

Monday, 3 October 2011

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: May it please your Ladyship --

MRS JUSTICE GLOSTER: Just before you start, I have a number of things I want to say.

First of all, I understand that some of the members of the press would like there to be more seats for members of the press and/or members of the public. Could you speak to Mr Tim Pollen in the first instance to see whether health and safety considerations will enable us to put a few more chairs in the room.

The second thing is that so far -- and this really, Mr Rabinowitz, is addressed to you and Mr Sumption and all other counsel and their clients as well as members of the press and the public: you may all use electronic communication, whether it's Twitter, anything on your mobile phones, but please may I ask you all to have sounds on your mobile phones turned off so we don't get during the course of the trial irritating mobile phone text bleeps or whatever.

Secondly, if there is any abuse or I consider that there is any abuse of the use of electronic communication, that is to say if I consider that people are inappropriately communicating to witnesses who are

going to go into the witness box after the witness who is in the box, if I consider that there is any inappropriate communication and that is brought to my notice, then I may have to reconsider the permission that I'm giving to everybody to use electronic communication.

The next thing is please could there be complete silence in court and no moving about in court when witnesses are being sworn in. That is part of the formal process and it is very important that at that moment in time there is complete silence and no rustling in the court.

The next thing is -- and this is addressed to counsel and solicitors and witnesses -- please could you make absolutely sure that nobody even takes a mobile phone into the witness box. Can I have your assurance that that will be done? It's not just a sound issue, it's also a communication issue.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: Or a prompting issue. Okay.

Yes, Mr Rabinowitz. Sorry, there's a request at the back of the court. Yes?

MEMBER OF THE PRESS: Sorry, from the members of the national press, there are only four members -- as far as we know -- here. The entire back row is taken up by

members of the public, no seats were reserved for the press, and in the annex it's a written feed only and not an audio feed.

MRS JUSTICE GLOSTER: Okay, just a second. More than four seats should have been reserved for members of the press in accordance with my instruction. Is Mr Pollen in court?

MR POLLEN: My Lady, the entire back row was reserved for press and public but not just press.

MRS JUSTICE GLOSTER: But not just press, okay. How many seats were specifically reserved for the press?

MR POLLEN: It was all reserved for the press and the public, the entire back row.

MRS JUSTICE GLOSTER: Right. So we need more seats for the press. Right.

What I'm going to do, gentlemen of the press, is I am going to shut the court at 1 o'clock. At 1 o'clock I will discuss with Mr Pollen what the arrangements should be specifically for the press because it's quite right that members of the press take priority over members of the public at least to an appropriate and limited extent. We can see what we can do.

MR RABINOWITZ: There are two seats here, my Lady.

Certainly for the openings, it may be possible to get a few more seats in there. There certainly are two here

which would be available.

MRS JUSTICE GLOSTER: Well, we're not having anybody sitting there for the time being.

MR RABINOWITZ: Not for the next few days.

MRS JUSTICE GLOSTER: I'm going to be very sexist here and if there's a pregnant lady of the press, she can come and sit down here.

Mr Pollen, we can put four seats there presently, four or five there, and I will discuss with Mr Pollen after no doubt the members of the press have bent his ear during the course of the morning, in the break, as to what the allocation should be between members of the public and members of the press.

MEMBER OF THE PRESS: And there are some lawyers in the gallery.

MRS JUSTICE GLOSTER: Right. I will also identify with counsel how many lawyers are, as it were, back-spilling out. But they also may be of course not just directly involved in this case.

Okay, can we get four or five more chairs down there, Mr Pollen, for members of the press.

MR POLLEN: They're on their way.

MRS JUSTICE GLOSTER: One of you can come up here, first come, first served. We'll see what we can do for the rest of you.

MEMBER OF THE PRESS: Thank you very much.

MRS JUSTICE GLOSTER: I don't know whether in the inquiry or the inquest they had a daily allocation of press seats, I'll try and find out how it was done because we don't want to have you all arriving at 8.30 every morning to get seats. That's not a practical way of doing things.

MEMBER OF THE PRESS: With the inquest there was a live audio feed into the annex.

MRS JUSTICE GLOSTER: We don't have that here. You all realise this is the first day of the building opening so we'll have to be flexible and see what we can do to accommodate it.

Okay. We'll get a few more seats in there. Basically, we'll just have to keep the liaison up, members of the press.

Mr Rabinowitz.

Opening submissions by MR RABINOWITZ

MR RABINOWITZ: As your Ladyship knows, I appear in this matter for Mr Berezovsky together with Mr Gillis QC, Mr Masefield, Mr Colton, Mr Forbes Smith, Mr Isaac, Ms Campbell, Mr Milner and Ms Shah. My learned friends Mr Sumption QC, Ms Davies QC, Mr Jowell QC, Mr Henshaw, Mr Eschwege, Mr Harrison and Mr Morrison -- I apologise if I've left anyone out -- all appear for Mr Abramovich, the defendant. Of course, also before your Ladyship in

relation to this hearing are Mr Ali Malek QC and Ms Tolaney QC and Ms Jeavons for Mr Anisimov, Mr Adkin and Mr Pringle for the family defendants and Mr Mumford for the Salford defendants.

Your Ladyship is of course aware that the claim by Mr Berezovsky against Mr Abramovich falls into two separate but overlapping parts. There is first the Sibneft claim, by which Mr Berezovsky seeks damages from Mr Abramovich totalling in excess of \$5 billion; and secondly there is the Rusal claim, by which Mr Berezovsky seeks damages on account of profits from Mr Abramovich totalling at least \$564 million.

As your Ladyship will no doubt have observed from the very long written opening documents, those claims, both the Sibneft and the Rusal claims, have given rise to an enormous number of issues, both issues of fact and issues of law. At bottom, however, my Lady, this is a case about two men who -- and this is common ground -- worked together to acquire an asset -- that is Sibneft -- that would make them wealthy beyond the wildest dreams of most people and who in the process, we say, became and remained good friends; until, that is, Mr Berezovsky, who had adopted a high political profile in Russia, not least through his control of certain media outlets, fell out with those in power in the

Kremlin and was forced to leave his home and create a new life abroad, leaving Mr Abramovich in a position where he was in effect required to make a choice: to remain loyal to Mr Berezovsky, his friend and mentor and the person to whom he owed his newly acquired great fortune, or instead, as we submit, to betray Mr Berezovsky and to seek to profit from his difficulties.

As your Ladyship knows, it is our case that Mr Abramovich at that point demonstrated that he was a man to whom wealth and influence mattered more than friendship and loyalty and this has led him, finally, to go so far as to even deny, as he does before your Ladyship, that he and Mr Berezovsky were actually ever friends.

So one of the major issues your Ladyship will now have to resolve relates to the true nature of the relationship between Mr Berezovsky and Mr Abramovich. Were they in fact friends and partners, as Mr Berezovsky contends? Or was the relationship between them altogether much more sinister, as Mr Abramovich, I think for the first time in the context of this litigation, has sought to suggest? Namely, according to Mr Abramovich, that it was a relationship in which Mr Abramovich, of his own volition and as a result of

his offering and agreeing to pay vast sums of money, in effect hired Mr Berezovsky, at the time a very substantial figure on the Russian stage, simply to provide Mr Abramovich with services that were basically criminal in nature, involving both corrupt political patronage and unlawful physical protection from Chechen criminal gangs or, to use the Russian word, "Krysha", a roof.

We submit that the answer to this question is obvious, but your Ladyship will of course be able to make up your mind about this once you've seen both men give evidence and heard all of their evidence being tested by cross-examination. As your Ladyship knows, Mr Berezovsky is to be the first witness in this trial. Mr Abramovich too, we have been told, will be coming to give evidence, although that is unlikely to be before November.

What I propose to do now, in what your Ladyship has asked should be relatively short openings, is first to say a little bit more about the general legal framework in which each of the two claims arise so that your Ladyship will have this firmly in mind when you come to hear the evidence; and secondly to identify for your Ladyship some of the more important documents that are likely to be central to the issues that your Ladyship is



going to have to determine.

MRS JUSTICE GLOSTER: Just at that juncture,

Mr Rabinowitz -- this is something I mentioned at the technical rehearsal on Thursday -- am I going to have an agreed list of headline issues?

MR RABINOWITZ: Indeed your Ladyship will have that. That is in the process of being agreed and I hope that certainly by the end of openings your Ladyship will have that.

MRS JUSTICE GLOSTER: That's fine.

MR RABINOWITZ: Your Ladyship will also have an agreed chronology which again the parties are currently working on agreeing.

MRS JUSTICE GLOSTER: Fine, very well.

MR RABINOWITZ: Can I therefore turn first to the Sibneft claim and that is the intimidation claim.

As your Ladyship will by now be well aware, Mr Berezovsky's case in relation to Sibneft is that Mr Abramovich intimidated him into selling his very substantial interest in Sibneft to Mr Abramovich himself at a very substantial undervalue and that he did so in effect by making threats to Mr Berezovsky and his partner, Mr Patarkatsishvili, the threats being first that unless Mr Berezovsky and Mr Patarkatsishvili sold those interests to him, he, Mr Abramovich, would take

steps with a view to the interest being effectively removed from them by those in the Kremlin, led by President Putin, who had come to regard Mr Berezovsky as his enemy; and secondly, that again unless they sold those interests to him, Mr Abramovich, at a price he was willing to pay, he, Mr Abramovich, would take steps with a view to preventing the release from custody of Mr Berezovsky's close friend Mr Glushkov, a man who, so Mr Berezovsky considered, was only in prison in the first place in order to place pressure on Mr Berezovsky to give up his interests in ORT, the television channel that had provided unfavourable coverage about President Putin and his policy.

In making these threats, Mr Abramovich was obviously, we submit, also threatening to breach the terms of what we submit was his partnership with Mr Berezovsky. As your Ladyship will know, Mr Berezovsky contends that as a result of this intimidation, he and his partner, Mr Patarkatsishvili, were pressured into selling their Sibneft interest to Mr Abramovich for very substantially less than they were worth and that they did so by way of the Devonia Agreement.

So far as concerns the elements of the tort of two-party intimidation that Mr Berezovsky would have to

establish, as regards English law those elements are perhaps most clearly set out -- and I'm not asking your Ladyship to turn this up now -- in a Court of Appeal decision in this case in the context of the strike-out application that Mr Abramovich pursued and lost. That case is reported at [2011] EWCA Civ 153.

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: Can I just identify the four elements of two-party intimidation that Lord Justice Longmore set out.

First, that there should be a threat by the defendant -- in this case obviously Mr Abramovich -- to do something unlawful or something which is illegitimate to threaten. It is not enough that there is a warning given; there must be a threat.

Secondly, that the threat must be intended by the person making the threat -- in this case again Mr Abramovich -- to coerce the claimant -- in this case obviously Mr Berezovsky -- to take or refrain from taking some course of action.

Third, that the threat must in fact coerce the claimant to take such action.

And fourth, that as a result of this conduct the claimant must suffer loss and damage.

My Lady, the parties are, I believe, broadly agreed

about the requirements of English law in this regard. Indeed the only element of the tort about which, as I understand it, there may be some dispute between the parties relates to the first of the elements I've identified, that is to say whether the threat must be to do something unlawful or whether it is enough that the threat is to do something which it is illegitimate to threaten, as in the law of duress or indeed the crime of blackmail. But since, as we submit, the threats made here were in fact on any basis, we allege, unlawful, that is unlikely to be a point that will detain your Ladyship very long.

Those are the elements of the tort and needless to say of course Mr Abramovich disputes that any of these elements are satisfied on the facts of the case. But as your Ladyship will have picked up, the legal framework for this claim has of course become more complicated as a result of the fact that, as your Ladyship will recall, earlier this year Mr Abramovich withdrew his acceptance that English law is the law that governs the claim, so that one of the issues that you will have to now consider in the context of the Sibneft claim is the question of the proper law of the claim.

There are three possible candidates for the proper law, namely first that the intimidation claim is to be

governed by English law; secondly that the intimidation claim is to be governed by French law; and third that the intimidation claim is to be governed by Russian law. So far as concerns your Ladyship, however, your Ladyship need not be concerned about any differences between English law and French law, the parties having agreed that for present purposes they are to be treated as the same, the only difference being that French law does not have a limitation period that would be even arguably applicable here.

Of course, if your Ladyship --

MRS JUSTICE GLOSTER: That is agreed, is it?

MR RABINOWITZ: It is certainly agreed -- I believe it's agreed, yes. I see Ms Davies is nodding so that appears to be agreed.

If your Ladyship concludes that in fact the applicable law is Russian law, then you will need to come to terms with the Russian law on this issue, although it appears that the experts for the parties, Dr Rachkov for Mr Berezovsky and Mr Rozenberg for Mr Abramovich, broadly agree that if Mr Abramovich did what Mr Berezovsky has said he did, then this would constitute a tort in Russian law as well. Indeed, as your Ladyship will see in due course, once one cuts through issues that are minor or theoretical, the only

dispute between the experts so far as Russian law is concerned -- the only dispute of real substance, that is -- is a dispute about the application of the limitation provisions as they exist under Russian law.

So far as the proper law issue is concerned, as your Ladyship will have seen from the written openings, it is Mr Berezovsky's case that the proper law applicable to the Sibneft claim should be either English or French. Mr Abramovich, by contrast, contends that the proper law should be Russian law. In due course that is a dispute that your Ladyship will need to resolve.

So that, in very brief and general outline, is the legal framework in which the Sibneft claim arises. Given that, in our submission, most of the differences between the parties about the law are unlikely to be determinative of this claim, I am not proposing at this stage to say much about the law.

My Lady, the Sibneft claim, in our submission, is very likely to turn on the facts. Whilst there are a number of factual issues that arise and that matter, there are, I submit, two central factual issues that lie at the heart of the Sibneft claim. They are these: first, the 1995 agreement.

As your Ladyship knows, it is common ground now between the parties that there was indeed an agreement

made in 1995 between Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili relating to the creation and in some form or other the acquisition of Sibneft. The dispute between the parties relates to what it was that was agreed.

Mr Berezovsky of course says that what the parties agreed was that the three men, Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili, would work together towards the creation and acquisition of Sibneft and that they would be partners in this enterprise with Mr Abramovich being entitled to a 50 per cent share in the ownership of Sibneft when created and acquired, as per the plan, while Mr Berezovsky and Mr Patarkatsishvili would together also be entitled to 50 per cent.

Mr Abramovich, however, whilst he acknowledges first that there was an agreement made in 1995 relating to Sibneft and secondly that without Mr Berezovsky's assistance he could never ever have obtained Sibneft, indeed it would never even have been created, nonetheless contends that the agreement made between these three men was not that they would act together as partners in this way but rather that their collective efforts would be directed towards ensuring that he and he alone was to acquire ownership of this incredibly

valuable entity whilst they, in return for their efforts towards ensuring that he and he alone acquired Sibneft, would in effect simply be rewarded from time to time with unspecified payments made by Mr Abramovich, although we submit it is what revealing that Mr Abramovich's case as to precisely what he says this money was to be paid for has changed from time to time as this case has progressed.

That is the first key factual issue: what was it that was agreed in 1995 and, more particularly, did Mr Berezovsky and Mr Patarkatsishvili ever in fact acquire an interest in Sibneft at all?

The second key issue of course relates to whether or not Mr Abramovich was guilty of intimidating Mr Berezovsky by, in the period leading up to April 2001, making the threats alleged by Mr Berezovsky. I ought, I think, just to say something about this issue, this second issue, the intimidation issue.

The first point to make about this issue, my Lady, is that whilst there is little in the way of contemporaneous material that provides direct confirmation of intimidation, that I would submit is not terribly surprising. Blackmailers will offer tend to favour oral threats as opposed to setting it all out in writing.



The second point to make -- and this flows from the first -- is that given, as one would anticipate, the absence of written material evidencing the making of threats here, one is therefore driven back in seeking to resolve this issue first to an evaluation of the evidence of both parties, the person who says he is threatened as well as the person who denies being guilty of blackmail; and secondly to what one might call the inherent probabilities of this matter, which, as your Ladyship will recall, was one of the factors stressed by Lord Goff in the Grace Shipping authority as being likely to help the judge to get to the bottom and to the truth.

Can I just make a few short observations in relation to this question of inherent probabilities and how your Ladyship is likely to be assisted by this in the context of the intimidation issue.

Your Ladyship will recall that the following matters are all common ground in relation to this issue: first, that at the end of 2000 the parties -- that is to say Mr Berezovsky and Mr Patarkatsishvili on the one hand and Mr Abramovich on the other -- concluded a transaction whereby Mr Berezovsky and Mr Patarkatsishvili sold their interests in ORT to Mr Abramovich. Your Ladyship is aware that the

divestment of ORT from Mr Berezovsky's control and influence was, says Mr Berezovsky, something very keenly sought by the Russian government itself, Mr Berezovsky's control of this really being at the core of his dispute with Mr Putin.

Secondly, it is also common ground that following the ORT sale there was a further agreement of some kind made between the parties in 2001.

It is thirdly also common ground that as a result of that agreement made between the parties in 2001, Mr Abramovich agreed to pay and did pay Mr Berezovsky and Mr Patarkatsishvili a sum of \$1.3 billion for something at least.

Fourthly, it is also common ground that following these events starting with the ORT sale and culminating in the agreement made between the parties and the payment to Mr Patarkatsishvili and Mr Berezovsky of the \$1.3 billion, Mr Abramovich and Mr Berezovsky ceased entirely to be friends at all. So that, I would suggest, one might surmise again that something happened between the parties during this time to mean that Mr Berezovsky was unwilling thereafter to have anything whatever to do with Mr Abramovich.

Of course, that falling out -- and there is no dispute that there has been such a falling out --

occurred notwithstanding that on Mr Abramovich's case, his taking the ORT shares off Mr Berezovsky's hands and his payment for them of a sum of over \$150 million involved him doing a very big favour for Mr Berezovsky. Indeed, his willingness to pay Mr Berezovsky and Mr Patarkatsishvili the sum of \$1.3 billion for, on Mr Abramovich's case, no interest in anything at all, it simply being in the nature of a goodwill payment, was an even bigger favour.

My Lady, we submit that against the backdrop of these areas of common ground, there are four points in particular that we would emphasise that your Ladyship will need to bear in mind when considering the inherent probabilities of each side's case.

First, your Ladyship will wish to consider whether Mr Berezovsky's case can in fact be squared with the sudden and dramatic end of his friendship with Mr Berezovsky, his old mentor, following the events that I've described, all of which are common ground.

MRS JUSTICE GLOSTER: Sorry, I'm not following you here, you said first that I would wish to consider whether Mr Berezovsky's case --

MR RABINOWITZ: Sorry, I meant to say Mr Abramovich's case, my apologies.

Your Ladyship will wish to consider whether

Mr Abramovich's case can in fact be squared with the sudden and dramatic end of his friendship with Mr Berezovsky, his old mentor, following the events which I've described, all of which are common ground.

If Mr Abramovich is to be believed that he was being generous in both taking the loss-making ORT off of Mr Berezovsky's hands and later agreeing to a substantial pay-out of \$1.3 billion to Mr Berezovsky and Mr Patarkatsishvili, one would expect that Mr Berezovsky would have been eternally grateful to Mr Abramovich. But instead, one finds exactly the opposite: one finds the friendship coming to a bitter and conclusive end. On Mr Abramovich's case we submit that there is no real explanation for this at all.

MRS JUSTICE GLOSTER: Give me the date for the falling-out.

MR RABINOWITZ: It starts in December 2000, my Lady. There is a dispute between the parties as to whether they ever saw each other again, as your Ladyship knows.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We submit on Mr Abramovich's case there is no explanation for this at all. On Mr Berezovsky's case there is: it was because he was betrayed and because he was blackmailed by someone who had been his friend and partner.

Secondly, if Mr Abramovich can be shown, as we say

he will be, to have put forward a false case as regards the ownership interests in Sibneft and Rusal, then the question for your Ladyship will of course be: if Mr Abramovich had nothing to hide in terms of the allegations made, then why would he, Mr Abramovich, have chosen not to be open and honest about these matters? Why would he put forward what we will be submitting is a dishonest case unless, of course, he had something also to hide on intimidation?

Third, and again just looking at the inherent probabilities, Mr Abramovich's case is, we would submit, difficult to square with the sale of Sibneft at what we and our experts will say was a massive undervalue. Mr Berezovsky's case is, of course, not. Just so your Ladyship has this, we submit that at the time of the sale of Mr Berezovsky's interests in Sibneft, his interests were worth at the very least \$2.9 billion and as much as \$6.6 billion.

If your Ladyship therefore concludes, having heard the expert valuation evidence, that Mr Berezovsky and Mr Patarkatsishvili did not receive anything approaching the full value for their ownership interests in Sibneft, then I would submit, in the absence of any evidence that Mr Berezovsky and Mr Patarkatsishvili were being very generous to their former friend and were seeking to

confer very substantial benefit on him -- and I can tell your Ladyship that there is no such evidence nor even any such suggestion by Mr Abramovich -- then that in our submission is again a very powerful indicator of the presence of coercion.

Fourth and finally on the inherent probabilities, your Ladyship will, in the course of the trial, get to hear a lot of evidence about the ORT intimidation, including, as your Ladyship will have picked up from the written openings, whether or not there was a meeting in Cap d'Antibes in December 2000. As your Ladyship may be aware, Mr Abramovich has gone to great lengths to try to establish a convincing alibi for his movements in December 2000. We are getting new witness statements almost every second day on this.

But if, as we say it will be, Mr Abramovich's case that the Cap d'Antibes meeting did not take place in December 2000 can in due course, once we have heard from Mr Abramovich, be exposed as false, and if as a result your Ladyship concluded that, contrary to what Mr Abramovich would have you believe, the Cap d'Antibes meeting did indeed take place, then I would submit that this too gives rise to a very strong inference that Mr Abramovich's claim that he in no way intimidated Mr Berezovsky and Mr Patarkatsishvili into surrendering

their interests in Sibneft to him at a gross undervalue is also unlikely to be true.

These are of course all matters we will need to pursue with Mr Abramovich when he comes to give evidence in due course. I am not sure that there is much I want to or can say about them now.

Can I then next turn just to say something briefly about the Rusal claim.

As your Ladyship knows, the core of the Rusal claim depends very substantially on whether the interests that Mr Abramovich acquired in the Russian aluminium industry in 2000 were, as he says, acquired solely for himself with no partners of any kind whatsoever, that being his case, or whether, as Mr Berezovsky says, here too those assets were acquired by these three men, Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili, acting together.

As you know, it is Mr Berezovsky's case that when these assets were originally sold, that is in early 2000, by, among others, the Trans-World Group and Mr Anisimov, they were acquired jointly by and for Mr Berezovsky and Mr Patarkatsishvili and Mr Abramovich.

When, in March 2000, it was agreed that these assets would be combined with assets held by Mr Deripaska's group, leading ultimately in December 2000 to the creation of Rusal, Russian Aluminium, it is again

Mr Berezovsky's case that the assets which were part-owned by Mr Berezovsky and Mr Patarkatsishvili were only permitted to be used in this way on the basis of an agreement by Mr Abramovich that he would hold half of the shares allocated in consideration of those assets being contributed to form this combined company, that is to say 50 per cent of Rusal, on behalf of and on trust for his partners, Mr Berezovsky and Mr Patarkatsishvili, it being agreed by Mr Abramovich, as would in any event be expected from such an arrangement, that he would not sell any part of the Rusal shares to be allocated in respect of the contribution of those assets without first getting the agreement of Mr Berezovsky and Mr Patarkatsishvili, who might otherwise be left holding only an unprotected minority within Rusal, much to the detriment of the value of those shares.

As your Ladyship knows, the claim in relation to Rusal arises because in September 2003, in what Mr Berezovsky contends was a total disregard of the promise that he had made, Mr Abramovich sold 25 per cent -- that is half of the 50 per cent Rusal holding that was in his name or the names of his holding companies -- to Mr Deripaska for some \$1.578 billion, Mr Abramovich netting that sum being common ground in this case.



It is also common ground that in carrying out that sale, Mr Abramovich failed even to tell Mr Berezovsky or Mr Patarkatsishvili that this is what he was proposing to do; he simply sold those shares without reference to them.

What is also common ground in relation to this claim -- indeed this cannot be disputed -- is that the consequence of Mr Abramovich's actions in this regard was to leave the remaining 25 per cent holding in Rusal as a minority stake, with Mr Deripaska's group holding the remaining 75 per cent, so that when an attempt was made in July 2004 to dispose of this remaining 25 per cent to Mr Deripaska, he was willing only to pay some \$450 million for that stake; that is to say less even than a third of what Mr Abramovich had taken for himself.

The net effect of Mr Abramovich's disregard, we submit, of his fiduciary and contractual duties owed to Mr Berezovsky and Mr Patarkatsishvili is, therefore, to have caused them very substantial loss. So this claim is brought, as your Ladyship knows, as a claim for breach of trust and breach of fiduciary duty and breach of contract.

As your Ladyship will have seen in relation to Rusal, also there is a major dispute as to the proper

law that should govern that claim. Mr Berezovsky's case is that the proper law governing both the breach of trust and fiduciary duty claims and also the breach of contract claim is English law. As your Ladyship will also have seen, Mr Abramovich disputes this and contends that the Rusal arrangements, if in fact they existed, would be governed by Russian law.

As your Ladyship again will appreciate, the issue as to the proper law governing the Rusal claim is an important one because if Mr Berezovsky accepts that Russian law were to be the proper law governing the Rusal arrangements, then the Rusal claim would be bound to fail because it is accepted by Mr Berezovsky that Russian law does not recognise the concept of a trust.

Again, so that in outline is the shape of the Rusal claim. Whilst of course there are again a number of issues that your Ladyship will need to consider, we submit that hereto your Ladyship's conclusion on this claim will largely depend on your Ladyship's finding in relation to two key factual issues, namely first, who were the individuals who acquired the aluminium assets from the Reuben brothers, Mr Chernoi, Mr Bosov and Mr Anisimov in early 2000? Was it just Mr Abramovich all by himself, as he is contending, or were Mr Berezovsky and Mr Patarkatsishvili his partners in

that acquisition? In our submission, my Lady, the evidence very strongly points here to Mr Abramovich not being the sole acquirer of those assets in early 2000.

The second key factual issue that arises in relation to Rusal is this: who were the parties with an interest in those assets when they came in December 2000, and in accordance with the agreements made in March 2000, to be combined with the aluminium interests of Mr Deripaska to form Rusal? And what, if anything, was agreed by the parties at the meeting at the Dorchester Hotel in London on 13 March 2000?

My Lady, subject of course to the issue of the proper law of the claim, an issue that is itself very likely to be one determined by your views as to which of Mr Abramovich or Mr Berezovsky is telling the truth about these matters, if your Ladyship is with Mr Berezovsky on these two key factual issues, then I would submit it is very likely that your Ladyship will decide the Rusal claim in favour of Mr Berezovsky.

I say that because of course, as I've already indicated, there can be and is no dispute that in fact Mr Abramovich, acting unilaterally and without regard to any interests of Mr Berezovsky and Mr Patarkatsishvili, did sell his shares to Mr Deripaska in September 2000 for close to \$1.6 billion. So that if there were

a trust arrangement in respect of these interests or a fiduciary relationship or a contractual agreement that Mr Abramovich would not sell without first obtaining the consent of his partners, then Mr Abramovich would have to accept that he acted in contravention of his obligations under the Rusal arrangements.

There can moreover also be no serious dispute that this left the remaining and unsold 25 per cent, which by virtue of his conduct of Mr Abramovich had turned into a minority holding, having a very substantially lower value. Therefore there can also really be no dispute that Mr Abramovich's conduct will have caused Mr Berezovsky to suffer very substantial loss and damage.

So that again in outline is the Rusal claim.

My Lady, having identified obviously in very summary terms what we would submit are the key factual issues, indeed probably the key issues in this case, I was proposing next to show your Ladyship some of the documentary evidence that is likely to assist your Ladyship in resolving these and other issues.

As will be obvious to your Ladyship, I plainly don't have the time to show your Ladyship all the documents that are going to be material but what I would submit would be helpful at this stage is to show your Ladyship

a small selection of documents that in our respectful submission are of particular significance because in a case rather lacking in contemporaneous documents, there are nonetheless certain documents that stand out like a beacon because, more than most, they do give one an insight into the contemporaneous views of the parties as to what was actually going on. They are in the main also documents that your Ladyship is unlikely to be taken to for a very long time, until at least we get to hear from Mr Abramovich.

I ought also just to say this about the documents: that is that inevitably, given the way these issues arise as well as the time when the material events occurred, your Ladyship will find there is more material that may assist your Ladyship in relation to the Rusal claim than there is in relation to the Sibneft claim -- again, as I submit, that is not surprising given the very different nature of the two claims -- although, as your Ladyship will see, even in relation to the Sibneft claims there are some very important documents that your Ladyship does have to guide your Ladyship.

I know it's not yet but I don't know what time your Ladyship wants to break?

MRS JUSTICE GLOSTER: I will break about 11.45 I think, or maybe a bit earlier. If you get to a break, let me

know.

MR RABINOWITZ: Can I just ask your Ladyship before we launch into the documents: is your Ladyship using the electronic documents?

MRS JUSTICE GLOSTER: I hope to be because, as you see, all I asked for and all I have are the written openings, the witness statements and the pleadings in hard copy.

MR RABINOWITZ: Right. Perhaps we can see how that goes and if we need to change courses then --

MRS JUSTICE GLOSTER: Yes. I would rather deal with it electronically because that's how I work, but if it's going to take too long then obviously I'll switch to hard copy.

MR RABINOWITZ: Can I then just begin by taking your Ladyship to some Rusal-related documents.

MRS JUSTICE GLOSTER: Just for the purposes of my note, I like to annotate the hard copy of the skeleton arguments where possible. Should I be looking therefore at the first section of your skeleton written openings where you're dealing with Rusal, like section G?

MR RABINOWITZ: Section G, page 219.

MRS JUSTICE GLOSTER: If the documents are there then it's quite nice for me to highlight them there, as it were, rather than making a separate note.

MR RABINOWITZ: I'm afraid I won't be able to give you page

references to the skeleton on each page.

MRS JUSTICE GLOSTER: That doesn't matter.

MR RABINOWITZ: Can I therefore ask your Ladyship please to go first to the document that your Ladyship will have -- I think all the references, unless I say otherwise, will be in the H(A) bundles. So H(A), bundle 17, page 33, please H(A)17/33. Your Ladyship should have there --

MRS JUSTICE GLOSTER: H(A)17, page 33?

MR RABINOWITZ: That's right. Your Ladyship should have there, when it comes on to your screen, a document in English headed:

"Agreement.

"Moscow, 10 February 2000."

MRS JUSTICE GLOSTER: Yes, thank you.

It's taking too long to load.

MR RABINOWITZ: I have put together a bundle of the documents that I'm likely to refer to, which I can hand to your Ladyship. It's a composite.

MRS JUSTICE GLOSTER: Let me just try once more.

Mr Fleming, I'm going to need your help. Just bear with me, Mr Rabinowitz. (Pause)

MR RABINOWITZ: My Lady, I wonder if this would be a good moment to take a break. We could take the transcript writers' break now. That will give people ten minutes to --

MRS JUSTICE GLOSTER: Yes, okay, to see whether it's a real difficulty or just a local difficulty. I'll take ten minutes.

(11.18 am)

(A short break)

(11.35 am)

MRS JUSTICE GLOSTER: I'm having more discussions at the luncheon break about seating for members of the press and the public, but in the meantime I'm afraid you'll have to stand.

Yes.

MR RABINOWITZ: Does your Ladyship now have on a screen H(A)17, page 33? If your Ladyship finds that this isn't working the way your Ladyship would like it to, as I say, I have produced a composite file containing the documents that I'm likely to be taking your Ladyship to today.

MRS JUSTICE GLOSTER: Yes, okay. I think it is working now but what I'll do is pass me up the hard copy and maybe it's just me who needs some more training.

MR RABINOWITZ: I have some for my learned friends as well.

(Handed)

Your Ladyship should find this document at tab 2.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: They all, as your Ladyship can see, have the



bundle references at the bottom of the page. I will continue to give the bundle references for those who do choose to follow electronically.

At tab 2, as I said earlier, this is an English translation of a Russian language agreement. For those who would like the reference to it, that's at H(A)17, page 38, the Russian language. It's an agreement dated 10 February 2000 by which the aluminium assets were originally sold by Trans-World and the other sellers to -- and I will put this neutrally -- the Abramovich interests.

Can I invite your Ladyship to look at the following provisions. First, the definition of the parties, top line:

"Roman Abramovich, Evgeniy Shvidler, Badri Patarkatsishvili and companies represented by them (hereinafter, 'Party 1') ..."

Your Ladyship sees who parties 2 to 5 are.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Just so that your Ladyship has this, the "companies represented by them" is a reference to the four offshore companies through which the aluminium assets were to be acquired. We're going to see the names frequently: Runicom Fort Limited, Palmtex SA, Galinton Associated Limited and Dilcor International

Limited.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Those companies, your Ladyship, were bearer share companies and the ownership is, of course, a matter of dispute in these proceedings. That's a matter which I'll come back to in a moment, if I may.

That is who we are told the parties are, or at least, as your Ladyship sees, party 1 to the agreement by which the aluminium interests were acquired.

Can I next ask your Ladyship just to glance at clauses 1 to 3 of this agreement, which, as your Ladyship will see, explain first what the assets are that are being acquired and secondly what part of those assets or shares are owned by each of parties 2 to 5, who, as your Ladyship sees, were the sellers.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As I say, one need only glance at that for present purposes.

Then clauses 4 and 5 are important. Clause 4:

"Party 1 shall acquire from Parties 2 and 3 all their shares and interests in business of BRAZ for 300 conditional units (150 [conditional units] to Party 2 and 150 [conditional units] for Party 3)."

Your Ladyship may wish to note at that stage, a conditional unit, if your Ladyship goes to H(A)17,

page 36 H(A)17/36, clause 20 tells us that:

"... 1 [conditional unit] under this Agreement shall be equal to 1,000,000 (one million) US dollars."

So where you have a clause which says 300 conditional units, that's \$300 million.

Then clause 5:

"Party 1 shall acquire from Parties 2, 3, 4 and 5 all their shares and interests in business of KrAZ and other Siberian Complex industries for [\$250 million] ([\$125 million] to Parties 2, 3, 4; and [\$125 million] to Party 5)."

If I can ask your Ladyship next to go to clause 9 on page 34 H(A)17/34, the following page, your Ladyship sees clause 9:

"Title to the shares defined in para 1 of this Agreement shall be transferred from Parties 2-5 to Party 1 within 3 business days after Party 1 effects the first payment under para 6 of this Agreement subject to the account of Party 1 in depositary and registry being open."

Then, again, just glancing back at who party 1 is said to be, as your Ladyship sees, this is not confined to Mr Abramovich at all but also includes Mr Patarkatsishvili, who, as your Ladyship will see from a great deal of evidence in this case, plainly

considered that he was acting also or representing Mr Berezovsky. Party 1 also includes, as your Ladyship saw, the four offshore companies, Runicom Fort, Dilcor, Galinton --

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: -- into whose name the acquisition was made.

As I've already noted, the beneficial ownership of those companies is in dispute. But what is perhaps interesting, as I shall show your Ladyship, is that in other documents that your Ladyship will see, these companies are from time to time identified as belonging to Sibneft or the Sibneft shareholders. That, as your Ladyship will see, is a matter of some significance.

In any event, just pausing here, if one takes this contract at face value and if one takes the view that the people writing the agreement understood and meant what they said, this would suggest that Mr Abramovich's case that he and he alone was the purchaser of the aluminium assets from these parties is very unlikely to be correct.

This fact, my Lady, that this acquisition was not one made by Mr Abramovich alone, is not just something that is suggested on the face of this contract; it is, as you will hear in due course, also what was thought by the counterparties to the contract, a number of whom are

going to come to court and say that they understood that they were selling to a group of which Mr Berezovsky was part.

It is also clear from the press reporting at that time, the reference in the press reporting of this acquisition being consistently to the acquisition having been made by the Sibneft shareholders, and more specifically by Mr Berezovsky and Mr Abramovich.

I don't propose to take your Ladyship to those now but can I perhaps give your Ladyship two or three references to that. There is a Financial Times report of 12 February which is at H(A)18, page 12 H(A)18/12; there is a BBC report of 12 February 2000 at H(A)18, page 13 H(A)18/13; and there is a Moscow Times report of the same date --

MRS JUSTICE GLOSTER: These are all referred to in your skeleton?

MR RABINOWITZ: They are.

But again, my Lady, the matter obviously doesn't stop there because the February 2000 agreement is by no means the only contract made at this time that suggests that Mr Abramovich's case that he and he alone acquired the aluminium assets is very unlikely to be correct.

Can I next ask your Ladyship please to go to the next substantive contract that was made in relation to

these aluminium assets and that is the document that your Ladyship will find in -- I'm going to give a bundle reference first -- H(A)16, page 47T H(A)16/47T. The Russian language version is at H(A)16, page 47 H(A)16/47T. Your Ladyship will find that in this opening bundle I have handed up at tab 1.

Your Ladyship should have there a document headed "Preliminary Agreement".

MRS JUSTICE GLOSTER: Yes, I do.

MR RABINOWITZ: This, for your Ladyship's note, it doesn't seem to carry a date but it's an agreement that was made in early March 2000. As your Ladyship may recall from the written opening, this agreement titled "Preliminary Agreement" is the agreement that ultimately led to the formation of Rusal. It led to the formation of Rusal by combining the aluminium assets acquired from the Trans-World Group and Mr Anisimov and others in February 2000, as a result of the agreement I've just shown your Ladyship -- that's the 10 February agreement -- together with aluminium assets that were held by Mr Deripaska's group.

If I can just show your Ladyship the preliminary agreement. Your Ladyship sees from the top of this agreement Mr Abramovich alone is identified as party 1 and Mr Deripaska alone is identified as party 2. Then

clause 1 identifies the aluminium assets that are to be the subject of this agreement.

If your Ladyship glances at clause 2.1, dealing with party 1, that's the Abramovich interests, they are set out, the aluminium interests said to be held by party 1 and these correspond to the aluminium interests acquired under the February agreement that we've seen made by the Sibneft shareholders, if I can put it that way.

Can I next ask your Ladyship to go to clause 4 on page 48T H(A)16/48T:

"The parties agree that in addition to the standard terms the Agreement shall by all means include the following terms ..."

Just pausing there. What this agreement is about, my Lady, is an agreement between these people that they will enter into an agreement for the purposes of combining their assets and in due course forming Rusal. This isn't, if you like, the merger agreement itself; it's a preliminary agreement which was intended to lead to the merger agreement.

Then just going back to clause 4:

"The parties agree that in addition to the standard terms the Agreement..."

And that's the agreement that they're intending to enter into:

"... shall by all means include the following terms..."

Just glancing at 4.1:

"Parties 1 and 2 warrant that, together with their partners (not including TWG or any companies and/or individuals related thereto or affiliated therewith), they own the assets and that the stated assets have not been pledged as security for the obligations of Parties 1 and 2 and are not subject to any third party rights, disputes or attachments."

This on its face, my Lady, I would suggest would appear to be a warranty both by party 1, Mr Abramovich, and by party 2, Mr Deripaska, that each of them own the relevant assets together with their partners. Of course, if, as Mr Abramovich now contends, he in fact didn't have any partners at all with whom he owned these assets, this would be a very odd warranty to be given; indeed I would submit it would be a misleading warranty.

Can I ask your Ladyship next to look at clause 4.2:

"Party 1 warrants its and its partners' concerted will to sign the Agreement on the terms determined herein, and shall be fully liable to Party 2 for any action (omission) by its partners associated with the performance hereof."

MRS JUSTICE GLOSTER: Yes.



MR RABINOWITZ: Again, your Ladyship sees a warranty has been given by Mr Abramovich not only for himself but also in respect of his partners. As your Ladyship will note, this makes clear that the understanding of the contracting parties here was that Mr Abramovich had more than one partner who was agreeing to merge these aluminium interests. Indeed, as you see, he is in fact offering an indemnity in relation to their concerted will and as regards their actions and omissions with regard to entering into the agreement.

Again, my Lady, if Mr Abramovich, as he would have you believe, did not have any partners at all, this again is a rather bizarre provision for him to be agreeing to because obviously if he had no partners, what on earth would he be doing giving a warranty about his partners' concerted will? This would just be nonsense.

Of course the document does make sense if, as Mr Berezovsky has said, he and Mr Patarkatsishvili were partners with Mr Abramovich in the acquisition of the aluminium assets. Mr Abramovich was of course warranting that they would consent to the merger and offering indemnities for them.

Of course this would also help explain the Dorchester meeting, which took place around eight or

nine days later, as a meeting of the principals: that is to say when all the partners on Mr Abramovich's side were present, so that Mr Abramovich could show that his partners really did consent to the merger arrangements which formed the subject matter of the preliminary agreement.

In other words, my Lady, just as with the earlier agreement, if one is to allow for the possibility that the parties wrote down what they believed to be the true position, if one just allows for that possibility, this fatally undermines Mr Abramovich's case that he had no partners and is strongly supportive of Mr Berezovsky's case that Mr Abramovich did indeed have partners.

Can I, before leaving this document, make two further points about it. Can I first ask your Ladyship to go to clause 14 of this contract, page 49T

H(A)16/49T:

"The Parties agree that the Agreement shall be governed by English law. Any dispute or disagreement arising out of the Agreement which cannot be resolved by negotiation shall be referred to the Court of Arbitration of the UK Chamber of Commerce and Industry, London, for resolution in accordance with the rules of this court of arbitration. A dispute or disagreement may be referred to this court by the Party concerned

upon the expiration of thirty days from the date on which a claim notice was given to the other Party."

As is clear from this, one has here an agreement -- and just standing back, one needs to think about what this agreement is about. It's made entirely between Russian businessmen, that is to say Mr Abramovich, Mr Shvidler, Mr Deripaska and Mr Bulygin. We are told that they are the people who were present when this was made; all Russian businessmen. Apparently, we are told, agreed between them whilst they're all together in Russia. As I've said to your Ladyship and as would perhaps be obvious, it was made in the Russian language; this is of course a translation we're looking at. And it was to deal with Russian aluminium assets.

Despite all of that, the parties chose to include an express provision that the arrangements they were going to make between themselves in relation to these Russian assets should be dealt with not under Russian law but under English law.

Can I just make this point. Your Ladyship will see they agree that the agreement shall be governed by English law. In other words, it's not this agreement that is to be governed by English law; it's the arrangements to be entered into in relation to Rusal.

Perhaps, if I ask your Ladyship just to go back to

clause 2 on page 47T, your Ladyship can see why I say that:

"This Preliminary Agreement is executed in connection with the Parties' intent to conclude an Agreement in respect of the Parties' title to the following assets..."

So this is looking forward to the agreement that is to be made and in looking forward to the agreement that is to be made, these Russian businessmen in Russia dealing with Russian assets say that the arrangements must be dealt with in accordance with English law. That makes it perhaps a slightly unusual provision because it is looking forward to an agreement that is to be made and saying that in that contract there should be an English law provision. It's not simply a cut-and-paste job.

Now, as your Ladyship will immediately appreciate, this is a matter of some significance in relation to the proper law issue that arises in the context of the Rusal claim. Your Ladyship will have in mind Mr Berezovsky's case in this regard.

Mr Berezovsky contends that the parties to the Rusal arrangements which are the subject of his claim all agreed that their merger arrangements when subsequently drawn up should also be governed by English law. It has

been suggested, and certainly was in the context of the strike-out application, that that evidence was fanciful and that Russian businessmen dealing with Russian assets would simply not contemplate either being concerned about such things, still less agreeing that those arrangements should be governed by English law.

The relevance of this document, my Lady, is that it entirely belies that argument because here one has clear contemporaneous evidence in relation to Rusal which demonstrates the exact opposite. It shows that by March 2000 Russian businessmen did indeed concern themselves with such things and indeed that these businessmen, despite the fact that the assets were in Russia, that they were Russian and they were making an agreement in the Russian language, felt sufficiently strongly about not wanting Russian law to apply to the arrangements that they were agreeing to put in place and sufficiently strongly that English law should apply that they regarded it as appropriate to stipulate expressly in this preliminary agreement that this was the way it was to be: that is that the main agreement, when entered into, would contain a provision that ensured that the arrangements between them should be governed by English law.

Given this, my Lady, if anyone at the Dorchester

Hotel meeting -- which is obviously a critical meeting in the context of this dispute -- just a few days later, on 13 March 2000, had tried to summarise for Mr Berezovsky, for his benefit, what had been agreed in relation to the preliminary agreement, they would, I would suggest, given what they had taken the trouble expressly to agree in (inaudible), have said words to the effect -- indeed have been bound to use words to the effect -- that, "We have agreed that our merger relations will be governed by English law". That, as your Ladyship may recall, is precisely what Mr Berezovsky has consistently said he was told at the Dorchester meeting.

Just to be clear, my Lady, since this may be a material point here, Mr Berezovsky's case about the proper law having been expressly raised and agreed and that this was to be English law was not some recent invention of Mr Berezovsky produced after he had seen these documents. On the contrary, this is a case that Mr Berezovsky advanced well before Mr Abramovich eventually disclosed the preliminary agreement, with its bespoke choice of English law to govern the future merger contracts.

Just so your Ladyship has the chronology, the order of events here, as your Ladyship knows, Mr Abramovich

pursued a strike-out application on the basis that Mr Berezovsky's case that the Rusal arrangements were governed by anything other than Russian law was hopeless. In response, Mr Berezovsky set out his case as to why the parties had expressly agreed that English law would govern their legal relations and only then did Mr Abramovich, in his reply evidence, disclose the preliminary agreement.

As I have suggested already, Mr Berezovsky's case about the agreement in respect of English proper law has from time to time been described by those acting for Mr Abramovich in terms suggesting that given the assets, given the parties, this is simply an incredible suggestion. But as this document shows, far from being incredible, this is precisely what these Russian businessmen dealing with these Russian business assets chose to do.

That's the first point I was going to make about this before moving on from the document. The second point is this.

Your Ladyship may wish to note that despite the countless witness statements that he has served and indeed continues to serve, Mr Abramovich himself has never been able to explain -- indeed has never begun to explain -- why, if he had no partners, he had signed an

agreement that plainly proceeded on the basis that he did indeed have more than one partner; not in his original witness statement nor in his most recent witness statement, his sixth witness statement, served after receipt of our written opening, in which we had effectively challenged him to explain the reference to "partners" in this contract.

The only response to this point that it appears Mr Abramovich is able to make is to try and write off this contract and these words to some sort of drafting aberration on the part of Mr Bulygin, Mr Deripaska's associate who we are told held the pen in respect of the drafting of this agreement. Indeed, my Lady, Mr Bulygin has served a witness statement and he may or may not in fact turn up to give evidence before your Ladyship.

I say he may or may not actually turn up to give evidence before your Ladyship: there is a doubt about this because subsequent to our serving of our written opening we have been told that Mr Bulygin has a health issue which may prevent this. If he does turn up, one will then have the opportunity to ask Mr Bulygin questions about his evidence.

What I would say at this stage, my Lady, is just this: that it is very clear that Mr Bulygin's evidence does not even come close to providing, so far as



Mr Abramovich is concerned, a satisfactory answer to the question why, if, as he now claims, he indeed had no partners, he would have signed an agreement which appears to suggest precisely the opposite and in which he expressly agreed to warranties about the existence of such partners.

Again, one of the problems for Mr Abramovich is that the matter doesn't stop with this contract either. We have the first contract which suggests that Mr Patarkatsishvili is a party; we have this preliminary agreement which then talks about partners; and so it goes on.

Can I ask your Ladyship next to go to the document at H(A)18, page 124 H(A)18/124. It's I hope at tab 7 of the opening bundle that I've given your Ladyship. Your Ladyship should have a document headed "Share Purchase and Sale Agreement". As your Ladyship sees, this is an agreement made by Runicom Limited, that's an Abramovich company, and GSA (Cyprus) Limited, and that is a Deripaska company.

Can I ask your Ladyship first if you could turn to page -- well, on page 124 your Ladyship will notice the definition of "Companies". It means:

"... those companies more particularly described in Schedule 1 Part I."

Your Ladyship will find schedule 1 at page 138 H(A)18/138 and your Ladyship sees there listed the four companies that I mentioned earlier: Runicom Fort, et cetera.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As I've mentioned, those were the vehicle companies through whom the shares in the aluminium assets were owned. They're "the Companies". There are a number of provisions dealing with them; I don't think I need to be concerned about that now.

Can I ask your Ladyship next to look at the definition of "Other Selling Shareholders", which your Ladyship will see at page 125 H(A)18/125:

"'Other Selling Shareholders' means those other persons who together with the Vendor are the legal and beneficial owners and holders of 100 per cent of the shares ... of the Companies at the Completion Date."

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As to who these other selling shareholders are, my Lady, a question that arises is this: if, as Mr Abramovich contends, he and he alone had an interest in the acquisition of the aluminium assets that are the subject of this contract, then, one asks rhetorically, who are these other selling shareholders? Because in our submission the fact that this agreement is one made

not just by Runicom Limited, Mr Abramovich's company, but also for and behalf of other selling shareholders is, we submit, yet a further major difficulty with Mr Abramovich's contention that he and he alone owned the aluminium assets and that he and he alone was to benefit from the injection of those assets into the company that became known as Rusal.

If one asks "Who were the other selling shareholders?" on Mr Berezovsky's case the answer to this is easy and it is the same answer as to the question "Who were the other partners of Mr Abramovich that were expressly referred to in the preliminary agreement?" The partners and the other selling shareholders were of course Mr Berezovsky and Mr Patarkatsishvili. It was they who had the ownership interests in the four offshore companies and they who acquired the original aluminium assets one month earlier, acting as partners with Mr Abramovich.

But who on Mr Abramovich's case were these other selling shareholders? My Lady, we have quite literally no idea. He has again said nothing and offered no explanation at all, and this despite the point being very carefully flagged up and dealt with in our written opening. It appears, therefore, that your Ladyship is going to have to wait again until Mr Abramovich comes to

give evidence in four weeks' time to find who, on his case, these other selling shareholders were.

Still on this agreement, can I ask your Ladyship next to go to clause 8.2 on page 134. Your Ladyship will recall that clause 14 in the preliminary agreement contained the agreement that the parties to the actual merger arrangements should be governed by English law and, as one would expect in light of that, one finds at clause 8.2 just such a provision.

Your Ladyship will know from what I have submitted a short while ago why we submit this is relevant and important in relation to the Rusal claim.

Now, there are a number of other agreements and materials relating to Rusal that give rise to similar points. Given the limited time I have in this oral opening, I only propose to dip into a few further selection of Rusal documents.

Can I next ask your Ladyship please to go to the document that we have in the bundle at H(A)18, page 221.001T H(A)18/221.001T; in this opening bundle at tab 8. I think at tab 8 your Ladyship may find something in Russian.

MRS JUSTICE GLOSTER: Yes. After the blue page.

MR RABINOWITZ: After the blue page, indeed, your Ladyship has a translation.

As your Ladyship hopefully sees, this is a document headed "List of documents". I should explain immediately that it is not entirely clear who precisely produced either this document or the other documents associated with this document that I'm going to show your Ladyship. I can, however, tell your Ladyship that they've come from the family defendants' disclosure. Your Ladyship sees that if you go back to the Russian document: the bottom left-hand corner is where you get the indication of who this version has come from.

We are at the moment trying to locate the original file out of which these documents were produced and that may shed some light on who it was that prepared the document.

MR SUMPTION: We understood it was common ground that the list was produced by Mr Jenni, whose name indeed appears at the end of it.

MR RABINOWITZ: In fact I think it suggests exactly the opposite because it says:

"The documents listed in this index are received by me..."

And it's prepared for him to be signing to acknowledge that he has received it. So, with respect, that isn't common ground at all.

What we submit is fairly clear, in relation to this

and the other documents I'm going to show your Ladyship, is that they were produced by a Russian speaker who was assisting Mr Patarkatsishvili at this time, possibly Mr Fomichev, possibly Mr Kay, and possibly someone from Mr Anisimov's camp, for example Mr Streshinsky.

We submit that what is also fairly clear is that these documents were produced for Mr Berezovsky and Mr Patarkatsishvili sometime in March or April 2000; that is to say very shortly after the aluminium asset transactions to which I have taken your Ladyship, those contracts your Ladyship has seen.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If I can just ask your Ladyship to go to the second page of the list of documents. Again, I've taken your Ladyship to this already in light of my learned friend's intervention. Your Ladyship sees:

"The documents listed in this index are received by me on 21 April 2000."

And one sees Hans-Peter Jenni's name there. This gives an indication of when this document was produced, although your Ladyship will note it is not in fact signed by Mr Jenni nor apparently received by him.

If your Ladyship then goes back to the first page, your Ladyship sees a reference at point 1 to an explanatory note, and that your Ladyship will find in

this bundle behind tab 9. For those trying to follow electronically, H(A)18, page 221.003T H(A)18/221.003T is where this will be found.

Just looking at the opening words:

"In connection with the Clients' likely trip to Europe, it is proposed that work begin on the Programme to put their assets in order."

As your Ladyship will see in due course, "the Clients" are plainly Mr Berezovsky and Mr Patarkatsishvili. We know from other evidence that Mr Berezovsky and Mr Patarkatsishvili were indeed contemplating a trip to Geneva with Mr Jenni to see a Mr Samuelson --

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: -- Christopher Samuelson, in the spring of 2000, with a view to moving their assets away from Russia and into new trust structures set up offshore.

So again this assists in time, this document, date-wise, to around March or April 2000. It also assists us in identifying the reason why these documents were produced: they were produced in connection with that proposal.

Can I then take your Ladyship back briefly to the list of documents behind tab 8 H(A)18/221.001T. Your Ladyship sees that in addition to the explanatory note

at point 2, there is a reference to:

"Structure chart of share sale-purchase deals and... intermediary transactions."

Your Ladyship may also wish to note point 4:

"Brief biography of [Mr] Patarkatsishvili (in English)."

I'll take you to those documents in due course.

Then what one has listed out from numbers 5 to 16 are agreements that Mr Patarkatsishvili had made under which commission was to be paid in respect of the February 2000 aluminium acquisitions. Your Ladyship will have seen those commission agreements referred to in the written openings. Your Ladyship can see that whoever prepared this bundle had produced not just the original agreements but also English translation copies of those agreements as well as a notary certificate in respect of each such agreement.

Those commission agreements are, as your Ladyship may have picked up from the written openings, agreements on which the defendants had and I think still do place some reliance, it being suggested I think that those commission agreements represented the entirety of what it was agreed Mr Patarkatsishvili was to get out of the February 2000 aluminium acquisition; although, as your Ladyship shall see, that is an argument which is very



difficult to square with, among other things, this agreement itself.

Can I just next ask your Ladyship to go to the document referred to at point 2 of the list: that's the structure chart. Your Ladyship will find that behind tab 3. It's at H(A)17, page 37.002 H(A)17/37.002. As your Ladyship will see, this document may assist you in understanding the structure of the aluminium sales with which you're going to be very much concerned.

You see that at the top of the schedule one has a list of the offshore vehicle companies which are the sellers of the aluminium assets. The Coalco companies are Mr Anisimov's companies and we have the Trans-World company sellers, Mr Reuben, Bosov, and Mr Chernoi's companies on the right. So two for Mr Anisimov and six for what we could call the Trans-World sellers.

Then, as your Ladyship sees, this is a representation of the fact that they are selling the aluminium interests -- those are described outside the boxes, between the various arrows pointing downwards -- to the four offshore companies, who again your Ladyship will recognise as having been the parties to the Rusal arrangements. Your Ladyship may wish to note that these four offshore companies are placed within a circle that appears to be titled "Sibneft".

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Does your Ladyship see that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As you will recall, I suspect, from our written opening, there is a consistent reference by third parties to the aluminium interests having been acquired by the Sibneft shareholders.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, the arrows show each of the aluminium acquisition contracts between Coalco and Trans-World Group on the one hand and the Sibneft four offshore companies on the other, and you may wish to note that the size of the share transfers and the purchase price, which your Ladyship sees is also shown there, just taking the by the first arrow, your Ladyship sees that KrAZ and KrGES interests and then there's a figure there given for how much is to be paid for that.

That tallies exactly with the aluminium acquisition contracts of 10 February 2000. I haven't taken your Ladyship to those detailed contracts; there are, I think, eight of them. I should say they all also include an English choice of law provision. But the figures, both in terms of the interests which are being sold and the amounts being paid for those interests, are precisely accurately set out. I say that because it's

pretty clear that whoever prepared this document had a very detailed and full knowledge of the aluminium asset transactions.

Now, your Ladyship sees below the boxes representing the Trans-World and Coalco sellers, and indeed the Sibneft purchasers, a slightly lighter oval shape containing the words "Intermediary", representing, as I will show your Ladyship, that there was to be commission paid on the sales. Does your Ladyship see that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then one sees in what amounts and by which companies this commission was to be paid.

If you go to the bottom of the chart, where you have another intermediary circle and four boxes: K1, K2, K3 and K4. As your Ladyship will see in due course, K1 and K2 were to be Mr Patarkatsishvili's companies; K3 and K4 were to be Mr Berezovsky's companies.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, with this in mind, can I ask your Ladyship then to go back to the explanatory note at tab 9 H(A)18/221.003T. Can I invite your Ladyship, if you would, to read the whole note to yourself.

MRS JUSTICE GLOSTER: Yes. (Pause)

Whose note is this?

MR RABINOWITZ: That is one of the mysteries. It was plainly, as I've suggested, made by a Russian speaker because this is a translation. So it was made in the Russian language. It was made, we think, either by Mr Fomichev or possibly by Mr Kay, who again was someone who worked for Mr Patarkatsishvili; possibly by Mr Streshinsky, who worked for Mr Anisimov.

MR SUMPTION: My Lady, if it helps, my understanding from my clients is that the most likely author of this document is Mr Kay, the reason for that being that although he has written it in Russian, his Russian is not actually all that good -- he is not a native Russian speaker, I am told -- and this looks like a document prepared by somebody who was not a native Russian speaker but did know Russian.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR RABINOWITZ: That is a mystery we hope to get to the bottom of in due course but I'm grateful to my learned friend for that.

MRS JUSTICE GLOSTER: And he worked for OP(?), did he?

MR RABINOWITZ: Yes, he did.

Can I make a few observations about the note. First, as your Ladyship sees from the introductory sentence, what the note is directed towards is putting the assets of the clients -- and it is plainly

Mr Berezovsky and Mr Patarkatsishvili -- in order and there is to be a three-stage programme for that. Given that, one would in due course in this document expect to find a reference to what those assets are, and we'll come to that shortly.

Secondly, and as regards the first or initial stage of the programme -- that's under the first heading, "Stage 1" -- one sees that this involves opening accounts and transferring certain funds across. Your Ladyship sees:

"In order to complete the intermediary transaction and thus the first stage of the Programme, the following action should be taken..."

And that includes the opening of accounts and the transfer of funds.

The funds that are to come in are, as one sees if your Ladyship glances at point 4, just above the heading, the funds that are to come in are the commission payments for the intermediary services provided in relation to the sales of the aluminium assets.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If one goes to around a third of the way down the page, towards the top, one has the description of the intermediaries and we see that this is described

as two companies belonging to Mr Berezovsky -- that's "BAB" -- and two companies belonging to Mr Patarkatsishvili, Badri Shalvovich -- I have that wrong I'm sure -- Patarkatsishvili. Your Ladyship will recall that I mentioned companies K1, K2, K3 and K4 were two for each of them.

This of course is relevant because, as your Ladyship may have picked up, the suggestion is made in some quarters that the aluminium transaction really had nothing whatever to do with Mr Berezovsky at all. Indeed, it's been suggested that whilst Mr Patarkatsishvili might have had some involvement, whatever he was doing, he wasn't doing it as a partner for Mr Berezovsky. As your Ladyship sees, this document is an indication that this is unlikely to have been the position.

Just still under "Stage 1", dealing with the opening of accounts and the transfer of funds, one sees, again about a third of the way down, next to the side heading "Total intermediary fees", that this is said to be approximately \$100 million. Does your Ladyship have that?

MRS JUSTICE GLOSTER: No, I don't. Where do I --

MR RABINOWITZ: On page 003T.

MRS JUSTICE GLOSTER: Yes, I'm there.

MR RABINOWITZ: "Total intermediary fees", approximately \$100 million. It may be halfway down.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: Again, your Ladyship may recall that there is a debate about why it is that Mr Patarkatsishvili was paid, at the time of the sale of the second Rusal tranche in July 2004, some \$585 million. There's no dispute that there was a payment of \$585 million to Mr Patarkatsishvili at around that time.

Your Ladyship may also recall that Mr Abramovich in his evidence has sought to suggest that this has nothing whatever to do with Mr Patarkatsishvili or Mr Berezovsky having an interest in Rusal. His suggestion is that that was to be a reward in effect for Mr Patarkatsishvili doing the intermediary work that he did in putting the original aluminium deal together.

But with respect to Mr Abramovich, this explanation makes little sense, we would submit, given the fact that, as your Ladyship sees here, the amount that Mr Patarkatsishvili was to get for the work, in terms of acting as an intermediary, had actually been agreed and it was to be around \$100 million, a wholly different and much smaller amount. That amount was fixed by contracts, indeed contracts which have been --

MRS JUSTICE GLOSTER: So your case is that this was the only

intermediary fee, is it, and that this \$100 million was paid to whom?

MR RABINOWITZ: It was never paid. My case, my Lady, is this: if there was an agreement made between Mr Abramovich -- on his case, what he says is: the only reason I paid \$585 million to Patarkatsishvili in 2004 was because he acted as an intermediary, that is to say he was involved in putting the original February 2000 deal together for the acquisition of those aluminium trusts, and that's why I paid him \$585 million.

MRS JUSTICE GLOSTER: So you say that's inconsistent with this \$100 million provision here.

MR RABINOWITZ: Precisely.

MRS JUSTICE GLOSTER: My question is: were intermediary fees of \$100 million paid; and if so, to whom were they paid?

MR RABINOWITZ: No.

I should say that although he wasn't given \$100 million, he was given a plane, his own plane, and there's discussion of that in the witness statements, as your Ladyship will recall. I don't know whether that was worth precisely \$100 million but that may be a partial explanation for that statement.

What we say is this, my Lady. If the \$100 million is what had been agreed in writing to be Mr Patarkatsishvili's fee, as it were, for the



commission payments, then it's difficult to square that with Mr Abramovich's case that that is why he paid Mr Patarkatsishvili \$585 million in 2004. If that is right, it follows also that there has to be a different explanation for why that amount of money was paid to Mr Patarkatsishvili in 2004. It has nothing whatever to do with the explanation that Mr Abramovich has come up with.

The third point to make about this document is this. Your Ladyship will have seen that "Stage 2" is referred to at the bottom of the first page of this document as the "main" stage and that was to involve structuring the assets. Just looking down at point A:

"Allocating assets to partners in proportion to their stakes."

If I can just focus on this for a moment. Your Ladyship sees the reference there to these gentlemen being partners, that's the same Mr Abramovich (sic) and Mr Berezovsky being partners, and that is obviously relevant in the context of this.

If your Ladyship then looks just below the identification of points A and B, on the top of the following page:

"It is initially envisaged that assets owned by the partners in the main business interests will be

distributed. Such business interests include..."

Your Ladyship sees point 2 and point 3: "The aluminium sector"; point 3, "Sibneft".

Sorry, I think I misspoke. The partners here are Mr Berezovsky and Mr Patarkatsishvili. I might have said in this context Mr Abramovich, and I apologise for that.

Just looking at this, as your Ladyship sees, they are "assets identified as owned by the partners", assets in the aluminium sector and Sibneft. So again, my Lady, I would submit that it's fairly clear that the understanding of whoever it was that created this document in March or April 2000 -- and that is a person who clearly had a detailed knowledge of the aluminium transactions, as we've seen from those diagrams at tab 2 of the bundle -- that person's clear understanding was that Mr Berezovsky and Mr Patarkatsishvili as partners had an ownership interest in those assets.

Patently I would submit that this was in addition to their entitlement to the \$100 million of commission in relation to the aluminium transactions, which, as your Ladyship will recall, is dealt with back in stage 1. So this note deals separately with the \$100 million which is coming in and then separately with the aluminium assets, which include the aluminium -- sorry, which deal

separately with the aluminium assets.

Now, your Ladyship will observe that this was a document created long before any dispute arose between Mr Berezovsky and Mr Abramovich about the ownership of those assets. Just pausing there, your Ladyship may recall that Mr Sumption in his opening document in fact appears to accept that from around 1999 all of Mr Berezovsky and Mr Patarkatsishvili's business associates understood or at least assumed that Mr Berezovsky and Mr Patarkatsishvili had an interest in Sibneft and indeed in Rusal, I think.

That I would submit is a rather important concession for Mr Sumption to have made. For your Ladyship's note, that is at paragraph 234, page 96 B(C)/96 of my learned friend's opening. He accepts that people around Mr Berezovsky and Mr Patarkatsishvili understood that they had initial interests in these companies.

As your Ladyship may also recall, Mr Sumption in his written opening, while he makes that concession, then seeks to explain it away -- that is, the fact that those in Mr Berezovsky's circle understood that he had such an interest -- on what I would suggest is the really rather ingenious basis of what Mr Sumption in his written opening labels "the classic psychology of the political exile".

That is at paragraph 235.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR RABINOWITZ: But there is an obvious difficulty with this for Mr Sumption, and it is this. Your Ladyship will of course note that these documents, the documents we've been looking at, were in fact produced in March or April 2000 or thereabouts. That creates a chronological problem for what one might call Mr Sumption's attempt to explain all this away by the psychology of the political exile and that is because at the time these documents were produced, Mr Berezovsky --

MRS JUSTICE GLOSTER: Sorry, just jogging back, how do we know they were produced in the March or April? That's from separate evidence?

MR RABINOWITZ: I've given your Ladyship two ways to identify that as a fact.

(1) If your Ladyship goes to the list of documents, I think that was at --

MRS JUSTICE GLOSTER: Yes, I see.

MR RABINOWITZ: That was to be signed saying he'd received it in April.

(2) It's pretty clear that these were produced in advance of a trip that Mr Berezovsky and Mr Patarkatsishvili were going to make to Europe, which we know they were going to make in the spring of 2000.

If your Ladyship looks at the explanatory note, "In connection with the Clients' likely trip to Europe".

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So we know that was to be in the spring of 2000 and we'll see -- this is not the only place where one can make this point -- that that indeed took place.

So the chronological problem for what one might call Mr Sumption's attempt to explain all this away by the psychology of the political exile is this: the documents were all produced at a time when Mr Berezovsky was not in fact in political exile at all. In fact, at the time Mr Berezovsky was basking in the glory of having been involved in President Putin's election victory and he was still living in Moscow. Political exile was in fact some way off.

So whilst I would not doubt for a moment that Mr Sumption may have a great knowledge of psychology, and even psychology of the political exile, it is clear that this simply does not explain these statements in documents like this one.

My Lady, I would suggest that the explanation as to why these statements were made that Mr Berezovsky and Mr Patarkatsishvili had these ownership interests is in fact a far simpler one and one for which no great knowledge of psychology is needed: they made those

statements about having an ownership interest because that is what they honestly understood the position to be. Whilst on this point, your Ladyship will recall that the fourth document on the list of documents was a short CV in English for Mr Patarkatsishvili and that is a document that your Ladyship will find at tab 28, I hope, of this bundle. It's at H(A)102, page 89.001 H(A)102/89.001.

If your Ladyship glances down about a fifth of the way towards the end:

"Mr ... Patarkatsishvili is a shareholder of Sibneft..."

It says nothing about the aluminium assets and that may be down to the fact that this was obviously produced so soon in time after that. But the reference to Badri being a shareholder of Sibneft, if that is right -- this document produced by more political exiles -- that drives a coach and horses through the story that Mr Abramovich is coming to this court to tell your Ladyship. As your Ladyship knows, Mr Abramovich's case is that he and he alone of these three men had an interest in Sibneft and that the other two never had any interest whatever in Sibneft.

Now, it might just be helpful to follow the story here through a little bit further. Can I ask your

Ladyship next to go to -- I'm going to give the bundle reference first again -- H(A)19, page 10 H(A)19/10.

It is tab 10 of the bundle we're working from. Does your Ladyship have there a document, Valmet, "Interoffice Memorandum"?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship may recall that the documents we were looking at were, as we understand it, prepared for a meeting with Mr Samuelson at Valmet. This was an organisation that Mr Berezovsky and Mr Patarkatsishvili approached in the spring of 2000 about sorting out a way to hold their Russian interests outside of Russia.

What we have here is a note made by Mr Samuelson, who is the person with whom they were dealing, dated 9 May 2000, recording what was said about those assets by Mr Berezovsky, Mr Patarkatsishvili and those representing them, including Mr Fomichev, to Mr Samuelson. Again, your Ladyship may wish to note this again is a document produced before Mr Berezovsky went into political exile.

MR SUMPTION: My Lady, I think my learned friend may be mistaken here about the dates. I made the same mistake in my skeleton argument. The date is in fact 5 September, it's the American dating system. That can be established by looking at the bottom paragraph on

page 11, which refers to Mr Jenni as having written reference letters. Those reference letters will be found at H(A)21/137 H(A)21/137. They're dated 2 September.

MR RABINOWITZ: I'm grateful to my learned friend for that. I'm not sure it matters to the point I'm making. As your Ladyship knows, Mr Berezovsky only left Russia in October. So be that as it may, May or September, still not the ramblings of a political exile.

Can I invite your Ladyship please to glance at the whole of this note.

MRS JUSTICE GLOSTER: I've read it before, I'm not sure why. Perhaps it was in one of your skeletons.

MR RABINOWITZ: I'm not sure it is. You can glance at the whole of the note if your Ladyship wishes. For my purposes I was only going to be concerned with the first page and a little bit.

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: Again, I think there are two main observations that I would make about this document in the context in which we are looking at it at this stage.

First, as your Ladyship sees, Mr Berezovsky and Mr Patarkatsishvili have presented themselves to Mr Samuelson as partners. One sees that in the first paragraph, third line. It is very clear that that is



how they regarded themselves. Does your Ladyship have that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Secondly, as one sees from the end of the first paragraph and more particularly from the third paragraph and the sentence beginning:

"Thus BB and AP were able to buy control of Sibneft... and subsequently have acquired 70% of Russia's aluminium smelters and have created a new holding company called Russian Aluminium to own all their aluminium holdings."

This suggests, I would submit, that, again, Mr Berezovsky and Mr Patarkatsishvili certainly understood and certainly represented to the advisers dealing with them that they had an ownership interest in Rusal and Sibneft.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Now, it is interesting, if I can just take your Ladyship to further documents to show your Ladyship the interest which they were telling Mr Samuelson at this time they held in these companies because that again is consistent with the case they make before this court.

Can I ask your Ladyship next to go to tab 11. It's H(A)21, page 212 H(A)21/212. In tab 11 your Ladyship

has first an email to a Mr Kenneth Maillard. If your Ladyship looks at the bottom, he's saying:

"I attach the two charts with the changes that you all raised."

That's in September, September 11.

If your Ladyship then goes to 212, what one has here is the structure that Mr Samuelson is putting in place for Mr Berezovsky at 212 and for Mr Patarkatsishvili at page 213.

Just so your Ladyship is clear about this -- this is something which I think will recur from time to time -- the "H" structure, that is a reference to the Hotspur Trust structure, and that is the structure put in place for Mr Berezovsky. Then the "O" structure on page 213 is a reference to the Octopus Trust structure, and that is what was being put in place for Mr Patarkatsishvili.

Your Ladyship sees that the structure looks incredibly complicated and indeed is. It was intended to be complicated given that it was in order to protect assets. Some information as to why this was so, of course, is clear from the note that your Ladyship saw of 9 September.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: But just ignoring the complexity for the moment, what I would submit is of some assistance, my

Lady, is that these structures, produced certainly long before any dispute between Mr Berezovsky and Mr Abramovich arose, do enable us to identify precisely what share of both Sibneft and Rusal Mr Berezovsky and Mr Patarkatsishvili appear to have understood themselves to own.

Just looking at page 213 -- this is the Patarkatsishvili structure -- your Ladyship sees a bar on the top headed "Sibneft" and a bar on the bottom headed "Russian Aluminium", Rusal.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If one just looks at the bar on the bottom and adds up --

MRS JUSTICE GLOSTER: Sorry, I have Sibneft -- yes, I see. We're on 213 now, are we?

MR RABINOWITZ: 213, yes. This is the Patarkatsishvili structure. Just picking it up, looking at the bar on the bottom which is the Rusal bar, your Ladyship sees percentage figures immediately above the Rusal bar.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: I can tell your Ladyship that that adds up to 12.5 per cent. If your Ladyship then goes back to the Berezovsky and looks at the bar at the bottom, the figures there also add up to 12.5. Together --

MRS JUSTICE GLOSTER: It doesn't say "Rusal" in the

bottom --

MR RABINOWITZ: No, it doesn't, but I can show your Ladyship other documents and maybe in due course we will have to. It is plain that that was intended to be Rusal. The only reason I have taken your Ladyship to these is one could date them or we can date them, they're sometime in September, whereas the other documents, although they for Mr Berezovsky also say "Rusal", don't have a date.

I can just perhaps give your Ladyship a reference to that without turning it up.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It's bundle H(A)102, pages 70 and 71  
H(A)102/70.

Now, the significance of the 12.5 and 12.5, obviously that adds up to 25 per cent and that is exactly in line with what Mr Berezovsky has consistently said was the interest in Rusal that was held for both himself and Mr Patarkatsishvili. So their story about this has been consistent long before this dispute arose. This is what they're telling their advisers.

Now, the same is true in relation to Sibneft. Again, just looking at those diagrams again, the Patarkatsishvili diagram, page 213: again, without making your Ladyship do the maths, I can tell your Ladyship that the percentage figures leading to the

Sibneft holding add up to 17 per cent. If your Ladyship then goes to the Berezovsky structure, the Hotspur structure at page 212, that adds up to 33 per cent. Together 50 per cent, split in a ratio of two to one.

Again, that is exactly in line with Mr Berezovsky's evidence. For your Ladyship's note, he explains this at paragraph 175(b) in his fourth witness statement. We don't need to go to it.

Again, my Lady, if this is correct, then that would again suggest that the story that Mr Abramovich is coming to this court to tell simply cannot be true. This exactly reflects the story that Mr Berezovsky has come to court to tell your Ladyship, both in relation to Sibneft and in relation to Rusal, but it is 100 per cent inconsistent with Mr Abramovich's case, although I accept that the most that one can say about this, given that it's a Berezovsky document, is that it reflects Mr Berezovsky's understanding of the position. But in my respectful submission, that is significant. He isn't a political exile, this isn't the ramblings of a political exile, no dispute has arisen, but he understands that he owns these interests.

Can I next -- and again this is primarily of relevance to Rusal -- just show your Ladyship some of the documents generated at the time of we call the sale

of the second Rusal tranche in June and July 2004, which again, I would submit, are very damaging to the case Mr Abramovich seeks to advance about Rusal.

Just to put the second Rusal sale into context, your Ladyship will recall that after Mr Abramovich disposed of 25 per cent of the Rusal shares or 50 per cent of the shares held by his group for just under 1.6 billion in September 2003, this meant that he had produced a situation in which the remaining shares he held were a minority holding since Mr Deripaska now held 75 per cent of the shares. One might think that that in itself was a rather odd thing to have done, even to oneself. This led to the remaining equal quantity of shares having to be sold in June/July 2004 for something not much more than a quarter of that amount, some \$450 million.

Of course, there is a great deal of dispute about what was going on in relation to that second sale. Mr Berezovsky's case, as your Ladyship knows, is that that second sale was a sale of a tranche that Mr Abramovich had agreed to hold on trust for Mr Patarkatsishvili and Mr Berezovsky jointly.

Mr Abramovich's case, once again, is very much more complicated. He of course disputes that he ever held the shares for Mr Berezovsky and Mr Patarkatsishvili on

trust and so he has to explain why he was making this payment, why the money was going to Patarkatsishvili, we say to Patarkatsishvili and Berezovsky, and indeed Patarkatsishvili says to Patarkatsishvili and Berezovsky.

What he suggests is that this isn't because Mr Patarkatsishvili was the beneficial owner of the tranche at all; rather the whole second tranche sale was just a very complicated way of enabling him to pay Mr Patarkatsishvili for what was really no more than an uncontracted reward for past work. I've mentioned that already; I'm not going to get into that again. He has to explain why the \$100 million which had been agreed wasn't what he was going to pay.

Can I just show your Ladyship a small selection of the documents generated in this context which in our respectful submission shed a great deal of light on the truth. Can I first ask your Ladyship to go to the document that I hope your Ladyship will find at tab 17 of this bundle. It's at H(A)74, page 219 H(A)74/219.

Your Ladyship should have there a memorandum produced by a law firm, Bryan Cave --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: It's Mr Hauser is the partner at Bryan Cave who produces this document; your Ladyship sees that.

Mr Hauser, an English solicitor. He is getting instructions from a Mr Mishakov. Your Ladyship may wish to know Mr Mishakov was the assistant to Mr Deripaska.

Mr Deripaska, you will recall, was one of the people at the Dorchester meeting when the decision to merge the aluminium interests to create Rusal was, we say, discussed and agreed in March 2000. Of course he was also the person with whom Mr Abramovich -- acting, we say, for Mr Berezovsky and Mr Patarkatsishvili, that is his other partners -- was contracting at that time, in February I think it was.

Your Ladyship may wish to note that it's clear from the witness statements that Mr Mishakov and Mr Hauser were very closely involved in the production of the Rusal agreement documentation, that's to say the February and March documentation. Given that, your Ladyship may think Mr Hauser and Mr Mishakov would be able to have at least some insight as to the people with whom they were dealing.

Can I ask your Ladyship please to read this memorandum, at least down to point 6 on page 220.

(Pause)

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: Can I just make the following observations about this note.



First, as your Ladyship sees -- this is paragraph 1 -- Mr Hauser of Bryan Cave explains that he's been advised that:

"... Madison..."

That's the Abramovich company.

"... has bearer shares... in the possession of its parent..."

And that the way the sale of the second tranche would work is that in the first instance:

"... [these] would be transferred to a company ('B') which [as he notes] is owned by the ultimate beneficiaries ('BB')."

Just pausing there, my Lady, it is clear that his instructions are that there are two ultimate beneficiaries, B and B.

If there's any doubt about that, then in my respectful submission that doubt is removed. If you look at paragraph 5 on the following page, your Ladyship sees a reference has been made there to getting a guarantee as to the ownership of shares from "each of BB". Second last line of paragraph 5. So BB is not one person, they're two people, otherwise he wouldn't referring to them as "each of BB".

Secondly, if your Ladyship is on page 20, one sees in the body of paragraph 6 that what Mr Hauser has in

mind, following his instructions from Mr Deripaska's team, is that:

"... it would... be necessary to ensure that BB were the only persons beneficially entitled to the Shares..."

So that Mr Deripaska could feel confident that he had a release from any person who might have a beneficial interest in the shares.

Now, it will be obvious to your Ladyship that our case is that BB were Mr Berezovsky and Badri, Mr Patarkatsishvili.

Your Ladyship will also have noted the part in italics that follows paragraph 6 referring to "Deeds of Release and Indemnity" and the statement there that, the last three lines:

"In addition, we would expect [Mr Abramovich's] Deed of Release to include an assurance that BB were the only persons who have ever been beneficially entitled to the Shares."

That of course we submit is wholly consistent with Mr Berezovsky's case about this. What we would submit emerges very clearly from this document is that it was at least the understanding of Mr Deripaska's team -- these were people who were the people who contracted with Mr Abramovich in February and March 2000 -- it was at least the understanding of those people that

Mr Berezovsky and Mr Patarkatsishvili, Boris and Badri, BB, were the persons who had a beneficial interest in the shares that were being sold.

That, of course, is entirely easy to reconcile with the documents I've previously taken your Ladyship to which talk of Mr Abramovich having partners, which talk about there being other selling shareholders. It's also entirely consistent with what we have seen was Mr Berezovsky's understanding and Mr Patarkatsishvili's understanding of the position: that they had an interest in Rusal. Of course, if this is right, this would again suggest that the case that Mr Abramovich is putting before the court that no one other than himself had any interest whatever in the Rusal shares is simply untrue.

But it doesn't stop with this document. Can I ask your Ladyship next to go to the document that you should have at tab 19 of this bundle. It's at H(A)74, page 223 H(A)74/223. At tab 19 we have a chart that Mr Hauser explains was produced by Mr Mishakov -- that's Mr Deripaska's associate -- and it was produced at around the same time that Mr Hauser produced the memorandum that we've just looked at. Again, it maps out Mr Mishakov's understanding of the transaction that was proposed in relation to the second tranche of shares.

Again, I don't know whether your Ladyship has had an opportunity to glance at the chart and more particularly at the notes below, but your Ladyship will see that fundamental to the understanding of Mr Mishakov, in effect Mr Deripaska's point man on this, is that B and B -- and obviously there are two of them, I would submit quite obviously Mr Berezovsky and Badri, Boris and Badri -- were the beneficiaries of 25 per cent of the Rusal shares that were to be sold. This is clear, for example, from point 4 in the notes:

"[Abramovich] provides guarantee with regard to the representation and warranty that the beneficiaries (B&B) are the ultimate beneficiaries of 25% of RH's shares."

Also see point 6:

"Beneficiaries' company jointly with beneficiaries B&B execute the Joint Deed of release and indemnity by which they warrant that they are the beneficiaries of 25% of R."

That's Rusal.

MRS JUSTICE GLOSTER: Did that happen?

MR RABINOWITZ: Well, we're going to see what happened.

What actually happens is that Mr Berezovsky gets painted out of the picture completely. I'm going to take your Ladyship through the chronology.

There are a lot of other documents which people

produce on the basis that Berezovsky and Patarkatsishvili are the beneficiaries and then at some point someone says, "We can't do this, we have to go a different route", and the reasons for that will be clear to your Ladyship when I take you through the documents.

He gets whitewashed out of the picture, does Mr Berezovsky, for reasons which I will submit in due course are obvious. He gets whitewashed out of the picture largely, I will be submitting, because Mr Abramovich or his associates in effect say to people, "We can't show this transaction in this way because of representations we've previously made to banks about the position". So he gets whitewashed out. This, in our respectful submission, represents the true position.

Your Ladyship will find as you go through this case that there are any number of documents produced by Mr Abramovich -- we've already seen a few of them -- where he has to disavow what the document says as not being the true position. He is a man who is perfectly happy to put his name, or at least the name of his associated companies, to documents which misrepresent a position. That in our respectful submission is exactly what has happened here, for reasons which you will see.

Just so your Ladyship should know this, Mr Hauser's evidence -- he has served a witness summary and one hopes he will be coming to give evidence -- is that he understood during the negotiations that Badri had a beneficial holder in Rusal, paragraph 10 of his summary, and that references to the other beneficial owner described elsewhere in the draft contractual document as "B2" -- I'm not going to take your Ladyship to that because I didn't think I was going to have time -- were references to Mr Berezovsky. That's his summary, paragraph 12. Although he says that he personally made no enquiries into the relationship with Mr Berezovsky or the strength of what he says is Berezovsky's claim, because he talks about the fact that there was an indication in the newspaper that Mr Berezovsky was claiming (inaudible) as well.

Now, your Ladyship, in our respectful submission, sees that these documents certainly suggest that the understanding of Mr Deripaska's team, the person with whom the deal had been made in March 2000 and to whom Mr Abramovich had made warranties about his partners, was that they were indeed partners or other persons with a beneficial interest in the Rusal shares and indeed that those persons were Berezovsky and Patarkatsishvili. This is totally inconsistent with Mr Abramovich's whole

case.

Your Ladyship should know that it's not just those in Mr Deripaska's camp who understood that there were beneficial interests in these shares and that these were held on behalf of Mr Berezovsky and Mr Patarkatsishvili. As your Ladyship will have gathered from our written opening, those instructed by Mr Patarkatsishvili in relation to this transaction, including with (inaudible), who were instructed by Mr Anisimov's assistant, Mr Streshinsky, with the assistance of investment managers Salford(?), also appear from the documentation to have clearly understood and have appreciated first that Mr Berezovsky and Mr Patarkatsishvili were the ultimate beneficial owners of 25 per cent of Rusal and secondly that Mr Abramovich was holding that 25 per cent on trust for them. So they appear to have been labouring under the same supposed misapprehension as Mr Hauser and Mr Mishakov on Mr Deripaska's team.

For your Ladyship's note, this is an occasion on which I can give you a reference to our skeleton: we deal with that at paragraph 847 and following of our written submissions at page 424 and following B(A)1/02/424.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: That may be a convenient moment, my Lady.

MRS JUSTICE GLOSTER: Very well.

MR RABINOWITZ: I'm happy to go on.

MRS JUSTICE GLOSTER: No. I'll sit again at 2 o'clock.

(12.58 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Members of the press, I've been told that the arrangement for you will be this: that every morning if when you show up at security you present your press passes, there will be reserved ticketed seats for up to ten members of the press. If you report to the commercial listing counter on the ground floor as you come through security, you will be given an allocated seat. There will also obviously be more seats in the public gallery. If I'm informed that ten reserved seats for members of the press is not sufficient going forward, then I will reconsider the position with the Courts Service staff.

I'm also told that arrangements have been made in consultation rooms 40 and 42 for an audio feed as well as the LiveNote feed. So any overspill, go to consultation rooms 40 and 42, where there will be an audio feed of the proceedings. Hopefully that should remove the need for anybody to stand at the back of the



court. Thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, I'm grateful. Before the short adjournment I had shown your Ladyship the memo and diagram at tabs 17 and 19 of the opening bundle and I made the point that it wasn't just Mr Deripaska's advisers who had the understanding that we see is reflected in those documents.

MRS JUSTICE GLOSTER: Sorry, just before we start off again, Mr Rabinowitz, Ms Davies, there is an outstanding application which you mentioned to me on Thursday, I think, in relation to the Clydesdale Bank.

MS DAVIES: Yes, my Lady.

MRS JUSTICE GLOSTER: I'm proposing to make the order but I would like a further copy of it to sign.

MS DAVIES: Of course, my Lady. We'll get that available for 4.30.

MRS JUSTICE GLOSTER: Thank you very much.

Sorry, Mr Rabinowitz.

MR RABINOWITZ: I had referred also to the understanding of is the Leboeuf lawyers who were involved. Can I now please ask your Ladyship to go to the document we have at tab 18 of the opening bundle: it's H(A)74, page 222 H(A)74/222.

Your Ladyship should have a document containing an

email.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If your Ladyship looks at the email towards the second half of the page, your Ladyship sees it's from Mr Mishakov. Your Ladyship sees that it's dated 9 June 2004 and it's sent to two people. The first is Mr Streshinsky, who is one of Mr Anisimov's people. Then your Ladyship sees that it is also sent to the person "nataliakh", that is Ms Natalia Khudyk, who is one of the very senior people engaged by Mr Abramovich.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If your Ladyship looks to the bottom part of that document, your Ladyship will see that attached to that email were two documents, being the scheme document produced by Mr Mishakov and the Bryan Cave memo. Does your Ladyship see that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: As your Ladyship has seen, both of those documents suggested that the 25 per cent holding in Rusal was beneficially owned by someone other than Mr Abramovich's companies and indeed that B and B or BB were the persons who had that beneficial interest.

It is not just Ms Khudyk on Mr Abramovich's side of the fence, as it were, among his senior people, to whom these documents were sent at the time. Can I ask your

Ladyship next to go to tab 20. It's H(A)75/93, 93T for the translation H(A)75/93T.

At tab 20 one has again an email sent -- I don't know whether your Ladyship is looking at the translation but this is sent from a Ms Panchenko again to Ms Khudyk, and again if you look at the attachments you see there it's the Bryan Cave memo and also the diagram, the scheme. So not only Ms Khudyk from Mr Abramovich's team but also Ms Panchenko from Mr Abramovich's team were sent these documents reflecting the understanding of at least others that Mr Berezovsky and Mr Patarkatsishvili were beneficial interest holders.

I can tell your Ladyship that it was not just these two people in Mr Abramovich's camp that were sent these documents; there were others and we will deal with that in due course in cross-examination. I'm not going to go through all of them now.

Of course, if what was said in these documents was just nonsense -- "I don't know what you're talking about. Why do you have B&B and BB as the beneficial interest holders?" -- one would have expected some reaction. One would have expected a document to come back and say, "No, no, no, you've got it all wrong", or an internal document saying, "I don't know what these people are talking about. Where did they get this

information?" One gets nothing of the sort, my Lady.  
Nothing of the sort.

Whilst it is right, as I mentioned before the short adjournment, that in the end the documents which were produced whitewash Mr Berezovsky out of the picture entirely, there is certainly nothing ever that we see which takes issue at all with what is being said in those documents.

Now, one gets a further indication of the understanding of the parties involved in the transaction, in particular those from Mr Deripaska's team, if your Ladyship then goes to the document that you should have at tab 21A: H76, page 106 H(A)76/106.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Does your Ladyship have there a memo, again from Mr Hauser?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So again Mr Hauser of Bryan Cave is sending a memo to Mr Mishakov, Mr Deripaska's assistant, and your Ladyship sees it's dated 18 June 2004. Can I invite your Ladyship just again to read through the whole of this memo, please. (Pause)

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Can I make again a number of observations about this document.

First, as one sees from the opening line, Mr Hauser has consulted on the telephone with Mr Mishakov and appears to have been advised by Mr Mishakov -- who, as I've said earlier, was involved in the drawing-up of the Rusal documents in March 2000 -- what the position is.

Secondly, as one sees from the second paragraph, Mr Mishakov and Mr Hauser understand that Mr Abramovich's company, Madison:

"... is... holding... 25% [of the Rusal Holding Limited shares] on behalf of B Company or that company's ultimate [beneficial] owners..."

And I would ask your Ladyship again to note the plural there, ultimate owners. They're described as B but there's more than one of them. That of course is consistent with the earlier memorandum and diagram drawn up by Mr Mishakov which your Ladyship has seen, which identifies the ultimate beneficiaries as B&B.

Third, your Ladyship sees that Mr Hauser, analysing the consequences of what he understands to be the arrangements under English law, we say quite correctly, perhaps not sufficiently emphatically, concludes that Madison, and perhaps Mr Abramovich himself, is a trustee for the ultimate owners with respect to the shares and/or is under fiduciary obligations to them. Your Ladyship sees that.

Fourth, as your Ladyship sees, Mr Hauser has been told that relations between Mr Abramovich and the ultimate owners have broken down and that Mr Abramovich no longer wishes to deal directly with the ultimate owners. That, of course, is certainly something that your Ladyship knows applies to his relationship with Mr Berezovsky at this point in time and perhaps also to Mr Patarkatsishvili, given what Mr Abramovich did with the first tranche of the Rusal shares. No one on Mr Abramovich's side has ever suggested who else might be the person with whom Mr Abramovich now no longer has good relations. So in my submission the identity of these people with whom Mr Abramovich has fallen out is obvious.

Fifth, again as your Ladyship sees, in order to overcome Mr Abramovich's reluctance to deal directly with the ultimate owners, Mr Hauser suggests an alternative way in which the transaction could be structured, with Mr Abramovich resigning as trustee and Mr Deripaska taking over the trusteeship and then buying out the shares --

MRS JUSTICE GLOSTER: This is all Mr Deripaska's team, is it?

MR RABINOWITZ: This is all Mr Deripaska's team, correct. The important point about that, as your Ladyship will

appreciate, these were the people who were the parties to the contract in which someone said, "Abramovich and partners are entering into this contract". They were there when all these contracts were made and negotiated.

Sixth and finally, one sees that Mr Hauser, in the final two paragraphs, notes that Mr Abramovich risks boxing himself into a corner with respect to the ultimate beneficial owners. On the one hand he's refusing to deal with them and on the other hand he's exposing himself to the risk of a breach of fiduciary duty. Mr Hauser's patience, as one sees, is running out and he's telling Mr Abramovich that he needs to come up with a solution and fast.

With that in mind, can I ask your Ladyship please next to go to the document that you find at tab 21: H76, page 57 H(A)76/57. Now, just so your Ladyship knows what this document is, it would appear to be a letter drawn up -- I'm not sure it is ever sent -- by Akin Gump, the lawyers who have been engaged by Mr Anisimov to assist with the transaction with a view to it being sent by Mr Streshinsky to Mr Abramovich's people.

Just starting, can I ask your Ladyship first to look at the first two lines here:

"As discussed over the phone, in order to meet the

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

Just pausing there, one can see, my Lady, that is what is happening here: there is a conversation over the phone and someone says, "We can't go with the structure you're thinking about because of representations which we've made to the banks. Please come up with an alternative proposal".

If you glance then further down the letter, one can see that an alternative structure is proposed, the purpose of which it would appear is to avoid any reference to Mr Berezovsky and Mr Patarkatsishvili as having had any beneficial interest in shares because, so this says, of the representations previously made to the banks.

Perhaps I can ask your Ladyship just to look at the first numbered paragraph there:

"The parties acknowledge that according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, [Mr Patarkatsishvili]..."

Well, "BP and B" is what it says.

"... participated in the sale of shares" --

MRS JUSTICE GLOSTER: You say that's Mr Berezovsky and Mr Patarkatsishvili?

MR RABINOWITZ: Indeed, Mr Berezovsky and -- and in fact if



your Ladyship just looks above it, you'll see:

"BP (an individual) and B (a company with B as the sole shareholder)..."

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So:

"The parties acknowledge that according to the agreements dated 10 February 2000 and 15 March 2000 and oral and other arrangements, BP and B participated in the sale of shares of KrAZ, BAZ, Krasnoyarsk Hydroelectric Power Station and Achinsk Alumina Refinery and also in the establishment and capitalisation of R Holding and at the time of the establishment of R Holding, M undertook to pay to BP and B the amounts equal to those received as income on 25% of shares in R Holding, including dividends payable on such 25% of shares and amounts/assets received from any sale of such 25% of shares. (Therefore, it was solely a right in personam rather than a trust or a right in rem -- a lawyer's comments)."

This has come, as your Ladyship sees, from Mr Abramovich's disclosure. What is interesting about this alternative structure which is being proposed is that even now what they're suggesting, even after this pep talk has taken place, what they're suggesting was the arrangement is almost identical to what

Mr Berezovsky says the position was.

In other words, the arrangement that's described, rather than simply him having a legal ownership, one sees that he has everything but a legal ownership because what in our respectful submission Mr Abramovich wants to be able to deny is that anyone other than he was the owner of the Rusal shares. But what this appears he's willing to acknowledge is that the interests that Mr Patarkatsishvili and Mr Berezovsky had was one that entitled them to all the benefits that they would have as if they were the beneficial owners of this 25 per cent: that is to say 25 per cent of the dividends and 25 per cent of whatever is received on the sale of those 25 per cent shares.

If your Ladyship looks at what is said here as well --

MRS JUSTICE GLOSTER: This draft from Akin Gump is going to?

MR RABINOWITZ: It's one that we understand was prepared for Mr Streshinsky so that he could send it to Mr Abramovich's people. Mr Streshinsky is Mr Anisimov's assistant. They were assisting Mr Patarkatsishvili.

So we have this telephone call. I can tell your Ladyship that no one deals in their witness statements with this telephone call; a very surprising omission. We have this telephone call and what we have is suddenly

everyone is having to change directions. Forget about what Mr Hauser has been saying about transfers to the B company owned by B and BP; we have to find a new route which in a sense disputes or doesn't recognise that they are the beneficial owners but gives them rights as if they were. That is in effect what this is saying.

What is, I would submit, also interesting about this is that even after the pep talk, no one is disputing that both Mr Berezovsky -- that's the B -- and Mr Patarkatsishvili -- that is the BP -- both participated in the sale and purchase of the aluminium assets and indeed in the establishment of Rusal. Instead what is now sought is to change the story somewhat to say that whilst they weren't given an ownership interest in the shares, they were to be given an entitlement that would in effect correspond to them having a beneficial ownership but do not recognise the ownership interest. As I submit, that again is still not a million miles -- despite the pep talk about misleading statements to the bank -- from what Mr Berezovsky says the position was.

So I would respectfully submit that again one has a document that is slap bang inconsistent with the case that Mr Abramovich seeks to present in relation to Rusal.

In the end, as I've already indicated, the position continues to evolve so that what eventually emerges are a suite of contractual documents, the documents that are referred to extensively in the written opening, that do indeed manage to whitewash Mr Berezovsky entirely out of the picture; although even those documents, your Ladyship should know, contain a representation and warranty by Mr Abramovich, in a contract which he makes, that Mr Patarkatsishvili was at all times the beneficial owner of these shares since March 2000.

So even in this changed, parallel-universe world which they start creating, even then you have a document which has Mr Patarkatsishvili expressly warranting that he was the beneficial owner of these shares from I think it's 15 March is the date, which of course is the date of the Rusal sale and purchase agreement that I took you to earlier.

Now, if that is right, if again we are to take what is said there at face value, again that is 100 per cent inconsistent with the story that Mr Abramovich wishes to tell your Ladyship: that he and he alone held an interest in these shares.

Just before leaving this area, can I ask your Ladyship next to go to the document that we have at tab 23: that's at H(A)84, page 64. This is the document

that I was mentioning. This is one of the documents that is finally produced.

For present purposes can I ask your Ladyship first just to glance at who the parties are. Your Ladyship sees that Mr Patarkatsishvili is identified as the beneficial owner. Your Ladyship sees Cliren Investment, that is a Patarkatsishvili company; Rusal Holding is obviously an Abramovich company; and Eagle Capital Group is a Deripaska company.

Can I ask your Ladyship to go to clause 3.1 of this contract at page 66:

"The Beneficial Owner..."

And your Ladyship will recall the beneficial owner is Mr Patarkatsishvili.

"The Beneficial Owner represents and warrants to the Purchaser and the Company that as of Completion:

"3.1.1 during the Period..."

And your Ladyship just may want to glance back to page 65 to see what "the Period" is:

"'Period' means the period commencing on March 15, 2000 and ending on Completion."

So we're here in July 2004. 15 March was the date that the parties make the Rusal contracts.

So just going back to 3.1, Mr Patarkatsishvili represents and warrants that:

"... during the Period..."

That is to say the period from 15 March 2000:

"... [Mr Patarkatsishvili] was the sole and ultimate beneficial owner of the Business Interests..."

Then it goes on to say it wasn't held for the benefit of any other person or any other business interests. It's a rather obscure definition, as many of the definitions in the contracts these parties made were, perhaps deliberately, it certainly covers the Rusal shares.

I just need to make two points about that. The first is the point I've already mentioned: that if this is true, if it is the case that Mr Patarkatsishvili was the beneficial owner since March 15, then, with respect to Mr Abramovich, it shows his case to be utterly untrue because his case is that he was the only person with an interest at the time.

The second point to make is this: as your Ladyship will see, what the parties to this contract have done is to require Mr Patarkatsishvili to say that he was the sole beneficial owner during this period, and that again is an attempt to cut Mr Berezovsky out of the picture.

Now, we have, as you'll see when we come to the Badri proofs, as they've been called, a lot of evidence from Mr Badri effectively saying they made him say this.

Again, we know from a great deal of evidence in this case that Mr Patarkatsishvili did not regard himself as the only beneficial owner. I've already taken your Ladyship to a number of contract documents which say he had this interest with Mr Berezovsky.

So even when they get to the last document, the whitewash of Mr Berezovsky is complete but they can't take Mr Patarkatsishvili out. As I say, this is flat bang inconsistent with Mr Abramovich's case in a document to which he or his company is a signing party.

MRS JUSTICE GLOSTER: And this was actually signed in this format?

MR RABINOWITZ: This was signed in this form, indeed. Your Ladyship sees it being initialled all the way through. Then if you go to page 70 --

MRS JUSTICE GLOSTER: What does the "Beneficial Owner DR", in the bottom left-hand corner, mean?

MR RABINOWITZ: Deed of release; that's the name of this document. I think there were seven documents, I may be wrong --

MRS JUSTICE GLOSTER: I see, that's just the name of the deed. I see, yes.

MR RABINOWITZ: I have no doubt that my learned friend will go to this document in due course, and indeed to other

documents, and say -- you'll remember he has a release argument which says: well, Mr Berezovsky, if he had a claim, has released it. We would respectfully submit that's a hopeless argument and I'm not going to get into it now. But that's one of the documents that was agreed. I think there was seven in all for agreement at this time.

Now, can I next just leave off the documents which are directly related to Rusal. Those are all matters we can ask Mr Abramovich about in due course. Can I take your Ladyship to another document that may assist in relation to a number of issues in this case and that is what we have called the Curtis notes, produced by the late Mr Stephen Curtis, a solicitor and senior partner in Curtis & Co who acted for Mr Berezovsky and Mr Patarkatsishvili at various stages and who made these notes in 2003, prior to his sudden death in a helicopter crash in March 2004.

Your Ladyship will find those in a number of places. I have them in this bundle at tabs 15 and 16. I'll just give the references for those who don't have this bundle. The original notes are at H(A)59/110.00 H(A)59/110.00 and at H(A)59/110.005 H(A)59/110.005 there is a transcript of the notes produced by Mr Curtis's partner in his law firm, Mr James Jacobson.



Just so your Ladyship knows what we're dealing with, at tab 15 we have the originals and at tab 16 we have Mr Jacobson's transcript. I'll in due course take your Ladyship through the transcript, which is obviously there to read. But can I just say something looking at the original at tab 15 before going to the transcript.

Your Ladyship will recall that we've explained in our written opening that it is Mr Berezovsky's case that these are notes of a meeting that took place at Mr Patarkatsishvili's house in Georgia either in early June 2003 or some 12 weeks later, between 21 and 26 August 2003. It was a meeting attended by Mr Patarkatsishvili, Mr Tenenbaum -- your Ladyship will know that Mr Tenenbaum is a very close associate of Mr Abramovich -- Mr Fomichev, and a fourth individual identified in the note only as Igor.

Again, as your Ladyship will have seen from the written openings, there is something of an authenticity challenge to these written notes because although Mr Tenenbaum does not dispute that he did go to a meeting in Georgia attended by Mr Patarkatsishvili, by Mr Fomichev and also by someone who he acknowledges may have been Mr Curtis sometime in 2003, he apparently wishes to dispute that he discussed any of these matters recorded in the note. Although I think what cannot be

disputed -- and I don't think is seriously disputed -- is first that this is a note made by Mr Curtis, it is in his own handwriting; and secondly, and necessarily, the notes must have been made before Mr Curtis's death in March 2004.

Just pausing there, again, it will be obvious from that chronology that that is a long time before a dispute in relation to Rusal emerges.

MRS JUSTICE GLOSTER: If there are going to be critical documents, please may you get them transcribed.

MR RABINOWITZ: We have them transcribed and I'm going to show your Ladyship the transcription in a moment. It's at tab 16. The only reason to start with this document is so that your Ladyship can see the -- just looking at this document first. I will go to the transcript because that's plainly easier to read. Top right-hand corner, your Ladyship sees:

,Meeting -- Badri, Eugene..."

That's Mr Tenenbaum.

Then there is a reference to Igor and then there's a reference to Ruslan, who is Mr Fomichev, together with Mr Curtis, who made the note. Then in the middle of the page your Ladyship sees what was a yellow sticker.

I think this has all been inspected in the original by my learned friends. Your Ladyship may wish to know that

the yellow sticker which was found on top of these notes again obviously assists in trying to work out when these notes were produced and by whom. They were produced --

MRS JUSTICE GLOSTER: Well, the lady is coming along to give evidence.

MR RABINOWITZ: She is coming along. It's a note which was made by Ms Jackie Flynn, who was Mr Curtis's secretary in 2000. As your Ladyship remarks, Ms Flynn will be coming along to give evidence to the court and she will confirm that the writing on the sticker is hers. She will also confirm that the writing on the note itself is that of Mr Curtis. I don't, as I say, understand the latter point to be disputed. She will be able to confirm the approximate time before which the notes will have been made because, as she explains, she left Curtis & Co after Mr Curtis's death in early 2004.

Now, as I've indicated, Mr Tenenbaum, as I understand it, doesn't dispute the fact that he was indeed in Tbilisi sometime in 2003 with Mr Fomichev and Badri, Mr Patarkatsishvili, and indeed he acknowledges that Mr Curtis might well have been there as well. So his case appears to be -- and Mr Abramovich's case on this appears to be -- that although Mr Tenenbaum did meet with these people at around this time, Mr Curtis simply imagined the translation and then wrote it down

and then presumably as part of this total sham Mr Curtis also on his return presumably gave these notes to his secretary, told her that they were vitally important and told her that they needed to be filed, all as part of a sham.

In other words, Mr Tenenbaum's and indeed Mr Abramovich's case must be that Mr Curtis, an English solicitor, in 2003 or 2004 deliberately fabricated notes of a meeting and that he said nothing of the sort. In my respectful submission that is, with respect, a somewhat far-fetched position to be taking. Unfortunately, of course, while Mr Tenenbaum can make that sort of allegation about Mr Curtis, Mr Curtis, having died in 2004, cannot defend himself.

In all events, perhaps I can now just invite your Ladyship to look at the transcript version at tab 16.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Can I invite your Ladyship to read through the whole of this and then I'll make, if I may, some observations on it. (Pause)

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: May I just make a few observations about this.

First, as your Ladyship sees from the extract from side one of card one -- that's the first page of this --

there is a discussion about the initial acquisition of aluminium assets by the Sibneft shareholders. That's the first two paragraphs. Your Ladyship sees not only a reference to the shareholders of Sibneft buying most of these plants, and one is dealing there with the aluminium plants, but one also sees Mr Patarkatsishvili as recorded as having noted that the shareholders of Sibneft were Boris, Badri and Roman; that is to say Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich.

That, of course, confirms two aspects of Mr Berezovsky's case and, if right, is utterly destructive of Mr Abramovich's case in that it shows first that all three were Sibneft shareholders and second that all three participated in the aluminium acquisitions.

Secondly, and again just staying with card one, side one, so still on the first part of this page, your Ladyship sees in the last three sentences before side two:

"Agreed with R..."

That's Roman, Mr Abramovich.

"... [and] Partner into Russian Aluminium --  
Shareholders 50/50.

"We agreed 25 B/B..."

That's Boris and Badri, Mr Berezovsky and

Mr Patarkatsishvili].

"... 25 Roman."

That is Mr Abramovich.

"We are passive shareholders so R..."

That's Mr Abramovich.

"... operating partner and every year we get dividends from [aluminium] activities."

Again, as your Ladyship will appreciate, that precisely accords with Mr Berezovsky's case as to the arrangements that were made in relation to Rusal. If this is an accurate reflection of the position, it is 100 per cent inconsistent with Mr Abramovich's position. Indeed, if this is correct, Mr Abramovich is plainly coming to the court to give your Ladyship evidence which simply cannot be true.

Now, third, and just looking at card one, side 2, so halfway down the first page here, there is then a discussion about Mr Abramovich acquiring the 25 per cent Rusal shares held by Mr Patarkatsishvili and Mr Berezovsky. This then goes on for most of the note, as your Ladyship has seen. There is a discussion as to how one is going to bring this about.

If your Ladyship can just go over the page and if I can ask your Ladyship to glance at card two, side 3, your Ladyship sees that we have Mr Tenenbaum -- that is

T -- apparently acknowledging an awareness of the structure used for the sale of the Sibneft holding:

"Eugene was asking if liked structure for [Sibneft]/[Badri] yes. Problem complicated and costly."

Your Ladyship knows that despite this, Mr Abramovich claims that he was completely unaware of the Devonian sale agreement and the structure that was used. So again, if this is accurate, that evidence again would appear not to be true.

We then have a discussion about the way in which the Rusal shares were then held: that is to say all through BVI companies with bearer shares. Your Ladyship sees this:

"... problem is existing shares are..."

This is Mr Tenenbaum speaking:

"... problem is existing shares are bearer company with bearer shares."

Then just picking it up on side 4, Tenenbaum again:

"Problem -- shareholders of [Rusal Aluminium] -- all of shareholders in holding [company] we are partners of third party -- BVI's held 50/50 not RA."

MRS JUSTICE GLOSTER: What does that mean on your --

MR RABINOWITZ: I'm going to tell your Ladyship what it means. It relates to this. The arrangements that had been made between Mr Deripaska and Mr Abramovich as to

how the 50/50 holding would be split with regard to the Rusal shares was unusual, it was counterintuitive, in that what they did was they set up -- and this evolves over time but certainly the position is as at this stage there were six BVI companies holding the shares in Rusal. What they didn't do was to say that three would be Abramovich companies and three would be Deripaska companies. The way they set it up was they each held 50 per cent of the six BVI companies. So, in a sense, they locked their positions together at that level.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So what Mr Tenenbaum is saying, first accurately saying about the BVI companies all being bearer shareholdings, and secondly:

"... shareholders of [Rusal Aluminium] -- all of shareholders in holding [company] we are partners of third party -- BVI's held 50/50 not RA."

Not Mr Abramovich. It precisely reflects what I've just said to your Ladyship.

Now, in our respectful submission what is interesting and important about that is this: this information about the structure by which the Rusal shares were held is information that would have been known to Mr Tenenbaum. Indeed, Mr Tenenbaum in his evidence accepts that it is information he would have



had. That, for your Ladyship's note, is E3, tab 11, page 110 E3/11/110, paragraphs 1103 and 1104. That sort of information, however, is not the sort of information that one would expect Mr Curtis, who apparently made this note up, to have. In our respectful submission, that again is an important indication of the authenticity of this note.

The second point I want to make relating to card two, side 4, is this. Your Ladyship sees at the end of side 4 Mr Tenenbaum is recorded as saying:

"... we have already made certain disclosures in market [and] we will have to consider what we have said -- Not to public.

"But to banks/insurance [companies]."

Now, as your Ladyship sees, this is put forward by Mr Tenenbaum in response to what Mr Curtis was saying should be the way in which the transactions should be accomplished. If your Ladyship goes back -- it's really the bottom of side 3 and also side 4, particularly the long paragraph where you see the S, where he's saying:

"... if shareholding already at BVI level it is easy to transfer ownership once we have established ownership route to RA -- no need to show changed in Russia just in BVI ... as going to have to change because of law..."

I'll come back to that.

"... good reason to show real. No need to show sale -- just say this was the true position -- reflecting actual position."

So what Mr Curtis appears to be saying is: transfer the shares into the names of Mr Berezovsky or Mr Patarkatsishvili or into their ownership because that would reflect the true position or the actual position. Mr Tenenbaum's response to that, in language that in my respectful submission echos the draft letter from Akin Gump we've just seen, is that, "We need to be careful about doing that because of representations we have may have made to the banks". Your Ladyship will recall that Akin Gump draft.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: We don't have Mr Tenenbaum in this note saying, "That's not the actual position. That's not the real position". What we have is him saying, "Well, we need to be careful about the actual real position being reflected because of representations made to the banks".

MRS JUSTICE GLOSTER: Did Mr Curtis speak Russian?

MR RABINOWITZ: No, he didn't, but Mr Fomichev, who was at the meeting, did, he spoke English as well, and Mr Patarkatsishvili I think spoke English and Russian. Mr Tenenbaum plainly spoke English and Russian. I think Mr Patarkatsishvili's Russian was not fantastic.

MR SUMPTION: His Russian was excellent but his English was not fantastic.

MR RABINOWITZ: Sorry, it's the other way round.

Can I then also just make this point about this note. If your Ladyship looks at the last sentence recorded as coming from Mr Curtis on card two, side 3:

"S -- changing [bearer] shares now in BVI -- so do have to be registered anyway -- can transfer shares in BVI."

That's a response to Mr Tenenbaum making a comment about bearer shares.

As your Ladyship just sees, going again down to side 4, again there's a reference to BVI: the position of BVI is going to "change because of law". Your Ladyship sees that?

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: What again we would respectfully submit is interesting about this is that we know that at the time in the BVI there was new legislation being brought in to regulate the ability of companies in the BVI, and in particular international business companies, to issue bearer shares. What we appear to have Mr Curtis doing here in this note is referring to this legislation which is about to come in and which was about to restrict your ability to deal with bearer shares in the way that I'm

told then had been the case, and that is, for your Ladyship's note, the IBC (Amendment) Act 2003.

Now, the interesting point, in our respectful submission, about that is this. Mr Tenenbaum wants to say to your Ladyship that this is a sham; this note was simply (inaudible). If it was a sham, then in our respectful submission it was an incredibly sophisticated sham to have Mr Curtis here, in the context of a discussion about bearer shares and BVI company, dropping into the conversation the new change in BVI laws relating to bearer shares. So if it really was a fictitious note made up by Mr Curtis, then I have to say it was an incredibly detailed and sophisticated one, given the references made to this BVI legislation then being introduced.

So I would just repeat this about this note, my Lady: unless the Curtis notes are indeed bogus, they provide the clearest possible evidence that Mr Abramovich's whole case before this court, both in relation to Sibneft and in relation to Rusal, is simply dishonest and untrue. That is why the authenticity of these notes is such an important issue.

Can I then move on to deal with the Le Bourget transcript. Your Ladyship is, I suspect, very familiar with the background to Le Bourget, not least because it

has been so extensively referred to in the written openings. That in my respectful submission is hardly surprising because it is, we would submit, another of the key documents in this case.

It is a key document because it captures the unguarded exchanges at least on the part of Mr Abramovich and Mr Berezovsky, neither of whom were aware that Mr Patarkatsishvili was secretly recording the conversation, covering a number of the key aspects of this case, including the nature of the parties' relationships as regards Sibneft and the nature of the relationship as regards Rusal.

It also, in our respectful submission, assists your Ladyship enormously with regard to the nature of the relationship between these men. Were they friends and partners or was their relationship, as Mr Abramovich contends, more criminal in nature, in the sense that he had been paying Mr Berezovsky for corrupt political practices and criminal protection? Again, in our respectful submission, the answer to that question also emerges very clearly from the Le Bourget transcript. So it is an important document.

As your Ladyship is aware, we've dealt in detail in writing -- and this is in our written opening at paragraph 60, page 42 in section B B(A)1/01/42 --

first with the history of the recording and its introduction as evidence in these proceedings; secondly with what we submit was Mr Abramovich's obvious discomfort when the recording was introduced as evidence in these proceedings; and third, with the fact that Mr Berezovsky has of course obtained evidence to establish that the Le Bourget transcript is indeed genuine.

Again, as your Ladyship is aware, we have set out the key extracts from the Le Bourget transcript in our written opening at the points where what is said there is material. Given that, I don't propose to spend too much time now dealing with it. In our submission, however, given the very central role that this is likely to play, it might just be worth taking a short bit of time to introduce your Ladyship to the document as it appears in the files. Can I ask your Ladyship -- it's in fact in tab 29 of this file. It's at E6/tab 01 of the trial bundles E6/01/1. Just.

So that I can explain the position to your Ladyship about this, there is a separate transcript of the Le Bourget conversation in the bundles -- for your Ladyship's note, that is at H(A)24, page 1T H(A)24/1T -- but the parties have tended, in my respectful submission sensibly, to use this version of the document

for the purposes of their submission and I suspect will continue to do so because, as your Ladyship sees, it is a composite document in nature.

Just to show your Ladyship the way this works -- it's fairly obvious but I just show your Ladyship -- if your Ladyship goes to page 3, your Ladyship sees columns, left-hand column "Speaker", and just paging forward we have "P", "B", and if you go a few pages on to page 6 you see "A". "P" is Mr Patarkatsishvili, "B" is Mr Berezovsky, and "A" is obviously Mr Abramovich.

It's recorded in the airport and it starts -- you only hear Mr Patarkatsishvili and Mr Berezovsky at the outset because they're waiting to find Mr Abramovich. You see tannoy announcements coming across. So we have the speaker identified, then we have the Russian text and English translation. I think although there are some outstanding issues in relation to the translation, the parties are pretty close in terms of getting towards an agreement where that matters.

Then, as your Ladyship sees, the last two columns, one has Mr Berezovsky's commentary and then Mr Abramovich's commentary. Your Ladyship I expect will find that very helpful as one goes along.

Now, again, we are likely to be spending some time on this, certainly with Mr Abramovich when he comes to

give his evidence, and I don't propose now to use up much time with it. We have set out the key parts of the transcript in our written document. Can I just remind your Ladyship of some of the main references to this. I'm not going to take your Ladyship to it; I will just, if I can, identify it.

MRS JUSTICE GLOSTER: I have it in the bundle.

MR RABINOWITZ: Boxes 456 to 470, beginning at page 159 and going through to page 165, that deals with Sibneft. We have set out the relevant passages at paragraph 228 to 230 of our written opening, pages 122 to 124 in section D B(A)1/01/122.

Boxes 495 to 510, beginning at page 170 and going through to page 175, that deals with both Sibneft and Rusal. Again, we've set out most of that at paragraphs 488 and following of our written opening, page 249, section G B(A)1/01/249.

Boxes 518 to 555 begins at page 177 and goes through to page 187. That deals with both Sibneft and Rusal and is also very helpful, we submit, in deciding whether these individuals were partners or persons in a Krysha relationship.

Finally, boxes 488 to 592, beginning at page 194 and going on to page 195, again dealing with all of those issues.



Now, as I say, I'm not going to take your Ladyship through that now; it's been set out in our written document and theirs as well. Can I just say this about Le Bourget, and that is to do with the authenticity challenge because although at the outset it appeared there was going to be a very substantial authenticity challenge to this, that seems to have largely disappeared. We are left with really what is rather a minor challenge to this document.

Can I perhaps take this by asking your Ladyship to go to annex C of our written opening, where we explain the position in this regard. Page 668 of that document B(A)3/668.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: If I could just show your Ladyship paragraph 3, which sets out what is left of the --

MRS JUSTICE GLOSTER: Yes, I've read all this.

MR RABINOWITZ: Okay. If your Ladyship has seen that, then I don't need to take your Ladyship to anything.

So that is the Le Bourget transcript. Now, what I was proposing to do next, my Lady, is just to say something about evidence that has been given in other proceedings that may be material to the matters which your Ladyship has to decide; in particular where evidence has been given by parties who, for whatever

reason, have declined to come before this court to give evidence.

I would respectfully suggest that there are perhaps two reasons that it may be worth just spending a short time on this evidence. The first reason is that given that the parties have chosen not to call any evidence, and I have in mind in particular the family defendants, given that they've actually decided not to call any witnesses --

MRS JUSTICE GLOSTER: This is the Gibraltar proceedings.

MR RABINOWITZ: This is the Gibraltar proceedings. This may be the only occasion on which your Ladyship gets to see this evidence.

The second reason, which is related to that, is this: in my submission the evidence highlights what I would submit is the somewhat strange game being played in these proceedings by the family defendants. Your Ladyship will recall we spent some time in our written opening, especially at annex B, that's page 660 B(A)3/660, describing the convulsions in the family defendants' position and how, despite having previously admitted that Mr Patarkatsishvili and Mr Berezovsky were (a) partners and (b) partners who had an ownership interest together in both Sibneft and Rusal, they have for the purposes of this litigation now adopted a wholly

different position altogether more hostile to Mr Berezovsky.

What I would like to do is just to show your Ladyship some of the evidence -- it won't take very long -- that has previously been given about these issues by Ms Gudavadze, the wife of Mr Patarkatsishvili, in proceedings in Gibraltar. Your Ladyship knows which proceedings I have in mind. Does your Ladyship feel you know enough about what those proceedings were about or shall I take a minute just to...?

MRS JUSTICE GLOSTER: I read, and I read it yesterday evening in fact again, annex B. If there's anything in addition to that you would like to tell me, please do.

MR RABINOWITZ: Annex B is about the change in case rather than the evidence so perhaps I can just say something about the Gibraltar proceeding and show your Ladyship just a little bit of evidence.

MRS JUSTICE GLOSTER: Yes. Where do I find it in the first volume of your main skeleton?

MR RABINOWITZ: Perhaps I can just show your Ladyship the evidence. You will find it in this bundle, tab 31, so right at the back. The bundle reference is S1, tab 13, page 201 S1/1.13/201.

Again, just so your Ladyship has this, the Gibraltar proceedings were proceedings commenced in April 2004 in

the Chancery Division of the Supreme Court of Gibraltar by Miselva Etablissement, a Liechtenstein trust company, and Nexus Treuhand AG, a Swiss trust company. Nexus and Miselva were respectively trustees of two trusts, the first named the Valmore Trust, the second the Summit Trust. The trustees sought directions from the Gibraltar court as to how to distribute assets in their trusts.

The defendants to that claim were Ms Gudavadze, the widow of Mr Patarkatsishvili, Mr Kay and two daughters of Mr Patarkatsishvili to his marriage with Ms Gudavadze: that's a Ms Iya Patarkatsishvili and Ms Liana Zhmotova. The main issue in that litigation concerned who was the real settlor of this trust, was it Mr Patarkatsishvili or Mr Kay; and for whose benefit had these trusts been established, for the benefit of Mr Patarkatsishvili's family or for the benefit of Mr Kay.

In the course of those proceedings, evidence was given by a number of people about the assets which were understood to have been owned by Mr Patarkatsishvili and also about Mr Berezovsky's relationship to those assets, including Ms Gudavadze.

What one finds at S1, tab 13, page 201, at tab 31 of the bundle I've handed up, is evidence given by

Ms Gudavadze. On the top left-hand corner your Ladyship has page 109, I hope.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It's almost impossible to read, I'm afraid, and I apologise for that.

I understand Ms Gudavadze is in court at the moment so is plainly not unable to come and give evidence.

What we have -- I don't know whether your Ladyship has this up on the screen?

MRS JUSTICE GLOSTER: Yes, I have.

MR RABINOWITZ: Question:

"You see, another thing is this: I don't know whether you know about, he is discussing his business with you" --

MRS JUSTICE GLOSTER: What line?

MR RABINOWITZ: Sorry, line 1. The question is this:

"... he is discussing his business with you, you know that he sold most of his Russian assets over time after he left Russia in, was it 2001?"

Ms Gudavadze:

"Yes, he sold part of his assets.

"Question: He sold Sibneft, he sold ORT, he sold his interest in Rusal?

"Answer: Yes."

So she agrees.

So your Ladyship sees there's an exchange between counsel and Ms Gudavadze and she's asked about Sibneft, ORT and Rusal, and we see that she appears to confirm that Mr Patarkatsishvili both had and disposed of an interest in Rusal and indeed in Sibneft. That of course is entirely consistent with Mr Berezovsky's case and of course wholly contrary to Mr Abramovich's case and indeed no longer squares with the family defendants' own pleading.

Perhaps I can just ask your Ladyship next to go to tab 13.

MRS JUSTICE GLOSTER: Who is cross-examining or examining here?

MR ADKIN: My Lady, I can assist: it's Mr Kay's counsel, Mr Steinfeld was cross-examining at this point.

MR RABINOWITZ: Can I ask your Ladyship next to go to tab 30. Top left-hand corner --

MRS JUSTICE GLOSTER: What was the issue that the trustees were raising: who was the settlor?

MR RABINOWITZ: They wanted to know who was the settlor of the trust. Mr Kay was obviously saying he was the settlor of the trust and that he should therefore have been entitled to the benefit of his trust. The Patarkatsishvili family were saying Mr Patarkatsishvili was the settlor of this trust and they were entitled to

the assets. So the question of the assets and who owned them was very much part of the issues in dispute.

Now, at tab 30, there's S1, tab 12, page 200 of the trial bundle S1/1.12/200. Your Ladyship has page 30 of the transcript. Again, I think this is Ms Gudavadze giving evidence:

"What sort of details..."

Perhaps one should pick it up at the bottom of page 29.

"Question: I am not going to go back, I assure you, to the memorandum of understanding. Did [Mr Patarkatsishvili] discuss with you his business dealings with Boris Berezovsky?"

"Answer: His business dealings with Berezovsky, to certain extent yes. Yes.

"Question: What sort of details did he give you about those?"

"Answer: I had general knowledge of Sibneft or RusAl, Kommersant was more close to me because I was taking part in, in fact, when Badri purchased Kommersant, about ORT.

"Question: Did he, for example, ever mention that he had an oral arrangement or partnership with Boris Berezovsky? Did he mention that to you?"

"Answer: Yes, until 2006, yes, they were partners."

Your Ladyship knows there's a dispute in the Chancery Division about whether or not that partnership ended in 2006 but what one has here is, again, Ms Gudavadze making perfectly clear that to her knowledge they were indeed partners, Mr Berezovsky and Mr Patarkatsishvili.

Now, it wasn't just Ms Gudavadze who in her evidence appeared to say that she knew and understood not only that Mr Berezovsky and Mr Patarkatsishvili were partners but also that they had ownership interests in both Sibneft and Rusal; in fact, that was their whole case at this trial.

Can I ask your Ladyship next, please, to go to tab 32 of this bundle. It's S1, tab 14, page 202 S1/1.14/202. You should have page 114 of the transcript of 12 June 2009. Page 114 is at the top right-hand corner.

This is Lord Goldsmith, who was acting for Ms Gudavadze and her family, and he was cross-examining Mr Kay at this stage. I can tell your Ladyship that just prior to obviously appearing in this way, Lord Goldsmith had actually met with Mr Patarkatsishvili on the day that Mr Patarkatsishvili died.

Here we have Lord Goldsmith saying this, if I can pick it up at about line 6:



"Question: Let's just be clear what this deal was. We know from other evidence, don't we, that as a result of pressure being put on Berezovsky and Badri, they had to sell certain businesses including Sibneft to Roman Abramovich?"

Now, there is a debate, as your Ladyship knows, about what Badri's evidence would have been had he lived. But we have here Lord Goldsmith putting this case:

"... as a result of pressure being put on Berezovsky and Badri, they had to sell certain businesses including Sibneft to Roman Abramovich?"

"Answer: That is correct.

"Question: And they had direct communications with Abramovich about this; isn't that right?"

"Answer: Direct and... through us as well.

"Question: It was decided that the deal was going to be done through a third party so that the money would not actually go... from Abramovich to Berezovsky and Badri?"

"Answer: It couldn't go directly.

"Question: Because the Russian Government would have taken exception to that; is that right?"

"Answer: Yes."

And then Mr Kay talks about it going through the

sheikh.

They are talking, as your Ladyship sees there, about Sibneft. It's absolutely part of the family defendants' case -- sorry, Mr Gudavadze's case and her daughters -- that Mr Patarkatsishvili did indeed have an interest in Sibneft and he did indeed sell that interest with Mr Berezovsky to Mr Abramovich.

Again, one has to compare that with the position that they are now taking in this litigation. They put a positive case before the Gibraltar court that Mr Patarkatsishvili and Mr Berezovsky were partners with an interest in both Sibneft and Rusal and perhaps, given that positive case, it's not surprising that Ms Gudavadze or indeed any of the other family defendants have decided not to come and give evidence to your Ladyship about these matters.

My Lady, this, we would submit, does bring into focus the appropriate scope and role of the family defendants in this trial. They have, as your Ladyship knows, served no witness statements at all, although it is clear from what I've shown your Ladyship the only thing those witness statements could have said if they had been served. But what they have done, wherever possible, my Lady, is to take a position in this litigation that is -- wherever they can do this and

indeed in circumstances where they can't properly do it -- adverse to Mr Berezovsky and his interests.

I stress that they do it even when they cannot legitimately take that sort of position because, as your Ladyship knows -- your Ladyship will have seen this in our written opening -- they have entirely trampled over what your Ladyship ordered in relation to the scope of their wrong with regard to the overlap issues when one comes to deal with the Russian history evidence and the Russian law.

MRS JUSTICE GLOSTER: I haven't let that evidence in yet, have I?

MR RABINOWITZ: You Ladyship hasn't let that evidence in. We're going to suggest that it should be excluded because there is something very odd about the way the family defendants are behaving here.

I'm going to show your Ladyship what we say about the Russian law position because we've never even had an attempt to answer why they've taken this position. Perhaps I can just pick this up. We had the same problem with the history evidence: they simply run roughshod over what your Ladyship made clear was the proper extent of their role, to put in whatever they can to hurt Mr Berezovsky's interests. Their Russian law position is just an egregious disregard of what your

Ladyship has said.

Can I just show your Ladyship -- pick it up from our written opening. Your Ladyship will find this in paragraph 950 on page 470 of our written opening, so it's section O, volume 2 B(A)2/470. Just picking this up at paragraph 950. I'll just pick it up from after the "Nonetheless":

"... the Family Defendants have served an expert report..."

I'm not going to deal with the Russian history position but I have to say it is not much better. It is marginally better because they do manage to trespass on a relevant issue there, but here they don't even manage that.

"... the Family Defendants have served an expert report on Russian law from Professor Peter B Maggs. This report addresses two questions as a matter of Russian law: whether the Dorchester Agreement was a binding contract under Russian law, and whether Russian law recognised the concept of trusts and trust property at the time of the Dorchester meeting: Maggs..."

"Professor Maggs' report does not go to any Overlap Issue and it is respectfully submitted that it is wholly inadmissible and should be excluded:

"(1) Neither Mr Berezovsky nor Mr Abramovich

maintain that the Dorchester Agreement was a binding contract under Russian law, or that any trust property arose under Russian law in respect of that meeting or RusAl.

"(2) Professor Maggs concludes that he is in full agreement with the opinions of Mr Rozenberg and Dr Rachkov on the questions which he has been asked to consider...

"(3) Hogan Lovells have not been able to identify any pleaded issue to which Professor Maggs' evidence relates. Nonetheless they insisted on Professor Maggs attending the Joint Meeting of Experts on Russian law, even though he was in full agreement with his fellow experts on the issues he had been asked to consider...

"(4) Professor Maggs proceeds in his report to comment, however, on other issues of Russian law which have been debated between Mr Rozenberg and Mr Rachkov in the context of the Sibneft claim -- a claim that does not give rise to any Overlap Issues or concern the Family Defendants in any way."

Then we said:

"(5) It is an abuse of process for the Family" --

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: Your Ladyship should also know that we kept writing to them saying, "Well, you tell us, what is the

pleaded issue which this relates to?" No response which engaged with that at all. They just, in a sense, filibustered their way into that position.

The irrelevance of the Russian law to the family defendants' position is perhaps highlighted by the fact that it is not mentioned once at all in the 50 pages of their opening submissions. It's not there, and that's not surprising, because it just doesn't arise on the overlap issue.

As I've indicated, it will be our submission -- we've warned the family defendants about this -- that your Ladyship should exclude this evidence entirely. There is no permission for it; it is utterly irrelevant; it will be a huge waste of time if we have to cross-examine Professor Maggs about it at length just because of the way he tries to give support to Mr Abramovich's own experts on matters which have nothing to do with the overlap issue.

The only matter of relevance that arises from this, I would suggest, is why the family defendants have chosen to act in the way they have, notwithstanding that it must have been obvious to them that they had no basis whatever for wanting to adduce this evidence in circumstances where it so obviously went beyond the overlap issue. The family defendants are, as I've

suggested, playing a rather odd game here and, as we've indicated in our written opening, Mr Berezovsky has a general concern about what precisely lies behind this.

Finally in terms of documentation, can I next say something about the evidence your Ladyship has from Mr Patarkatsishvili. It will be clear to your Ladyship from the written openings that this evidence has something of the curate's egg about it, with both parties claiming that it provides them with assistance.

As your Ladyship may perhaps have observed, there is rather a lot of material collected from the various solicitors at various times from Mr Patarkatsishvili before he died in February 2008. Although it is fair to say, I would submit, that the process was far from completed, even on the evidence that Mr Patarkatsishvili had by the time of his death given to his solicitors, there is at least some material that would assist the court.

Your Ladyship will be aware that these are very substantial -- I plainly don't have the time to take your Ladyship through all of this, I suspect we're going to see a fair amount of it in the course of the evidence, but if I can just take your Ladyship to one or two extracts that might assist.

Can I ask your Ladyship --

MRS JUSTICE GLOSTER: Shall I have a ten-minute break for the shorthand writers?

MR RABINOWITZ: Yes.

(3.10 pm)

(A short break)

(3.24 pm)

MR RABINOWITZ: My Lady, I was about to show you some of the evidence taken from Mr Patarkatsishvili before his death in February 2008. Can I invite your Ladyship first to go to tab 25 in this bundle: H(A)96, page 151 H(A)96/151.

At tab 25 your Ladyship should have a draft and unsigned witness statement that had been produced by Cadwalader, who were then the solicitors on the record for Mr Berezovsky. As Ms Duncan, the Cadwalader partner, and Mr McKim, her assistant, explain, in evidence they will give to your Ladyship in due course, this is a document they had put together following first their review of the earlier notes that had been taken by Mr Berezovsky's previous solicitors of Mr Patarkatsishvili's evidence; and secondly, evidence that they had collected following meetings over two days with Mr Patarkatsishvili, with Mr Berezovsky also present, in Tel Aviv on 29 and 30 November 2007.

I take your Ladyship to this first because although,



as will be clear to your Ladyship, it is still a work in progress -- one sees that because there are from time to time notes from the solicitors asking further questions; they are still trying to get all the relevant information from him -- it does represent, I would suggest, a very much better understanding of Mr Patarkatsishvili's position on the key issues than any earlier notes, which, although certainly useful, are necessarily much rougher in terms of gathering Mr Patarkatsishvili's view of things that would be the later notes.

At this stage I don't want to take up too much time on this. As I say, they are likely to be referred to at length during the evidence of the witnesses. Can I perhaps take your Ladyship to one or two passages -- in fact that's a lie, I'm going to be taking you to more than one or two passages -- but can I begin by taking your Ladyship to paragraph 12 on page 154.

Just if I can show your Ladyship what is said here:

"In a series of discussions between myself, Boris and Roman, we agreed that any interests we acquired in Sibneft would be beneficially held as to 50% by Roman, and as to the remaining 50% by Boris and myself."

I'm happy for your Ladyship to read the whole of that --

MRS JUSTICE GLOSTER: Shall I read all that for myself?

MR RABINOWITZ: Indeed. (Pause)

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: As your Ladyship sees, at the beginning he says:

"... we agreed that any interests we acquired... would be beneficially held as to 50% by Roman, and as to the remaining 50% by Boris and myself."

He says he remembers the principle of 50/50 sharing very clearly, in the last line. Again, if that is right, that is again completely contrary to Mr Abramovich's case.

Paragraph 19 on page 156:

"We first became involved in the aluminium industry in 1999 at the time aluminium assets became available in the market. I was of the view that this sector represented a good opportunity and I shared my opinions with Boris and Roman. They agreed with me and we decided to purchase aluminium assets with funds generated through our core shareholdings in Sibneft."

Then paragraph 25 on page 158:

"The final agreement for the creation of RusAl was reached at a meeting at the Dorchester Hotel in Park Lane... in March 2000. It was agreed that we would merge our aluminium assets, KrAZ, BrAZ", et cetera --

MRS JUSTICE GLOSTER: I've read all that.

MR RABINOWITZ: "The shares in RusAl were to be held between [Mr Deripaska]... and ourselves in the ratio of 50:50; the shares were held 25% Boris and myself, 25% Roman and 50% Deripaska."

MRS JUSTICE GLOSTER: I've read a few of these.

MR RABINOWITZ: Perhaps I can point your Ladyship to it and if you've read it, I won't read it again.

MRS JUSTICE GLOSTER: It may be that I haven't actually read the paragraph that you've taken me to, but certainly in the course of my pre-reading I've read a few of these documents.

MR RABINOWITZ: All right. Can I ask your Ladyship next to go to paragraph 51; that's at page 163.

MRS JUSTICE GLOSTER: Yes. Let me just read that.

MR RABINOWITZ: In fact, can I invite your Ladyship to read from paragraph 51 down to paragraph 60 on page 165.

(Pause)

MRS JUSTICE GLOSTER: I've read that.

MR RABINOWITZ: Then paragraph 65 on the following page:

"I reiterate that had Roman not exerted the pressure I discuss above I would never have contemplated selling my stake in Sibneft. It was a growing company in which I had invested significant sums, and that was becoming increasingly profitable, and its dividends represented

my principal source of income once the business was up and running. There was simply no good commercial reason for us to sell when we did -- it was solely down to Roman's pressure."

Then, if your Ladyship has read that, I can invite you to go to paragraph 68 in relation to the sale of Rusal; that's at page 167.

MRS JUSTICE GLOSTER: Just give me the date again of this proof.

MR RABINOWITZ: It was taken in 2007, I think November 29 and 30. It has a date at the bottom, 14 December 2007. It followed meetings with Mr Patarkatsishvili and Mr Berezovsky --

MRS JUSTICE GLOSTER: That's the computer-generated date of the document?

MR RABINOWITZ: Indeed. There were meetings -- they took notes at meetings which took place in Tel Aviv on 29 and 30 November 2007.

MRS JUSTICE GLOSTER: Yes, thank you. Where do you want me to read to now?

MR RABINOWITZ: Paragraph 68, I think that may be what your Ladyship just has read. If your Ladyship has read that, then paragraphs 78 and 79.

MRS JUSTICE GLOSTER: These are the documents you were taking me to this morning, is that right?

MR RABINOWITZ: Indeed. Your Ladyship sees in particular paragraph 79 where he says --

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: -- can't see the documents. So, as I say, this is not signed, indeed it's not finally approved by Mr Patarkatsishvili but it's the last stab at trying to get evidence from him and, in our respectful submission, on the key elements it certainly helps Mr Berezovsky's case.

I entirely accept, as I think is clear from my learned friend's skeleton, that there are other aspects of the documents, the notes taken from Mr Patarkatsishvili to various solicitors that my learned friends can rely on and indeed they do, but I would make two points about the earlier notes on which they rely.

First, that in my respectful submission one is much more likely to have got closer to the true position as those asking the questions became more familiar with what the issues were really about than is the position with the earlier conversations where there was much more room for misunderstanding.

Secondly, that even in the earlier notes of conversations that my learned friends would prefer to rely upon, even then two things are very clear and both,

if true, suggest that Mr Abramovich's entire case before this court is false.

Those two things are, first, that Mr Abramovich was not the owner of Sibneft on his own and that in fact Mr Berezovsky and Mr Patarkatsishvili were his partners and, secondly, that Mr Abramovich is again simply not telling the truth when he suggests, again, that he and he alone was the acquirer of the aluminium interests in 2000 or indeed the person beneficially entitled to the 50 per cent interest in Sibneft.

Can I therefore take your Ladyship to the first occasion on which notes were taken from Mr Patarkatsishvili as to what his understanding of the position was in relation to these matters. In the bundle that I've handed to your Ladyship, you'll find these or at least some of them at tab 24. It's at H(A)89, page 220 H(A)89/220, for those of you looking at the screen.

Just to say what these notes are, this is a transcript of notes which were made following the first meeting with Mr Patarkatsishvili which took place in Tbilisi, Georgia, I think the meeting was on 29 June 2005. It was attended by, among others, Mr Andrew Stephenson, a partner from Carter Ruck, and Mr James Lankshear, a partner from Streathers. My Lady,

the notes that begin at page 220 are a typed-up version of those made by one of the attendees at that meeting, I think it was Mr Stephenson.

Whilst there is a fair amount of material, perhaps for present purposes I can invite your Ladyship to go to page 224, where we get an indication of Mr Patarkatsishvili's evidence to these solicitors of the position in relation to Sibneft. It's above the page:

"Purchase of Sibneft.

"Badri cannot give exact answer -- maximum amount of RA - several million US BP less than 10 m[illion] ...

"All rest our resources -- bank credits -- BB negotiated everywhere, worldwide -- pledged everything -- BP clear understanding serious money.

"Offers to sell after elections to sell for billions -- results of election."

Then this is the key aspect of this for present purposes:

"Sibneft shareholders.

"50/50.

"Roman 50 -- BP/BB 50%.

"Roman who brought idea -- in while RA idea to make business -- from beginning want to split 3 ways -- RA know how to run business. No human resource to manage

company. Wanted RA to feel as partner."

That's a clear indication as to what Mr Patarkatsishvili's understanding again was of who were the shareholders in Sibneft.

Then, if I can invite your Ladyship next to -- well, just look again, still on page 224, to what he says about Rusal:

"Rusal.

"BP, Vasiliy -- co-owners of aluminium company. Lev Boiko -- Rossiskaya -- Lev -- owned 75%..."

He's identifying the various interests.

"BP helped to solve problem -- Chernoi and Anisimov -- saw BP help very important -- could do more if a partner -- invited to buy other aluminium resources ... new [negotiations] in BP's presence; his office achieved success in this."

Just scrolling down, your Ladyship sees:

"Alfa Group was enemy for Lev Chernoi -- ask BB what to do, BB [that's Mr Berezovsky] talk to [Mr Abramovich] -- went to Roman office -- let's go -- take these actions -- we start [negotiations]."

And then this:

"Buyer, not middlemen."

So, again, it's perfectly clear, I would submit, what his position is about this and it becomes clearer



still if your Ladyship goes to page 229.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: This is under the heading "Rusal":

"Shares held by [Mr Abramovich];

"50% jointly with [Mr Abramovich] --

"Found Roman negotiating sale of his 25%.

"RA -- holding [negotiations without] informing us.

"After [Abramovich] sold 25% -- invite him to talk of future -- Badri told RA didn't want to stay alone against Deripaska -- wanted to sell -- [Abramovich] represented common interests -- didn't want to have to deal with Deripaska directly."

Your Ladyship sees what is said there, plainly again Mr Patarkatsishvili confirming that the 25 per cent that was unsold was shares in which he had an interest.

Then in terms of the Sibneft sale and the reasons why there was a payment of 1.3 billion, your Ladyship may wish to glance at page 228. Can I invite your Ladyship just to read what is said about the position at page 228. (Pause)

MRS JUSTICE GLOSTER: Yes, I've read that.

MR RABINOWITZ: In my respectful submission, my Lady, the key thing that emerges from what one has at page 228 is this. As your Ladyship knows, Mr Abramovich -- it goes to why the 1.3 billion was paid which in a sense is, as

I indicated at the outset, one of the key issues in this case. Mr Berezovsky's case has always been that that was paid in respect of his Sibneft interests and it was at an undervalue and that he was pressured by Mr Abramovich to sell, with threats having been made. Mr Abramovich's position, of course, is that the \$1.3 billion was not paid in respect of any interest at all. It was, in a sense, a gratuity. He was paying these people even though, on his case, they couldn't give him anything. There was nothing more that they were doing for him, they were not selling him anything, he previously paid them for something, he says, services, and he was just paying this for little more than gratuity purposes.

Again what one has here is Mr Patarkatsishvili making it clear that certainly his understanding was that he was selling an interest in Sibneft. Again, in our respectful submission, if this is right, that undermines in a very serious way Mr Abramovich's case.

Now, that is all I was proposing to show your Ladyship from this. As I say, there are plainly bits in these unfinished documents where evidence is still being gathered that both sides can and do rely upon, but what I would submit --

MRS JUSTICE GLOSTER: Just before you leave page 228, the

last paragraph there, how do you analyse:

"Initiative of Badri -- where complaining -- better option to sell [and] to stop pressure"?

MR RABINOWITZ: That is Badri coming to Mr Berezovsky.

Mr Berezovsky never wanted to sell, Mr Patarkatsishvili was much more willing to sell than Mr Berezovsky. So what appears to be happening here is Mr Patarkatsishvili is saying that, as between the two of them, he was the one who was saying "We should sell". That again reflects Mr Berezovsky's ambivalence.

What I would submit is clear from these documents and this evidence is that, if these notes do prove to be reliable evidence about the position in relation to Sibneft and Rusal, then the case that Mr Abramovich has put before this court on the key issue of were these men people who had an interest in these companies, will be shown not to be a true case. It will be a false case.

Subject to that and subject to your Ladyship having anything that you would like me to deal with, that was all I was proposing to say in opening. I've finished slightly ahead of schedule.

MRS JUSTICE GLOSTER: No, that's excellent. I'm very grateful to all your team for the very full written submissions, all of which I have read. Thank you very much indeed, Mr Rabinowitz.

Mr Sumption, are you going next and do you want to start today?

MR SUMPTION: I'm in your Ladyship's hands. I would actually rather start tomorrow. I think your Ladyship appointed 10.15 as the starting point but if you want me to start now I will.

MRS JUSTICE GLOSTER: No, unless Mr Rabinowitz is pressing --

MR RABINOWITZ: I'm perfectly happy for Mr Sumption to start tomorrow.

MRS JUSTICE GLOSTER: Very well. How is the timeframe?

MR SUMPTION: I shall finish well within tomorrow just as my learned friend has done. I will probably take about the same time as he did. So we will start on the amendment application --

MRS JUSTICE GLOSTER: I'm going to let the others --

MR SUMPTION: There's then short statements by the others, forgive me. We probably will get to the amendment applications first thing on Wednesday.

MRS JUSTICE GLOSTER: Right. Mr Malek, is that how you see things?

MR MALEK: My Lady, I appear for the Anisimov defendants, I will be 10 to 15 minutes so I agree with Mr Sumption's assessment.

MRS JUSTICE GLOSTER: Right. So it looks as though we might

complete your submissions tomorrow as well.

MR MALEK: Yes.

MRS JUSTICE GLOSTER: And, Mr Mumford, that goes for you,  
does it?

MR MUMFORD: My Lady, I'll be very short indeed.

MRS JUSTICE GLOSTER: And Mr Adkin as well?

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: Okay. Well then, do you prefer to sit  
at 10.15?

MR SUMPTION: I was simply remembering, perhaps wrongly,  
what your Ladyship directed. I will sit -- there's  
something to be said for it.

MRS JUSTICE GLOSTER: I think I said 10.15 because of the  
quarter of an hour breaks for the shorthand writers, but  
if it's inconvenient -- Mr Rabinowitz, are you happy to  
sit at 10.15?

MR RABINOWITZ: I'm in your Ladyship's hands. I don't mind  
either.

MRS JUSTICE GLOSTER: Why don't we sit at 10.15 and that  
means we may be able to rise a bit earlier than  
1 o'clock which makes it easier for getting in and out  
of the building.

Ms Davies.

MS DAVIES: My Lady, I have the order. It still has  
paragraph 4 in it which we're not pursuing just at the

moment so if I can ask my Lady to cross that out.

(Handed)

MRS JUSTICE GLOSTER: I've read the application, I'm minded to make the order.

MS DAVIES: Paragraph 4 is the one that Douglas (inaudible) have indicated they want to make some oral submissions on so we're not pursuing that just at this moment.

MRS JUSTICE GLOSTER: Yes, right.

MS DAVIES: My Lady, the other thing I said I would hand up last week, which I hadn't yet given to my learned friend, is a draft timetable so I'll just hand that up now as well. (Handed)

MRS JUSTICE GLOSTER: Thank you. Subject to changing the date, I will sign that.

Would you let my clerk have a copy of the signed order?

MS DAVIES: Of course, my Lady.

MRS JUSTICE GLOSTER: Right. This is a proposed timetable.

MS DAVIES: It's a proposed timetable which sets out the order of the proposed witnesses and counsel's best estimates at the moment of the likely time for each witness. Obviously everyone is aware that it's very difficult to be precise about these things and flexibility has to be taken into account. My learned friend Mr Rabinowitz is shaking his head, I did show it

to Mr Gillis.

MR RABINOWITZ: I haven't seen it and I'm certainly not going to say it won't work. The only thing I would say is that, if it's changed in a way which means -- we need to check with the witnesses who thought they would be in week seven who are now told they're going to be in week three or four, that they can do the time that it is now suggested they will have to do.

MS DAVIES: Of course. I don't believe there has been very much change to my learned friend's witnesses but, of course, if there are problems they will no doubt notify us as soon as possible.

MRS JUSTICE GLOSTER: Right. Thank you very much.

MR GILLIS: My Lady, might I just enquire, on our application under CPR 31.22 which was in relation to the French documents and the --

MRS JUSTICE GLOSTER: Yes, I thought I'd signed that.

MR GILLIS: That's what I wanted to ask. I wasn't sure whether that --

MRS JUSTICE GLOSTER: I thought I signed that on Thursday, but if I didn't, I'll get my clerk to provide you with a copy.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: Right. Very well. 10.15 tomorrow.

(3.45 pm)

(The hearing adjourned until  
Tuesday, 4 October 2011 at 10.15 am)



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