm not clear about is whether or not you concede that you should credit, or some credit, for the 585 that was paid to Mr Patarkatsishvili.

MR RABINOWITZ: Can I invite your Ladyship to go to the opening submissions.

MRS JUSTICE GLOSTER: Right. Yes, I've got them. Which?

MR RABINOWITZ: Paragraph 1477 and following, page 637, behind V.

If your Ladyship looks at paragraph 1479 on page 638.

MRS JUSTICE GLOSTER: Right, 1479. You recognise it -- yes, I must have got it from there.

MR RABINOWITZ: I think that was the point my Lady was after.

MRS JUSTICE GLOSTER: So he's accepting, as it were, is this right, that Mr Patarkatsishvili had authority to receive the 45 (sic) million on the "partnership's" account.

MR RABINOWITZ: Not that he had authority but that he in fact did.

MRS JUSTICE GLOSTER: So anyway he's giving credit for that.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: For the 450 million. He's not saying, "You should have paid half to me, Mr Abramovich. You shouldn't have paid the whole lot to Mr Patarkatsishvili"?

MR RABINOWITZ: He's not disputing that Mr Patarkatsishvili would have been entitled to half of what the proceeds were, that is to say, of the 25 --

The claim arises in this way: number one, he shouldn't have sold without consent, so that as a consequence of that he was in breach of --

MRS JUSTICE GLOSTER: I've got all of that. All I'm interested in is whether, in paragraph 1479, the recognition there is an acceptance that he has to give credit for whatever his share is of the 450 million?

MR RABINOWITZ: And I think we do accept that.

MRS JUSTICE GLOSTER: Well you seem to be there.

The alternative would be to say "You had no authority to pay Mr Patarkatsishvili without my consent

and agreement, I'm not giving any credit for any part of it".

MR RABINOWITZ: Well, he could have said that, and perhaps we could have said that --

MRS JUSTICE GLOSTER: But he's not?

MR RABINOWITZ: -- but he's not saying that.

MRS JUSTICE GLOSTER: Yes, okay, I'm clear on that. Thank you.

MR RABINOWITZ: Just for your Ladyship's note, we deal with quantum issues further at section O8, page 924 and following.

MRS JUSTICE GLOSTER: In the second --

MR RABINOWITZ: In our written closing.

MRS JUSTICE GLOSTER: In your written closing.

MR RABINOWITZ: That may assist your Ladyship in terms of what our position is generally in relation to the claims.

Now, can I then turn to the position of the Chancery defendants.

MRS JUSTICE GLOSTER: Yes, certainly.

MR RABINOWITZ: I'm going to say very little about them because the position they take very largely mimics the submissions of Mr Abramovich which, as your Ladyship knows, have been dealt with in full in our written closing.

So far as the position of the family defendants is concerned, there are only two points we would wish to make. The first is really by way of a caveat to suggest that your Ladyship tread carefully when dealing with the family defendants' written closing because, in our submission, that document reflects an unfortunate tendency not always to fairly portray the documentary evidence or the oral evidence, but since a number of the issues to which those submissions are directed really just follow what your Ladyship will find in Mr Abramovich's materials, again I'm not going to take up time on that now.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Secondly, so far as the family defendants are concerned, is just to note the curious position that the family defendants have had in these proceedings. As my Lady will recall, Mr Patarkatsishvili's widow and daughters had previously run a case in Gibraltar and given evidence there which recognised the interests of Mr Berezovsky and Mr Patarkatsishvili in both Sibneft and Rusal.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Despite the fact that they were, Mr Patarkatsishvili's widow and daughters, very frequently in this court during the trial, and there

would not appear to have been any difficulty whatever with them doing so, Mr Patarkatsishvili's widow and daughters declined to give evidence to the court on matters which were plainly within their knowledge. Yet here they are, having led absolutely no evidence of their own, and in circumstances where they had previously told the court exactly the opposite, seeking to persuade the court that Mr Berezovsky had no interest in Rusal.

Indeed more than that, my Lady, they are seeking to persuade the court that Mr Patarkatsishvili also had no interest in Rusal, arguing for example at paragraph 35 of their written closing that the commission agreements demonstrate, they say, Mr Patarkatsishvili's role as a key intermediary in the aluminium deal and not a principal to it.

My Lady, if that were not enough, there is also the fact that the family defendants' case, as presented by their counsel since they called no evidence, is also inconsistent with Mr Patarkatsishvili's own evidence as described, for example, in the statements of Ms Duncan and Mr McKim. A further oddity which, in our submission, demonstrates that the position which they adopt is entirely self-serving and a position of pure convenience. And indeed, despite the family defendants'

protestations in the course of their oral opening that they would not want Mr Patarkatsishvili to be branded a gangster, that's at Day 2, page 147, it is notable that in their written closing the family defendants are perfectly prepared to seek to brand their late husband and father a serial and methodical liar.

For your Ladyship's note, you may wish to see, for example, paragraph 72 of the family defendants' written closing where it is suggested that Mr Patarkatsishvili falsely asserted to Mr Berezovsky's solicitors between 2005 and 2007 that both he and Mr Berezovsky had acquired ownership interests in Rusal when that was not in fact the case.

My Lady, the fact that the family defendants are apparently perfectly content to make submissions that their late husband and father, Mr Patarkatsishvili, was a deceptive and dishonest man, willing to mislead Mr Berezovsky's solicitors, shows, we submit, just how far the family defendants are now prepared to go in order to defeat Mr Berezovsky's claims against Mr Abramovich in the Commercial Court action and themselves in the Chancery actions.

I would submit that this does not reflect well on them and strongly suggest what the claimant has all along suspected, and which has never been openly and

adequately dealt with by the family defendants, namely that there is much going on behind the scenes which has resulted in their being willing to betray the memory of their father and husband in this way.

MRS JUSTICE GLOSTER: Can I ask, and it may be I've seen some reference to this, did your solicitors write to the solicitors acting for the family defendants to enquire whether there were any arrangements between the --

MR RABINOWITZ: They did.

MRS JUSTICE GLOSTER: What was the answer to that? Do I need to look at that correspondence?

MR RABINOWITZ: We have -- for my Lady's note, annex B to our opening document sets out that, page 660.

There was a reply which we made clear was, in our submission, not a satisfactory reply in that it left open a number of questions which were unanswered.

MRS JUSTICE GLOSTER: Annex B?

MR RABINOWITZ: Indeed, my Lady may recall I raised it in opening --

MRS JUSTICE GLOSTER: Yes, I remember.

MR RABINOWITZ: It was never dealt with by Mr Adkin then, through no fault of his own I think.

Now, given that there is overlap between what they're saying and what Mr Abramovich is saying, I wasn't proposing to address your Ladyship specifically

on the points that they have made. They are, I would submit, adequately covered by what we say in our closing.

Can I then just turn to the Anisimov defendants, and again I can be brief about this. Again, this is a document which, perhaps unsurprisingly, is also substantially parasitic on Mr Abramovich's written submissions and, again, since the points arising are really the same, I'm not going to repeat them just because they're repeated in Mr Anisimov's submissions.

My Lady there are perhaps two points arising from the Anisimov defendant's written closings that I do need to mention. The first relates to the point that they make about various matters not being put to Mr Anisimov, in particular about --

MRS JUSTICE GLOSTER: I think I may have left it in my room so I'm going to get it up on the screen.

Can you give me the reference to Mr Malek and Ms Tolaney's closing, please, so I can look at it on the screen? I may have left it in my room.

MR MALEK: Can we give your Ladyship another -- it's a clean copy I'm told, of our submissions.

MRS JUSTICE GLOSTER: Yes, I mean, I have got one, but if I could have another copy. You haven't got it in small, I suppose? It doesn't matter. That's fine. Thanks

very much. (Handed)

I have read it, Mr Malek.

MR RABINOWITZ: So the first, as I have said, the first point relates to the point that they make that there were various matters not put to Mr Anisimov about what he knew of Mr Berezovsky's involvement in the original aluminium acquisition, and the second point I need to address is a point which they make -- Mr Anisimov makes about the second Rusal sale.

Now, just on the first point, points not put and the like, your Ladyship may recall that the overlap issues, for very sensible reasons, have not been defined so as to require this court to make any findings about Mr Anisimov's knowledge or about questions of his honesty and dishonesty. That was for the very good reason that those are matters to be dealt with in the Chancery action where there will have to have been full disclosure on all matters from Mr Anisimov and all the parties, and the court in the Chancery Division will have all relevant evidence before it on all issues.

It was for this reason, that's to say that this court will not have to make any findings about Mr Anisimov's knowledge or about questions of his honesty or dishonesty, that various matters were not put to Mr Anisimov about his state of knowledge and bona

fides.

As we have made clear in our written closing, we are not inviting the court to make any findings as to Mr Anisimov's knowledge in these proceedings and nor is the court required to do so.

MRS JUSTICE GLOSTER: No.

MR RABINOWITZ: That is the first point.

My Lady, the second point I need to pick up on is that Mr Anisimov, in his written closing, this is at paragraph 168, page 80, suggests to your Ladyship that it is fanciful to suppose that there was some sort of conspiracy in relation to the second Rusal sale documentation to misrepresent the true factual position. That is what he says.

My Lady, the difficulty with that submission is that it is a point that is completely undermined by Mr Abramovich's own defence in this action. In other words, both on Mr Berezovsky's case and on Mr Abramovich's case it is suggested that the second Rusal sale documentation quite deliberately did materially misrepresent the true factual position.

From Mr Berezovsky's side, Mr Berezovsky says the conspiracy was to keep his name out of that documentation. From Mr Abramovich's side, the suggestion is that Mr Patarkatsishvili was dressed up to

look like a beneficial interest holder when he was not. So that on both sides' case, they are suggesting to your Ladyship that there was indeed a conspiracy of sorts to misrepresent the true factual position in the sale documentation.

So it's somewhat ironic that Mr Anisimov, Mr Anisimov alone, contends that it is fanciful to think that there could have been any conspiracy of that sort given that, in effect, that point is common ground. So, my Lady, we submit that that point of Mr Anisimov is bad. I'm not, as I say, going to address the other points because, as I say, they do largely overlap and I would just be repeating myself even further than I already have.

So unless I can assist your Ladyship with anything else, those were our closing submissions.

MRS JUSTICE GLOSTER: Thank you very much indeed.

MR RABINOWITZ: The only other thing I would say is that we are endeavouring to get the schedule, which will become an important document for your Ladyship, I think, schedule 2 -- well, it's their schedule with our comments, we hope to do so by the end of this week.

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: I'm grateful.

MRS JUSTICE GLOSTER: In fact I've got a criminal case that

I've got to deal with for three days, and some reading for that, so I'm not going to start writing this judgment --

MR RABINOWITZ: **We will get it to you as soon as we possibly can.**

MRS JUSTICE GLOSTER: **I can tell all the parties I'm not going to start writing this judgment immediately, not least because I've got a three-day criminal case, but also because I have a lot of reading to do because, as you know, I was not given any formal reading time before the case started. Obviously you'll be kept up with progress.**

So if there is anything you wish to deal with you'll have at least seven days before I get into the reading.

MR RABINOWITZ: **I'm grateful. Thank you my Lady.**

MRS JUSTICE GLOSTER: **Right. Thank you very much, Mr Rabinowitz, and also your entire team.**

MR RABINOWITZ: **Thank you.**

MRS JUSTICE GLOSTER: **Yes, Mr Malek.**

Closing submissions by MR MALEK

MR MALEK: **My Lady, can I start off by saying how I intend to deal with our oral submissions.**

MRS JUSTICE GLOSTER: **Yes, I have read your document.**

MR MALEK: **I'm obliged.**

What I propose to do is to break my submissions down

into two parts. First of all, to deal with some issues as to how we submit your Ladyship should approach the evidence and the issues in this case, and then I will move on to submissions directed to Mr Berezovsky's Rusal claims.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: At the outset, we are grateful for the indication that you gave to my learned friend Mr Rabinowitz as to how you will use the written submissions. And I will not repeat our written submissions although I would wish to highlight some points.

For the avoidance of doubt, we confirm that we adopt the submissions made by Mr Abramovich as far as they affect us and Rusal, and also the submissions of the family defendants. My objective this afternoon is not to go into the detail because that's the purpose of the written submissions. What I would like to do is to focus on some big picture issues that hopefully will assist your Ladyship in reaching your decisions on the issues in dispute. When I go through my submissions, I will do my best to give your Ladyship supporting references so that you can follow up the arguments if your Ladyship wishes to do.

MRS JUSTICE GLOSTER: Thank you.

MR MALEK: The first topic I would like to cover is the

difficulties that this case presents to the fact finder, namely your Ladyship. There are three features of the case that stand out. First of all, it's about hotly disputed oral agreements; it's a case where the claims are stale, and when I say stale I mean the limited evidence upon which Mr Berezovsky's claims are based is stale; and then the third feature is that the burden of proof is on Mr Berezovsky to establish his claims. We submit it's those three features that present insuperable difficulties for Mr Berezovsky. There cannot be any serious dispute about those three features.

All I wish to say about the burden of proof, your Ladyship heard submissions from my learned friend Mr Rabinowitz about overreaching questions on the case, Day 41, page 4, lines 15 to 18. He said:

"I would respectfully suggest that there is one overreaching question that the court will want to ask itself, and it is this: has Mr Abramovich on his case provided a plausible explanation for the enormous and indeed admitted payments made to Mr Berezovsky and Mr Patarkatsishvili?"

Now, all I wish to say about that is it's careful (sic), when your Ladyship considers questions like that, that there is no reversal of the burden of proof. The

burden of proof is on Mr Berezovsky to establish his case. And it's important to keep that consideration in mind when one considers the broad questions.

As to the first two features, it's quite plain that the Sibneft and Rusal claims do require consideration about alleged oral agreements made many years ago. The agreements are all oral, they are the four agreements that your Ladyship has heard about, namely the 1995 tripartite agreement, the 1996 agreement, the 1999 agreement and finally the Dorchester 2000 agreement.

Although not on the agenda for determination at this trial, but as part of the background, there is the disputed bilateral joint venture between Mr Berezovsky and Badri that is part of the Chancery proceedings, and based on that bilateral joint venture, Mr Berezovsky appears to assert an entitlement to a share of all of Badri's assets and investments from 1995 until Badri's death in February 2008 with some limited exceptions. I'll come back to that bilateral joint venture and its significance in these proceedings in a moment.

The next point to make is that this is not a case about --

MRS JUSTICE GLOSTER: When you say all Mr Patarkatsishvili's assets, are we dealing with real property and things as well?

MR MALEK: I think we're dealing with real property as well. There are some exceptions, but the answer to that question is yes, as I understand it.

Now, the point I was about to go to --

MRS JUSTICE GLOSTER: I mean homes in Georgia?

MR MALEK: No, personal property and investments I'm told. His personal property, yes, is excepted, yes.

As far as the point about the disputes about the alleged oral agreements, it's quite plain that this is not a case about minor disputes. In fact every aspect of the alleged oral agreements are in dispute: whether they were entered into, whether they were intended to be legally binding terms in governing law. And as your Ladyship knows, there's a dispute as to what Mr Berezovsky was wearing on one occasion that is the dressing gown issue in relation to Dorchester.

You're not going to hear me about dressing gowns, you'll be pleased to know, but there is a serious point about that which is that your Ladyship is not required, we would submit, to try every factual disputed issue, and the purpose of my submissions is to focus on the core issues and to avoid the sideshows.

Now, as to staleness, in my submission, there could be no doubt about that. The court is being asked to make findings of fact in 2012 in relation to agreements

some 16 to 17 years ago, and, as your Ladyship knows, the Dorchester Hotel meeting celebrates its 12th anniversary in March. Now, the difficulties of stale claims are well known. Oral evidence tends to be based on reconstruction rather than specific recollection. Yesterday Mr Rabinowitz criticised Mr Anisimov of amnesia in relation to the Baden Baden meeting in June 2001. In my submission, it can't be expected that individuals remember meetings so long ago and I'll come back to that specific meeting later on in the course of my submissions.

Now, even in the normal litigation, the problems are well known. Witnesses can persuade themselves of a version of events that on analysis is simply wrong, documents get destroyed in the ordinary course of business. But this case is more difficult because here is a case where the parties' resources are substantial, there are allegations of dishonesty, there has been a substantial strike-out before Sir Anthony Colman, and this has meant that the material before the court on these alleged oral agreements is substantial and that in itself gives rise to difficulties to the fact-finder.

Now, as far as how a fact-finder deals with a case like this, this is clearly a case which is intensively factual.

MRS JUSTICE GLOSTER: I don't think you need to call me the fact-finder. I'm the judge, aren't I?

MR MALEK: The judge, exactly. For the judge.

MRS JUSTICE GLOSTER: You could call me the decision-taker.

MR MALEK: Yes. I'll call you the decision-taker and the judge, of course.

But the point I'm making is that the main difficulty that Mr Berezovsky faces is that he is dealing with -- relying on conversations many years ago and where he is the only real witness in the case. As far as the facts are concerned, your Ladyship will approach this no doubt having regard to the contemporary documents, the likely probabilities and the demeanour. I'm not going to say anything at this stage about likely probabilities, and nor do I propose to say anything about demeanour because that's subjective and it's something for your Ladyship to form a view on.

But in our submission, there are two types of factors which your Ladyship should take into account. There's what I may describe as general factors that make the court's task a difficult one in any event, and then there are specific ones to Mr Berezovsky and his evidence which we submit means that his claim must fail.

As far as the general points are concerned, there are four points that I would like to draw your

Ladyship's attention to. First of all, there is the unusual background and context. It is often said in cases that context is everything. Contrary to what has been written about by some in the recent press, there are good reasons why this case is being tried in London. And this court has a unique experience dealing with cases of an international element. But you are undoubtedly trying a case with an unusual background and context. That's the medieval history point that Mr Sumption made at the outset of the case, it's the Russian context.

Of course one way that your Ladyship has been able to mitigate this difficulty is allowing in the expert evidence from Professors Fortescue, Service and Bean, and it goes without saying that we invite your Ladyship to proceed on the basis that they all discharged their duties to the court as experts.

But the fact that the court is being asked to rely on historical evidence from experts to provide context for disputed oral agreements is unusual and is why there was a dispute of application to admit this evidence. The Russian context also deals with the issues about the governing law and questions of its content and, again, your Ladyship had assistance from well-qualified experts.

But there's this other difficulty that's perhaps worth stressing at this point, that when your Ladyship comes to consider the evidence and looking at conversations, there were undoubtedly conversations involving English and Russian speakers, and that's the language barrier point or the lost in translation point, and that covers conversations that the solicitors were party to, whether it's Mr Curtis or Mr Moss, and the proof-taking before Badri died.

The second general overview point here is that the court would normally expect, in view of their importance, that the alleged agreements be recorded in writing or certainly evidenced in writing by contemporaneous documents and here they were not. Mr Berezovsky in his closing submissions challenges this by saying that there is documentary evidence. But when I'm speaking of contemporaneous documentation I am not referring to circumstantial evidence or documents that might support a version of events, I'm speaking of the type of records that you would normally see in a case of this kind of nature. I'm talking about notes, of records of any kind. But, in our submission, this lack of documentation to the alleged oral agreements is very damaging to Mr Berezovsky's case.

Now, a lot of evidence has been given about why the

agreements were oral, and to some extent that that is tied into the Russian context point that I've mentioned. But I would submit that the court should approach this as a matter more of common sense than Russian history about business practices.

Whatever might be said about the lack of written agreements between trusted friends and partners, it is hard to see why, if Mr Berezovsky's version of events is correct, no record was made by anyone of the Dorchester Hotel agreement involving Mr Deripaska, who clearly was a principal player in the merger and who Mr Berezovsky had no relationship with.

Moreover, if my learned friend Mr Rabinowitz is right in his argument, which is hotly disputed on the facts, that Mr Berezovsky and Mr Abramovich fell out after the alleged intimidation in relation to ORT at the end of 2000, and then in relation to Sibneft, why did he do nothing to secure his alleged interest in Rusal if he really believed that he had an interest in Rusal? In my submission, there is no answer to that.

So whatever might be said about the reason for the lack of contemporary documents, whether it is because there are no agreements or for any other reason, the fact of the matter is that you are dealing with agreements which are oral and undocumented. It means

that the court lacks the important material to test the parties' version of events. It means that the court is being asked to look at events and material long after the alleged oral agreements to see whether they provide circumstantial evidence in support of the matters sought to be proved.

Now, the third point is that the combination of the lapse of time and unfortunate circumstances means that there are limited materials before the court and certainly the court did not hear from all of those who could have given evidence that might have assisted the court in determining whether the alleged oral agreements were made. That is a feature of stale claims. The court simply does not have all the evidence that might have been available had the dispute been resolved nearer the time of the alleged oral agreements rather than 16 years after they were concluded.

Your Ladyship knows who I am referring to. Badri obviously was a key witness, and the various notes that were taken of meetings with him years after the event in question are clearly not a substitute for his oral evidence. Undoubtedly he would have been a key witness, not simply to Mr Berezovsky but also to Mr Abramovich whose evidence was that he remained in friendly relations until Badri died.

Important witnesses are dead. Mr Curtis is dead, he died in a helicopter accident. He suffered the same fate as General Lebed. Both of them would have been important witnesses but on different topics. Mr Moss, the solicitor involved in the Baden Baden meeting in June 2001, is dead. And some witnesses simply refused to give evidence.

And you've heard about Mr Michael Chernoi. As Mr Abramovich points out in his written closing at paragraph 251.7, it appears that there is some financial arrangement between Mr Berezovsky and Mr Chernoi. Inexplicably Mr Chernoi refused at the last minute to be cross-examined by video-link. We would submit it shows a weakness of Mr Berezovsky's case that he continues to rely on his evidence. But, in my submission, no reason has been given as to why he has not been called.

Yes, he has a litigation in relation to Mr Deripaska but arrangements were made by Mr Deripaska to protect his interests in relation to that litigation. The same could have been done in relation to Mr Chernoi. And we would submit that there may be a link, to say the least, between the financial arrangements that were mentioned in the course of evidence and Mr Chernoi refusing to come to give evidence.

We would say that if you have any interest in his

evidence you should read Mr Justice Henderson's judgment in Cherney v Neuman which is at 2011, it's going to go on to Magnum at P(A)4/05B, where you will see that there is a very odd situation where he was apparently rehearsed in cross-examination, the judge indicated that he approached his evidence with considerable caution, and the judge said that his answers in cross-examination were often evasive.

Now, as far as Mr Fomichev is concerned, it appears that he was thought to be so unreliable that no one called him. I'm not going to deal with him because your Ladyship has the submissions about him from the principal protagonists.

Joseph Kay is another person but his absence is not a surprise and, as we point out in our closing submissions, the Gibraltar court's assessment of him was somebody with a palpable predisposition to mendacity and for whom the truth is vaporous.

Now, the fourth difficulty -- he obviously made a very convincing witness.

The fourth difficulty is that this is not only a case -- not a case where the oral agreements are evidenced by the contemporary documents; the documents that do exist are of limited assistance and often do not help because there is an issue of whether they can be

taken at face value.

A good example of this is in relation to the documents relating to the second Rusal sale. Here there is some common ground between the principal protagonists. Mr Abramovich says that the declaration that Badri had been an owner since 2000 is not true, Mr Berezovsky says that Badri's representations and warranties are not true, and those agreements are summarised in our closing submissions at paragraph 207.

You've heard about the backdating of documents. You have also received allegations that sham documents were created in order to satisfy the requirements of western banks. So this means that where ownership interests are referred to in correspondence, the question for your Ladyship is whether this is reflective of real ownership interests or whether it is simply a false statement in order to allow the movement of money to satisfy money-laundering requirements.

Moreover, there is evidence that Mr Berezovsky was prone to making claims to ownership which he knew to be untrue. That's a reference to Aeroflot and I'll come back to that later in the context of the explanatory note.

What about press statements? Clearly they were sometimes unreliable and they do not always say the

truth. You remember I put to Mr Berezovsky in cross-examination the press statement that said that Logovaz had acquired the aluminium assets. He said that that was disinformation. As we point out in our closing submissions at paragraph 51.1, Mr Berezovsky accepted in his evidence that he used the media to spread deliberate disinformation.

So those four factors make Mr Berezovsky's case difficult to establish, whether it's a question of context, lack of contemporary documents, missing witnesses and unreliable witnesses, but claims which are -- of course we're dealing with claims which are dependent on the court's acceptance of his oral evidence on which he has the burden of proof.

Now, on their own, these four factors would have presented by themselves massive problems for a case based on disputed oral agreements. However, we submit that acceptance of Mr Berezovsky's case becomes almost impossible when one considers his evidence, and there are five short points to be made here.

The first is the relevance of politics in this case and how it affects the court's consideration of the evidence in this case. Politics of course is at the forefront of the allegations in relation to ORT and the Sibneft intimidation claim. Politics and law do not go

together very well, but the political aspects of this case cannot be ignored in relation to other aspects of the case.

There are three examples of this. The first is this: it was Mr Berezovsky's political influence that was important as to why he received from Mr -- money from Mr Abramovich. Whether that's under the oral agreements he alleges, or is krysha as Mr Abramovich alleges, that in itself does not affect the Rusal claim because Mr Berezovsky did nothing in relation to Rusal. However it is Mr Abramovich's case, which the Anisimov defendants support, that it was Mr Berezovsky's perceived political power, after President Putin was elected in March 2000, that is important in understanding why Mr Abramovich and others were prepared to go to the Dorchester Hotel to meet him.

The second point is this, it was Mr Berezovsky's political aspirations and his character which perhaps explains the tendency on the part of Mr Berezovsky to grandstand. You have the many statements to the press that your Ladyship was referred to and this means that the court should be slow to rely on statements to the press as being true.

You have the examples of this in the submissions. When Mr Berezovsky tells the press in February 2000 that

Logovaz has acquired aluminium assets, when in late June 2004 he says that he has an interest in Rusal and disapproves of the sale and will challenge it to the court if necessary.

Now, the question for the court is whether, when he made those statements, it was because he believed Logovaz has an interest, or he had an interest in Rusal, or was it because he wanted to be on the stage with the lights on him? We know the statement in relation to Logovaz was fiction. Our case is that the June statement about Rusal was grandstanding and again untrue.

The third fact about the political aspect ties in with political krysha and the payment for influence. I do not propose to go into the issue of krysha but you have heard how it was important for key players in Russia to have persons associated with you. This may require the relationship to involve the appearance of ownership rights. How does one determine, as a judge determining a case, whether this is a complex krysha arrangement involving real ownership or simple apparent ownership?

That was a point covered by Mr Abramovich in his evidence, and the reference to the transcript is Day 17, from page 63 onwards, and also his third witness

statement, at paragraph 32 through to 36 E1/03/42.

So the short point here is that the political aspects of the case cannot be ignored and, we submit, present difficulties for Mr Berezovsky in establishing his case.

Now the second difficulty, or the point here, is that Mr Berezovsky's case concerns important changes in his case. There are many examples of this, a good example being the alleged agreement on English law to govern the dealings in relation to Rusal. Another example is the late introduction of the 1999 agreement when it became clear that the 1995 agreement did not produce the consequences desired by reason of operation of Russian law.

In many cases, of course, we accept that amendments to a case are not reason for doubting the merits of the case. However, in a case based on alleged oral agreements and dependent on who your Ladyship believes is telling the truth it really does matter. And anyone advising a client will tell him or her that they need to get the version of events correct right at the outset, whether it's in a pleading or in a witness statement, and I would suggest that in a modern context, with statements of truth, that is a consideration of particular importance.

Now, we contend, as your Ladyship knows, that the many changes were not fine-tuning of a bona fide claim by way of clarification or correction, but have all the hallmarks of invention.

The third point is Mr Berezovsky's tendency to blame his lawyers for changes in his case, and the issue here is whether the changes to the case can be justified because of misunderstandings between a client and his lawyers or whether Mr Berezovsky, as we allege, blames his lawyers as a false excuse for changes. Again it shows how unreliable his evidence is and why it cannot be accepted.

Now, the fourth point is that there are features of Mr Berezovsky's evidence that are disturbing and, we submit, fatal to a case based on disputed oral agreements. First of all, there are his blatant lies and there are two examples of that. There's first of all Forbes, and that relates to the case he advanced in response to the justification defence which he knew to be untrue. And then, secondly, as to the nature and extent of his involvement in the acquisition of the premerger aluminium, which we cover in our closing submissions at E1.4.3. In addition to that, in addition to the blatant lies, is his tendency to supply what he called disinformation that is tied into the political

aspects that I have referred to.

Of course, the lies are important because they are lies connected with the court process, and although one may have a scale in terms of the seriousness of lies, we submit that those lies are important and are relevant because it shows an indifference to the truth and also a predisposition to make up allegations to bolster a false claim.

The last point I make on these general overview factors is what I might call the corruption of the trial process that taints his evidence in the case. Mr Rabinowitz referred yesterday to the manipulation of the trial process by Mr Abramovich. I'm not going to respond to those points against Mr Abramovich, but one may think that people in glass houses should not throw stones.

It is not that Mr Berezovsky has paid evidence (sic), as he has in relation to the Le Bourget transcript and Cliren's Latvian bank accounts. It concerns the agreements with Dr Nosova and Mr Lindley giving them eye watering amounts of money if Mr Berezovsky succeeds in this case.

You have seen the written winning agreements. It is rather ironic that Dr Nosova and Mr Lindley were not prepared to rely on undocumented agreements of the

nature that forms the basis of Mr Berezovsky's alleged claims. You have also heard about the financial arrangement with Mr Cotlick who played an important part in the preparation of the case.

There are three other points. First of all, there is how the agreements came to light. Clearly they were suppressed from his own lawyers, and Mr Berezovsky hoped that they would never see the light of day. Secondly, it reflects very badly on Mr Berezovsky that he denied he was paying witnesses, which he himself recognised could be seen as bribing of the witnesses, until prompted by his own counsel in re-examination. Thirdly, there is a reason why these agreements were made in the first place. This is not the way litigation is carried out in London. Mr Lindley's greed shows a complete lack of judgment of the conduct this court expects from its officers. It is grubby, it shows a willingness to get a result at all costs.

In Mr Berezovsky's written submissions at paragraph 227, it is suggested that Mr Abramovich's team took a personal dislike to Dr Nosova. Personal dislikes are irrelevant. The real concern is that she gave evidence for Mr Berezovsky in a prior action in which she stood to gain under her winnings agreement without that being revealed to the court or the opposing

parties. It might be said that at least this court in this action knows the true position. However, it all leads to a lurking suspicion that is hard to displace of what else in the conduct of this litigation has taken place to achieve the desired result that we do not know about. If you're prepared to pay for evidence in this way, and to cover up that you are doing it, it may be thought that there is nothing off limit to get the desired result.

The next point about the evidence is the importance of assessing it against the relevant questions that the court must decide. I'm only dealing with Rusal. The first point is that Mr Berezovsky's claim in relation to Rusal must be evaluated against the case he has to prove. Most of his written agreement is an exercise of picking small holes in Mr Abramovich's version of events. Yet, as I've stressed earlier, the burden is on Mr Berezovsky to prove his case, not to simply undermine Mr Abramovich's defence.

Secondly, there is a chronology that cannot be ignored. I will explain this in more detail in a moment, but the essence is this. Mr Berezovsky says that he obtained an interest in Rusal by virtue of the agreement at the Dorchester meeting in March 2000 and that the reason for that agreement was, he says, because

he had an interest in the aluminium assets that were combined to form Rusal. On his formulated case, that takes one back to matters he says were agreed in 1995.

Now, that is the only way in which Mr Berezovsky says he obtained an interest in Rusal, at least insofar as this court is concerned in this action, namely by virtue of the prior aluminium assets and the Dorchester meeting.

The third point here is that Mr Berezovsky spends a lot of time in his submissions looking at subsequent events, that is after the Dorchester agreement. Now, of course, we accept that subsequent events can provide assistance in evidencing the existence of an earlier made agreement, albeit that that assistance is necessarily rather limited by virtue of the ex post facto nature of the subsequent evidence. But that is all that the subsequent evidence can do. The key point is that the subsequent evidence cannot provide a new and independent case for Mr Berezovsky that has not been pleaded in this action and is not open to him.

Now, it will be recalled that Mr Berezovsky attempted to introduce a case based on the bilateral joint venture between himself and Badri shortly before this trial commenced. That attempt failed when the allegations were struck out by the court in July 2011.

It is not legitimate to Mr Berezovsky to say that everybody thought he had an interest in Rusal in 2004 for whatever reason, therefore he must have an interest in Rusal however that interest arose.

In our submission, the court should look at this from the right end of the telescope, and that is all the more given the growing awareness of the need to legalise money flows out of Russia at the time of the various subsequent documents that Mr Berezovsky relies upon as evidencing his alleged interest in Rusal.

Therefore, evidence as to subsequent payments, the two sales of the Rusal shares or, for that matter, anything taking place after the Dorchester Hotel must be viewed through the prism of whether they support Mr Berezovsky's pleaded case.

Does this evidence help to prove that Mr Berezovsky was a purchaser of the aluminium assets in late 1999, early 2000? Does this evidence help to prove that Mr Abramovich agreed at the Dorchester Hotel to act as Mr Berezovsky's trustee?

We contend it's those questions that must be considered when you look at the subsequent events that are relied upon by Mr Berezovsky.

The next topic about the evidence concerns the allegation that Mr Berezovsky is able to make in order

to support his claim. We would submit that not only is he confined to his pleaded case in this action, he is confined to the allegations that he is allowed to make. This comes from the point that Mr Rabinowitz mentioned a moment ago. And in the course of my opening oral submissions, the issue of what points did and what points did not need to be put to witnesses was discussed, and it was agreed that in the interests of avoiding duplication in a trial of this nature it was not necessary for all points to be put to witnesses. The reference here is to N2/134.18 to 135.11.

The two categories that were left out were first of all allegations of dishonesty and then, secondly, important matters to the witnesses. Your Ladyship specifically indicated that if she were to consider something important that was not put, there would be consequences. So those are the two categories: allegations of dishonesty and important matters to the witnesses.

Now, this point is of importance as Mr Berezovsky wholly failed to put a number of key points to Mr Anisimov during the course of the trial. There are three points here to make. First of all, the alleged informal meetings with Mr Anisimov. As your Ladyship will recall, Mr Berezovsky's oral evidence about the

aluminium assets was to suggest for the first time that he had a significant and important role in the acquisition of aluminium assets. This included, he said, multiple meetings with sellers of the aluminium assets, including Mr Anisimov, yet this was not put to Mr Anisimov in cross-examination. Here we submit the court should take that into account on the basis of matters not put to Mr Anisimov.

Secondly, there was Mr Berezovsky's alleged grand conspiracy, which included Mr Anisimov, during the course of the second Rusal sale to airbrush him out of the paperwork. He says that dishonest documents were produced to disguise his interest. That would necessarily have involved a number of persons including Mr Anisimov.

In cross-examination of Mr Streshinsky, the point was made on a number of occasions that Mr Streshinsky would have shared all information with Mr Anisimov and acted on his instructions only. The point is repeated in Mr Berezovsky's closing submissions and the reference there is at paragraph 1137.7.

We would submit that these are matters of critical importance in relation to what the case is. These aren't minor points, these aren't matters that are going to go to the Chancery proceedings, these are points

which are of critical importance, and yet Mr Anisimov, like Mr Deripaska, was not asked one question about the second Rusal sale, and it was certainly not put to him that he was involved in any such dishonesty.

Now, it is not open to Mr Berezovsky, we submit, now to assert that there was a conspiracy theory involving Mr Anisimov, or that Mr Anisimov knew that Mr Streshinsky about any conspiracy -- or that Mr Anisimov knew through Mr Streshinsky about any conspiracy that Mr Berezovsky alleges was carrying on.

The third point is that Mr Berezovsky also alleges that Mr Anisimov advised Mr Berezovsky and/or Badri -- his case remains unclear -- that British law should be used, around the time of the purchase of the aluminium assets and/or the Dorchester meeting, again his case remains unclear.

This key allegation was not put to Mr Anisimov in cross-examination. The allegation is tellingly down-played in his written closing submissions, there's no mention of it made in the key sections addressing the alleged express agreement between Mr Berezovsky, Badri and Mr Abramovich as to British law, and the reference there is his closing, paragraphs 67 to 74, 1581 to 1592, but it is nonetheless maintained in the backwaters of the submissions by way of a comment in respect of the

explanatory note, and the reference there is paragraph 1253, and we deal with this at E3 of our written closing.

Again, the court should take that into account that this point was not made to Mr Anisimov at all.

The next general point about the evidence is to respond to allegations Mr Berezovsky makes about the credibility of the witnesses put forward by the Anisimov defendants. In short, Mr Berezovsky's team makes a rather tiresome point in the written submissions, paragraphs -- in the opening submissions, paragraphs 28 to 29, and repeated in their written closing, 1134 to 1136, 1137.5, that Mr Anisimov's evidence against Mr Berezovsky should not be accepted on any matter that was potentially unhelpful to Mr Anisimov because he has a financial interest in Mr Berezovsky failing to prove that he had an interest in Rusal, that financial interest being that Mr Anisimov will not have to compensate Mr Berezovsky for the proceeds of the second Rusal sale that Mr Anisimov invested into the metals industry, that's the MGOK/Metalloinvest.

In our submission, that point does not assist Mr Berezovsky at all. First of all, it is logically nonsense because it begs the question the court is to answer. Mr Anisimov has cause to lie in this case,

Mr Berezovsky says, because he is lying in the Metalloinvest action. He must lie to be consistent. But it is of course equally logical that Mr Anisimov is being constantly truthful. He has as much motive to tell the truth to honestly protect money that is rightfully his as he would have to lie to dishonestly keep money that is not his. In other words, Mr Berezovsky's argument prays in aid the dishonesty he seeks to prove.

In any event, it is not an argument that has any merit because if it applies, it applies to Mr Berezovsky as well. Two can play at that game. If millions of dollars give Mr Anisimov a motive to lie, by the same token billions of dollars give a greater motive to lie.

MRS JUSTICE GLOSTER: Just a second, Mr Malek. The allegation in the Chancery proceedings is that Mr Anisimov knew of Mr Berezovsky's interest?

MR MALEK: Correct, that's it.

The only point --

MRS JUSTICE GLOSTER: As a result of the Dorchester Hotel meeting?

MR MALEK: As a result of a separate agreement made subsequently.

If your Ladyship goes back to our opening submission we deal with this, but it is entirely separate and it's

not linked to any knowledge based about the Dorchester. It's based, as I understand it, on the alleged joint venture and also discussions that took place between the two of them.

MRS JUSTICE GLOSTER: Subsequently to the Dorchester Hotel meeting?

MR MALEK: Correct.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR MALEK: Yes. Ms Tolaney reminds me, it's not a discussion that Mr Berezovsky was a party to, it was a discussion between Mr Anisimov and Badri that he alleges. We don't accept that of course.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: So the point is that it cannot seriously be argued that your Ladyship should reject Mr Anisimov's evidence because he has a financial interest, and that tellingly is the only point that Mr Berezovsky can find to cast aspersions on Mr Anisimov's honesty.

As to Mr Streshinsky and Mr Buzuk, they no longer are employed by Mr Anisimov, as your Ladyship heard in the evidence, and they should be treated as witnesses with no witness (sic) to grind and they are independent.

I am now going to turn to the Rusal claim. Your Ladyship will say when you would like me to stop.

MRS JUSTICE GLOSTER: I will take the break now, I will take

quarter of an hour now.

(3.15 pm)

(A short break)

(3.38 pm)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

MR MALEK: My Lady, I'm now going to turn to Rusal. So that your Ladyship has the structure of this part of the argument I'm first of all going to deal with the interrelationship between the Sibneft and Rusal claims, then I'm going to deal with Mr Berezovsky's claim to the aluminium assets, then Dorchester, and then subsequent events, and then finally the knowledge of Mr Anisimov.

MRS JUSTICE GLOSTER: Yes, very well.

MR MALEK: As far as the interrelationship between Sibneft and the Rusal claim, there's the obvious link that's been mentioned by the parties about what might be called the holistic approach to the evidence, namely that views on, say, the credibility of evidence in relation to the Sibneft witnesses is likely to influence in relation to the evidence in relation to Rusal, and the converse is true.

But the one fundamental difference in Sibneft and Rusal is this: is Mr Berezovsky does not contend that he did anything, beyond show up at the Dorchester meeting in March 2000, towards the formation of Rusal. That's

in stark contrast to his claim to Sibneft where Mr Berezovsky says that he was the reason -- says that the reason that he was entitled to a share in Sibneft was because of the role in its creation. He doesn't claim any role in respect of Rusal, he does not say that he did anything apart from attend the meeting. Mr Abramovich did all the hard work putting Rusal together. Mr Berezovsky did nothing.

Rather, Mr Berezovsky says the reason he was entitled to 25 per cent in Rusal, and the reason Mr Abramovich allegedly agreed to hold a 25 per cent interest in Rusal on trust for him, was because Mr Berezovsky says that this reflected Mr Berezovsky's share of the aluminium assets that went into Rusal.

So Mr Berezovsky's claim to Rusal is therefore solely dependent, based on the assets he contributed. He is not entitled to anything based on work done towards Rusal, whether its creation or formation, and therefore the Rusal claim is very different from the Sibneft claim.

When we look to see why Mr Berezovsky says he owned the aluminium assets that went into Rusal in the first place, we see that the claims are quite connected. In short, although Mr Berezovsky sought to reorientate his case during the course of the trial, which we will go

into shortly, Mr Berezovsky's pleaded case is that it was because of his earlier agreement with Mr Abramovich in 1995, and the use of Mr Berezovsky's Sibneft profits to purchase the aluminium assets, that Mr Berezovsky gained an interest in the aluminium assets.

For this purpose, could I just invite your Ladyship to turn to the particulars of claim, which is in A1/02/26. It may be that this can just come up on the screen, but if your Ladyship has the pleading, it's paragraph C59B.

What you see there is:

"As Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich had agreed in 1999, before the aluminium assets were acquired, the 1995 Agreement (as set out in paragraphs C34 to C[35]B) applied to the aluminium assets, and payment for these assets came from Mr Berezovsky's, Mr Patarkatsishvili's and Mr Abramovich's share of profits derived from their interest in Sibneft. Accordingly, Mr Berezovsky and Mr Patarkatsishvili had Russian law rights in respect of the aluminium assets under the 1995 agreement, and Mr Abramovich was obliged to act in good faith and reasonably towards them in respect of such assets."

So it's really that part of the pleading which refers to the earlier agreement and the use of the

Sibneft profits, which is the basis of the acquisition of the interest in the aluminium assets. I'll come back to that, if I may, in a moment.

Now, the second topic, I've now dealt with the interrelationship, is how does Mr Berezovsky seek to establish an interest in the aluminium assets? There are three ways that he seeks to establish that interest. We deal with it in our --

MRS JUSTICE GLOSTER: Yes, I've got your --

MR MALEK: In fact we deal with it in our opening submissions at D2.2 which explains how the claim emerged. But if I could just summarise the three ways.

The first way is that the 1995 agreement he alleges between himself, Mr Abramovich and Badri, and that's the first way. In short, it is his submission that it was agreed that in 1995 all future business would be shared in the same proportions as it was shared in relation to Sibneft. That allegation was modified in his written evidence, the fourth witness statement, which was to the effect that each of them would have a right of first refusal in relation to the other's future business ventures. That's the first way.

The second allegation is that there was an agreement in 1999 that the 1995 agreement would be applied to the aluminium assets.

And the third allegation is that the aluminium assets were paid for -- the aluminium was paid from Mr Berezovsky's and Badri's share of the Sibneft profits.

So those are the three allegations.

We submit that all three allegations fail. The points are made in writing, but essentially the short points are these. As far as the 1995 agreement, there are two points, one legal and one factual. The legal point is that in relation to the agreement in relation to future business, whatever the agreement was in 1995, it was governed by Russian law. And the Russian experts are agreed that an agreement to cover future business lacks certainty and that an agreement covering future business would be ineffective as a matter of Russian law. So this means that even if Mr Berezovsky establishes the 1995 agreement, which we contend he does not, the claim fails.

The factual point about the 1995 agreement is a point that Mr Sumption made in his oral submissions at N40, page 3, which shows that this argument was a nonstarter.

MRS JUSTICE GLOSTER: Can you give me the transcript date, please? That's Day 40, is it?

MR MALEK: Day 40, yes, page 3, where he makes the point,

which we adopt, that this argument was a non-starter because it's inherently implausible that Mr Berezovsky would have given up, in 1995, 50 per cent of all future business to Mr Abramovich whom he viewed at the time as having achieved nothing in politics or business.

So those are the two points in summary why the 1995 agreement fails.

We then move on to the 1999 agreement which also fails, and the second way -- this is the second way in which he formulates a claim, by relying on an agreement made in 1999 to the effect that the 1995 agreement would be applied to any acquisition of the aluminium assets.

We submit that that argument is hopeless. The origin of the allegation appears to come from the evidence of Dr Rachkov, the Russian law expert. It was introduced late, the allegation was introduced into this action in April 2011, and in the Metalloinvest action in February 2011, as we point out in our closing at paragraph 68.2.

We submit that not only was it late and based on the Russian law evidence, we submit that even Mr Berezovsky has not gone as far as to say that the 1995 agreement was mentioned, discussed, or any agreement made by explicit reference to it during the discussions he says he had with Mr Abramovich in 1999.

Now, there is a dispute here. You will see it in the claimant's schedule 1 which was handed up yesterday, at page 33, which attempts to strain the reading of his fourth statement to suggest the 1995 agreement was referred to in oblique terms during his discussions with Mr Abramovich. But we submit that the statement cannot be read in that way, and we cover that in our closing submissions at paragraph 70 to 72. I will not repeat it.

But significantly, the alleged agreement was not even put to Mr Abramovich in the course of the evidence. Again, that's covered in our written closing at 70 to 72. And, in short, the parties never agreed that the aluminium acquisition would be subject to the same partnership terms as the Sibneft arrangement.

One other reference to give on that is Mr Abramovich's schedule that was handed up recently at pages 122 to 123, and we adopt what is said there as well. So that's the second way the case is put, the 1999 agreement.

Then the third way is the one that I've just mentioned, namely that the third basis for an interest in the premerger aluminium interests is that it was paid for from Mr Berezovsky's and Badri's share of the Sibneft profits. And that's the particulars of claim

that we just looked at, at C59B.

Your Ladyship may think that, given the importance and significance of the alleged agreement, one might have expected Mr Berezovsky to be able to state how and when the profits were applied in this way. However, his evidence was completely lacking. He could not tell us, because as Mr Sumption explained during the course of his oral submissions, and the reference there is Day 40, pages 5 to 8, Sibneft profits were not used to pay for the aluminium assets.

Now, we cover that in our written submissions at E1.2.2. We also rely on Mr Abramovich's closing at paragraph 412, and on Mr Abramovich's schedule at paragraph 21 commenting on paragraph 62.4 of Mr Berezovsky's closing submissions.

As we point out in our closing submissions at paragraph 73, this was another late change to Mr Berezovsky's case. It was introduced in February 2011 in the Metalloinvest action and was pleaded in the Abramovich action in April 2011.

So the fact of the matter is that Mr Berezovsky made no contribution to the acquisition of the aluminium assets.

The fact that the Sibneft profits were not in fact used is more than a simple mismatch between what

Mr Berezovsky says was originally agreed with Mr Abramovich and what in fact subsequently happened. We submit it is fundamental to Mr Berezovsky's pleaded case that Sibneft profits were used to purchase the aluminium assets. This is because Mr Berezovsky's pleaded case is that he, Badri and Mr Abramovich agreed in 1999 that the 1995 agreement applied to the aluminium assets and payment for those assets came from Mr Berezovsky's, Mr Patarkatsishvili's and Mr Abramovich's share of profits derived from their interest in Sibneft. That's the passage that we just looked at.

So it's not simply an agreement that profits would be used; it's an assertion that profits were used. Moreover, it is not an independent basis, separate from the alleged application of the 1995 agreement, for Mr Berezovsky to have acquired an interest in the aluminium assets. In our submission, it's clear that it is a necessary requirement for the 1995 agreement to have been able to apply.

Now, this very specific formulation of the pleaded case as to the nature and operation of the 1995 agreement was repeated by Mr Berezovsky in his oral evidence when he made it clear, following an express question from your Ladyship, that the 1995 agreement

required each party to contribute to the cost of any business investment.

If I could ask your Ladyship, or if this could be put on to the screen. It's Day 6, it's N6 at 125.1 to 125.8. We can see that, I don't know if your Ladyship has the transcripts to hand, but this is one passage that I would like your Ladyship to see, or to see it on the screen if we can put it up there.

MRS JUSTICE GLOSTER: It's on the screen.

MR MALEK: It's at 125 and this is 10 October. Your Ladyship asked this question:

"What were the terms of the right of first refusal? Was there an agreement that if you wanted to go into the new venture, you had to put up 50 per cent of the capital for it as well?

"Answer: Yes, absolutely. It means that we should put --

"MRS JUSTICE GLOSTER: Match the capital that the other party was putting in?

"Answer: Absolutely correct. Absolutely correct.

"MR SUMPTION: Was that actually agreed? Do you that that was agreed?

"Answer: Absolutely correct. It was agreed that we invest 50/50, definitely.

"MR SUMPTION: ... so that's something we should add

to your witness statement, is it?

"Answer: Thank you very much, but it was absolutely clear because we share ... 50/50 and if we go to new business we should share 50/50 our investment."

This is a point that we make in our closing submission at paragraph 76. Now, the point here to stress is that the realisation that Sibneft profits were not in fact used to purchase the aluminium assets has led to this assertion in Mr Berezovsky's closing submissions, and if your Ladyship could turn to Mr Berezovsky's closing submissions at paragraph 1152, where this point is made.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: Perhaps I could just ask your Ladyship to read paragraph 1152.

MRS JUSTICE GLOSTER: I've read that.

MR MALEK: The point that's being made is that, yes, he accepts that no financial contribution was made to the acquisition of the aluminium assets, and that his case that he was one of the people who was entitled to benefit from the -- this is a reference to the balancing payment of 575 million, ultimately paid by Mr Deripaska in the Rusal merger arrangements, being one of the partners in the aluminium acquisition itself.

Now, there are a number of responses to this. The

first point, it involves rather overenthusiastic but incorrect and circular logic. Mr Berezovsky's case is that he was a partner in the purchase of the aluminium assets because the 1995 agreement applied and Sibneft profits were used. We submit it's logical nonsense to assert that Mr Berezovsky can dispense with a necessary basis for that partnership, ie that Mr Berezovsky's money was used to purchase the aluminium assets, because he was entitled to the benefit of Mr Deripaska's subsequent payment because he was already a partner in the aluminium acquisition.

Now, the second point is that the assertion that Mr Berezovsky ever contended that he was entitled to the benefit of Mr Deripaska's payment because he was already a partner is simply wrong. It is wrong for four reasons.

First, there would need to be a clear agreement with Mr Abramovich that Mr Berezovsky was intended to be a partner from the outset despite not having any input into the aluminium asset sale. That has never been Mr Berezovsky's case and, until Mr Berezovsky's embarrassing attempts in his oral evidence to carve out a role for himself in the negotiations of the aluminium assets, Mr Berezovsky has never presented any discernible rationale as to why Mr Abramovich would

agree to make Mr Berezovsky a partner in the absence of any financial contribution.

Secondly, such an agreement would make nonsense of Mr Berezovsky's case that he agreed with Mr Abramovich in 1999 that Sibneft profits would be used.

Thirdly, as mentioned in paragraph 103 of our written closing, no such agreement could possibly have been made because it was not known at the time of purchasing the aluminium assets that Mr Deripaska's payment under the Rusal arrangements would equal the sums needed to purchase the aluminium assets.

Finally, Mr Berezovsky did not even know at the time what the structures of the financing were. Apparently he thought that Sibneft profits had been used, and this is another example of making it up as he goes along.

So you have before your Ladyship a very late amendment alleging that he has an interest by virtue of the Sibneft profits that went into purchase aluminium assets. When it became clear that that case was flawed, he came up with another unpleaded allegation relating to the equalisation payment and, for the reasons I've just identified, that too fails.

That ties in with another point. In order to bolster his case, Mr Berezovsky came up with a number of new and, we would submit, wild allegations in his oral

evidence about meetings Mr Berezovsky had never before mentioned with the sellers of the aluminium assets and the importance of Mr Berezovsky's alleged influence with General Lebed to the survival of the aluminium deal.

If your Ladyship just briefly turns to our written closing, we cover this from page -- I think it's about page 40, it starts at E1.4.1 and goes through to E1.4.3. Your Ladyship has read that, but what, we submit, is clear from that explanation of the evidence is that this role that Mr Berezovsky now asserts is pure fiction. He's had many opportunities to present what his case is on the aluminium assets, and it's quite clear that the departure, and the new evidence that was given during the course of cross-examination, just simply shows that he was lying on this.

I'm not going to go through that because it's all self-explanatory, but as we point out at paragraph 97, he had every opportunity in the Metalloinvest to explain that he had this important role that he now asserts before your Ladyship, and at no time was it ever suggested that he had this role. And in fact in support of the allegations of knowledge on the part of Anisimov, he didn't refer to any discussions or meetings, he just simply referred to press cuttings and the like.

As we say at 99, he has given no credible

explanation as to why he introduced this new and inconsistent evidence during the course of the oral evidence, and we submit that Mr Berezovsky's case on this was untrue and that he knew it was untrue.

There's only a few points that I wish to add by way of oral submissions. The first is, if the court wishes to enquire why Mr Berezovsky lied on this, the answer, we submit, is clear. He lied because he knew he had to come up with a reason why Mr Abramovich would have agreed to give him an interest in Rusal.
Mr Berezovsky's sudden creation of a role for himself in the negotiations leading up to the aluminium asset sale was an attempt to present a rationale for why Mr Abramovich agreed to give him 25 per cent of the aluminium assets even though not a penny of Mr Berezovsky's money had gone towards their acquisition. In other words, he needed to replicate his Sibneft case.

But a role in the aluminium negotiations alone does not assist Mr Berezovsky. His pleaded case is flatly inconsistent with any new, distinct performance-only based interest in the aluminium assets.

Secondly, all of Mr Berezovsky's evidence in respect of the aluminium negotiations -- sorry, all that Mr Berezovsky's evidence in respect of the aluminium

negotiations served to do was to show that he was willing to, and did, present evidence which was manifestly false and untruthful. He had nothing to do with the deal, and we cover that in our written submissions and I do not repeat it.

What is said in my learned friend's submissions at paragraph 53 is that the claim in respect of Rusal is, on any view, a strong one. What we have seen, just from looking at the way the case is pleaded, and the way the evidence emerged, is that Mr Berezovsky's claim to have acquired an interest in the aluminium assets rests solely on the allegation that in 1999 it was agreed that the 1995 agreement would apply to them. We would submit that the claim is not a strong one, it is hopeless.

Nor is Mr Berezovsky's case assisted any further by any sundry ambiguities and gaps he points to. These include, first of all, the inclusion of Badri and Mr Berezovsky, as a signatory to the master agreement, and secondly the argument that Mr Berezovsky was a party to the master agreement by virtue of being a beneficial owner of the purchasing companies.

Mr Berezovsky relies on the master contract of 10 February. I don't need to take your Ladyship to it. It's at H(A)17 at 38T H(A)17/38T. Badri is described as one of the persons constituting party 1, it also

includes Mr Shvidler, and the evidence as to why Mr Shvidler was a party was to the effect that he was one of the critical figures in the process of negotiating the deal.

As far as Mr Badri's role is concerned, he was the person who facilitated the deal, and his involvement is covered in the four protocols which were prepared for him in February. They are the documents that were notarised before a Moscow notary on 16 March 2000. There is a dispute as to whether these were documents designed to cover the cost of an aircraft which was agreed at the Dorchester. However, we adopt Mr Abramovich's submission that these agreements were unconnected to the acquisition of aircraft, which is dealt with in Mr Abramovich's closing at paragraph 406.3 and footnote 1461.

As to the dispute of whether or not Mr Badri was a purchaser of the aluminium assets, evidence was given on behalf of Mr Anisimov to the effect that he believed that Badri was a purchaser. That evidence was also given by other witnesses called by Mr Anisimov.

But a number of points need to be made on this. First, the relevant question for this court is whether or not Mr Berezovsky was a purchaser of the aluminium assets. Now, one of the issues in the Chancery case is

whether or not Mr Berezovsky and Badri were partners so that Mr Berezovsky could claim in respect of Badri's interest in the aluminium assets, assuming he did acquire an interest, and that issue is in the Chancery Division and it doesn't arise before this court.

That's a point that we make in our closing at paragraph 117, especially 117.3.

The second point is that it follows that Mr Berezovsky cannot say in the proceedings before your Ladyship that Badri acquired some interest, specifically by way of the master agreement, and that helps Mr Berezovsky. That would be bringing in by the back door the argument that Mr Berezovsky is not allowed to make. He is not allowed to say that if Badri had a right, Mr Berezovsky had half of that right because of his alleged bilateral joint venture with Badri.

As your Ladyship --

MRS JUSTICE GLOSTER: I'm not sure I agree with that. I'm not sure it needs to rest on the alleged joint venture agreement with Mr Patarkatsishvili.

MR MALEK: If it doesn't need to rely on the joint venture then the point doesn't arise. But if it does need to --

MRS JUSTICE GLOSTER: No, the point I'm making, Mr Malek, is that surely it's open to Mr Berezovsky to say, well, Mr Abramovich knew, because of my agreement with him,

that I was in there half and half and Mr Badri was there, as it were, fronting for me.

MR MALEK: That's fine, there's no difficulty with that. My only argument is the argument that because Badri was a party to the bilateral joint venture, and therefore if Badri acquired an interest then I'm entitled to claim an interest by virtue of that.

MRS JUSTICE GLOSTER: I can see that.

MR MALEK: That's the only point I'm making.

The contention that Mr Berezovsky was an undisclosed principal to the master agreement is, we say, absurd. As he confirmed in cross-examination in response to my questions, he had not even seen the agreement prior to this litigation. He did not know its terms. Clearly he did not assume any obligations under it and could not have acquired any rights.

The third point, which I think is tied into the point I just made to your Ladyship under my second point, is that Mr Berezovsky cannot say that because Badri signed, everyone must have known that Badri (sic) was involved because everybody knew of Mr Berezovsky's partnership with Badri. That's another case, that Mr Berezovsky expressly tried to add but was struck out by the court.

So the attempt to sneak this argument back, and the

reference is to his closing submissions at paragraph 62.3 and 1114, where he states that his partnership with Mr Patarkatsishvili was notorious, is in our submission inappropriate.

So it therefore follows that a fourth possible route to make a claim to the aluminium assets is simply not open to Mr Berezovsky in these proceedings, and it's that fourth possible route which I'm addressing here. There was the three routes, there is no fourth route.

So that highlights a point that, when considering the question of whether the subsequent evidence indicates that Mr Berezovsky thought he had an interest in the aluminium assets, whether pre or post merger, for the court to keep in mind that the critical question is not whether or not Mr Berezovsky has an interest based on arguments that are not open to him; the critical question must be whether or not it proves one of the three ways in which he brings this claim.

That's a point that we submit is very important to keep in mind when your Ladyship comes to look at the subsequent evidence. You have to look at the subsequent evidence, we submit, to see whether it supports a pleaded case based on the 1995 agreement, the 1999 agreement, or the contribution of the Sibneft profits into the aluminium assets.

The final point here is that Mr Berezovsky's closing submissions jump upon Mr Anisimov's, Mr Streshinsky's and Mr Buzuk's assumption that Badri may have been one of the purchasers as evidence in support of his case that they believed that Badri and Berezovsky were purchasers.

The references there to Mr Berezovsky's submissions are 1139, 1143.5. And Mr Berezovsky asserts at 1114 that the view, and I quote, of "all four sellers", including specifically Mr Anisimov, was that "Mr Berezovsky acquired an ownership interest in the aluminium assets and was one of the principals involved in the transaction."

Now, to put it lightly, this is a gross mischaracterisation of Mr Anisimov's evidence. It is a point repeated over and over again in Mr Berezovsky's closing submissions, and, again, in the schedule 1 handed up yesterday at page 33, responding to paragraph 395 of Mr Abramovich's submissions, and at page 40, the box concerning paragraph 414. But hollow repetition of this bad point does not give it credibility.

Mr Anisimov was very clear in his evidence about this, and it's in paragraph 42, where he says that:

"Mr Berezovsky was not present at any of the

meetings which I attended and at which the sale of the KrAZ assets was discussed nor, to the best of my knowledge, was his name even mentioned."

Paragraph 45:

"I am aware that Mr Berezovsky is claiming that he had an interest in the KrAZ assets".

Then he goes on to say in the same paragraph:

"For my part it was neither apparent to me nor was it ever suggested to me that Mr Berezovsky was involved in the purchase of, or acquired [an] interest in, the KrAZ assets."

And as to any assumptions as to Mr Badri's interest, Mr Anisimov, Mr Streshinsky and Mr Buzuk's assumptions were just that, assumptions. There is a subtle but significant difference between an assumption without an enquiry and a belief based upon extraneous knowledge.

Mr Anisimov's, Mr Streshinsky's and Mr Buzuk's assumptions should not be mistaken for any concrete form of belief. They do not provide evidence of what Mr Badri's evidence in fact was, and they certainly do not provide any support as to whether or not Mr Berezovsky had any interest.

Now, the other point made is Mr Berezovsky as a beneficial owner of the purchasing companies. In cross-examination of a number of witnesses, Mr Buzuk and

Mr Streshinsky, see paragraph 113 of our written closing submissions for references, a point was made that the sellers did not know the identity of the beneficial owners of the purchasing company. Mr Berezovsky now says that he was one of those beneficial owners. The cross-reference to his closing submissions are paragraphs 62.3, 1114 and 1149.

Mr Berezovsky was never able to identify what exactly it was he says Mr Abramovich held on trust for him. Was it the companies or the plants? The cross-reference to our opening submissions on that, where we deal with this point, is at paragraph 39.10.

Now, in his written closing, Mr Berezovsky at paragraphs 1114 and 1149, plumps, contrary to his pleaded case in this action at C59A to C59B, for being a beneficial owner of the companies rather than the plants. Mr Berezovsky says that this is significant because the four purchasing companies were party to the master agreement. The reference there is 1114.

But this does not add anything to Mr Berezovsky's case on the alleged 1999 agreement or the master agreement as he contends. He does not advance any specific basis for asserting that he was a beneficial owner of the companies, for example a declaration of trust by offshore nominee holders. He simply relies on

Mr Abramovich's alleged agreement in 1999 that the aluminium assets would be held on the same terms as the 1995 agreement.

Mr Berezovsky would be as much a party to the master agreement by being a beneficiary behind Mr Abramovich as he would be a beneficiary behind the companies.

So the beneficial owner of the companies case is therefore not a distinct case for the alleged 1999 agreement, and it certainly does not give Mr Berezovsky an additional route into being a party to the master agreement.

Can I just deal briefly with the Badri interview notes.

MRS JUSTICE GLOSTER: Can I just say this. I've got to rise promptly at 4.15 because I've got a meeting. If you're going to go beyond 4.15 then I'm going to ask you to continue tomorrow.

MR MALEK: I'll be one minute, two minutes, last point.

MRS JUSTICE GLOSTER: Again I don't want to put any pressure on you.

MR MALEK: I'm obliged, your Ladyship. It's just this on the Badri interview notes.

It was argued by Mr Berezovsky that these indicate that Badri believed himself and Mr Berezovsky to have an interest in KrAZ and Bratsk assets corresponding to

their shares in Sibneft.

However, the only indication as to how that interest was acquired was on the basis that the money to acquire those assets had come from the Sibneft assets. We know that that is not correct, as I've just indicated, and therefore the evidence of the interview notes do not take matters further.

The reference to this can be found in Mr Abramovich's schedule at page 126, commenting on paragraphs 1145.4 to 5 of Mr Berezovsky's closing submissions.

My Lady, that's a convenient point to rise, if that's convenient to your Ladyship.

MRS JUSTICE GLOSTER: Yes. How much longer do you think you're going to be?

MR MALEK: An hour.

MRS JUSTICE GLOSTER: Thank you very much indeed. Very well, 10.30 tomorrow.

I think there is some sort of educational function here arranged by one of the parties after court. I assume you all know about it?

MR MALEK: I don't but I don't think it matters.

MRS JUSTICE GLOSTER: Okay. Well, perhaps you could ask Mr Huntley, who is sitting at the back of the court, about it.

MR MALEK: We will ask Mr Huntley.

MRS JUSTICE GLOSTER: Just so you all know. I may have got it wrong, it may be next week.

Very well. 10.30 tomorrow.

(4.17 pm)

(The hearing adjourned until Thursday, 19 January 2012 at 10.30 am)

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