Thursday, 19 January 2012

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

Closing submissions by MR MALEK (continued)

MR MALEK: My Lady, we were looking yesterday at the question of whether Mr Berezovsky had an interest in the aluminium assets on the basis alleged in these proceedings, and we say no.

So the next point to deal with is the question as to what are the consequences if he didn't have that interest, and we submit that there are three consequences. The first one is that, when considering the question of the likely probabilities, we contend that the court should conclude that it is inconceivable that Mr Abramovich and Mr Deripaska would have given an interest to him during the course of the Dorchester meeting on 13 March 2000. There is no reason for Mr Abramovich to have done so. Mr Berezovsky had nothing to do with the hard work of putting together Rusal, and he had no role in relation to Rusal and its creation or its future business.

The second consequence, and this follows from the first point, is that Mr Berezovsky would have provided no consideration for the alleged express trust in relation to Rusal which he alleges was agreed at the

Dorchester Hotel.

The third consequence is that Mr Berezovsky has no interest that he can trace into Rusal, whether by way of a constructive trust or otherwise.

My Lady, there's one point, I should pick up this point that is made in the claimant's schedule that was handed up by my learned friend, Mr Rabinowitz, in the opening, and it's at page 32 where he makes a point in response to what is said by Mr Abramovich at paragraph 395 of the closing submissions.

If I could ask your Ladyship just to read what the response is and I will make a short point in response. So it's at the bottom of page 32, it's the last box dealing with 395.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: It's really the first point made there, the so-called non sequitur about the technically defective. Our response to that is that we are not saying that Mr Berezovsky's interest was technically defective as a matter of Russian law. We contend that he had no interest at all, and that's a response to that point.

That is the end of his claim for a constructive trust or resulting trust in respect of Rusal since his claims are based on him having a pre-existing proprietary interest in the assets contributed in the

merger.

I can now then deal with the next, I think my third, topic in the list of subsequent events, and that's the Dorchester Hotel meeting. Various points about this meeting have been fully canvassed, and by way of oral submission I wish to make seven short points on why that claim fails.

The first point is that your Ladyship is aware of the essential background: the negotiations started in March 2000 at the hotel, continued at Mr Abramovich's house. The material terms found their way into the sale and purchase agreement of 15 March, and it was amended on 15 May to reflect the addition of the Bratsk assets.

Our point there is that there is no evidence that Mr Berezovsky was involved in anything relating to the negotiations apart from the Dorchester Hotel meeting. He therefore is forced to contend that this meeting is of critical significance during which everything was agreed.

The second point is that a lot is made by Mr Berezovsky as to why Mr Abramovich and others were willing to see him in London. As I mentioned earlier in my submissions yesterday, we contend that the evidence makes sense as a Russian presidential election had taken place on 7 March. Mr Berezovsky was at the height of

his political influence. In view of Mr Berezovsky's interest in promoting his profile, it is reasonable to conclude that he wanted the meeting in order to highlight his importance.

The third point is that Mr Berezovsky's account of the meeting does not make sense in a number of respects. He had not been involved in the working group or in the drafting of the various agreements. His evidence that important matters were agreed is simply not made out during the course of that meeting. Of the matters that he says were agreed at the Dorchester meeting, it is clear that they had already been covered in the preliminary agreement.

The fourth point is that Mr Berezovsky's evidence that he recalls about the equalisation payment involving Mr Deripaska is simply false and dishonest. This is a matter which was agreed later and was related to the addition of certain of the Bratsk assets to the merger. The evidence of Mr Hauser was that certain of the Bratsk assets were added later and this gave rise to the 15 May revision.

We refer your Ladyship, not to turn to it now, to Mr Abramovich's schedule commenting on Mr Berezovsky's closing at paragraph 1181, and that's at pages 130 to 132 of the schedule, where there is a whole series of

points demolishing Mr Berezovsky's new theory that it was agreed at the Dorchester Hotel meeting that the Bratsk assets would be included in the merger, in return for increasing the compensatory payment from Mr Deripaska from $400 million to $575 million.

The fifth point is that had Mr Berezovsky or Badri been parties to the deal in relation to the merger, it is reasonable to suppose that they would have been involved in the addition of the Bratsk assets which culminated in the agreement of 15 May. They were not.

Sixthly, the only term that Mr Berezovsky has identified which was not included in the preliminary agreement was a no selling without consent provision. There is no reason why this term should have been agreed. It is denied by Mr Abramovich, Mr Shvidler and Mr Deripaska. And as Mr Sumption pointed out in the course of his oral submissions, it is not a term that would have made any commercial sense. That's Day 40, 35.27 to 37.7.

Seventhly and finally, none of the persons involved in the process of finalising the terms of the purchase agreement knew of the meeting. This confirms that nothing of substance was agreed at the meeting.

There is one issue which your Ladyship raised with my learned friend Mr Rabinowitz, which related to the

question of the nature of the interest that Mr Berezovsky acquired as a result of the meeting, and your Ladyship asked the question whether it was personal or whether it was proprietary. You will find a discussion of this point in Mr Abramovich's written closing at paragraphs 516 to 519. And the point that is made there, and I just simply summarise, is that it is all too vague and nothing was identifiable which could constitute trust property. But we simply adopt the submissions that are made there and I do not repeat them.

The only other point to make about Dorchester is that the allegation upon which Mr Anisimov has adduced evidence is Mr Berezovsky's contention that it was agreed that the merger agreements would be governed by English law. That's the British law point. And, as I mentioned to your Ladyship yesterday, this allegation was not put to Mr Anisimov during the course of his cross-examination.

By way of oral submission, I just wish to highlight four brief points. The first point is that Mr Berezovsky's written submissions in respect of this allegation have been thoroughly inconsistent, both in respect of when the advice was given, what it related to, and who it was given to, whether it was to Badri

and/or Mr Berezovsky. The reference there is E3.3 of our written closing submissions.

Secondly, the court will no doubt wish to trace the history of the allegation. The allegation was only introduced in the context that Mr Berezovsky suddenly realised that he needed to prove English law in order for this claim to be valid. We deal with that in section E3.2 of our written closings. We submit that everything here points to this being an invention. Had the allegation any substance it would have been raised far earlier.

The third point is that this part of the trial was a low point for Mr Berezovsky. His performance in the witness stand in respect of the alleged advice from Mr Anisimov was abysmal. He flipped and flopped all over the place, and we deal with that at E3.4.2 of our written closing submissions.

The fourth point is that the third point I have just made was tacitly recognised in Mr Berezovsky's closing submissions.

Tellingly, Mr Anisimov's alleged advice about British law is not cited as one of the pieces of evidence in support of the alleged express agreement between Mr Berezovsky, Badri and Mr Abramovich. You will see that from the closing submissions of

Mr Berezovsky at 67 to 74, 1581 to 1592, whereas previously it had always been cited in support, and you will get that from Mr Berezovsky's written opening at paragraph 457.

In fact, the only mention of Mr Anisimov's advice in Mr Berezovsky's written closing submissions, which is not warranted given that the point was not even put to him, has now changed. Mr Berezovsky's closing submissions -- and this is paragraphs 1253 to 1254 -- say that the explanatory note, which does not refer to British law but refers to using offshore structures and generically western lawyers, supports Mr Berezovsky's allegations that Mr Anisimov advised Badri, and I quote:

"... to structure his affairs offshore using western laws, and that it was Mr Patarkatsishvili who had subsequently used the phrase 'British law'."

As I say, that's at paragraph 1254, lines 5 to 6.

Now, we say that that is simply wrong. Mr Berezovsky's allegation has always been that Mr Anisimov advised the use of British law, not Badri. The reference there is paragraph E3.3 of our written closing which sets out Mr Berezovsky's various allegations in pleadings and the written evidence. And it is not correct to say now that Mr Berezovsky's case has been that Mr Anisimov's advice was confined to

western law in order to manipulate the evidence to support Mr Berezovsky's last minute argument that the explanatory note was authored by Mr Anisimov or his advisers.

Now, the next point is the Rusal contractual documentation. Mr Berezovsky has made a number of submissions concerning what was referred to in his written opening submissions as the Rusal contractual documentation, and the starting point on that is that it cannot be said that this documentation can be used for the purpose of establishing any knowledge on the part of Mr Anisimov. He was not involved in the formation of Rusal and did not see any of the documentation prior to the commencement of these proceedings.

Now, let's just deal with the main points made by Mr Berezovsky. First, he contended that he was an undisclosed party to the preliminary agreement, and that was provided for in the use of the word "partners" of Mr Abramovich. You will get that from his closing submissions at paragraphs 1164 to 1175. But the answer to that is that Mr Berezovsky had not seen the preliminary agreement before these proceedings and admitted that he knew nothing about its negotiation.

We contend that it is hard to see how it could seriously be contended that he was an undisclosed

principal to an agreement which he did not see, he did not know its terms and, moreover, the drafting of the agreements indicate that Mr Berezovsky was not considered to be involved. The concern, as your Ladyship heard, was that one of the parties might be acting as a front for the Trans-World Group. Mr Hauser's evidence is important on this and we submit that Mr Hauser is a credible witness with no axe to grind.

The reference to the materials on this is our closing submissions, E2.2 and paragraph 157, and we also adopt Mr Abramovich's closing submissions at paragraphs 422 to 428, and also Mr Abramovich's schedule which deals with this at paragraphs 127 forwards -- sorry, page 127 forwards, and which deals with the evidence of the draftsmen.

Now, the second point is that Mr Berezovsky contends that he was similarly an undisclosed party to the merger agreement of 15 March after the Dorchester meeting, and that's covered by the phrase "Other Selling Shareholders". He makes the same point concerning the restated and amended SPSA in his closing submissions at paragraph 1271 forwards, where the reference is to the "other P1 shareholders". Again Mr Hauser's evidence comprehensively demolished these points and this has

been dealt with by Mr Abramovich's team. The reference to our closing is E2.2 and paragraph 157, Mr Abramovich's closing submissions paragraphs 422 to 428, and Mr Abramovich's schedule at page 127 onwards.

So we submit that the only conclusion that can be reached is that Mr Berezovsky's account concerning the Dorchester agreement is false and must be rejected. We submit the account given by Mr Abramovich, Mr Shvidler and Mr Deripaska should be preferred. We point out that there is no contemporaneous documentation supporting Mr Berezovsky's account. And as far as his heavy reliance on the notes of the interviews with Mr Badri, these were made long after the events in question. They started in 2005 and, we submit, do not support -- are not contemporaneous and do not support Mr Berezovsky's account. You will find a useful summary of the various points in Mr Abramovich's schedule at page 134 commenting on Mr Berezovsky's closing submissions at paragraph 1215.

Let's move on to the fourth topic, which is the subsequent events to the Dorchester meeting that Mr Berezovsky relies upon. As your Ladyship knows, this is concerned with the question of the weight that can be attached to circumstantial evidence covering events after the merger as an indication that Mr Berezovsky had

an interest in Rusal.

As I mentioned yesterday, the question is not whether there is evidence that is consistent with Mr Berezovsky having an interest in Rusal, but whether there is evidence that supports his case that he acquired an interest in Rusal by virtue of the case that is pleaded and which he can advance in these proceedings before your Ladyship. You are not concerned with the allegation in the Chancery Division that he acquired an interest by virtue of the alleged bilateral joint venture between Mr Berezovsky and Badri.

It is also right to record here that it is not suggested by Mr Berezovsky that he can advance a case outside his pleadings, and we are proceeding on the basis that the only case we have to meet is the one that has been pleaded.

Now, the matters that are relied upon are six. There's the Le Bourget transcript; the internal planning documents; the Curtis notes of August 2003; the alleged distribution to Mr Berezovsky and Badri of Rusal profits; the terms of the --

MRS JUSTICE GLOSTER: Just stopping there, Mr Malek, and going back to the point you made a moment ago.

MR MALEK: Yes.

MRS JUSTICE GLOSTER: It is relevant for the purposes of

this action for me to consider and probably to decide whether the fact that Mr Patarkatsishvili was paid 585 million reflected an interest which he, Mr Patarkatsishvili, might have had in the assets.

MR MALEK: Correct, I agree with that.

MRS JUSTICE GLOSTER: I have got to decide what is the correct characterisation or the reason for that payment.

MR MALEK: Correct.

MRS JUSTICE GLOSTER: Which has or potentially might have an ongoing impact for the Chancery proceeding.

MR MALEK: My Lady, if your Ladyship could just bear for a moment, I'm going to come back specifically to that question of what your Ladyship needs to decide, and I'll deal with that, if I may, at that point of time, but I will come back to that point.

Just going through the list, I think the last point I made were the terms of the 2004 documents for the sale of the second tranche and the Badri interview notes. I'm going to deal with most of this very quickly.

As far as the Le Bourget transcript is concerned, your Ladyship has Mr Abramovich's closing submissions at paragraphs 429 to 432. We have nothing to add on this beyond to stress that they do not give rise to any indication on any reading that Mr Berezovsky acquired an interest in Rusal which -- along the lines that he

alleges in these proceedings.

The second point is the internal planning documents, which is dealt with in Mr Abramovich's closing submissions at paragraph 433 to 435. And the main document there is the explanatory note, and the reference for the transcript is H(E)1/3/4T. That's a document that was found in the office of Mr Badri's financial adviser, Mr Kay. It is now suggested that Mr Streshinsky was the author of the explanatory note but there is no evidence to support this, and that's a point that I will come to at the end of my oral submissions. And we adopt what Mr Sumption said about this document in the course of his oral argument, Day 40, page 51, where he said:

"It looks very much like a money-laundering exercise but it is hard to be sure about that on the very paltry information that we have about this rather incoherent document."

Curtis notes are covered by Mr Abramovich at 436 to 441. We submit that Mr Tenenbaum's evidence was entirely credible. The creation of this note suggests it was part of a legalisation document process. It ties into the Spectrum transaction and the Devonia transaction, from which Mr Curtis received a personal payment of $18 million in addition to his firm charging

full professional fees.

As far as the alleged distribution of the dividends in Rusal, that relates to the 175 million which is described as constituting Rusal dividends paid to Mr Berezovsky and Badri in 2003 and 2005. It is covered in Mr Abramovich's written closing, paragraphs 442 to 448. Nothing further to add.

So that leads us on to Rusal. I'm not proposing to say anything about the first tranche because that's covered by Mr Abramovich, I want to deal with the second Rusal sale which, of course, is more important as far as my client is concerned.

Now, Mr Berezovsky's case on this, in a nutshell, is that references to multiple beneficiaries and BB in the draft documentation proved that he was a beneficial owner of Rusal but that he was airbrushed out of the final documents. We covered this in our written submissions at section E2.5, which is page 77, and E2.6 which is page 79.

What I propose to do is just to make a few short remarks by way of oral submission.

MRS JUSTICE GLOSTER: E2.5 is the sale of the first --

MR MALEK: It's the first one, and then the second one is E2.6. So it's really E2.6.

Now it's important to distinguish between different

issues. The matter in issue is whether or not Mr Berezovsky had an interest in Rusal proceeds on the basis pleaded in this case, and that is not the same as whether or not Badri had an interest in the Rusal proceeds because, as everybody agrees, Badri did have an interest in the monies he received, precisely because he received them. The defendants contend that they were his commission payments that he agreed with Mr Abramovich.

As I've just mentioned, the issue which does not arise in these proceedings is whether or not Mr Berezovsky had an interest in Badri's Rusal proceeds simply by virtue of the alleged joint venture between Badri and Mr Berezovsky.

MRS JUSTICE GLOSTER: Yes, I can quite see that, but the issue that does arise in these proceedings is whether, as Mr Berezovsky contends, because he's going to give credit for his share of the payment, that that was paid as part of the alleged ownership interest in Rusal.

MR MALEK: Agreed. And so the question then is not simply whether people thought that Mr Berezovsky had an interest in the Rusal proceeds, but whether any such speculation assists Mr Berezovsky in proving that Mr Abramovich agreed, back in 2000, to act as a trustee for Mr Berezovsky.

In this context, the key point is that none of the draft documents and none of the people involved in the creation of the documents for the second Rusal sale ever referred to the Dorchester meeting. It was never suggested to anyone during the course of this trial that the Dorchester meeting was linked to the second Rusal sale and the matters discussed.

So the short point here is that the second Rusal sales do not help Mr Berezovsky establish any of his claims to Rusal in these proceedings.

The second point is that the essence of Mr Berezovsky's case is that those drafting the documentation in connection with the second tranche transaction recognise that Mr Berezovsky did have an interest in Rusal and airbrushed him out of the contractual documentation by the time that the transaction was executed on 20 July 2004.

The point we make here is that there is no doubt that an allegation of airbrushing involves an allegation of dishonesty on the part of those involved in the transaction, in other words, the production of documentation which was knowingly false and a fraud on Mr Berezovsky to disguise -- to wipe out his interest.

We submit, as I indicated yesterday, that it was incumbent on Mr Berezovsky to put to the witnesses that

particular allegation so that it could be answered by them. What he cannot do is to invite his lawyers to present a case theory in closing that was not firm enough to put to the witnesses so that they can answer the allegation.

Now, as I said, if there was a conspiracy to airbrush that would have necessarily involved Mr Anisimov. It was not a case that was put to Mr Anisimov and therefore it is not appropriate for him to maintain that Mr Anisimov was involved in any impropriety or conspiracy. That is true of all the allegations against Mr Streshinsky about Salford and Leboeuf's removal from the transaction, and it goes to the allegations that Mr Streshinsky told First Zurich Bank that Mr Berezovsky was a beneficiary and then withdrew the statement when money-laundering became an issue.

The sole purpose of those allegations was to implicate Mr Anisimov in Mr Berezovsky's alleged conspiracy theory. But as I say, that option is not open to Mr Berezovsky because no case of impropriety was put to Mr Anisimov.

The third point is that not only was the conspiracy theory not put to Mr Anisimov, it was comprehensively rebutted by the witnesses in evidence and the conspiracy

theory is wholly unsupported by any evidence.

Let's look at the draft documents. The court will no doubt recall Mr Hauser's evidence when he emphatically denied that any airbrushing took place. His evidence was credible and should be accepted. Your Ladyship will remember Mr Hauser's evidence on that. He was clearly angry, he was irritated that this allegation was made against him and he answered that allegation to your Ladyship, and I would submit that his evidence was honest, it was credible and it should be accepted.

Now, the sole basis for this assertion by Mr Berezovsky is that because Mr Hauser confirmed that the references in documents that he drafted to BB and beneficiaries did not come from Mr Abramovich's representatives or Badri's representatives, and Mr Hauser indicated in one answer that the press reports may not have been the sole reason he persisted in including the references in his documents, that therefore by process of deduction it is alleged that the only logical conclusion is that Mr Deripaska instructed Mr Hauser that Mr Berezovsky was involved.

Now, the logic of its origin is attributed on some of the occasions that the point is asserted, but it is repeated with such frenzy, and the references are 1418.5, 1424.1, 1425 to 27, 1439 to 1443, 1462, 1488,

1492, 1512, 1513. It's a point that's made over and over again, but where you perhaps see it most clearly is in the closing submissions at paragraph 1418.5 where it is stated in his closing submissions:

"Mr Deripaska's team were originally instructed that Mr Berezovsky was also a beneficial owner alongside Mr Patarkatsishvili. However, they were prepared to live with the acknowledgement from Mr Abramovich and the warranty from Mr Patarkatsishvili that he was the sole beneficial owner."

This detailed version of the instructions given to Mr Deripaska's representatives, and Mr Deripaska's representatives' mindset, is pure make-believe. It finds no support in the evidence.

Let's start off by looking at Mr Deripaska's knowledge. The one person who could speak to Mr Deripaska's belief in 2004 was the one person who was not asked and that was Mr Deripaska himself. Mr Deripaska was only asked about events up to 2003, he was not asked about 2004. You will get that from his evidence at Day 29 --

MRS JUSTICE GLOSTER: Just a second. Before you go there, I'm just checking the reference you gave a moment ago.

MR MALEK: To 1418, subparagraph 5.

MRS JUSTICE GLOSTER: You referred to 1518.5 [in the draft

transcript].

MR MALEK: I should correct it, it's 1418, subparagraph 5. I think there was a mistake.

MRS JUSTICE GLOSTER: Just a second, please.

Yes, thank you.

MR MALEK: So the point I'm making is that this is an allegation of instructions given by Mr Deripaska, and the point is that no questions were asked of Mr Deripaska.

Since Mr Deripaska was not asked any questions about the 2004 events, he was not asked whether he believed that Mr Berezovsky was behind the second Rusal sale. Instead of that, what Mr Berezovsky does is he relies on yet a circuitous and speculative route to establish something that could have been simply asked of Mr Deripaska directly.

In fact, we submit that the evidence shows that Mr Deripaska did not have this belief. As we point out in our closing submissions at paragraph 205.4, Mr Anisimov's unchallenged evidence was that he was asked by Mr Deripaska whether Mr Berezovsky had any connection to the transaction. Mr Anisimov therefore raised this with Badri, Badri assured him that Mr Berezovsky was not anywhere near the deal.

Now, this unchallenged evidence from Mr Anisimov

indicates that Mr Deripaska did not have the knowledge alleged.

If I could ask you to turn to the schedule again of Mr Berezovsky, the claimant's schedule, at page 46, what is said in the bottom box is this, in relation to that.

MRS JUSTICE GLOSTER: I can read it.

MR MALEK: Yes, it's the first sentence:

"Mr Deripaska denied having ever had the initial conversation with Mr Anisimov despite being asked about the matter by Mr Anisimov's own counsel, Mr Malek."

Now, with respect, that is wrong. He made no denial. In a note that was supposed to correct errors, alleged errors, this is a rather unfortunate error itself because if your Ladyship turns to Day 29, page [5] at line 18, he made no denial. He said he simply does not recall. And we would submit that it's not a case of what Mr Rabinowitz called amnesia in relation to Mr Anisimov's evidence on Baden Baden; it's hardly surprising that he doesn't recall this because it happened seven years ago. So that's Mr Deripaska.

What about Mr Hauser? We say it's bizarre for Mr Berezovsky to rely on Mr Hauser's evidence to support this conspiracy theory, and there are four points on this.

The first point is that Mr Hauser vehemently denied

any impropriety in deliberately airbrushing Mr Berezovsky out of the documents. That's Day 32, page 29.16 to 30.6.

Secondly, if, as Mr Berezovsky's theory requires, Mr Hauser knew well from Mr Deripaska's instructions that Mr Berezovsky was a beneficial owner, then on Mr Berezovsky's case, what Mr Deripaska would have told Mr Hauser would not be a simple belief or possibility that Mr Berezovsky was involved, it would have been Mr Deripaska's instruction that he incontrovertibly knew that Mr Berezovsky was a beneficial owner, and had always been, and had had personal dealings with Mr Abramovich concerning the shares from at least the moment of the meeting at the Dorchester Hotel in 2000, because Mr Deripaska was at that meeting, a party to the alleged Dorchester agreement, and a witness to the alleged trust agreement between Mr Abramovich, Badri and Mr Berezovsky.

The acknowledgement from Mr Abramovich and the warranty from Badri would thus have simply been a lie and Mr Hauser would have known that. Yet Mr Hauser specifically confirmed, in addition to generally confirming that he was not a party to airbrushing conspiracy, that he would not have allowed his client to sign a document that he knew to be factually inaccurate.

The references to Mr Hauser's evidence are Day 31, 29.16 to 30.6, Day 31, 93.4 to 17. We submit, as I indicated earlier, that his evidence was credible and we would invite your Ladyship to accept it.

Thirdly, were it to be the case that Mr Hauser allowed his client to knowingly sign agreements which were liable to be challenged by Mr Berezovsky, because Mr Deripaska knew at the time that they were false, then as Mr Hauser explained, those documents do not do what they purport to do. That's Day 31, 26.16 to 30.6. But Mr Hauser made it clear that he thought that that would be an incompetent thing for a solicitor to have done. That's Day 31, 30.1 to 6.

The fourth point is that it follows from this that Mr Berezovsky's speculation that Mr Deripaska must have instructed Mr Hauser that Mr Berezovsky was a beneficiary based on what Mr Hauser could not say, namely what Mr Deripaska's instructions to him were, was an avenue that is closed off by what Mr Hauser did say. That's the important point. Mr Hauser's evidence is clear.

Now, what other sources Mr Hauser may have been referring to when he said that the press was not the sole reason for including a reference to Mr Berezovsky in his documentation, whatever it could have been, it

cannot have been Mr Deripaska's instructions.

That deals with Mr Deripaska and it deals with Mr Hauser.

In fact the explanation for the draft documentation is simple. It's addressed in our closing submissions at paragraphs 182 to 184 and goes back to Mr Berezovsky's public assertions that he had an interest in Rusal. As we explained there, people who draft documentation have to be careful, they want to avoid risk, and those drafting the documents adopted an approach to drafting which did not proceed on the basis that they thought that Mr Berezovsky had an interest in the Rusal proceeds, but rather they proceeded on the basis that their respective clients would not take the risk that Mr Berezovsky had an interest.

MRS JUSTICE GLOSTER: Just remind me, Mr Abramovich called Mr Hauser, not your client?

MR MALEK: That's correct. Under a witness summons.

As your Ladyship will recall, this goes back to the period in early June 2004, shortly after the negotiations had begun, where Mr Berezovsky made the announcement to the press that he had an interest in the assets being sold and would, if necessary, resort to the courts to block the sale. That of course resulted in a consequent flurry of activity between the lawyers as

to which party should take the risk that Mr Berezovsky would follow up his public assertions with some kind of nuisance claim in the future. Understandably, none of the parties were willing to do so.

The reasons for this are addressed fully in our submissions at paragraph 206, which I will not repeat here, but again commonsense comes into play. What is particularly telling is that, although Mr Berezovsky was prepared to make those statements to the press, he did not make any statement to those involved in the drafting of the documents. We would submit that that is important. Because had Mr Berezovsky genuinely held an interest in Rusal, it is reasonable to suppose that he would have asserted an interest directly rather than sitting by and making grand and empty statements which no doubt increased the perception of his importance by virtue of those statements but which had no legal consequences and were untrue.

We contend that the events surrounding the second Rusal sale show that Mr Berezovsky's account about the Dorchester meeting, or that he had an interest in the assets that found their way into Rusal, is false.

Your Ladyship knows that Mr Badri gave a confirmation that was inconsistent with Mr Berezovsky having any interest, and it is worth stressing that

Mr Berezovsky's case about what he knew about that confirmation by Mr Badri is confusing to say the least. We submit that it seems likely that he knew that Badri gave that confirmation, and that's a point that we cover in our closing submissions at paragraph 210, page 104.

Now, the next point concerns this point, which is we know that it was Badri who took on that risk. He was receiving the money from the transaction so he was the natural commercial party to accept the risk. Badri was happy to do so, and indeed expressly confirmed both in documentation and privately that the representations were correct.

There are two points here. First, Badri told Mr Anisimov that Mr Berezovsky was not involved in the deal, and that's referred to in our closing submissions at paragraph 205.4, which makes a reference to Mr Anisimov's evidence at paragraph 71. And this evidence is an important point relevant specifically to Mr Anisimov, and it falls within the second category of points which should have been put to Mr Anisimov if Mr Berezovsky disagreed with it. Yet Mr Anisimov's evidence about this conversation was not challenged in cross-examination.

The second point is that Badri confirmed to Mr Streshinsky that the representations he was making

were correct and that he was in fact the sole beneficial owner of the shares, and that was during Mr Streshinsky's trip to Badri's dacha in Georgia. Now Mr Berezovsky necessarily challenges Mr Streshinsky's evidence on this, and this entails, in order to explain away the conversation between Badri and Mr Streshinsky, an elaborate theory that Badri and Mr Streshinsky sent Mr Faekov of Akin Gump off on a merry wander down the beach so that he was out of earshot whilst Mr Streshinsky and Badri cooked up a plot to give the warranties, even though they were false, just to get the deal done.

That theory is far-fetched, it is unfounded. There is absolutely no evidence to justify the assertion. Mr Berezovsky contends in his closing submissions at paragraph 1522, subparagraph 5, that there is no credible alternative explanation for why Mr Faekov accompanied Mr Streshinsky on the trip to Georgia. This is both illogical and inconsistent with the evidence.

As Mr Streshinsky explained, the trip was a three-day trip in which both of them worked on the documentation. Just because Mr Faekov was not a party to one conversation with Badri does not mean that his presence on the trip is inexplicable in the absence of Mr Berezovsky's conspiracy explanation.

In fact, Mr Streshinsky followed up the meeting with Mr Patarkatsishvili by sending him the deal approval document, and that's a document at H(A)81 at 184 H(A)81/184, and we deal with that in our closing at 205.8 to 205.11.

What Mr Berezovsky does is that he interprets this document as an admission of Mr Berezovsky's interest, and you get that from his closing submissions at 1525(c) to 1529. But, and this is the important point, he omits to mention that Mr Faekov's and Mr Streshinsky's conclusion was that they did not know of any facts that Mr Berezovsky could rely on to substantiate his allegation.

If your Ladyship could just turn to paragraph 205.8 of our --

MRS JUSTICE GLOSTER: I'm there.

MR MALEK: You'll see the point, and it's made there.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: The statement that they did not know of any facts that Mr Berezovsky could rely upon, that necessarily would have been false and known to be false if the conspiracy theory is correct, and we would submit that there is no basis at all for doubting that conclusion.

So the position is that there was no conspiracy. There are many other flaws in the conspiracy. Had there

been a conspiracy, it would involve many persons apart from Mr Anisimov. There were too many professionals involved to suggest that this allegation has any substance to it. And it is important to stress that the conduct of the parties and the advisers can be explained in a way that does not involve any dishonesty or wiping out of Mr Berezovsky's interest.

What the evidence shows are concerns of the drafting parties that Mr Berezovsky might have an interest that was genuine, as was the subsequent acceptance that Mr Berezovsky did not have an interest and their residual caution about allocating the risk of an unfounded and baseless claim by Mr Berezovsky.

Now, the only other two allegations concerning the alleged conspiracy that concern Mr Anisimov directly are Mr Berezovsky's allegations concerning the removal of Salford/Leboeuf from the transaction negotiations, and Mr Streshinsky's communications with First Zurich Bank. My Lady, those arguments are dealt with in our submissions, I don't propose to go through them.

MRS JUSTICE GLOSTER: Can I ask you one question, I'm looking at the document --

MR MALEK: At H(A)81/184, is that the one?

MRS JUSTICE GLOSTER: Yes. Just remind me, because I can't see my note on it, who put the comments in the

right-hand column, the prescient comments? Was there ever any evidence on that?

It's the column that says "Methods of elimination and assessment of the risk". Just remind me --

MR MALEK: My Lady, it was a jointly prepared document by Mr Streshinsky and Mr Faekov of Akin Gump, so it would --

MRS JUSTICE GLOSTER: It was jointly prepared by both -- it's not a response in any way, it's jointly prepared by Mr Streshinsky and Mr Faekov, is it?

MR MALEK: That's our understanding, correct.

MRS JUSTICE GLOSTER: Thanks.

MR MALEK: As I say, the only other two allegations -- there's the Salford/Leboeuf point, which is the point that we cover in our submissions at 186 to 193. Your Ladyship has our submissions in writing, and the points that are made -- relied upon are fully set out in writing and I don't propose to repeat them because there's nothing further to add.

Now, as far as the First Zurich Bank is concerned, that is at 194 to 204 of our written closing, and it's the height of Mr Berezovsky's case on this, as it appears from Mr Streshinsky's comments to First Zurich Bank that Mr Streshinsky contemplated the possibility that Mr Berezovsky was a beneficial owner of the Rusal

shares but, again, that is an argument that is built upon speculation, and there's just three points worth stressing in relation to that.

The first point is that, as Mr Streshinsky conclusively clarified, until he had spoken to Badri in June 2004 in Georgia, he did not know with confidence what the position was with regard to Mr Berezovsky. He knew Mr Berezovsky was claiming an interest. He knew that Mr Deripaska was concerned about this but he had no personal knowledge of the true position. So on any view this evidence does not help Mr Berezovsky prove an alleged Dorchester meeting at all.

The second point is that nor does it assist Mr Berezovsky to prove Mr Anisimov's knowledge. The argument appears to be that if Mr Streshinsky thought something, Mr Anisimov must think the same. That is just pure speculation.

Then the third point, and this is perhaps the most important point about the FZB communications, is that Mr Berezovsky's -- the unreliablity of the FZB communications to Mr Berezovsky's case is in fact borne out by the later communications, which Mr Berezovsky's written closing conveniently ignores.

As set out in paragraph 203 of our written closing, that's page 96, FZB's conclusion on the evidence they

had seen, and the information Mr Streshinsky had provided them, was that there was some form of retroactive structuring going on for the purposes to provide a satisfactory explanation for the settlement of account, but the evidence did not support any actual historical interest in the Rusal shares, whether in Badri or Mr Berezovsky.

We would submit that that very conclusion is wholly contradictory to Mr Berezovsky's case that he acquired in 2000 at the Dorchester meeting the interests that he pleads in Rusal. It is, on the other hand, supportive of the legalisation activity that was a particular concern for Badri at the time.

There remains one specific allegation -- one allegation specific to Mr Anisimov that needs to be addressed, and that is Mr Anisimov's alleged knowledge of Mr Berezovsky's interest in Rusal. If your Ladyship turns to Mr Berezovsky's closing, you'll see that this is dealt with at 1137 to 1140. I have two issues which I need to address. The first is the issue of what findings the court should make in respect of Mr Berezovsky's allegations about Mr Anisimov's knowledge. Then the second is it to address why Mr Berezovsky's allegations about Mr Anisimov's knowledge, which are set out in detail in his written

closing, are wrong.

Let's deal with this first question, the question of what findings a court should make as to Mr Anisimov's state of knowledge. Now, it was suggested by my learned friend Mr Rabinowitz yesterday to your Ladyship that no findings should be made about Mr Anisimov's knowledge of Mr Berezovsky's alleged interest in Rusal. What Mr Rabinowitz said is that this was the correct approach because, I quote:

"... the overlap issues ... have not been defined so as to require this court to make any findings about Mr Anisimov's knowledge or any questions of his honesty or dishonesty."

The transcript reference to that is Day 42, page 112, lines 11 to 15. We submit that that is not correct, and Mr Berezovsky's team did not take that approach when making detailed submissions about Mr Anisimov's knowledge in their written closing submissions.

We would submit that there are three very good reasons why this court should make findings of fact as to Mr Anisimov's knowledge. In summary -- let me just list them and I'll develop the points. The first point is that it is Mr Berezovsky who has put Mr Anisimov's alleged knowledge in issue in this case and, on

Mr Berezovsky's own case, the question of Mr Anisimov's knowledge falls to be determined under overlap issues 1, 2 and 3. Mr Berezovsky relies on Mr Anisimov's alleged knowledge in both 2000 and in 2004 as evidence of Mr Berezovsky's alleged interest in the aluminium assets and in Rusal. That's my first submission.

My second submission is that Mr Berezovsky has himself invited the court to make findings about Mr Anisimov's knowledge. Mr Rabinowitz's position yesterday was a reversal from the position in Mr Berezovsky's written closing submissions.

My final point is that this court is the forum in which issues about Mr Anisimov's knowledge relating to the aluminium assets and Rusal are to be decided. Any other outcome would involve exactly the duplication and waste of court time that the joinder of these actions was intended to avoid and would be unfair to the Anisimov defendants.

MRS JUSTICE GLOSTER: When you say issues about Mr Anisimov's knowledge, do you include dishonesty as part of the knowledge issue?

MR MALEK: Yes, exactly. If it's part of their case, the allegation involves allegations of dishonesty, the answer is yes. And, of course, these are -- the fact that those points were not put needs to be considered.

Let's just deal with each of these three points that I've just mentioned. My first submission was that Mr Anisimov's alleged knowledge of Mr Berezovsky's interest in the aluminium assets and Rusal is squarely within overlap issues 1, 2 and 3, having been brought into those issues by Mr Berezovsky himself.

Now, overlap issue 1 concerns whether Mr Berezovsky acquired an interest in the aluminium industry prior to the meeting at the Dorchester meeting in March 2000, namely by acquiring an interest in the aluminium assets sold by Mr Anisimov as one of the sellers in early 2000.

As your Ladyship is aware, Mr Berezovsky's case is that he was one of the purchasers of the aluminium assets. He has attempted to prove that case by asserting that the sellers, including Mr Anisimov, all knew that he was one of the purchasers. Indeed, Mr Berezovsky went to town in his oral evidence in his assertions that the sellers, including Mr Anisimov, all knew that he was the key to the deal, saying that he had had numerous meetings with them and so on. So this is not an insignificant part of Mr Berezovsky's case.

Your Ladyship can see that these allegations are repeated in Mr Berezovsky's closing submissions, and the references there to his closing submissions are 59.5, 1114, 1118, 1137 to 1139, 1143 subparagraph 5, 1146,

1251, 1547.7, and it's repeated in the schedule 1, pages 33 and 40.

It was also a case advanced orally by Mr Rabinowitz yesterday, which is at Day 42, page 63.27 to 64.7 -- sorry, 63.23 and 64.7.

So we submit it is perverse that Mr Berezovsky now suggests that the court should make no findings concerning Mr Anisimov's knowledge, despite relying on what he asserts the sellers, including Mr Anisimov, knew in order to prove his case against Mr Abramovich.

Mr Berezovsky's submissions concerning Mr Anisimov's alleged knowledge to prove his case on overlap issue 1 are not limited to a general assertion about the four sellers. In fact Mr Berezovsky goes out of his way in a series of very detailed arguments, which I will address shortly, to prove that specifically Mr Anisimov did have knowledge of Mr Berezovsky's alleged interest in the aluminium assets, and Mr Berezovsky then makes detailed points on the basis of various matters.

First of all, there is Mr Anisimov's visa declaration, and that's his closing submissions, 1137.1. Secondly, there's Mr Moss's note of the purported Baden Baden meeting with Mr Anisimov, and that's paragraph 1137, subparagraphs 2 to 5. Thirdly, there is Mr Anisimov's alleged knowledge about the use of British

or western law, and the closing submissions there are 1245 and 1253 to 1254.

Fourthly, there's Streshinsky's email to Ms Khudyk, and that's his closing submissions at 1137, subsection 6. Fifthly, there is the fax from Syndikus to Mr Streshinsky dated 27 March 2000, and the closing submission is at 1250. Sixthly, there is Mr Streshinsky's communications with First Zurich Bank, and that is Mr Berezovsky's closing submissions, paragraph 1137, subparagraph 6(g). And seventhly, there is the explanatory note, which is in his closing submissions at 1137, subparagraph 8.

Your Ladyship will recall that a lengthy amount of cross-examination of Mr Streshinsky was devoted to these last four documents in order for Mr Berezovsky to try to assert that Mr Streshinsky, and therefore Mr Anisimov, knew about Mr Berezovsky's alleged interest in the aluminium assets. That's Day 33, page 46, 112, and page 129 to 147.

We would submit: what was the purpose of this cross-examination if the court was not going to make any findings because that was a matter for the Chancery Division? With respect, this demonstrates how bad this point is that has been taken on behalf of Mr Berezovsky.

Indeed, of the four sellers whose purported views

Mr Berezovsky relies upon as evidence of his alleged interest, it is Mr Anisimov who is the focus of his written closing submissions. Messrs Reuben, Chernoi and Bosov get about eight and a half pages all together, Mr Anisimov is 14 pages, and there's five and a half pages on the question of the authorship of the explanatory note.

So that's overlap issue 1.

Overlap issues 2 and 3 deal with the agreement allegedly made at the Dorchester Hotel meeting concerning Rusal. In addition to recycling the arguments about Mr Anisimov's alleged knowledge of Mr Berezovsky's alleged interest in the aluminium assets, Mr Berezovsky relies upon a case that he was deliberately airbrushed out of the second Rusal sale documents. And specifically, in relation to Mr Anisimov, Mr Berezovsky relies upon Mr Streshinsky's alleged knowledge of Mr Berezovsky's interest as a beneficiary which he asserts would have been knowledge shared by Mr Anisimov. The reference there for your Ladyship is Mr Berezovsky's closing submissions at 1127, subparagraph 7, where he says:

"Given Mr Streshinsky's knowledge, it would be astonishing if Mr Anisimov was not aware of the position."

So the position is this: Mr Berezovsky relies upon the draft documents circulated during the negotiations for the second Rusal sale as evidence that everyone involved in the second Rusal sale, including specifically Mr Streshinsky, that they considered that Mr Berezovsky was a beneficial owner of the shares. The references there are 1418 --

MRS JUSTICE GLOSTER: Just a second.

1127, subparagraph 7 is a misreference. Can you give me the correct one, if it's a reference to Mr Berezovsky's closing.

MR MALEK: I'm told it's 1137.

MRS JUSTICE GLOSTER: Thanks very much.

MR MALEK: So we're looking at the point about the draft documentations, and the reference there is 1418, 1429 --

MRS JUSTICE GLOSTER: Yes, I have it.

MR MALEK: The next point is the disinstruction of Salford, and that's paragraph 1420, subparagraph 4, which Mr Berezovsky alleges was deliberate because of Salford's investigations into Mr Berezovsky, and the reference there is 1430 and 1448 to 1506.

The next one is the allegation that Badri told Mr Streshinsky that Mr Berezovsky was involved and told him that the representation he was asked to give was therefore false, allegedly false. The reference there

is --

MRS JUSTICE GLOSTER: Just a second.

Yes.

MR MALEK: The last one is the allegation that Badri told Mr Streshinsky that Berezovsky was involved and told him that the representation he was asked to give was therefore allegedly false. The reference there to the closing submissions is 1418(c) to 1516, and 1525.

So the point about this first submission is this: it is therefore quite wrong to say that Mr Anisimov's state of knowledge does not fall within the overlap issues. It does, and it does so precisely because Mr Berezovsky has sought to rely upon Mr Anisimov's alleged knowledge of his interest in Rusal, which he says is demonstrated by the events of the second Rusal sale, to prove his case on those overlap issues. This alleged knowledge forms a central part of the purported evidence that Mr Berezovsky relies upon.

Now, the second point is that Mr Berezovsky himself invites the court to make findings about Mr Anisimov's knowledge. The point here is that the second reason why it is not correct to suggest that the court should not make findings about Mr Anisimov's knowledge is that Mr Berezovsky in fact has invited the court to do so. In addition to positively asserting a case based upon

Mr Anisimov's knowledge, Mr Berezovsky expressly invites the court to evaluate Mr Anisimov's evidence and to reject it. The reference to his closing there is at 1138.

He then recognises that the court may take the view that it will not make specific findings as to Mr Anisimov's knowledge but seeks to persuade the court to make findings about Mr Anisimov's and Mr Streshinsky's understanding during both the aluminium asset sale and the second Rusal sale that would support Mr Berezovsky's case. The reference there to his closing submissions is 1139, subparagraphs 1 to 2.

I explained yesterday why we submitted that Mr Berezovsky's claims in these proceedings are doomed to failure. But we submit that in this case, where the wheels really did come off was during Mr Berezovsky's performance in the witness box. He no doubt wishes to see whether he can salvage something for the Chancery Division and therefore wants to narrow the findings your Ladyship makes so that he can fight another day.

We say the true reason for Mr Rabinowitz's shift of position yesterday is obvious. It follows from the realisation that Mr Anisimov was a credible and honest witness who said that he did not have any knowledge that Mr Berezovsky was a purchaser of the aluminium assets or

had any interest in Rusal. In fact, he believed that Mr Berezovsky did not have any interests because of what Badri said.

Now, Mr Rabinowitz appealed to the scope of the overlap issues to explain why points were not put to Mr Anisimov, but we would submit that that explanation simply does not work. He had to put the points which were relevant to his case in these proceedings, and the points that he relies upon, as we have seen, were not simply points that might or could have been put, they should have been put if he was going to advance a case against Mr Anisimov. And the obligation to put important points applied to all witnesses and was nothing to do with the scope of the overlap issues.

This change of position also followed the receipt of our written submission where it was pointed out that Mr Berezovsky failed to put to Mr Anisimov a number of important points and therefore cannot maintain a case that Mr Anisimov knew about certain matters when he was not asked about them, or certainly he cannot put a case of dishonesty against Mr Anisimov.

So this is the context in which Mr Berezovsky now says that the court should not make any findings about Mr Anisimov's knowledge at all so that Mr Berezovsky can have another go in the Chancery action, with the caveat

that, rather hypocritically, Mr Berezovsky would still like to rely on Mr Anisimov's knowledge to support his case in this action.

That cannot be right. He cannot both have his cake and eat it, and he cannot seek to relitigate the same issues in the Chancery proceedings.

That leads on to my third point, which is that this court is manifestly the appropriate forum to make findings as to Mr Anisimov's knowledge concerning the aluminium assets and Rusal.

The first point is that the whole point of the conjoinder of the Chancery defendants was so that the Rusal issues could be decided once and once only, in the best forum, with the best evidence and without duplication or waste of the court's time. The basis for that assertion is what was said in the combined judgment, the joint judgment, which is at -- and I've asked for this to come on to the Magnum screen if your Ladyship doesn't have the hard copy.

MRS JUSTICE GLOSTER: I've got it.

MR MALEK: It's I1/05/138 to 139. Hopefully the judgment will come up. I'll repeat the reference -- it's that judgment.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: We would invite your Ladyship to have a look at

that judgment, and particularly at paragraph 28, particularly subparagraph 2, and 29, where it is made plain what the purpose of this trial is, and the purpose of this trial is to deal with all the Rusal issues.

It simply can't be right that we're going to have a repeat of all of this in the Chancery Division. It is this court that has seen and heard all the evidence in respect of the aluminium assets and Rusal, and the key points are these. First of all, all the documents relating to the aluminium assets and Rusal were disclosed in this action. Secondly, this court has heard from all the relevant witnesses including, for example, Mr Reuben who was another seller of the aluminium assets, and perhaps most importantly, Mr Berezovsky spent a significant amount of time conducting detailed cross-examination of Mr Anisimov and, in particular, Mr Streshinsky that was aimed solely at establishing Mr Streshinsky's and Mr Anisimov's knowledge of Mr Berezovsky's alleged interest in the aluminium assets and Rusal.

That cross-examination, if Mr Anisimov's knowledge is now said to be irrelevant, as Mr Rabinowitz says, would have served no purpose and been entirely wrongful.

MRS JUSTICE GLOSTER: Just a second, Mr Malek. Are you saying that I should decide once and for all the extent

of Mr Anisimov's knowledge? Surely all I can do in relation to the overlap issues is to decide, if I agree with the submissions you've made, the extent of his knowledge of the alleged trilateral agreement.

MR MALEK: Yes, that's correct.

MRS JUSTICE GLOSTER: I can't decide, can I, whether or not Mr Anisimov had knowledge of the bilateral joint venture agreement between Mr Berezovsky and Mr Patarkatsishvili because that's not within my remit.

MR MALEK: Correct. Your Ladyship has to, in our submission --

MRS JUSTICE GLOSTER: You may say one leads to the other but, strictly speaking, I can't go further than determining, if I agree with your submissions, whether Anisimov had knowledge of the trilateral joint venture.

MR MALEK: Correct, and a knowledge of interest based on the aluminium assets.

The point is, yes, we entirely agree with what your Ladyship says. Your Ladyship can only deal with the allegations of knowledge that are before this court relevant to the proceedings that are before your Ladyship.

Your Ladyship is not in a position to deal with the bilateral joint venture, alleged bilateral joint venture between Badri and Mr Berezovsky, but what your Ladyship

can do is that where in their written submissions they make allegations about Mr Anisimov's knowledge, where Mr Anisimov has made statements about his knowledge in his witness statements, where Mr Anisimov has been cross-examined about his knowledge, where anything is said about Mr Anisimov and what he knew, your Ladyship is in a position to make, and we say should make, determinations about those matters.

How it plays out eventually in the Chancery case in terms of the bilateral, that's a matter for another occasion and before a different court, but we would submit that your Ladyship should make findings of Mr Anisimov's knowledge on the points because the whole process, including evidence of witnesses and arguments, will not be repeated in the Chancery trial. The Chancery trial is not going to go into Rusal and aluminium assets again because that would be a complete duplication and a waste of the court's time.

Moreover, it specifically makes Mr Anisimov's and Mr Streshinsky's and Mr Buzuk's appearance at this trial a complete waste of time. If their belief, understanding and knowledge is irrelevant to the overlap issues, then there was no conceivable reason for them to waste their time, effort and money coming here as they do not testify directly to Mr Berezovsky's alleged

interest in either the aluminium assets or Rusal; the only conceivable use of their evidence at this trial requires a finding of fact by the court as to their knowledge or belief. And that is exactly the use that Mr Berezovsky seeks to make of their evidence.

If one stands back, can it really be said that in their closing submissions they spend pages and pages going on about what Mr Anisimov knew, and then to say, "Well, you're not meant to make any findings", it just doesn't make any sense what is being said here.

What is really happening in this case is that they know the case has been lost, and what they're trying to do is salvage something for the Chancery Division and they should not be allowed to do that.

Now, the only other point that I make on this is that there is no -- not only is there every reason why this court should not make findings as to Mr Anisimov's state of knowledge about Mr Berezovsky's alleged interest and the aluminium assets and Rusal, but conversely there is no reason why the Chancery court would be put at a disadvantage when considering Mr Anisimov's alleged knowledge of a bilateral joint venture.

This is because any documents in this action that arguably show knowledge specifically of the alleged

bilateral joint venture will obviously be deployed by Mr Berezovsky before the Chancery court.

Insofar as Mr Berezovsky hopes to prove knowledge of the alleged bilateral joint venture simply by showing that Mr Anisimov knew individually about Mr Berezovsky's interest in lots of specific investments, the court does not need to retry the question of whether Mr Anisimov had specific knowledge about Rusal. It will of course remain open to the Chancery court division, the Chancery judge, to find that even if as a result of this trial Mr Anisimov is not shown to have any specific knowledge of any alleged interest in Rusal, he must nevertheless have known of Mr Berezovsky's alleged interest in Rusal and/or the Rusal proceeds received by Badri because he knew about the bilateral joint venture by virtue of knowledge about other assets.

But there are therefore many reasons why this court should, indeed will, need to make findings about Mr Anisimov's knowledge and no obvious reasons why those findings should not be binding for the purposes of the Chancery actions, and therefore we invite the court to make those findings.

My Lady, the last part of my submissions was to deal with a separate point, which are the specific arguments that Mr Berezovsky has advanced to support his

allegation that Mr Anisimov knew about Mr Berezovsky's alleged interest in the aluminium assets and in Rusal.

I think it will take me about 20 minutes to do that so it may be that that's a convenient time to break.

MRS JUSTICE GLOSTER: Okay. I'll take the break now for a quarter of an hour.

(11.41 am)

(A short break)

(12.00 noon)

MRS JUSTICE GLOSTER: Yes, Mr Malek.

MR MALEK: My Lady, the last topic I need to address before your Ladyship concerns Mr Anisimov's alleged knowledge and I can deal with this quickly, not because it's not important but simply because it's covered in our written submissions.

The matters that are relied upon in support of knowledge are the declaration that Mr Anisimov gave in connection with a visa application for a visit to the USA in which he said that the aluminium assets were to the shareholders of Sibneft, that's dealt with in Mr Berezovsky's written submissions at 1137, subsections 1 to 5, which is at page 654. Then there's the documentation prepared by Mr Streshinsky in the course of the second Rusal sale and that's covered at 1137.6 to 7, and then there's the explanatory note, which is 1137

to 1138.

I'm not going to deal with the visa declaration because although we exchanged written submissions we anticipated that that point was going to be made and we covered that in our written submissions. The same in relation to the Streshinsky documents and the emails to Ms Khudyk, and also the FZB compliance report.

So all we need to deal with is the explanatory note, which is at H(E)1/03/4T, that's the English translation, and that's a star late entrant to Mr Berezovsky's case on knowledge. It's listed at 1137.8 as evidence of Mr Anisimov's knowledge although the substantive argument as to its authorship is set out at paragraph 1249 and at page 59 of schedule 1.

We say that the argument is completely overstated. The argument is presented as if the authorship of the explanatory note is obvious, and insinuates that the Anisimov defendants only question its authorship because it is damaging to their case.

The first point we make is that that is a bold assertion given that, as we set out at paragraph 129.5 of our closing submissions, Mr Berezovsky was still accusing various people of drafting the explanatory note as late as his opening submissions. His latest theory that Mr Streshinsky is the author appears to only have

occurred to him during the course of the trial.

What I will now do is go through each of the reasons given by Mr Berezovsky in his closing submissions dealing with this question of whether or not Mr Streshinsky is the author. As I will show, these arguments range from the superficial to the demonstrably wrong.

Let's just go through them very quickly because we haven't done this in our written submissions. The first point is at 1249.1, and the argument here is that the note contains both Russian and English words. That's at 1249, subsection 1, on their closing.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: If your Ladyship could have that perhaps open.

MRS JUSTICE GLOSTER: I've got it.

MR MALEK: Then I can deal with our responses.

In our submission, that hardly narrows this down to Mr Streshinsky. Your Ladyship will know that it's our case, and indeed Mr Abramovich's case, that Mr Kay is the most likely author and he spoke both Russian and English as well.

Now, the next point is the question of where the document was found and the argument there is that it was found in -- I'm just finding the reference to this in my submissions.

The next point is that the argument that the -- in fact, the first point, yes, is English and Russian words, and the next point I think is at 1249.4(a), it says:

"Amongst all Mr Kay's other papers at 11 Grosvenor Place, there is not a single document which Mr Kay appears to have authored in Russian."

That is a very odd submission to make, and your Ladyship will note that there is no reference to support that argument, there's no footnote, and we are not aware of the evidence that supports that proposition. What we can say is that this part of the skeleton is very misleading because, as far as we are aware, Mr Berezovsky's solicitors have not reviewed all the documents at 11 Grosvenor Place but only a proportion of them. Our submission is that this argument ought to be dropped now, or at least Mr Berezovsky should explain when all the documents at 11 Grosvenor Place were reviewed if he's going to substantiate this allegation.

So that's a first point about Mr Kay.

The second point is that the note contains errors in Russian language, and Mr Streshinsky was a dual Russian/English speaker, and that point is made at 1249.2. Our response to that is that Mr Streshinsky's native language is Russian and it's actually very

unlikely that he would make simple grammatical errors. So our conclusion is that that is a factor against Mr Streshinsky being the author.

In fact, there is no basis in fact and no evidence to support the assertion in paragraph 1249.2 that the explanatory note does contain grammatical errors that are replicated in other documents supposedly authored by Mr Streshinsky. Again there is no supporting evidence, this is only mere assertion and we submit should be dropped.

The third point is that Mr Streshinsky would have been familiar with the financial information on KrAZ and the other company that it was envisaged in the information -- explanatory note would be supplied. That's at 1249.3.

Our response to that is that anyone who was familiar with the Russian aluminium industry is likely to have known that Mr Anisimov owns his assets through the Coalco companies. Moreover, Mr Streshinsky's knowledge of the financial information is such that it's most unlikely that he would have referred to the purchase price as being "about 600 million" as the author of the explanatory note states at the top.

He knew what the figure is, he wouldn't have used language like 600 million. Similarly, he knew from

a recent report, and the reference there is to our opening submissions at paragraph 50 and footnote 84, that he knew from a recent report that had valued those assets, a third of the aluminium assets, at 940 million.

As your Ladyship can see, the author of the explanatory note values the assets at 6 to 8 billion. Our point there is that Mr Streshinsky would not have done that.

MRS JUSTICE GLOSTER: Mr Streshinsky said he'd not seen it before and he wasn't the author of the note?

MR MALEK: That's correct. These are the points that are --

MRS JUSTICE GLOSTER: Was it suggested to him in cross-examination that he was the author of the note?

MR MALEK: Yes, it was, and that's why I'm going through these points, at least giving your Ladyship the bullet references.

MRS JUSTICE GLOSTER: Yes, thank you.

MR MALEK: Point four is the one at 1249, subparagraph 4, which is that Mr Berezovsky and Badri are referred to as "the clients". What Mr Berezovsky says is that Mr Streshinsky would have referred to Badri and Mr Berezovsky as "the clients" but Mr Kay would not.

Our response to that is that it's complete speculation that Mr Berezovsky does not even attempt to explain. He gives no reason why Mr Kay would not have

referred to Mr Berezovsky and Badri as "the clients", given that he worked for them, while Mr Streshinsky would have referred to them as "the clients". In fact they were not Mr Streshinsky's clients at all, and there is no evidence that we can point to to suggest that Mr Streshinsky ever referred to Badri as "the client".

You can see that from the compliance memo, the FZB, which is at H(A)77/95, Ms Khudyk's communications which are H(A)76/54 and 57, and the Syndikus fax at H(E)3/22/1 which Mr Berezovsky says is linked to the explanatory note.

In fact, as your Ladyship may recall, Mr Streshinsky's evidence was that he'd never spoken to Mr Berezovsky and confirms that he would not have referred to him as "the clients". That's at paragraph 22 of his statement, F1/02/60.

It's also worth pointing out that in Mr Berezovsky's oral opening, Day 1/55, 10 to 22, my learned friend Mr Rabinowitz explained that Mr Berezovsky and Badri were planning a trip to see Samuelson to discuss moving their assets and Mr Rabinowitz linked the explanatory note to this evidence. Mr Berezovsky and Badri were therefore Samuelson's clients. So again, that point is a bad one.

The fifth point is at 1249, subparagraph 5, which is

that the explanatory note lists Aeroflot as Mr Berezovsky's asset and Mr Kay would have known better. That is a particularly bad argument, as we point out in our closing submissions at 129.6, page 62, where we reference to a number of documents created by Mr Berezovsky's other advisers containing this error.

The indication is that this is something that Mr Berezovsky told his advisers. That ties into the point I made to your Ladyship yesterday that it is hard to take at face value anything said by Mr Berezovsky about his ownership because it seems that he told his advisers that he had an interest in Aeroflot, although he expressly disavowed this.

Indeed, Samuelson in particular is known to have recorded this point, and the reference there is H(A)19/10. Neither Mr Anisimov nor Mr Streshinsky have ever expressed the view that Mr Berezovsky had an interest in Aeroflot. So the conclusion on this point is that that is a factor against Mr Streshinsky being the author, and more likely that one of Mr Berezovsky's other advisers, whether it's Kay or Mr Samuelson, as being the author of this document.

The next point is not any better, which is the point that there are similarities in the layout of the explanatory note and one document authored by

Mr Streshinsky. That's 1169 at 6. In our submission, this is extremely superficial analysis. Most of the formatting points can be made about Mr Berezovsky's own submissions, introductory paragraphs with colons, use of subparagraphs, bold and underlining and bullet points. There are an equal number of differences between the explanatory note and Mr Streshinsky's email to Ms Khudyk that Mr Berezovsky refers to, different fonts, different formatting of headings, different spacing between the numbered paragraphs.

So this evidence is little more than a superficial attempt to compare writing styles which is usually the purview of more sophisticated and complex expert analysis.

Point seven is the final what is described as remarkable evidence that Mr Berezovsky points to, and that's at 1250 at page 720, which is that Mr Streshinsky appears to have envisaged on the steps identified in stage 1 of the explanatory note at exactly the same time as the explanatory note was drawn up -- sorry, was engaged on the steps, I should have said, appears to have been engaged on the steps identified in stage 1.

Another bad point. The date of the explanatory note is certainly not clear, and that's a point that Mr Abramovich's schedule at page 137, commenting on

Mr Berezovsky's closing submissions at paragraph 1250, make. But in fact the only steps that Mr Streshinsky is said to have been involved with is the provision of documents to a third party to help set up an account for Badri, and that's the only one. So this argument is thin to say the least.

So we submit that Mr Berezovsky's case on the explanatory note is speculation, supposition, and a lot of inaccurate and misleading assertions. We in fact agree with what Mr Abramovich says in his closing submissions at paragraph 433, subparagraph 1, that the author of the explanatory note is likely to be Mr Kay in whose offices the document was found.

The other point I would like to make on this is that it is said in paragraph 1252 of Mr Berezovsky's closing submissions, and that's at page 721, that Mr Streshinsky's evidence on the explanatory note is, and I use his phrase, "deeply unsatisfactory". It was only so insofar as it was unsatisfactory to Mr Berezovsky because he did not give the answers that Mr Berezovsky wanted.

In fact when you come to re-read the cross-examination of Mr Streshinsky, you will see that it consists of a whole series of speculative assertions in lengthy speeches at Mr Streshinsky with

Mr Streshinsky having very little to say. But he certainly denied, and this is the point that your Ladyship raised with me, in clear terms that he was the author of the explanatory note, and as set out above in the points I've just made there is no good evidence to show anything to the contrary and a lot of good points to show that he was not the author of the explanatory note.

The only other point I would make on the explanatory note is that the points need to be kept in context. Mr Berezovsky is using speculative inference upon inference to infer, one, that Streshinsky was the author of the explanatory note; two, that Mr Streshinsky therefore knew that Mr Berezovsky was a purchaser of the aluminium assets; three, that Mr Streshinsky told Mr Anisimov about this; and four, that Mr Anisimov therefore knew that Mr Berezovsky was a purchaser of the aluminium assets and therefore had an interest in Rusal. It is a creative case certainly, but it is not credible or a viable case from which to find that Mr Anisimov had any knowledge about Mr Berezovsky's alleged interest in the aluminium assets.

And, of course, the other point to make on this is that, were it true, why did Mr Berezovsky feel the need to make up in his oral evidence a load of direct

conversations with Mr Anisimov which, as we've said to your Ladyship, are simply fiction?

My Lady, that's all I wanted to do, apart from just cover up -- just to make a few corrections and to answer a point made by your Ladyship.

The first point is the transcript of Mr Deripaska's evidence, and I made a mistake which in fact doesn't help Mr Berezovsky but it is a correction that I need to make. I said to your Ladyship incorrectly that no questions were asked --

MRS JUSTICE GLOSTER: Hang on, can you just give me the --

MR MALEK: Yes, it's at Day 29, which I think is in volume 2 of the transcripts, and it's at Day 29, and it's at page 45. This was one of the documents that was put to Mr Hauser -- to Mr Deripaska, and therefore what I said to your Ladyship was incorrect.

MRS JUSTICE GLOSTER: What line on the page?

MR MALEK: I'm not sure where it starts, but the passage concludes at page 45. Your Ladyship asked Mr Deripaska at line 13 on page 46:

"Mr Deripaska, in this first paragraph the suggestion is made that Madison, that's Mr Abramovich's company, is holding the 25 per cent shareholding in Rusal Holdings Limited on behalf of another company, called B Company, or that company's ultimate owners, B.

"Is that something or is that issue something that you knew anything about at that time?

"Answer: No, I was not aware of that in any way."

So it is -- so that corrects what I said to your Ladyship this morning at [draft] page 20 at lines 6 to 11. So if your Ladyship could just note that correction.

The second point is the effect of findings and this touches upon a question that your Ladyship asked. If your Ladyship is prepared to turn down the transcript to page --

MRS JUSTICE GLOSTER: So you made a misstatement at page 20, lines 6 to 11 of today's transcript?

MR MALEK: Yes, and my mistake was when I said that nothing had been asked of Mr Deripaska about the events in 2004 concerning the second Rusal sale where it's quite clear that there was a reference.

MRS JUSTICE GLOSTER: Yes.

MR MALEK: And in fact a clear denial on the part of Mr Deripaska.

The second topic, just by way of wrap-up, is if your Ladyship turns to the transcript for today at [draft] page 12, and your Ladyship said:

"It is relevant for the purpose of this action for me to consider and probably to decide whether the fact

that Mr Patarkatsishvili was paid 585 million reflected an interest which he, Mr Patarkatsishvili, might have had in the assets."

Now, your Ladyship does need to decide on the evidence whether, as Mr Abramovich said, Badri did not acquire an interest in Rusal but was simply paid a debt through the sale of the second tranche of the Rusal shares in 2004.

MRS JUSTICE GLOSTER: Yes, obviously I've got to decide that.

MR MALEK: Yes. Or whether, as Mr Berezovsky says, he and Badri jointly acquired an interest in Rusal in 2000.

The point I just make there is the one your Ladyship I'm sure has that Mr Berezovsky does not allege in these proceedings that only Badri acquired an interest in Rusal in 2000. His case is that he and Badri jointly acquired an interest in Rusal in 2000 and, as the judge said, the finding made by the court in these proceedings will be relevant to the Chancery actions, because, for example, if the court decides that Badri did not acquire an interest in Rusal in 2000 then no such interest can form part of the joint venture that he has to establish.

So that's the point there.

The other point that your Ladyship raised, and this is the third of my miscellaneous points, is that your

Ladyship asked me the question about the deal summary that we looked at earlier, which is at [draft] page 30 of the transcript at 11.15, where your Ladyship asked for the authorship of the document at H(A)18/181 (sic), which, your Ladyship remembers, the point I was making there is it records the fact that the authors did not know of any fact that Mr Berezovsky could have relied upon in order to assert an interest.

The evidence dealing with that is Mr Streshinsky's evidence in his written evidence at F1/02 at page 87 at paragraph 122 F1/02/87, where he gives evidence to the effect that "Around this time, at my instruction, Mr Faekov began to prepare a document entitled 'Transaction with Rusal Holdings'".

As your Ladyship knows, in fact we need to go back, it starts at -- Ms Tolaney reminds me I should read the whole passage or in fact just have the reference. It starts at 121 and we would ask your Ladyship to read 121 and 122. In fact it's 135, it's the whole section. And in fact it shows that they both authored it, so that was the point to your Ladyship's question.

The only other point I would make is that I did go through the references to the bundles quite quickly --

MRS JUSTICE GLOSTER: I've got them all on the transcript.

MR MALEK: What we were going to do is to check them and if

there were any errors to give those corrections to your Ladyship.

MRS JUSTICE GLOSTER: Yes, fine, if you would email them to my clerk.

MR MALEK: Thank you.

Those are my submissions, my Lady.

MRS JUSTICE GLOSTER: Thank you very much indeed, and thank you to the entire team as well.

Yes, Mr Adkin.

Closing submissions by MR ADKIN

MR ADKIN: My Lady, the overlap issues each reflect issues you were asked to decide in the Commercial Court action, and we have sought in our closing document to indicate the paragraphs from the agreed list of issues arising in that action to which each overlap issue relates.

It follows, of course, that we are in the happy position of being able to rely, as we do, on the evidence and submissions advanced on behalf of Mr Abramovich on those issues.

Although each is a separate overlap issue, Mr Berezovsky's case in relation to those issues requires him, we submit, to establish a chain of agreements, each of which is necessary to make out the next. In order to successfully establish that he obtained an interest in Rusal, and therefore in its

proceeds, he needs to show that he had an interest in the aluminium assets merged into it. In order to establish an interest in those aluminium assets, he relies on an agreement said to have been reached between himself, Mr Abramovich and Mr Patarkatsishvili in 1999 by which they amended or agreed to supplement the 1995 agreement.

Since it's common ground that the acquisition of the aluminium assets was in the event funded by a bridging loan, and not Sibneft profits in which Mr Berezovsky can assert an interest, that alleged 1999 agreement is in fact now the only basis upon which Mr Berezovsky is able to assert an interest in the aluminium assets, so that agreement must be made out. And in order to make that agreement out, we submit Mr Berezovsky needs to make out the claimed 1995 agreement. That is because, as all of the Russian law experts were agreed, in order for there to be an effective amendment or an addition to an existing agreement, that existing agreement itself had to be effective. We've set out the references to that expert evidence in our closing document at paragraph 19, footnote 27.

It follows therefore that if there was no effective 1995 agreement, either because it was not made as alleged by Mr Berezovsky or it didn't work under Russian

law, the claims '99 agreement cannot work and the whole of the case on the overlap issue, we submit, collapses.

My Lady, all of the agreements that Mr Berezovsky seeks to rely on were, of course, oral. None of them is recorded or indeed evidenced in writing. None of them resulted in any form of documented ownership interest in Mr Berezovsky. And the only person present on any of the occasions at which those agreements can sensibly have been said to have been made, who supports Mr Berezovsky's story, is Mr Berezovsky himself.

We therefore endorse the submission made on behalf of Mr Abramovich that, in approaching the evidence, unless your Ladyship can have a high degree of confidence in Mr Berezovsky's truthfulness as a witness it's unlikely that he can succeed.

Now, Mr Berezovsky has, through his closing, urged upon your Ladyship a somewhat different approach to the evidence. The theme of the submissions made on his behalf yesterday, as we understand them, was to suggest that there is a large number of evidential matters relating to the Rusal part of the action which cannot be explained in a manner consistent with Mr Abramovich's case, as a result of which it is said Mr Berezovsky's case should be accepted.

We respectfully submit that there is a number of

problems with that approach. The first, of course, is that it amounts to an illegitimate attempt to reverse the burden of proof which lies with Mr Berezovsky. Second, whatever one might conclude as to the consistency of the evidence pointed out by Mr Rabinowitz with Mr Abramovich's case, and we don't accept that the evidence is in fact inconsistent, most, if not all, of the matters relied on by Mr Berezovsky are in fact entirely inconsistent with his own case. A good example of this, we would submit, is the reliance placed by Mr Berezovsky on the five contemporaneous agreements relating to aluminium which might, we would say, fairly be said to be amongst the most significant documents on this part of the case.

Now, Mr Berezovsky is not recorded as a party to a single one of those agreements, nor is he expressly referred to in any of them. The key term which he says was agreed at the Dorchester Hotel, and on which reliance is now placed, the provision that nobody would sell their interest without the consent of others, is wholly absent from any of the subsequent agreements following the Dorchester meeting which your Ladyship has seen.

Another term, the balancing payment of 575 million from Mr Deripaska which is said to have been agreed at

the Dorchester Hotel meeting, is absent from a written agreement which was produced only a few days later.

The remaining terms which are said to have been agreed at that meeting are in fact to be seen in an earlier agreement, all already having been agreed to.

Emphatic representations are made in the July 2004 sale agreement which are completely inconsistent with Mr Berezovsky having had an interest in the Rusal assets.

So, in fact, we submit, on analysis, the only way in which any of those agreements can be said to lend support to Mr Berezovsky's case is the reference in the February 2000 document to "partners", and in the March and May agreements to "other selling shareholders". But of course those are points upon which your Ladyship has had evidence from the draftsmen, including Mr Hauser, a man of undeniable, we would submit, neutrality and integrity, who have all made very clear that such references had nothing whatsoever to do with Mr Berezovsky.

Similar points can be made on various of the other parts of the evidence upon which Mr Berezovsky relies as being inconsistent with Mr Abramovich's case. The point I want to make now is that, whilst your Ladyship will undoubtedly want to test the known facts against the

conflicting evidence of Mr Abramovich and his witnesses, and that of Mr Berezovsky, it is not enough, we would submit, for Mr Berezovsky simply to assert inconsistencies with Mr Abramovich's case unless he can also establish that the known facts are consistent with his own case. That, as we will submit in due course, is a burden, we say, he is unable to discharge on the overlap issues.

Now, my Lady, of course the critical part of the evidence that you will have to assess is that of the witnesses that you have seen. Your Ladyship has received a number of submissions from both sides, which I don't propose to repeat, as to the particular importance of the witness evidence in a case such as this where one is dealing with oral arrangements and the documents are not to be trusted, it being common ground that documents were created which did not properly reflect the true position on both sides of the case.

I want simply to add one further point to the significance of the witness evidence and the role that we submit it should play in your Ladyship's approach to the overlap issues. It is, we submit, a fact of critical importance that, although Mr Berezovsky claims, as he must, that his involvement in the acquisition of the aluminium assets in February 2000, and in the merger

of those assets with Mr Deripaska's business in March 2000, was to be concealed from the documents, he emphatically does not claim that his involvement was to be concealed from those others involved in the deals. In fact Mr Berezovsky claims to have been a, indeed the, key player in both deals and to have met with and negotiated the arrangements with the relevant counterparties.

We've set out the references to Mr Berezovsky's position in relation to the February 2000 deal at paragraph 25 of our closing document.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Mr Deripaska's -- the March 2000 deal of course needs no reference since, as your Ladyship knows, it's a central part of Mr Berezovsky's case that he met with Mr Deripaska and negotiated that merger at the Dorchester Hotel.

Now, if Mr Berezovsky's case is to be believed, there are a number of people on both sides of these deals who must have known of his involvement, indeed who he says he met and with whom he discussed the deals and whose evidence would, if truthful, support his case. Of course, as your Ladyship has seen, Mr Berezovsky's case has received no such support from any of the witnesses from whom you have heard involved in either of these

deals. None of Mr Abramovich, Mr Shvidler, Ms Panchenko, Mr Tenenbaum, Mr Anisimov, Mr Streshinsky, Mr Buzuk, Mr Deripaska, Mr Hauser suggested in their evidence that Mr Berezovsky had any part of any of those agreements. We've summarised their evidence at paragraphs 26 and 27 and paragraph 50 sub 1 and sub 2 of our document.

Even Mr Reuben, who Mr Berezovsky himself called, made clear that he had no particular idea with whom he was dealing and that, quite contrary to Mr Berezovsky's evidence that he'd met and discussed the terms of the sale with him, in fact the whole deal from his side had been negotiated by somebody else. And the references to his evidence we've set out at paragraph 26.1 of our closing document.

Now, the best that Mr Berezovsky is able to do is to rely in large part on the evidence of two witnesses, Mr Bosov and Mr Michael Chernoi from whom your Ladyship has not heard. In fact Mr Bosov nowhere says in the statement that has been filed, which is devoted solely to a disclosure issue, that Mr Berezovsky was a party to the aluminium deal. As to Mr Michael Chernoi, your Ladyship has of course heard submissions as to why very little, if any, reliance can sensibly be placed on his evidence, which is further undermined by the excuse he

proffered for not coming to give it, namely a fear that Mr Deripaska might not go after him, which must on any view have been apparent to Mr Chernoi and indeed those dealing with him from the very time he gave his statement.

MRS JUSTICE GLOSTER: When you say "namely a fear that Mr Deripaska might not go after him", what do you mean by "not go after him"?

MR ADKIN: As we understand it, the excuse Mr Chernoi has principally proffered is that he wasn't willing to come and give evidence on a topic which touched on his claim against Mr Deripaska because there was a possibility that Mr Deripaska might not subsequently turn up and himself be heard and give evidence to the court, thereby obtaining --

MRS JUSTICE GLOSTER: In this action?

MR ADKIN: In this action, thereby obtaining some sort of illegitimate advantage.

The difficulty with that explanation, other than we would submit it lacks any sensible credibility at all, is that it's an explanation which was inherent in the process and which he must have known from the time that he gave his statement.

Now, to overcome the problem that the witness evidence presents for him, Mr Berezovsky has been

compelled to assert the existence of what, as we understand it, amounts to a substantial conspiracy to deceive your Ladyship. It's important to note that this conspiracy must, on the logic of Mr Berezovsky's case, extend not only to Mr Abramovich and his close advisers and those who have given evidence on his behalf, it must also of course extend to Mr Deripaska, and it must also, of course, extend to Mr Anisimov and the witnesses called by him.

It is similarly important, we would suggest, to note that the conspiracy must also encompass witnesses, most notably Mr Streshinsky and Mr Buzuk, who have no continuing association with any of the key players in this case and no apparent axe to grind at all. We've set out references to that point at paragraph 28 of our skeleton.

Now, I don't propose to add to the submissions that your Ladyship has already heard on the credibility of the witnesses arrayed against Mr Berezovsky, but we respectfully submit that the claims of widespread dishonesty advanced on Mr Berezovsky's behalf come nowhere close to being supported by the few peripheral points relating to dressing gowns, Dr Evil texts and the like, which Mr Berezovsky's team have been able to make out about credibility of witnesses.

Now, Mr Berezovsky, of course, was his own principal witness on the Rusal issues. Indeed he was the only witness from whom your Ladyship has heard with any direct involvement in the aluminium agreement who stated that he was a party to them. We have set out our submissions on Mr Berezovsky's own credibility at paragraph 8 of our closing document. You've had the main points from Mr Sumption and Mr Malek and I don't propose to repeat them.

What I do want to do, my Lady, is to add one further point about Mr Berezovsky's character which we submit is of some significance and with which one suspects he might himself agree. Mr Berezovsky is a man who recognised the importance of being politically powerful and being seen to be powerful. Indeed, it is his evidence that, after he survived the assassination attempt against him in 1994, he realised that the key to success in business was the acquisition of power and influence. One sees that from his fourth witness statement at paragraphs 40 to 41 at D2/17/205. Of course, as the enumerable contemporary references to Mr Berezovsky and his activities in the press illustrate, it can, we submit, fairly be said that Mr Berezovsky was keenly interested in being seen to be powerful.

Now, that facet of Mr Berezovsky's character is significant to a number of the issues in this case but, for the purposes of the overlap issues, we submit it is of considerable importance when one comes to consider the evidence as to the circumstances and reasons for why the Dorchester Hotel meeting took place.

Before finishing with dealing with the witnesses, my Lady, I should also address the suggestion made on Mr Berezovsky's behalf that the family defendants are somehow in Mr Abramovich's pay and have participated in some sort of deception. The foundation of that allegation appears to be a suggestion made by Mr Berezovsky that the family defendants have changed their tune on Rusal and have done so because they have been bought off by Mr Abramovich. That was set out in Mr Berezovsky's written opening at annex B; it was not reprised in the written closing but it was by Mr Rabinowitz yesterday.

MRS JUSTICE GLOSTER: Well, it's said you said something inconsistent or members of the family said something inconsistent in the Gibraltar litigation.

MR ADKIN: My Lady, yes.

The further suggestion was made, very seriously, that the reason why the tune has been changed is because the family has been bought off.

Now, when I moved to address that suggestion in opening, your Ladyship, with respect quite rightly, indicated that it would be more helpful if it was dealt with at the end of the trial, after hearing the relevant evidence. The reference for that is Day 2, page 143, line 4 to page 144, line 25. Now, in the event, there has been no relevant evidence on that point and that is because Mr Berezovsky at no stage saw fit to put the very serious suggestion that he had bought off the family defendants to Mr Abramovich or indeed any other of his witnesses. We submit, with respect, that if that sort of allegation was to be pursued, it needed to be put and it is simply not open to Mr Berezovsky to resurrect it now.

In fact, the family defendants had in their pleadings made clear that they would, if appropriate, rely on Mr Abramovich's position in the Abramovich action at a time long before it was directed that these two claims be tried together and, therefore, long before they could offer any particular support to Mr Abramovich in the way alleged. The references to that are paragraph 85 of the family's defence at M1/06/229, a paragraph which can be seen was introduced in March 2010, M1/06/180, the idea of a joint trial first being canvassed before Mr Justice Mann in May 2010

at I1/04/115.

After the suggestion that the family defendants have changed their tune, the suggestion was made yesterday that Mr Patarkatsishvili's widow and daughters had previously given evidence in Gibraltar that recognised Mr Berezovsky's and Mr Patarkatsishvili's interest in Rusal and Sibneft. That is not in fact the case in relation to the daughters, one of whom gave no evidence in Gibraltar at all and one of whom gave very brief evidence there which made no mention of Rusal or Sibneft.

So far as Ms Goudavadze is concerned, it is true to say that, in answer to a question whether Mr Patarkashivili sold a number of assets when he left Russia which were listed by the cross-examiner and which included Rusal and Sibneft, Ms Goudavadze replied yes. One sees that at S1/1.13/201, in the minuscript, page 109, lines 1 to 9.

We respectfully submit that the weight that has been sought to be placed by Mr Berezovsky on that answer, given in wholly unrelated proceedings to which Rusal and Sibneft was entirely irrelevant, is rather greater than it will bear.

Ms Goudavadze can hardly be criticised for having previously concluded that Mr Patarkashivili had

an interest in Rusal --

MRS JUSTICE GLOSTER: Can you just give me the reference again? It hasn't come up in the transcript.

MR ADKIN: That is S1/1.13/201. I referred your Ladyship to the minuscript within the page which is 109, lines 1 to 9.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: In fact, the available documents, namely the July 2004 sale document, showed on their face Mr Patarkatsishvili to have had an interest and indeed it's common ground that, for at least a time in July 2004, Mr Patarkatsishvili did acquire such an interest which was then immediately sold to Mr Deripaska.

Now, the fact is, as Ms Goudavadze had alluded to in the preceding line of her cross-examination, her knowledge of many of Mr Patarkatsishvili's and Mr Berezovsky's financial affairs prior to and in the time immediately following her husband's death was seriously limited, not least because Mr Berezovsky and his associates, Dr Nosova and Mr Lindley being prominent amongst them, had refused her access to the relevant material. That is a theme in fact picked up by the family defendants in their pleading in the Chancery actions, and your Ladyship has the references at

M1/06/187, paragraph 4, and M1/06/268, paragraphs 170 to 197.

Of course, as the family defendants have obtained greater access to documents and heard what Mr Abramovich has had to say, they have had every reason to conclude that Mr Berezovsky's account of events is untruthful. Now, we respectfully submit that the indignation with which the attacks on the family defendants have been pursued is particularly misplaced given that the most serious of the allegations thrown out by Mr Berezovsky, that they've been bought off by Mr Abramovich, was simply not put, and the person throwing that particular stone, Mr Berezovsky, is in an especially vulnerable glass house given the evidence of his own concealed commission agreements with his own witnesses, Dr Nosova and Mr Lindley.

Finally on this, my Lady, I ought to deal with the suggestion that's been made that the family defendants' position departs from what has been described as Mr Patarkatsishvili's own evidence on the Rusal issues. This is a point which, we respectfully submit, has been grossly overblown. Repeated reference has been made on behalf of Mr Berezovsky, both in his written and oral closing, to Mr Patarkatsishvili's evidence. Mr Patarkatsishvili, of course, has not and is not in

a position to give any evidence. Indeed, none of the draft witness statements attributed to him were signed by him, nor is there any real evidence that he ever saw or approved of their contents or of the contents of the notes or conversations with him.

Now, it would in our submission be quite wrong, as Mr Berezovsky has on occasion sought to do, to elevate these various drafts, lawyers' notes et cetera, to the status equivalent to as if Mr Patarkatsishvili had actually come to court, appeared before your Ladyship, taken an oath and given evidence. Indeed it's a particular irony that Mr Berezovsky seeks to disregard the limitations inherent in comments or instructions given to lawyers in circumstances where he has, in his own evidence, frequently sought to resile from statements his own lawyers have made on his behalf.

But whatever may or may not be derived from the comments Mr Patarkatsishvili made at various times to Mr Berezovsky's various lawyers, about which your Ladyship has heard a very great deal to which I don't propose to add, two things can safely be said about Mr Patarkatsishvili's own position in relation to Mr Abramovich prior to his death, namely that he remained on entirely friendly terms with Mr Abramovich and that he did not join with Mr Berezovsky in suing

Mr Abramovich in respect of matters which, if Mr Berezovsky is to be believed, Mr Patarkatsishvili had an equally valid claim. Indeed, he allowed the limitation period, on any view, for such claims to pass before he died.

Now, the characteristics to be attributed to Mr Patarkatsishvili, if Mr Berezovsky's story is right, are, we would suggest, deeply dishonourable ones.

MRS JUSTICE GLOSTER: Just a second, Mr Adkin. You made the point that he didn't join with Mr Berezovsky in suing Mr Abramovich. Can you just remind me of the chronology? When did Mr Patarkatsishvili die and when was the writ issued?

MR ADKIN: The writ was issued in 2007, Mr Patarkatsishvili died in February 2008.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: My Lady, the characteristics to be attributed to Mr Patarkatsishvili, if Mr Berezovsky's story is right, are, we would suggest, deeply dishonourable ones. He suggests, that is Mr Berezovsky suggests, that Mr Patarkatsishvili was prepared to continue to pretend to Mr Abramovich that he was his friend and to do so over a great many years, indeed to within weeks of the alleged intimidation of Mr Patarkatsishvili in May 2001, to go and see Mr Abramovich, invite Mr Abramovich's wife

and Mr Abramovich to join him in his home in Georgia, generally entertained them and generally behaved in a thoroughly friendly way. That is all seen from Mr Abramovich's seventh statement, paragraphs 12 to 13, E8/18/219, which evidence has not been challenged.

We respectfully submit that the reason Mr Patarkatsishvili continued to be friendly with Mr Abramovich is because he was his friend.

My Lady, overlap issue 1, the acquisition of the aluminium industry assets. We've dealt with that issue at paragraphs 13 to 42 of our closing document.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: The principal points on the evidence have already been set out there, and also of course by Mr Sumption and Mr Malek in their oral closings.

I want to add only a very few further points. Now, in the absence of any documented interest in the aluminium deals struck in February 2000, or of any supportive witness evidence from those involved, Mr Berezovsky's evidence on this overlap issue, we submit, boils down to two things.

First, a claim that he can show himself to have made some sort of contribution to the acquisition of those assets, and, second, a pointing to the presence of Mr Patarkatsishvili and Mr Shvidler on the documented

agreement from which, he suggests, it can sensibly be inferred that he was a party to it as well.

So far as the claimed contribution is concerned, we submit there's very little significance(?) to what Mr Berezovsky says. He says that it was agreed that the acquisition would be funded from Sibneft proceeds, though since in the event the acquisition was funded from a bridging loan paid off from the proceeds of the subsequent merger with Mr Deripaska, we only have Mr Berezovsky's word to go on that.

Mr Berezovsky also says that his contracts with General Lebed were critical. It is not at all clear why. None of the witnesses, not even Mr Berezovsky himself, has suggested that General Lebed played any particular part in the deal. It's also said, and this was a point repeated by Mr Rabinowitz in his oral closing, that General Lebed confirmed Mr Berezovsky's involvement in the deal by making certain statements in the media. The short answer to that point is that he didn't.

In fact, as your Ladyship will see from the article relied on by Mr Berezovsky at H(A)18/71.003T, what General Lebed in fact said was that the main purchaser was Mr Abramovich. He refuted any suggestion that Mr Berezovsky was going to buy some of the aluminium

shares, and he said that Mr Berezovsky was a middleman, a position which is consistent with nobody's case and which, again, underscores the difficulties of relying on what's said in the papers.

Finally, Mr Berezovsky says that the deal -- that he, as it were, brought the deal to Mr Abramovich and Mr Patarkatsishvili because the deal was brought to him by Mr Bosov on behalf of the vendors. The difficulty with that proposition --

MRS JUSTICE GLOSTER: Sorry, can I just go back to the article.

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: Where do you say --

MR ADKIN: It's right at the bottom, my Lady.

MRS JUSTICE GLOSTER: I've got it on my screen, the document. Yes, I've got it, thank you.

MR ADKIN: Your Ladyship has it.

Now, the difficulty, we submit, with the proposition that the deal was brought to Mr Berezovsky by Mr Bosov is that we only in fact have Mr Berezovsky's word for that. Furthermore, Mr Berezovsky himself said in his evidence that Mr Anisimov had already taken the deal to Mr Patarkatsishvili and that Mr Bosov's role was considerably overplayed. One sees that from the transcript, Day 9, page 9, line 21 to page 10, line 2.

So there is, we submit, nothing of substance in Mr Berezovsky's first suggestion that he made some form of contribution to the deal.

This second suggestion relies on the master agreement in which Mr Berezovsky points to Mr Patarkatsishvili and Mr Shvidler being named along with Mr Abramovich as parties to it. My Lady, if Mr Berezovsky's claim to have participated in the purchase of the aluminium assets is to have any credibility, one would, we submit, at the very least expect him to be able to present a coherent case as to who his partners in that venture actually were.

The case which has emerged in Mr Berezovsky's written closing is that Mr Shvidler, as well as Mr Patarkatsishvili and Mr Abramovich, was his partner in that venture. That is set out in the written closing at paragraph 61, sub 1, paragraph 1113, paragraph 1114, paragraph 1143, sub 4, and paragraph 1149, sub 1, sub (b).

That is a case which appears to spring entirely from the reference to Mr Shvidler in the definition of "Party 1" contained in the written agreement. Indeed it is a case that Mr Berezovsky has to make if the point about Mr Patarkatsishvili and Mr Shvidler being parties to the master agreement is to be any good to him,

because if Mr Shvidler was not in reality a co-investor then his presence on that agreement is not at all inconsistent with what Mr Abramovich says.

Now, the assertion that Mr Shvidler was Mr Berezovsky's co-investor is, we submit, yet another very clear example of Mr Berezovsky massaging, indeed changing his story in order to fit the facts when he thinks it might help him to do so. It is in fact a case which is entirely inconsistent with Mr Berezovsky's previous position and with his pleaded position. Mr Berezovsky has never before suggested that Mr Shvidler was a party to that deal. It's not the position that Mr Berezovsky maintains in his pleadings, one sees that from the particulars of claim in the Commercial Court action at paragraph C59 to C62, A1/2/26 to 27 A1/2/26, nor was it in fact a point mentioned by Mr Berezovsky in his evidence.

The claim that Mr Shvidler was a co-purchaser of the aluminium assets, which is now pursued with such vigour in Mr Berezovsky's written closing, is also, of course, hopelessly inconsistent with the remainder of Mr Berezovsky's case. It is, of course, his case that the aluminium acquisition deal was simply an extension of the 1995 agreement, an agreement which he has never suggested and does not now suggest included Mr Shvidler.

It is also Mr Berezovsky's case that it was agreed that the aluminium assets would be paid for out of the Sibneft profits yet nobody has suggested that Mr Shvidler had any entitlement to any part of those profits. And it's impossible to understand how, on Mr Berezovsky's case, he would have acquired(?) an entitlement to the aluminium assets to be purchased with them.

It is also in fact a case which is inconsistent with the Curtis notes upon which Mr Berezovsky places such great reliance.

Now, Mr Berezovsky's belated attempt to suggest that Mr Shvidler was a co-investor in the aluminium assets, we submit, simply illustrates the extent to which he is willing to drop one story and pick up another to fit what he perceived to be the evidence that might help him, and that he has in fact no true idea as to the true nature of the deal in which he claims to have participated.

My Lady, before moving on from the first overlap issue I should say something briefly about the Patarkatsishvili commission agreements. Now, the significance of those documents in support of Mr Abramovich's case is of course obvious and has been developed in his closing by Mr Sumption. In an attempt

to draw the sting out of those documents, it's been suggested on Mr Berezovsky's behalf that they were somehow produced after the Dorchester agreement had been made for money-laundering purposes to enable Mr Patarkatsishvili to obtain funds for a plane which, it is common ground, he would obtain by way of commission.

Now, we submit that that suggestion, which appears to be based solely on the fact that the relevant documents were found in a box with the name of a particular bank crossed out, is hopeless for all the reasons set out orally by Mr Sumption and in the various skeleton arguments that your Ladyship has received from the defendants.

We also note that this particular piece of inventiveness in relation to the commission agreements does not sit at all well with Mr Berezovsky's case on the explanatory note which is relied on by Mr Berezovsky as an accurate account of what happened but, in fact, records the commission agreements as being for the benefit of both Mr Berezovsky and Mr Patarkatsishvili, something which cannot be squared with the suggestion now made that the commission agreements were produced simply for the purpose of allowing Mr Patarkatsishvili alone to receive a plane.

We also submit that Mr Berezovsky's position fails to deal with a further and more fundamental question which is why, if Mr Patarkatsishvili was as he says a principal to this agreement, he was being paid any commission at all.

Now, I should add a further point which arises out of Mr Berezovsky's case in relation to the commission agreements which is this, the suggestion that they were manufactured for essentially a money-laundering purpose does at least recognise one plain fact amongst the vast amounts of material in this case that Mr Berezovsky has so far been unwilling openly to acknowledge, which is that a great many documents were manufactured to legitimatise payments to be received by Mr Berezovsky and Mr Patarkatsishvili in the west.

My Lady, I was about to turn to the second overlap issue. If this is a convenient moment --

MRS JUSTICE GLOSTER: I will rise now. 2 o'clock.

(12.59 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Adkin.

MR ADKIN: My Lady, over lunch, it's been pointed out to me that there are some corrections I need to make to the transcript.

The reference to bundles at [draft] 76, lines 18 and 20 is to "N" for November, it should be to "M" for Mike.

At [draft] 73/23, it records me as saying that Mr Berezovsky was able to make out a number of criticisms about Mr Abramovich --

MRS JUSTICE GLOSTER: Yes, I wondered about that.

MR ADKIN: If I did say that I certainly didn't mean it. We don't accept that any of the various criticisms that have been made about Mr Abramovich's witnesses have any validity at all.

MRS JUSTICE GLOSTER: Yes, I assumed you weren't making a concession there.

MR ADKIN: My Lady, no.

Finally, your Ladyship asked me about the issue of Mr Berezovsky's claim against Mr Abramovich in relation to Mr Patarkatsishvili's death. Your Ladyship will see from the claim form that Mr Berezovsky issued his claim against Mr Abramovich on 1 June 2007, that can be seen from K2/2/4. That of course is over six/seven/eight months before Mr Patarkatsishvili died.

MRS JUSTICE GLOSTER: I have it all in the chronology but I just wanted to be in touch there.

MR ADKIN: My Lady, yes.

My Lady, overlap issue two, the Dorchester meeting. We deal with that at paragraphs 43 to 72 of our closing

document, and your Ladyship has already heard the principal points on it from Mr Sumption and Mr Malek to which I wish to add very few.

The first point that I want to add concerns the circumstances in which the Dorchester Hotel meeting can be shown to have come to be arranged. Now, it was Mr Berezovsky's evidence that the Dorchester meeting was a pre-planned summit of principals at which the key terms of the merger deal were finalised and agreed. And he said that the meeting had been arranged to take place in London and that such arrangement had been made some seven to ten days before in fact it occurred.

The reference to that in Mr Berezovsky's cross-examination is set out in our closing at paragraph 51.1, to which I would invite your Ladyship to add a reference in Mr Berezovsky's witness statement as well, fourth witness statement, paragraph 274 at D2/17/255.

Conversely, it was Mr Abramovich's evidence that the meeting was a last minute arrangement which was only set up on 12 March at Mr Berezovsky's request, indeed insistence, after Mr Abramovich had returned to Moscow and reported to Mr Patarkatsishvili the deal that he'd just concluded with Mr Deripaska, a matter in which Mr Patarkatsishvili can fairly be said to have had an

interest given his commission arrangements with Mr Abramovich in relation to aluminium.

We submit, with the greatest of respect to Mr Berezovsky, that his evidence on how the Dorchester meeting came to be arranged and came about simply cannot be true. We know, both from their evidence and also the passport stamps, that Mr Abramovich and Mr Shvidler flew back to Moscow from London on Sunday 12 March, the very day before the Dorchester meeting occurred. It appears also that Mr Deripaska flew back from London to Moscow at around the same time. That suggestion is supported by Mr Berezovsky himself in his closing document at paragraph 1184.

Now, my Lady, it is impossible to understand why these people would have flown from London to Moscow on 12 March if they knew, as Mr Berezovsky says they must have known, that there was to be a summit meeting in exactly the same place, London, the very next day. Indeed, the difficulties with Mr Berezovsky's evidence on this topic are further underscored by the fact that Mr Berezovsky himself can be shown to have arrived in London on 12 March and, therefore, been in exactly the same place on exactly the same day as Mr Abramovich, Mr Shvidler and Mr Deripaska, the people he summoned back to attend the meeting at the Dorchester Hotel the

following day.

Mr Berezovsky's passport stamp shows him arriving in London on 12 March, that's at R(I)1G/30/15, and that is of course consistent with the evidence of Ms Gill, the Carter Ruck lawyer acting for Mr Berezovsky in the Forbes appeal to the House of Lords, who said that Mr Berezovsky was attending the hearing of that appeal the very next morning.

We submit all of this goes to demonstrate that Mr Berezovsky's case for the Dorchester meeting was a pre-arranged summit of principals arranged to thrash out the terms of a merger deal --

MRS JUSTICE GLOSTER: Sorry, why is Mr Berezovsky coming into London on 12 March something that goes to support your analysis as opposed to his analysis?

MR ADKIN: My Lady, we say this, because if as Mr Berezovsky says this was a pre-arranged summit of principals, what on earth were those principals doing --

MRS JUSTICE GLOSTER: I can see the point you're making in relation to Mr Abramovich and Mr Deripaska but I can't see why that is supported by Mr Berezovsky flying in on 12 March.

MR ADKIN: Because they could have had the meeting on the 12th when they were all in the same place at the same time. Mr Berezovsky must have known long in advance

that he would be in London on that date because he was attending a no doubt long-in-the-diary fixed hearing at the House of Lords. We submit it simply defies belief, if there was indeed a pre-planned meeting of these people, that half of them should have flown from one city to another at the very same time that the others flew into that city and the very day before they were all going to have to fly back there. It simply beggars belief.

Now, doubtless recognising that problem, those tasked with drafting Mr Berezovsky's closing document have in fact departed wholesale from Mr Berezovsky's evidence on this particular topic and now appear to accept that the Dorchester meeting was indeed a last-minute arrangement put together at very late notice.

MRS JUSTICE GLOSTER: Where was Mr Berezovsky flying in from?

MR ADKIN: I'm so sorry?

MRS JUSTICE GLOSTER: When was Mr Berezovsky flying in from?

MR ADKIN: That I'm afraid we don't know. Or if we do, I don't.

The departure from Mr Berezovsky's own evidence in his closing is to be seen from paragraphs 1192, 1199 and 1548, sub 2 of that document. Now, the problem with

that, quite apart from the fact that it is wholly at odds with Mr Berezovsky's own evidence, is that it is impossible to make sense of it in a way consistent with his case. If it is right, as now appears to be accepted, that the Dorchester meeting was arranged at the very last moment on 12 March 2000, the question arises: what happened on that day to cause the meeting to come about?

Now, Mr Abramovich's evidence provides a ready answer to that question. What happened is that Mr Berezovsky found out about the merger, was informed about it, and insisted that his protege, Mr Abramovich, attend the meeting to tell him about it.

Mr Berezovsky's case, indeed his evidence, is totally contradictory to that and provides no explanation at all.

Now, my Lady, there is a further and we say important way in which Mr Berezovsky's case on the Dorchester Hotel has experienced a significant shift in his closing submissions. Faced with the difficulty of trying to provide a reason for the Dorchester meeting consistent with the rest of the evidence, Mr Berezovsky's team have, at paragraphs 1175 and 1199 of their closing document, departed from what we understood to be Mr Berezovsky's case, and indeed his

evidence, that the event was a prearranged meeting of principals at which the terms of the merger deal were arrived at, and now suggest that the Dorchester meeting came about because Mr Abramovich had to make good on what they claim was a promise, contained in clause 4.2 of the preliminary agreement with Mr Deripaska, that his "partners" would consent to the merger deal which had already been done.

Now, there are, we submit, a number of problems with that proffered explanation. First, as the evidence makes clear, the reference to "partners" in that particular clause of the preliminary agreement is not in fact a reference to Mr Berezovsky at all. You've heard submissions on the point from Mr Sumption and Mr Malek and I don't propose to repeat them.

Second, the suggestion is wholly inconsistent with Mr Berezovsky's own evidence. It was his evidence not only of course that the meeting was planned seven to ten days before, but that the terms of the merger were actually negotiated and agreed to at the Dorchester Hotel, which is a far cry from the suggestion now advanced that it was simply an occasion on which he signified his approval to a deal already done.

Third, if, as Mr Berezovsky's submissions suggest, the preliminary agreement envisaged from the outset that

there would be some occasion in the future on which Mr Berezovsky was to signify his consent to it, it is impossible to understand why that occasion was not planned well in advance rather than arranged, as it evidently was, at the very last moment at great inconvenience to all concerned.

Finally, if the true purpose of the Dorchester meeting was to obtain Mr Berezovsky's consent to the preliminary agreement, which he says had been signed on his behalf by Mr Abramovich a number of days or weeks before, it is difficult, we would submit impossible, to understand why no reference was made to that agreement and no copy of the agreement was produced, indeed why Mr Berezovsky never saw a copy of the agreement at all, which we understand it to be common ground he did not.

The fact is, my Lady, that the circumstances in which it is clear the Dorchester meeting came to be organised are entirely consistent, on analysis, with Mr Abramovich's evidence as to why it happened, and entirely inconsistent with Mr Berezovsky's own evidence and his case, whether taken in its original form or in its rejigged form as set out in his closing document.

The next point I want to deal with is the effect of Mr Berezovsky's case on ORT and Devonia as it relates to the overlap issues. Now, of course, Mr Berezovsky must

live with the consequences of his Sibneft case when it comes to considering what he says about Rusal. We submit that those consequences are rather significant. We set out some of those at paragraph 52 of our closing document and I want to develop some of those points.

It is at the heart of Mr Berezovsky's case that from December 2000 onwards he was forced by Mr Abramovich to sell out first of ORT and second of Sibneft at a knock-down price on a promise that Mr Glushkov would be released, a promise which Mr Berezovsky says Mr Abramovich broke not once but twice.

Now, against that background, Mr Berezovsky would have it believed, in relation to Rusal, first, that he was entirely content to remain partners with Mr Abramovich in the company and leave the valuable asset in the hands of Mr Abramovich without making any attempt whatever to obtain a record or acknowledgement of his ownership interest in it, and, second, that despite Mr Abramovich's ruthless intention to force Mr Berezovsky out of Sibneft for a song, and turn his back on his former mentor, he balked at doing the same in relation to Rusal and indeed continued diligently for the following four years to pay dividends to Mr Berezovsky.

Now, we respectfully submit that Mr Berezovsky's case, as it relates to his continuing interest in Rusal, makes very little sense when considered against the backdrop of what he said happened in relation to Sibneft.

There is a further point which we submit can fairly be made on this. The evidence shows that Mr Berezovsky and Mr Patarkatsishvili were in fact aware that the $1.3 billion Devonia payment was actually derived from Rusal profits. That is referred to by Mr Jacobson in his witness statement at D2/16/126, a point developed in cross-examination at Day 13, page 134, lines 1 to 6.

Now, if Mr Berezovsky and Mr Patarkatsishvili truly believed that they had an interest in Rusal, it is hard to understand why they were willing to be paid for what Mr Berezovsky says was their interest in Sibneft from what must have been their own monies.

My Lady, finally on this point, I want, if I may, to deal with the point Mr Rabinowitz described as "follow the money". The problem with this point, from Mr Berezovsky's point of view, is that it is quite plain from the evidence that he had no idea whether he was receiving any of the monies to which he says he was entitled or indeed where the money actually went.

So far as the alleged Rusal profits are concerned,

the suggestion that Mr Berezovsky received any profits at all, let alone the amount of them, is not one born of Mr Berezovsky's own knowledge. It is simply constructed from the available evidential material, and we've set the point out in our closing.

Mr Berezovsky's own evidence is that --

MRS JUSTICE GLOSTER: What paragraph are you referring to?

MR ADKIN: I'm so sorry, my Lady, I've missed the paragraph from my submissions, I'll make sure your Ladyship has it in due course.

Mr Berezovsky's own evidence is that he had no idea whether he was receiving any Rusal profits but feels sure that, if he was not, Mr Patarkatsishvili would have told him.

Now, in light of the fact that Mr Berezovsky says that he catastrophically fell out with Mr Abramovich at the end of 2000, the suggestion that he paid no regard to whether he received what was due to him from Mr Abramovich in relation to Rusal over the ensuing four years is, we submit, difficult to credit.

So far as concerns the amounts actually paid over by Mr Abramovich, and which Mr Berezovsky claims represent profit payments, those of course payments of which it is common ground he was entirely unaware, we would submit that there is in fact a fair amount of common ground as

to the circumstances in which those payments were made, and we set this out at paragraph 61 of our closing document.

It is common ground that, following the Devonia transaction, Mr Patarkatsishvili approached Mr Abramovich and asked him for more money to compensate for the very considerable costs associated with that transaction, including in particular the large sums of commission which had to be paid to legalise the money. It also appears to be common ground that very substantial sums of commission were indeed paid under the Devonia deal, including to the sheikh, to Mr Curtis, to Mr Kay and others.

I should also add that it is also common ground that, in respect of the prior transaction between Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich, namely the sale of ORT, substantial commission costs associated with that deal were indeed met to the tune of over 10 per cent of the value of the deal by Mr Abramovich. One sees this in the bolshoi balance.

The only issue in dispute therefore is whether, when Mr Abramovich was approached by Mr Patarkatsishvili and asked to contribute again to the costs that had been incurred in the Devonia transaction, Mr Abramovich said no, as Mr Berezovsky claims he did, or whether

Mr Abramovich said yes, as he claims he did.

If, as we submit the evidence suggests, Mr Abramovich did say yes, then this provides a ready explanation for the sums that can in fact be shown to have been paid from Mr Abramovich to Mr Patarkatsishvili and Mr Berezovsky between 2003 and 2004. It is also of course entirely consistent with what happened in relation to the ORT transaction.

Now, the suggestion that these monies were in fact representative of Rusal profit entitlements to which Mr Berezovsky -- which Mr Berezovsky was entitled to receive is further undermined by the fact that he is unable to point to a single piece of evidence which suggests any attempt to calculate any entitlement to such profits, or to corrolorate (sic) the payment of the profits -- the payments shown to have been made to any profits actually made by Rusal, and the fact that it is clear from the bolshoi balance that nothing which could sensibly be said to represent Rusal profits was in fact paid to Mr Patarkatsishvili or Mr Berezovsky in the period which it covers in 2000 and 2001.

So far as concerns the proceeds of the second Rusal sale in July 2004, I really want to deal with these very briefly but to emphasise quite how little evidence Mr Berezovsky is in fact able to give about what

happened to these monies, to take Mr Rabinowitz's words, how completely inadequately he is in fact able to follow the money.

Indeed, when asked in cross-examination, Mr Berezovsky admitted that other than the alleged investment made in Metalloinvest, also referred to as MGOK, he had absolutely no idea where the 585 million went. That is at Day 10, page 120, line 16.

My Lady, I don't propose to add to any of those points. Your Ladyship has already heard at considerable length on the Curtis notes, the Le Bourget transcript and all the other various bits of evidence which Mr Berezovsky relies on. I don't think I need to add to what's been said and what's in the closing submissions.

I want therefore, if I may, to move on to overlap issue three, which is the express English law trust. I propose to say very little on that. Your Ladyship has already heard a great deal about it and it's dealt with in our closing document at paragraphs 73 to 78.

We submit that there has, in relation to the claimed express English law trust, been a tendency in Mr Berezovsky's closing document, which has been repeated by Mr Rabinowitz orally, to elide two rather different concepts.

Great reliance is placed on the proposition that it

was agreed that the terms of the merger with Mr Deripaska were to be governed by English law, and reference is made to the English law clause there undoubtedly was in the prior preliminary agreement, though how far that point goes is questionable given that Mr Berezovsky admits he never saw that document. It is suggested on the back of all of that that, in the circumstances, it was perfectly natural for the parties to the Dorchester meeting to have agreed that the terms of their merger would be governed by English law.

Now, my Lady, we submit that the problem with all of this is that it overlooks the case which Mr Berezovsky actually makes and needs to prove. That is not a case as to an express choice of any particular system of law to govern the merger agreement. It's a rather different proposition, that there was a specific agreement between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili that the interests to be created in Rusal would be held subject to a trust and that that trust would be governed by English law. That is an arrangement which is in fact said to have been made between the three of them prior to the Dorchester meeting and reaffirmed by them at that meeting.

Now, we respectfully endorse Mr Sumption's submissions that that proposition is difficult to credit

and we seek to add some points on the inherent implausibility of this at paragraph 75 of our written closing. It is simply incredible, we would respectfully submit, that any parties to a trust agreement should have considered it more important to select a system of law to govern that agreement than to bother to write the agreement down. That is an even more incredible suggestion in relation to these particular parties who, on Mr Berezovsky's own evidence, never in a million years contemplated falling out and trusted each other completely.

They therefore had absolutely no purpose which anybody has been able to identify in agreeing a system of law to govern their relationship which could only be of any relevance in relation to Mr Abramovich, Mr Patarkatsishvili and Mr Berezovsky in the event that they might actually fall out, an event which Mr Berezovsky himself acknowledged none of them ever considered might be feasible.

It's all the more incredible, we submit, when one considers Mr Berezovsky's own evidence that he had very little idea of how English trusts worked, had never come across one in oral form, neither sought nor received English law advice, and therefore, one must assume, had absolutely no idea, even on his case, to what he says he

was agreeing to.

It is, we submit, similarly incredible that they all should have solemnly reaffirmed this particular agreement, said to have been reached between the three of them prior to the Dorchester meeting, reaffirmed that agreement at the Dorchester meeting when, on the face of it, the terms upon which Mr Abramovich was to hold the assets for Mr Patarkatsishvili and Mr Berezovsky were nothing to do with Mr Deripaska and irrelevant to anything that they actually had to discuss on that occasion.

On the validity of any express trust, and on the resulting and constructive trust case, I don't propose to add anything to what your Ladyship already has in my written document at paragraphs 76 to 81, or indeed to the submissions from the other defendants. That therefore covers overlap issue four.

So far as regards the final overlap issue, which is related to how the proceeds of the second Rusal sale are to be regarded, that issue of course will turn on your Ladyship's findings on the preceding issues and I need say no more about it.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: Finally, my Lady, it's right that I should mention something about the experts which I've called

and who have been subject to a great deal of criticism by my learned friend in closing.

A great deal of time has been taken up in Mr Berezovsky's document making various criticisms of the historical experts, including Professor Bean who of course was called by me. I'll deal with those criticisms in due course, briefly, but so far as concerns the Rusal part of the claim, we submit that they are largely beside the point. The reason for that is that all three history experts were agreed that whatever the position may have been in the early to mid-1990s, by 2000, which of course is the relevant date for the purposes of the Rusal claim, Russian businessmen such as Mr Berezovsky did document their interests and did formalise their holdings.

The reference to that is to be found in the joint memorandum which is at paragraphs 43 and 44 at G(B)6/1.01/20.

So, my Lady, it can fairly be said that Mr Berezovsky's claim to have acquired a wholly undocumented interest in the aluminium assets, both in relation to the initial acquisition of such assets in February 2000 and indeed the merged business set up in March 2000, runs contrary to the expert evidence, including that of his own history expert.

Given that the position on business practice by 2000 is common ground, the primary relevance of Professor Bean's expert evidence is as to the 1995 agreement which, for the reasons I've explained at the beginning of my oral closing, is relevant to the Dorchester -- to the overlap issues.

Professor Bean gave evidence to the effect that Russian businessmen who wished to make binding agreements in the mid-'90s did so in writing, very often involving the use of offshore structures. In relation to his evidence, it can fairly be said that Mr Berezovsky has sought in his closing document to have his cake and eat it. He relies heavily on Professor Bean's understanding and evidence that offshore structures were used by Russian businessmen, but he refutes the suggestion that the agreements made between Russian businessmen at the time, at least where they intended to operate beyond the system of honour only, were in writing.

The tension between those two points, of course, is an obvious one. The use of sophisticated offshore holding structures is hardly consistent with a system of undocumented obligations, handshakes and mutual understandings. The assertion is made in Mr Berezovsky's closing document that Professor Bean is

somehow unqualified to give the evidence as to business practice which he in fact gave. That is to be found at paragraph 246 of Mr Berezovsky's written closing.

Unsurprisingly, of course, it's not advanced in respect of that proportion of Professor Bean's evidence as to business practice upon which Mr Berezovsky himself seeks to rely. Indeed, Mr Berezovsky's submissions go so far as to assert that Professor Bean accepted that his conclusions were inapplicable to the types of agreement which are the subject of this action, that's in Mr Berezovsky's closing at paragraph 246, sub 6(?).

As Mr Abramovich's team have pointed out in their responsive document, that is an assertion wholly unsupported by the transcript references provided in which Professor Bean fairly accepted the obvious point that he did not see every single agreement made between Russian businessmen at the time, and indeed it's not an assertion supported, so far as we can see, by any other portion of Professor Bean's evidence.

We would submit, with force, that Professor Bean was in fact the best placed of all the experts as to Russian history, from whom you heard, to give evidence on Russian business practice at the relevant time. As is clear from his evidence and from his CV, he was able to draw on two strands of knowledge, both the academic

learning that he has in the field but also, uniquely in this case, his experience as a lawyer working in Russia at the relevant time, 16 hours a day it would seem.

Now, the suggestion is made that Professor Bean's evidence is to be discounted because his experience is limited to working with multi-national and not Russian clients. That assertion, even on its face, is incorrect because, as Professor Bean pointed out, he had many more Russian clients than the ones he identified in the limited list he provided with his CV. One sees that from the transcript, Day 38, page 83, lines 19 to 22.

It might also fairly be said that whatever the number of Russian clients whose business arrangements he was involved with actually was, it was a greater number than any other expert.

In fact Professor Bean came closest of all the experts to giving evidence of a truly comparable situation in Russia when he talked about his experience, his direct experience, dealing with the Yukos ownership structure and the relationship between Mr Khodorkovsky and Mr Lebedev. That is to be found in the transcript at Day 38, page 85, line 19, to page 87, line 8.

That evidence made clear that, in relation to Yukos, the ownership structure was fully documented using offshore arrangements and the services of Mr Curtis or

somebody like him, even though the relationship between Mr Khodorkovsky and Mr Lebedev could not, as Professor Bean described it, have been closer.

Of course we don't submit that it must be assumed because one comparable set of transactions or relationships was recorded in writing, the agreement that Mr Berezovsky claims was made must also have been recorded in writing.

MRS JUSTICE GLOSTER: If that's right, where is the expert evidence going on all this?

MR ADKIN: Well, my Lady, quite. Quite.

MRS JUSTICE GLOSTER: One can tell from one's own -- or one knows from one's own practice at the Bar, if one had any Russian clients back in the '90s, that some transactions were documented and some weren't.

MR ADKIN: Your Ladyship will recall that the proposition that your Ladyship would benefit from hearing Russian history evidence, expert evidence, was loudly vaunted by Mr Berezovsky and resisted by everybody else for precisely the reason that your Ladyship has identified.

MR RABINOWITZ: With respect, not on this issue though, my Lady.

MRS JUSTICE GLOSTER: I think that's right, Mr Rabinowitz.

MR ADKIN: Well, if I've made an incorrect submission --

MRS JUSTICE GLOSTER: All I would say is that on this

particular point, Mr Adkin, obviously one is assisted to a certain extent by expert evidence, but at the end of the day I've got to decide whether or not there was an oral agreement in this case.

MR ADKIN: My Lady, absolutely. Absolutely.

The short and, we submit, elementary point that I seek to make is simply to rebutt the suggestion that Professor Bean's evidence is a complete waste of time and Professor Fortescue's should be preferred, and to suggest that, insofar as any evidence is going to help your Ladyship on this issue from the experts, Professor Bean is going to be the most helpful because he is the closest to some sort of vaguely comparable transaction. That's as far as I seek to take the point.

As far as Professor Maggs is concerned, it can fairly be said that a great deal of reliance has in fact been placed by Mr Berezovsky's team on Professor Maggs's opinions in various places. In fact, they refer to and endorse his published views on Russian law on no fewer than seven occasions in their closing document.

Now, it's quite plain from this and from the scope and the nature of his publications that Professor Maggs's views are entitled to the fullest respect and are of the greatest assistance to the court. It is particularly regrettable therefore that what we

submit was a purely tactical decision was apparently taken on behalf of Mr Berezovsky not to explore Professor Maggs's evidence at all, even where that evidence contributed to and expanded on, indeed differed from, that given by Professor Rozenberg on Mr Abramovich's behalf.

Now, it was suggested at paragraph 496 of Mr Berezovsky's written closing that Professor Rachkov's evidence was to be preferred to that of Professor Maggs because Professor Maggs's evidence was, to quote, brief and did not always represent fully researched views. Very limited examples are given in support of that proposition, neither of them was put to Professor Maggs, and it's difficult to see how any reliance can fairly be placed on either of them when Professor Maggs was not given an opportunity to comment.

The position that your Ladyship has been left in as a result of the decision taken not to cross-examine Professor Maggs is, we would submit, particularly unsatisfactory given that he developed a number of points in his reports which added to or departed from Professor Rozenberg's position. A point of particular importance was Professor Maggs's evidence that the primary remedy in Russian contract law was specific performance, the primacy of which was mirrored in the

approach to compensation in the Russian courts which would be calculated as the cost of obtaining alternative performance, so that either way you would need to know what the obligations of the parties to a contract actually were.

That is to be found in Maggs's second report, paragraph 25(a), at G(A)5/02/9, and in cross-examination by Mr Sumption at Day 37, page 46, line 2.

A further point that Professor Maggs developed in addition to those made by Mr Rozenberg was his evidence on the way Article 434 of the 1964 Civil Code worked during the period in 1995 after the entrepreneurial activity rules came in but prior to the express repeal of that provision. That is to be found at Maggs 2, paragraph 18, G(A)5/02/6.

Now, my Lady, we submit that, in circumstances where Mr Berezovsky has deliberately chosen not to challenge the views expressed by Professor Maggs on those issues, no serious weight can be given to the various criticisms now sought to be made by him in relation to those views and you should be very slow to reject them.

My Lady, that's all I have to say about the overlap issues.

My Lady, during the course of his submissions,

Mr Malek reminded your Ladyship of the interrelation with the Chancery actions. If it would assist your Ladyship to have the latest directions order in the Chancery actions we'll make sure that your Ladyship has that.

MRS JUSTICE GLOSTER: Yes, I think so.

MR ADKIN: My Lady, one final thing. The reference that I was unable to give your Ladyship was --

MRS JUSTICE GLOSTER: Yes, just remind me what it was in connection with.

MR ADKIN: It relates to Mr Berezovsky's own knowledge of the Rusal profits, and that reference is paragraph 62, subparagraph 1 and following of our closing document.

Unless I can assist your Ladyship any further, those are my submissions.

MRS JUSTICE GLOSTER: No. Thank you very much, and thank all members of your team too for the work that has gone into the submissions.

Yes, Mr Mumford.

MR MUMFORD: My Lady, I was only going to confirm that our position remains neutral on the overlap issues on which we are to be bound and, accordingly, unless there's anything that I can assist my Lady with, I wasn't proposing to --

MRS JUSTICE GLOSTER: No, thank you very much, Mr Mumford.

I have read your charmingly brief submission of three pages.

Yes, Ms Davies.

Reply submissions by MS DAVIES

MS DAVIES: My Lady, many of the points made by my learned friend Mr Rabinowitz in his oral submissions, with which we respectfully disagree, are points that have already been addressed in our written closing, or were made in my learned friend's lengthy written closing and have therefore already been addressed in Mr Sumption's oral closing submissions or in our schedule. I'm obviously not going to seek to repeat points that have already been made there.

Given the disparaging remarks that were made by my learned friend at the outset of his oral submissions in relation to our schedule, I would however just make two observations about it. The first is that the schedule seeks to provide your Ladyship with appropriate cross-references to our written closing submissions on key points which we hope will be of assistance to your Ladyship in finding the relevant materials amongst the morass of documentation that is now before the court.

But second, and more substantively, the schedule also identifies the key respects in which we submit my learned friends' written closing submissions

mischaracterise Mr Abramovich's case or the evidence before the court, and provide the references to make good those points. We obviously hope that my Lady will work through and take up those points when working through my learned friends' written closing.

MRS JUSTICE GLOSTER: I will do, Ms Davies.

MS DAVIES: We heard from my learned friends that they intend to produce a response to our schedule, which will presumably focus on the second category of point but we have obviously not yet seen that.

MRS JUSTICE GLOSTER: Hang on, can I just be clear what I've got. At the moment I've got schedule 1 to Mr Berezovsky's submissions which sets out --

MS DAVIES: That's claimant's schedule of errata 1.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: That responds, as we understand it, to our written closings and sets out what are described as so-called errors in our written closing. What we are told is yet to come --

MRS JUSTICE GLOSTER: Yes, is a response --

MS DAVIES: -- is a response to this document.

MRS JUSTICE GLOSTER: Can we just call them something different?

Your defendant's schedule 1 is -- shall we call it the defendant's errata schedule?

MS DAVIES: Of course.

MRS JUSTICE GLOSTER: Theirs is the claimant's errata schedule. What is proposed is that they're proposing to respond to your errata schedule.

MS DAVIES: Errata to errata, yes, my Lady.

MRS JUSTICE GLOSTER: Yes, errata to errata, okay.

MS DAVIES: The simple point I was just making is we haven't seen that yet, and nor did my learned friend address in his oral submissions any of the particular points that we made in our schedule so we will have to see what they produce on that.

MRS JUSTICE GLOSTER: Okay, let me just work out where we are on this.

Mr Rabinowitz, what's the easiest way of dealing with this? I'm happy to give you seven days.

MR RABINOWITZ: My Lady, we hope to get it to your Ladyship in the middle of next week.

MRS JUSTICE GLOSTER: Okay, so seven days for you. And any response, as far as I'm concerned, reply, I don't want it to go on forever, but if either side feels they've got to put in a further response of course you're free to do so.

MS DAVIES: My Lady, we would not unless we felt it was really necessary of course.

MRS JUSTICE GLOSTER: Okay. So if I give Mr Rabinowitz

seven days from today to get the document in.

MR RABINOWITZ: It will be in by then, my Lady.

MRS JUSTICE GLOSTER: And if Ms Davies or indeed anyone else feels that they simply have got to put something in, do so, but please identify precisely what it is so that my clerk can add it to the bundles and make sure it goes on Magnum.

MS DAVIES: Of course, my Lady.

What my learned friend Mr Rabinowitz did do in his oral submissions, when developing certain of the points made on Mr Berezovsky's behalf, was to interject a number of new mischaracterisations of Mr Abramovich's case or the evidence and it is on those points which I intend to focus now. I will take the matters as briefly as I can and I propose to follow broadly the same order as my learned friend, rather than any order of significance to the issues my Lady has to decide, as I anticipate that will be of most use to my Lady.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: I will mainly be addressing points relating to the general criticisms of my client's case or Sibneft as many of the points on Rusal have already been addressed by my learned friends, Mr Malek and Mr Adkin.

My learned friend Mr Rabinowitz started his oral submissions by making a number of points about the

conduct of this trial by Mr Abramovich and his witnesses. Those included the suggestion of improper collusion between Mr Abramovich's witnesses, including the suggestion of collusion in supposedly changing the case in relation to the reasons for the payments to Mr Berezovsky, or what my learned friend described as the smears and innuendo issue. Most of those points already feature in section B of his written closing and are therefore fully addressed in section B of our schedule in response, and they were also addressed by Mr Sumption at various points in his oral submissions. In our respectful submission, there is no merit in any of them.

There are, however, four short points arising from my learned friend's oral submissions on this topic that I should address. First, in the context of the smears and innuendo issue, my learned friend suggested that in his oral submissions Mr Sumption had indicated that your Ladyship could safely ignore the evidence about Mr Berezovsky's attire at the Dorchester Hotel meeting. That was at Day 41, pages 19 to 20. Now, with respect to my learned friend, that was not what Mr Sumption was saying at all. Rather Mr Sumption was making the different point that my Lady could safely ignore the allegation made in my learned friends' written closing

that Mr Abramovich, Mr Deripaska and Mr Shvidler colluded together to make up their evidence about the circumstances of Mr Berezovsky's arrival at the meeting. The reference to Mr Sumption's submissions on that are at Day 40, pages 47 to 48.

The reasons why your Ladyship can safely ignore the allegations of collusion on this point are elaborated upon at page 28 of our schedule where we address the circumstances in which this evidence came out. The point did not, as my learned friend suggested orally was a constant theme, emerge in Mr Abramovich's re-examination at all. He mentioned it in his cross-examination. And, as my Lady may recall, the evidence from Mr Shvidler and Mr Deripaska on this point was effectively forced out of both of them by my learned friend himself in cross-examination because they were repeatedly asked about the issue.

We respectfully submit that those circumstances provide the most unpromising basis for a suggestion that the parties colluded to smear Mr Berezovsky about his behaviour.

In passing, I would also point my Lady to the next box at page 28 of our schedule --

MR RABINOWITZ: My Lady, I'm not going to do this too often but I do have to rise at this point because what my

learned friend has just submitted misrepresents the situation.

The reason that I dealt with that in cross-examination is because Mr Sumption came to me in the course of the cross-examination to tell me that he was going to deal with it in re-examination and, in those circumstances, if I didn't deal with it in cross-examination I wouldn't have had the opportunity to deal with it again.

MS DAVIES: My Lady, I would ask my Lady to re-read the transcript on those points and to see that the point I was making was the repeated questions made by my learned friend Mr Rabinowitz of both Mr Deripaska and Mr Shvidler on this issue in which my learned friend persisted in seeking to extract the evidence from them.

I was then moving very briefly just to point out to my Lady the next box at page 28 of our schedule, which is responding to paragraphs 133 to 135 of my learned friends' written closing, where we address the suggestion that was put, if anything, in even stronger terms orally by my learned friend, that's at Day 41, pages 18 to 19, that the evidence establishes that Mr Abramovich, Mr Shvidler and Mr Deripaska arrived at the Dorchester Hotel at about 1.00 pm and, as my learned friend put it, that Mr Berezovsky did indeed arrive

about one hour after they did at 2.00 pm which, it is said, demonstrates that Mr Berezovsky could not have arrived from the internal door in Mr Patarkatsishvili's suite.

The evidence that is said to demonstrate that, as we point out, is in fact nothing more than travel schedules. And when each of Mr Abramovich, Mr Deripaska and Mr Shvidler were asked about it, unsurprisingly, they could not be precise as to times.

The second point under this heading relates to the Dr Evil text. When addressing that issue in his oral submissions, my learned friend appeared to suggest in response to an intervention from my Lady that Skadden in correspondence had identified the number from which the text had been sent and, when that was given, that phone was checked and no record of the text was found. That's Day 41, pages 23 to 24.

No doubt that was inadvertent by my learned friend but it is not correct. Skadden were only asked to which number the text was sent, which is what they provided. I of course accept that Addleshaw Goddard then indicated that they'd checked the relevant phone records for Mr Berezovsky's phone, whatever that might mean, and they showed no record of the text being sent. We've set out the relevant references at page 3 of our schedule.

But that obviously does not rule out the possibility, which is the possibility my Lady was putting to my learned friend and to which my learned friend was attempting to respond, that the text was sent from another phone. With respect, your Ladyship was therefore exactly right to query where my learned friend's submissions on this issue got him.

Third in this category, it was suggested by my learned friend in his oral submissions that there didn't appear to be a dispute that the bolshoi balance had been, as he put it, sat on for a period of six months in the sense of not being disclosed after it had been identified as relevant, a process he elsewhere described as one of suppression for a period of six months, and that this event should in some way lead my Lady to conclude that Mr Abramovich and his team had failed to comply with their disclosure obligations. That was at Day 41, pages 28 to 30.

Now, the issues that have been raised in relation to the disclosure of the bolshoi balance have been repeatedly addressed in correspondence and in our submissions, but those explanations were unfortunately again mischaracterised by my learned friend in his oral submissions.

In particular, it was not just a question of

translation. Rather, the key point is that it was a document that contained a whole host of confidential information, much of which was not obviously relevant to the issues in dispute and indeed hasn't been referred to at trial. For example, details of payments received or made from various third parties that had nothing to do with Sibneft or Rusal.

It also, as my Lady will recall, includes a lot of abbreviations: PRR, PBR, PRBBR and the like which needed to be understood in order that the potential relevance of the figures then given could be understood, and so that the issue of the extent of disclosure that needed to be made could be determined, and that meant it was one of some complexity.

It is also just not correct to suggest, as my learned friend did, that we accept that the document was sat on for a period of six months after it was identified as disclosable. That misstates the time line. We set out the correct time line at page 33 of our schedule, which is that the document was harvested as part of the harvest of electronic documents in November 2010. That harvest produced, as my Lady might expect --

MRS JUSTICE GLOSTER: You've set it all out here, haven't you?

MS DAVIES: Indeed, and it wasn't until February 2011 that it was identified as potentially relevant. It was then considered in light of the points I've just made.

There is in fact, my Lady, a certain irony in my learned friend's criticisms of these events given the extent of the very late disclosure that has been made by my learned friend's client in this case with important documents continuing to be disclosed right up to and through the trial. Those include documents relating to Mr Berezovsky's and Mr Glushkov's asylum applications --

MRS JUSTICE GLOSTER: Do you know, I'm not going to decide this case on the lateness of discovery on either side. I know Mr Rabinowitz has made some substantive submissions about the absence of documents on your side.

MS DAVIES: Indeed, my Lady, and that's why I'm addressing this, because what is being suggested, and it's a very serious allegation indeed, is that my client has wholescale failed to comply with his disclosure obligations. My client is heavily criticised, for example, for failing to disclose documents of the very same type as are missing from Mr Berezovsky's own disclosure, such as mobile phone bills, bank statements, credit card statements and the like. Those criticisms are made notwithstanding that, on Mr Berezovsky's own evidence, he anticipated bringing these claims from as

early as 2001 whereas the first that Mr Abramovich heard about them was 2007.

Moreover, and this is an important point in our respectful submission, none of these serious allegations of disregard of disclosure obligations were put to Mr De Cort, who was the person within Mr Abramovich's internal team with internal responsibility for overseeing the disclosure process and who signed the disclosure statements.

The suggestion that there has been some sort of blatant disregard for the disclosure process or blatant withholding of documents is wholly unjustified.

Fourth, and the last point in this category, relates to the points made by my learned friend in relation to what he suggested was Mr Abramovich's failure to call Mr Fomichev, and specifically my Lady's query whether we could find any assistance, or my Lady would find any assistance in the authorities on the issue of whose job it was to call Mr Fomichev.

Now, like my learned friend, following my Lady's query, we have looked and we've found nothing specific in the authorities. There is of course no obligation on any party to call a witness, that's confirmed at Phipson, paragraph 11.15. And what all the cases do is simply seek to apply the test of whether it's

appropriate to draw an adverse inference to the particular facts.

My learned friend yesterday produced three authorities. Those really are, as he readily acknowledged effectively, no more than recent examples of the application of the principles to the facts. The two Peter Smith decisions are cases where the individual concerned was a relative of one of the parties, close relative, so it's not surprising an adverse inference was drawn.

The third decision, Mr Justice Burnett, is perhaps of slightly more interest as, whilst the judge was not prepared to draw an adverse inference in that case, he did indicate that the fact that the individual was no longer in his previous employer's employ was not a sufficient reason not to call him. That is of some relevance, we would submit, in the present case, for, as my Lady will appreciate, we submit that it was in fact Mr Berezovsky, if anyone, and not my client, who might reasonably have been expected to call Mr Fomichev. Mr Fomichev was after all --

MRS JUSTICE GLOSTER: What, even after he sued him for the recovery of money?

MS DAVIES: Well, my Lady, Mr Fomichev is based in London and susceptible to a summons so the fact they've fallen

out is not a reason not to call him. In fact what Mr Berezovsky said in his oral evidence is that he didn't want to call Mr Fomichev because he now regards him as untrustworthy.

If that's a good reason not to call him, it's actually a good reason why no party in this litigation would wish to call him as a witness on their behalf.

Now, my learned friend in his oral submissions on this point latched on to just one of the reasons that had been given by Mr Sumption in his oral closing for not calling Mr Fomichev, namely the evidence that shows that he was directly involved in the preparation of sham documents, and he sought to knock that point down. That ignored the fact that Mr Sumption had also referred to the fact that Mr Fomichev was Mr Berezovsky's agent, which I've just addressed.

But, in an effort to make it good, my learned friend went on to suggest that there was no difference between my client calling Mr Fomichev on this account and calling other witnesses, such as Mr Gorodilov, who, he suggested, was the architect behind the sham Spectrum documents produced in relation to the ORT sale. That's at Day 41, page 35. That was a theme he returned to yesterday when he suggested that it was Mr Gorodilov's idea to produce an offshore sale of the ORT shares for

$10 million and then an option agreement of $140 million, Day 42, page 73.

Now, even leaving to one side the obvious point that Mr Gorodilov is an employee of Mr Abramovich, the basis upon which my learned friend suggested that Mr Gorodilov was the architect of the sham Spectrum documents was not clear from his submissions. It's not in fact borne out by Mr Gorodilov's evidence. That was to the effect that what was agreed was that there would be a payment of $10 million in Russia and a direct payment of $140 million outside of Russia to an account indicated by Mr Fomichev. That's paragraphs 70, 73, 76 and 84 to 96 of Mr Gorodilov's first witness statement at E2, tab 4.

He repeated that explanation in his oral evidence at Day 24, pages 93 to 94, in a passage of his evidence where he was providing an explanation of the background to the payments that were made. None of that evidence was challenged.

His evidence was further that he knew nothing about the Spectrum documents, that's paragraphs 88 to 90 of his first witness statement. That again was not challenged. Indeed, there was no reference in his cross-examination to the Spectrum agreements at all.

What Mr Gorodilov did say in his witness statement,

and that's in paragraph 87, was that at a much earlier stage of the discussions in relation to the ORT sale he had identified the possibility of using an option agreement as one amongst the various means then being considered of transferring the shares, but he went on in the same paragraph to point out that, so far as he was concerned, the potential use of an option agreement had been rejected by the time of the meeting at Le Bourget. And if my Lady follows up the reference to the documents prepared by Mr Gorodilov, it's at H(A)23/191T, my Lady will also see that what Mr Gorodilov was talking about having previously been considered was a real option agreement, executed before any share transfer, as a means of transferring the shares. He wasn't contemplating a fictitious grant of an option in respect of the ORT shares, coupled with a forged assignment of that option, both executed following the actual sale by Mr Berezovsky to Akmos as we know in fact occurred.

What the evidence in fact demonstrates is that the sham Spectrum documents were conceived by and produced by a combination of Mr Fomichev, Mr Curtis and Mr Ivlev on Mr Berezovsky's behalf, and that Mr Gorodilov had nothing to do with it. That is all set out at paragraphs 271 to 274 of our written closing.

That's all I wanted to say on the criticisms of --

general criticisms of my client's case.

So I turn now specifically to the Sibneft claim. Now, my learned friend started by identifying and addressing various key -- pieces of key evidence which it is suggested will be of most assistance to my Lady in determining the nature and content of the 1995 agreement. Most of these points are points that we have already addressed at length in section A1 of our written closing and pages 42 to 64 of our schedule. There are, however, three topics arising specifically out of what my learned friend said in his oral submissions that I wish to address.

First, when addressing the Curtis notes, my learned friend suggested that no credible attempt had been made to explain how certain information contained in those notes could have been known by Mr Curtis if it was not information provided by Mr Tenenbaum. That is an issue which we had addressed in paragraph 440, subparagraph 5 of our written closing, but, in his oral submissions, my learned friend focused on two specific pieces of information that he suggested could not have been learned from the sources that we cite there. That was at Day 41, pages 46 to 50.

In particular, my learned friend suggested that those sources do not identify that the shareholders in

Rusal were held on a 50/50 basis with Mr Deripaska or were bearer share companies. We respectfully submit there is nothing in either point.

First, Mr Berezovsky's own particulars of claim expressly recognise -- and that's paragraph C65A at A1, tab 2, page 30 A1/02/30 -- that the 50/50 split of ownership between Mr Abramovich and Mr Deripaska in respect of Rusal had been publicly announced by as early as 4 April 2001. That 50/50 split of the aluminium interests was then of course expressly confirmed by Mr De Cort in July and early August 2003, shortly prior to Mr Tenenbaum's visit to Georgia, in the context of the payments being made to Blue Waters. I'm referring there, my Lady, both to Mr De Cort's letter to Mr Curtis dated 8 August 2003 at H(A)62/26, and the attendance note of Mr De Cort's conversation with Mr Keeling on 16 July 2003 at H(A)62/19.

Second, in the context of arranging the payments to Devonia, at least Mr Fomichev and probably Mr Curtis would have been well aware that Mr Abramovich used bearer share companies in the BVI. As Ms Panchenko explained in her evidence, the mechanism by which the US 1.3 billion payments were made, starting in 2001, was that bearer shares in Pex, which was itself the shareholder in Madison, which in turn was the

50 per cent shareholder of Rual, were transferred temporarily to Devonia for the period of time required to allow Pex to declare a dividend to Devonia using funds received from Rual. That's Panchenko's second witness statement, paragraphs 86 to 87 and 96, at E3, tab 7, 186 and 189 E3/07/186.

The same point can be made about the later top-up payments in 2002 to Devonia, that's again explained by Ms Panchenko in her second witness statement at paragraphs 104 to 105, E2/07/191.

Further, your Ladyship will in fact recall that Mr Tenenbaum's evidence was that, by August 2003, he thought the reorganisation of Rusal had been undertaken, so the information in the Curtis notes which related to the preorganisation structure did not reflect his understanding at the time. That's Mr Tenenbaum's evidence at Day 28, pages 126 to 128.

Now, also in relation to the Curtis notes, my learned friend then went on to suggest that Mr Tenenbaum's explanation of what was discussed in Georgia was obviously false, and indeed he put it as high in his oral submissions as impossible, because the meeting in Georgia pre-dated, so he said, Mr Patarkatsishvili's interest in Brazilian football by almost a year.

That suggestion is in turn based on the document produced by the Brazilian authorities when investigating Mr Berezovsky which my learned friend did not take your Ladyship to but which my learned friend suggested confirms that Mr Patarkatsishvili's first contact in Brazilian football was only a year later.

That document is at H(G)28/218.

MRS JUSTICE GLOSTER: **Hang on, I'd like to look at that.**

MS DAVIES: **It's a lengthy document, my Lady, starting at page 28.**

MRS JUSTICE GLOSTER: **H(G)28, is it?**

MS DAVIES: **Have I got the reference wrong? I do apologise. H(G)28, page 218. Page 218, which is actually the first reference to Mr Joorabchian, "First steps in Brazil".**

My Lady, it's a lengthy document. What it does indicate or suggest, particularly for example at page 220 if we can go forward to that, is that Mr Patarkatsishvili's first contact with Mr Joorabchian may have been in 2004, but we submit that if you go through the whole of this document, which I wasn't proposing to do now, there is nothing in it on the issue of whether Mr Patarkatsishvili had any other contacts or interest in Brazilian football before this date.

I'm being referred to the last paragraph on page 219 which is perhaps one of the ones my learned friend is

relying upon.

MRS JUSTICE GLOSTER: So that's doing it in August 2004.

MS DAVIES: Yes, it is suggesting that the first meetings with Mr Joorabchian were then, but that's not the point that my learned friend is seeking to extract from this document. What he's seeking to extract from this document, and we say you can't extract it from this document, is that Mr Patarkatsishvili had no interest and no contacts with anyone in Brazilian football prior to 2004. And as well known as Mr Joorabchian is in this jurisdiction now, it is difficult to conceive that there are not others in Brazil who have contacts in Brazilian football apart from him.

The second topic I wished to address under this head was one that featured a number of times in my learned friend's oral submissions, namely his suggestion that the evidence as to the payments that were made by Mr Abramovich clearly support, as he put it, Mr Berezovsky's case as to the 1995 agreement.

The first point I wish to pick up in that context is my Lady's request to my learned friend for references to the evidence suggesting that there had been an exercise of calculating what was 100 per cent and what was 50 per cent.

Yesterday, my learned friend in response to that

referred you to paragraphs 264 to 265 of their written closing. My Lady may also wish to note that all the references to the evidence indicating how the amounts of payments were decided upon are to be found in paragraphs 46 to 57 of our written closing. We refer there, for example, to the evidence, including the evidence of Mr Berezovsky's own witnesses such as Dr Nosova, which show that the payments were the result of an ad hoc negotiation process and not the result of any correlation with Sibneft's profits, whether that means the profits of Sibneft itself or, as it is now suggested, something broader.

We also specifically address at paragraphs 55 to 57 the discussions at Le Bourget and the question of what other discussions there were between Mr Abramovich and Mr Patarkatsishvili --

MRS JUSTICE GLOSTER: You need not repeat those.

MS DAVIES: No. All I would ask my Lady to do is to put a note against those paragraphs to refer also to footnote 251 to paragraph 46 because that also sets out information about the conversations between Mr Abramovich and Mr Patarkatsishvili.

In short, we submit that the evidence does not demonstrate that there was anything even approximating the exercise my Lady was enquiring about.

In relation to the payments made, my learned friend also took issue with the suggestion we had made in both our written and oral closing that, prior to his oral evidence, Mr Berezovsky had only ever claimed to be entitled to a portion of the profits earned by Sibneft rather than by any other entity, and he suggested that Mr Berezovsky's case in his pleadings and his evidence was always that the three partners had agreed to share the profits which they made from obtaining ownership and control of Sibneft.

To support that suggestion, my learned friend referred my Lady in particular to paragraphs C34 and C34B of the particulars of claim. When my Lady takes up that reference, you will, in our respectful submission, find that it is in fact silent on this issue. That is perhaps unsurprising as Mr Berezovsky's witness statement on the 1995 agreement was equally silent on the issue. In fact, the paragraphs of that statement describing the terms of the 1995 agreement, that is Berezovsky 4, paragraphs 95 to 106, at D2/17/216 and following, those paragraphs say nothing at all about an agreement to share profits, let alone any agreement to share profits of any company other than Sibneft.

Indeed tellingly, in paragraph 401 of his written closing submissions on this issue, my learned friend put

the suggested entitlement to profits of companies other than Sibneft as an implied term of the alleged 1995 agreement.

That's an allegation that doesn't work for the reasons we've set out at page 57 of our schedule, but it is also an allegation that is obviously inconsistent with the suggestion now made that Mr Berezovsky's case all along has been that it was expressly agreed that they would share any profits earned as a result of the obtaining of control of Sibneft.

Now, to find Mr Berezovsky's pleaded case on the profits to which he was entitled a share of, my Lady in fact needs to look at paragraph C37.4 of the particulars of claim in relation to the 1996 agreement at A1/02/14, to which my learned friend did not refer in his oral submissions.

There it is said unequivocally that in 1996 it was orally agreed that Mr Berezovsky and Mr Patarkatsishvili would continue to be entitled to dividends and to any other payments made by Sibneft to its owners. That can only be interpreted as a reference to payments being made by Sibneft and no other company.

The reason my learned friend spent time making his, in our submission, incorrect pleading point was that he then went on to suggest that both of our points on the

absence of the correlation between the payments made and the profits of Sibneft, and our point as to Mr Berezovsky's purposes in reaching his understanding with Mr Abramovich in 1995, both those points were, as he put it, entirely false because they depended entirely on the incorrect assertion that Mr Berezovsky only claimed to have an entitlement to the profits of Sibneft. That was at Day 41, pages 86 and 93.

We submit that the premise for that suggestion was wrong for the reasons I've just explained. But, in any event, my learned friend is also wrong to say that that's what our case on this issue depends upon.

First, there are a number of reasons why the absence of correlation point doesn't depend on Mr Berezovsky's claimed entitlement only being to Sibneft profits. For example, the evidence of ad hoc negotiation, and also the contents of the bolshoi balance which even my learned friend accepts reveal that Mr Berezovsky and Mr Patarkatsishvili were paid less than half of the receipts from the oil trading companies and the ZATOs. I'm referring here to their comment on paragraph 56 of our closing submissions at page 11 of their schedule of so-called errata.

But significantly, the bolshoi balance also reveals that the payments were made on an erratic basis which

bears no discernible relationship to any receipts, so that even if there was an entitlement to something broader than Sibneft profits, properly so-called, there was no correlation.

Significantly, as my Lady will appreciate, there is also the clear evidence that payments commenced in early 1995, essentially from the moment that Mr Berezovsky started to provide his political patronage and way before any question of control of Sibneft arose. Revealingly, these payments in 1995 were not mentioned at any point by my learned friend in his oral submissions. The evidence of those payments, my Lady will recall, included the evidence of both Mr Abramovich and Ms Gorbunova who, in the strike-out application before the disclosure exercise was undertaken -- sorry, Goncharova, not Gorbunova, who, in the strike-out application before the disclosure exercise was undertaken, had explained that the payments started in early 1995.

MRS JUSTICE GLOSTER: I've got that evidence.

MR RABINOWITZ: My Lady, again I hesitate to rise. My learned friend knows, we've discussed this, that she doesn't have a right of reply. She has a right of reply in relation to new points. How it is said there is a new point when I didn't say something I frankly don't

understand.

We have tried to stay seated and I would be grateful if my learned friend really just stuck within the parameters --

MRS JUSTICE GLOSTER: I have got a lot of these points in your written closing submissions already and I really must restrict you to a right of reply on new points.

MS DAVIES: My Lady, what I was trying to deal with was the point which is completely new, which is that our case on correlation and purposes depends entirely on the suggestion that Mr Berezovsky was only claiming an entitlement to Sibneft profits, and the 1995 payments are one of the very key reasons why that suggestion, which was made for the first time by my learned friend in his oral submissions, is wrong.

The 1995 payments are also the reason why our submissions on Mr Berezovsky's purposes in 1995 are not dependent on the claimed entitlement only being to Sibneft profits, because under the loans-for-shares auction, on any view, Mr Abramovich was not even going to get control of Sibneft until 1996, whereas Mr Berezovsky's needs in early 1995 --

MRS JUSTICE GLOSTER: This is repetitive, I've got all this.

MS DAVIES: The third topic I wish very briefly to address, given the significance to the issues my Lady has to

decide, are the repeated criticisms made by my learned friend in his oral submissions of Mr Abramovich's case on krysha. I was going to take this very briefly because Mr Sumption of course addressed my Lady on this issue, but various further points were developed by my learned friend in his oral submissions on this point which I just very briefly --

MRS JUSTICE GLOSTER: Well, as long as they're new, Ms Davies. I have had an awful lot of submission on krysha, both in your closing and by Mr Sumption in oral closing.

MS DAVIES: The very short point I would ask my Lady to note is that when my Lady works through all the various criticisms made by my learned friend in his oral submissions on this topic my Lady will find, in our respectful submission, that they are dependent on the mischaracterisation by him of the evidence as to the nature of the krysha relationship. And in particular what he sought to do repeatedly orally was to pigeonhole Mr Abramovich's case on this issue as being one where the concept of krysha merely involved the provision of specific lobbying services which he could then suggest had come to an end. Whereas, as my Lady knows, our submission, supported by the evidence of Mr Abramovich and the evidence of the historical experts, is that

krysha is a much broader concept.

MRS JUSTICE GLOSTER: I have got that point.

MS DAVIES: My learned friend also suggested orally, and this was a new suggestion, that Mr Abramovich's case on krysha was bizarre because in 1995 Mr Abramovich barely knew Mr Berezovsky, had never worked with him --

MR RABINOWITZ: My Lady, that may be a new adjective but it's really not a new point.

MRS JUSTICE GLOSTER: I don't think it is, Ms Davies. I have got an awful lot of material, and unless it's a really new point arising out of what Mr Rabinowitz said, you know, it's just actually even keeping a note of it or going back to the transcript. I really must ask you to be a bit disciplined about it.

MS DAVIES: My Lady, we're seeking to, but we hadn't understood that suggestion to be made before but I'll move on.

That brings me to ORT where there are six very short points raised by my learned friend in his oral submissions that I need to address.

I will take these very briefly. First, my learned friend criticised Mr Sumption's submissions about the evidence relating to the negotiations with Mr Lesin and took my Lady to various passages of the notes of the interviews. All I would ask my Lady to do is to also

refer, when looking back at those passages, at R(D)1/06/78 lines 361 to 364, which my learned friend didn't take my Lady to in the course of his oral submissions but which we submit is important on this issue of whether Mr Lesin's offer remained on the table.

MRS JUSTICE GLOSTER: Right, well, I'll look at those.

MS DAVIES: Second, in connection with the same point, my learned friend went on to refer to Mr Berezovsky's evidence that he had more than enough money to stay in London for a thousand years, and made a whole host of criticisms of Mr Abramovich's reasons for the ORT share purchase. Again, just to give my Lady some references, we would ask my Lady to look at Abramovich 3, paragraphs 209 to 214 at E1/03/98, and Abramovich 4, paragraph 57, E5, tab 11, page 26 E1/11/26, where Mr Abramovich sets out all the various reasons, the pressure from Mr Patarkatsishvili, the concerns about money and so on, and also Mr Jenni's evidence at Day 11, pages 109 to 110, and Mr Ivlev's evidence at Day 14, pages 118 to 120 about the difficulties Mr Berezovsky was experiencing in obtaining funds at that time.

The third point, and again it's a very brief point but it was a suggestion that was made more than once by my learned friend in his oral submissions, that Mr Abramovich has previously admitted that there was

a meeting with Mr Berezovsky after Mr Glushkov's arrest, and that his evidence --

MR RABINOWITZ: My Lady, again that is not a new point. It was made in our written opening.

MS DAVIES: Again, I just wanted to --

MRS JUSTICE GLOSTER: Ms Davies, just a second. I've got all the points about changing case on both sides. I mean, I must have enough material before me to decide all that.

MS DAVIES: I just wanted to give my Lady the reference to Mr Abramovich's evidence on it, that's all I wanted to do.

MRS JUSTICE GLOSTER: Okay, it's not in your closing --

MS DAVIES: Unfortunately it's not there.

MRS JUSTICE GLOSTER: Okay, give it to me then.

MS DAVIES: Abramovich, Day 21, page 126, where he expressly rejected the suggestion of change of case. Day 21, page 126.

Fourth, and this is again a very quick point to give my Lady the reference, it relates to Ms Gorbunova. My Lady will recall my learned friend took my Lady to paragraphs 40 to 41 of Ms Gorbunova's witness statement and suggested that Mr Sumption's criticisms of her evidence were wrong. My Lady, what we would ask my Lady to do is to compare paragraphs 40 to 41 with

Ms Gorbunova's evidence at Day 11, page 133 to 135.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: The final point on this relates to the catastrophic breakdown and I don't want to repeat all the points we've made about why there was no catastrophic breakdown. But the point I wanted to pick up relates to the occasion in Israel where I gave my Lady a reference yesterday to Mr Berezovsky's comments in the media in December 2002. My learned friend in response invited my Lady to read that report and suggested it contained nothing disparaging of Mr Abramovich but my Lady also needs to look at Mr Abramovich's fourth witness statement, paragraph 150, at E5, tab 11, 61 E5/11/61, where he explained that when he read it at the time he regarded it as being very disparaging, was stunned by it and arranged a specific meeting with Mr Patarkatsishvili to discuss it.

MRS JUSTICE GLOSTER: Yes.

MS DAVIES: I then turn to Sibneft intimidation which I really -- there's only one point I want to address which relates to the reliance by my learned friend orally in relation to the witness statements of Mr McKim and Ms Duncan, and there are just three short points we would ask my Lady to take into account in relation to that. The first is that my learned friend studiously

didn't refer to any of the 2005 notes of the interviews.

MRS JUSTICE GLOSTER: Well, I've got to look at all those.

MS DAVIES: Indeed. My learned friend, to try and make good his points, referred solely to 2007 material and it's not just what Mr Patarkatsishvili said in 2005 that needs to be looked at against that, it's also Mr Berezovsky's own public statements in 2005.

Finally, when considering the evidence that my learned friend relied on of Ms Duncan and Mr McKim, my Lady of course needs to have in mind what Ms Duncan and Mr McKim said in their oral evidence about those impressions and notes representing a combination of sources, in particular Mr Berezovsky. That's Day 16, pages 12 to 13 and Day 16, 37 to 38.

My Lady, I have about ten more minutes.

MRS JUSTICE GLOSTER: Well, I'm going to go on because I think I want to finish this now.

MS DAVIES: I'm then turning to Sibneft choice of law which I accept of course, my Lady, we addressed fully in section A5 of our closing but the submissions made by my learned friend yesterday at Day 42, page 2 to 5, not only appear to demonstrate some confusion about what we were saying but they also introduced a couple of new points that I just do need to deal with.

MRS JUSTICE GLOSTER: Please do.

MS DAVIES: The starting point is of course section 11 which requires my Lady to identify where the events constituting a tort occur --

MRS JUSTICE GLOSTER: I know what section 11 does.

MS DAVIES: Yes, exactly. There's no dispute between us about what section 11 requires my Lady to look at. We identify at paragraph 319 of our closing the four constituent elements of the tort as identified by the Court of Appeal in this case. The first is a threat of unlawful act --

MRS JUSTICE GLOSTER: I don't need to have those repeated to me, Ms Davies, I really have got this on board.

MS DAVIES: No. Well, my Lady, I just need to make a couple of points about them. The threat of unlawful act, no threats are said to have been uttered by Mr Abramovich in France. Instead what my learned friend in his oral submissions sought to do was to identify a new concept in this respect, that is of the threat being made in France in the sense of that being the place where Mr Berezovsky received and succumbed to the threat. But, with respect to my learned friend, the issue of the place where Mr Berezovsky succumbed confuses the elements of the making of the threat and the element of coercion.

MRS JUSTICE GLOSTER: He says it was made in France because

that's where the recipient of the threat was at the time.

MS DAVIES: Yes, and that's the point I'm trying to address. We say that confuses the making of the threat and the coercion which is a separate element. But in any event the evidence demonstrates that Mr Berezovsky left it to Mr Patarkatsishvili to handle the relations with Mr Abramovich once he'd left Russia in October 2000. Communications to Mr Patarkatsishvili were therefore in effect communications to Mr Berezovsky and the empty room example that my learned friend referred to yesterday is not, in our submission, analogous.

He also sought to rely on what he said was the context to the threats, the meetings at Le Bourget and Cap d'Antibes. Now, assuming for a moment my Lady were to accept that anything of relevance occurred on those occasions, that, in our submission, doesn't of course mean that the relevant event constituting the tort occurred in France. The event only occurs once the threats are made.

Moreover, if my Lady is trying to --

MRS JUSTICE GLOSTER: This is his continuum point, I've got that on board.

MS DAVIES: My Lady, the second big point that my learned friend focused on is the coercion in fact submission.

The submission was originally said by my learned friend to have occurred in England when Mr Berezovsky signed the Devonia agreement but now it's suggested occurred in France because that's where he took the decision to submit and it was suggested communication of that submission is not necessary.

With respect, that can't be right. For as long as Mr Berezovsky remained uncommitted to sell to Mr Abramovich, the alleged threat had not resulted in any coercion in fact and the commitment to sell could only come with some form of outward communication by Mr Berezovsky of his decision. That's why indeed it has previously been my learned friend's case that the submission occurred through the Devonia agreement in London when the commitment came about.

MRS JUSTICE GLOSTER: So you say they've changed their case on it?

MS DAVIES: They have changed their case but in a way that doesn't work because simply a decision to submit doesn't amount to coercion in fact.

The final point here is damage. My Lady has our submission that the situs of the loss is Russia but in that connection my learned friend criticised Mr Sumption's reference to the Kwok Chi Leung case on the ground that it had nothing to do with one of the

events giving rise to the tort. With respect, that's difficult to understand. Mr Sumption was merely making the point that damage is a necessary component of the tort, as with any tort, and what Kwok Chi Leung tells my Lady is that damage here was in substance suffered in Russia.

Finally on Sibneft, my Lady, my learned friend suggested that there was no issue between the parties whether what was threatened was unlawful as a matter of Russian or English law. That's correct so far as Russian law goes if my Lady accepts Mr Berezovsky's case at its very highest, although there are other elements of Russian law my Lady will need to consider, but it's not correct in relation to English law. We have set out in our closing submission at paragraph 355 to 379 various submissions as to why what is said to have been threatened was not unlawful as a matter of English law. I wasn't going to repeat those but just draw attention to that.

I then come to Rusal where there are only five very short points. First, in relation to the nature of the agreement between Mr Abramovich and Mr Patarkatsishvili in respect of aluminium, my learned friend suggested it was incredible to suggest that what Mr Abramovich was doing in 2004 was paying Mr Patarkatsishvili his

deferred commission for the assistance he'd provided in relation to the original aluminium asset because, he said, the amount Mr Patarkatsishvili received represented 37 per cent of the capital cost of Rusal. That was Day 42, page 49.

To get to that figure, he compared the 585 paid to Mr Patarkatsishvili to the 1.58 billion Mr Abramovich received from Mr Deripaska in 2003. Now, on any view, that's not the right comparison because Mr Deripaska in fact paid 450 of the 585 directly to Mr Patarkatsishvili but, more significantly, that point also ignores the very substantial dividends that Mr Abramovich received in respect of aluminium in the period between 2000 and 2004, the quantum of which is in fact demonstrated by the fact that those dividends were the source used to fund the 1.3 billion payments made between 2001 and 2002.

Second, a very short point in relation to events in 2003 where my learned friend firstly suggested Mr Sumption hadn't referred to this in his oral closing, he did, Day 40, page 64 to 65; but secondly said that there was no commercial sense in the decision on Mr Abramovich's part only to sell half in 2003. We address this at 451 of our closing submissions. The short point is Mr Deripaska couldn't afford to buy the

whole 50 per cent, so it makes a lot of commercial sense.

MRS JUSTICE GLOSTER: I've got that in 451.

MS DAVIES: Third is to pick up on a question my Lady asked about the deed of release and whether my learned friend had any further submissions he wished to make, and my learned friend pointed to paragraph 1706 of his closing, which dealt with paragraphs 422 to 425 of Mr Berezovsky's fourth.

I just wanted to give my Lady, because it's not clear from other materials, the reference to our closings that deal with those paragraphs of Mr Berezovsky at 560 to 564.

MRS JUSTICE GLOSTER: Hang on. Yes, thank you.

MS DAVIES: The key point really is that Mr Berezovsky stated in his oral evidence that he told Mr Patarkatsishvili he is absolutely free to do everything he likes in relation to the sale. In our submission, that was obviously authority enough.

It's also the reason, incidentally, why my learned friend was wrong to suggest yesterday that his client could have refused to have given credit for the 585 million paid in 2004. Mr Berezovsky had authorised on any view Mr Patarkatsishvili to enter into the 2004 documents.

Rusal choice of law issue --

MRS JUSTICE GLOSTER: Did Mr Rabinowitz suggest yesterday that he could have refused? I thought the suggestion came from me actually.

MR RABINOWITZ: Indeed.

MS DAVIES: And it was picked up by my learned friend and they said: but we haven't done it anyway.

MR RABINOWITZ: And my learned friend simply asserts her case and says on any view he was authorised. Really this is not a new point.

MRS JUSTICE GLOSTER: Well, I'm interested in this point, and I raised the point I think with Mr Rabinowitz yesterday because there seems to be a concession.

Mr Rabinowitz, are you saying you could have refused?

MR RABINOWITZ: My Lady will have to put the point to me again. Could have refused what? I think my Lady said --

MRS JUSTICE GLOSTER: Could have refused to have given credit.

MR RABINOWITZ: Not -- because we had the money, that was the point. Your Ladyship said was it because you were authorised, I said, well, we had the money. If we had the money, how could we refuse to give credit?

MRS JUSTICE GLOSTER: You got the money from

Mr Patarkatsishvili?

MR RABINOWITZ: **As I understand it, to the extent that we have the money we have to give credit for it. It's got nothing to do with the authority. That was the point I made to my Lady.**

MRS JUSTICE GLOSTER: **Yes. The point I put to you, I thought, yesterday was theoretically there was a defence or there was a point that Mr Berezovsky might have taken which was paying the money to Mr Patarkatsishvili is not a good discharge by Mr Abramovich of the obligation that he owes me.**

MR RABINOWITZ: **That was the point your Ladyship put to me.**

MRS JUSTICE GLOSTER: **And as I understand it, you accepted that you had to give credit for the half-share because that's in your closing submission.**

MR RABINOWITZ: **To the extent that we --**

MRS JUSTICE GLOSTER: **And is that on the basis that you're simply not taking the point or that you did in fact get the money or half of the money that was paid to Mr Patarkatsishvili?**

MR RABINOWITZ: **We in fact got the money, it was on that basis.**

MRS JUSTICE GLOSTER: **Okay. Thank you. That's clarified it for me.**

MS DAVIES: **My Lady, I was trying to make a broader point**

which is actually there's a further reason why they had to give credit, which is Mr Berezovsky's own evidence, and we give the references at paragraph 563.1 of our written closing, that he had told Mr Patarkatsishvili that he was absolutely free to do everything what he liked to do in relation to the sale.

The dispute between the parties is really about, we would submit, whether specific authority was needed in relation to the release.

MRS JUSTICE GLOSTER: Okay, thank you.

MS DAVIES: Then finally, two short points on the Rusal choice of law issue. Firstly, my learned friend submitted that the principals had discussed and agreed upon the choice of law at the meeting at the Kempinski Hotel. Just for my Lady's note, that submission we submit is not borne out by the evidence. Mr Bulygin's evidence was that he put the clause in, it's paragraph 15 of his statement, and that was confirmed by Mr Abramovich at Day 19 --

MRS JUSTICE GLOSTER: That's in your closing, isn't it?

MS DAVIES: It may be there somewhere.

The final point is that my learned friend suggested, and this certainly was a very new point and is in fact also wrong, that in April 2009, when Mr Berezovsky first suggested that there was an express agreement of English

law, Mr Berezovsky didn't know what system of law governed the underlying aluminium asset acquisition agreement or the Rusal merger agreement, and he went on to say that his fixing on English law in those circumstances would have been a lucky guess if there was in fact no express agreement.

MRS JUSTICE GLOSTER: Yes, I remember that submission.

MS DAVIES: I'm sure it's inadvertent on my learned friend's part but it's based on a false premise. Mr Marino's first witness statement, which was served at the same time as Mr Berezovsky's statement and which Mr Berezovsky confirmed in his statement he had read, states in terms that both the underlying aluminium acquisition asset agreements, and the Rusal merger agreements, were governed by English law. That's Marino 1, paragraphs 266 to 284 at J2.2/09/121.

He may well not have seen the executed agreements by that time but what Mr Marino's statement reveals is that he had seen other evidence which clearly indicated to him the position, for example a statement from Mr Hauser confirming that the merger agreements were governed by English law, to which Mr Marino refers. So there was, with respect to my learned friend --

MRS JUSTICE GLOSTER: Mr Marino was a solicitor acting for Mr Berezovsky?

MS DAVIES: Indeed. No question of a lucky guess at all.

My Lady, unless there are any further points on which I can assist?

MRS JUSTICE GLOSTER: No, thank you very much, and thank all the team too, please, Ms Davies, for your helpful submissions.

MR RABINOWITZ: My Lady, so far as anything that my learned has said requires to be addressed, we will do it in the schedule that we're dealing with because it's largely repetitive.

MRS JUSTICE GLOSTER: You have got the last word, Mr Rabinowitz.

MR RABINOWITZ: Indeed. And insofar as we want to address points she has made I would largely do it in writing.

I would just say one thing --

MRS JUSTICE GLOSTER: I think it will be quicker and easier if you do it from the transcript in writing.

MR RABINOWITZ: Indeed. That's really what I'd rather do.

What I'd like to do is just address one point which was made, because it may matter to my Lady when your Ladyship is considering the issues. It arose out of something that in fact Mr Malek said about whether we are inviting or not inviting your Ladyship to make findings about Mr Anisimov's knowledge.

MRS JUSTICE GLOSTER: You've got a right of reply in

relation to anything that Mr Malek said and anything that Mr --

MR RABINOWITZ: Most of it simply repeats points that are, in any event, in Mr Abramovich's schedule, and insofar as we need to deal with it we will deal with it there.

I do want to address this point because it affects the way your Ladyship approaches the determination of the matter. Mr Malek, I think, suggested that we had changed our position from one which we were taking in our written closing where he said we were telling your Ladyship you should make findings about Mr Anisimov's knowledge. He said that in my oral closing I had changed that and I was now saying that your Ladyship shouldn't.

In fact, neither of those was correct. Paragraph 1139 of our written closing says exactly what I said on my feet, which is that the overlap submissions do not require your Ladyship to make findings about Mr Anisimov's knowledge. The point that we were trying to make was this, my Lady: the overlap issues in effect try and carve out for the purposes of this trial the question of the determination whether objectively Mr Berezovsky and Mr Patarkatsishvili had an interest in Rusal because, plainly, if objectively they did not have such an interest, the issues which arise in the Chancery

trial about tracing claims and the like, depending on Mr Anisimov's knowledge of that interest, cannot arise in relation to that interest because it didn't exist.

Now, the point that we have been trying to make in our written closing, and obviously not made well enough, was this. If incidentally, on your Ladyship's route to try to determine whether or not Mr Berezovsky and Mr Patarkatsishvili had interests, your Ladyship finds it of assistance to either find or not find that Mr Anisimov had knowledge of that, then that is plainly something that your Ladyship will want to consider.

The only point that we were trying to make is that outside of that your Ladyship may regard it as not appropriate to make findings about the stand-alone question of the extent of Mr Anisimov's knowledge, that's to say, subjective knowledge, because that really is something which arises not as part of the objective determination of whether these interests existed but as part of an issue which arises in the Chancery litigation.

I don't mind taking your Ladyship to this now, although given the time your Ladyship may not want to do it, but the overlap issues, at least the previous draft, because your Ladyship knows that there was an amendment to it, are found at bundle I2 --

MRS JUSTICE GLOSTER: Have we not got --

MR RABINOWITZ: Your Ladyship changed something. We can see it insofar as we need to -- in fact we can hand it up --

MRS JUSTICE GLOSTER: Is this the final version of the overlap issues?

MR RABINOWITZ: Just let me ask Mr Gillis exactly what it is.

Rather than take it from this, which I'm not sure what it is exactly, if your Ladyship wants to take it from Magnum, your Ladyship will find it at bundle I2, tab 6, page 24 I2/06/24.

Now, there was an amendment which your Ladyship made but I don't understand it to affect the point that I'm making --

MRS JUSTICE GLOSTER: I hope somebody has set out for me in one of the closing submissions what the overlap issues are in their final form.

MR ADKIN: My Lady, we have. You'll find them at the beginning of our submissions and also --

MRS JUSTICE GLOSTER: And that is the final version, is it?

MR ADKIN: That is the final version.

We rather piously promised your Ladyship that we'd ensure that this sealed order was actually put onto the database. I'm afraid we've not lived up to that promise, I think in part because the order hasn't

actually been sealed.

MRS JUSTICE GLOSTER: I don't want to go to anything that isn't the final version.

MR ADKIN: The final version is set out in our closing in paragraph 1 in italics, and in annex 1.

MRS JUSTICE GLOSTER: Right. Well, Mr Adkin, can you make sure, because you might be interested in the point, that they are actually on Magnum, they do get --

MR ADKIN: We will get the order sealed if it hasn't already been sealed, and we will make sure that a sealed order ends up on Magnum, my Lady.

MRS JUSTICE GLOSTER: While you're standing, Mr Adkin, I would like to thank you, or your junior, for the useful chart at annex 2.

MR ADKIN: My Lady, I'm grateful.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz. So I'm working from there then.

MR RABINOWITZ: I2, page 26. Your Ladyship has the overlap issues subject to the amendment which was made which doesn't affect the point I'm making. If your Ladyship goes through those, you will see they're directed to, in a sense, the determination of whether, objectively, Mr Berezovsky -- obviously Mr Patarkatsishvili as well -- had the interest. They don't raise the question in the context of the overlap issues for determination

of, for example, Mr Anisimov's knowledge. That was the only point that we were trying to make.

We weren't saying to your Ladyship, you can't decide this, or that you must decide it, simply that the overlap issues were done in a way which does not require your Ladyship to do it because the question of Mr Anisimov's knowledge will be an issue -- that is going to be one of the main issues in the Metalloinvest action where there will be any number of other related issues before whoever tries it.

We're not saying your Ladyship should stay away from it insofar as you find it helpful in considering whether or not they had an issue, and that was the only point. I just wanted your Ladyship to be clear about what we were or not saying.

And insofar as there are any points which have arisen, as I say, we will set it out for your Ladyship in the written document that we are producing rather than take up more time now.

MRS JUSTICE GLOSTER: It will be quicker for you, won't it, as well, if you do it by reference to the transcript?

MR RABINOWITZ: It certainly will.

MRS JUSTICE GLOSTER: Very well. Obviously I'm going to reserve my judgment.

So far as communication with counsel is concerned,

Mr Rabinowitz, should my clerk communicate, rather than with all counsel, could you designate and let him know from each party who he should communicate with?

MR RABINOWITZ: **Indeed, my Lady.**

MRS JUSTICE GLOSTER: **Otherwise, does he communicate to all your clerks or all solicitors? So can each team have one designated point of contact?**

MR RABINOWITZ: **We will do that.**

Two other things I ought to mention. Your Ladyship asked for an up-to-date chronology.

MRS JUSTICE GLOSTER: **Yes.**

MR RABINOWITZ: **We have progressed that at our end, and it will be progressed, and your Ladyship will have an up-to-date chronology.**

MRS JUSTICE GLOSTER: **Can you send me a hard copy of it?**

MR RABINOWITZ: **We will do.**

MRS JUSTICE GLOSTER: **With an agreed statement that it either sets out the agreed chronology or it identifies where people disagree.**

MR RABINOWITZ: **We will do.**

The only other point, my Lady, first can Mr Gillis just deal with a point.

MRS JUSTICE GLOSTER: **Certainly.**

Yes, Mr Gillis.

MR GILLIS: **My Lady, just one point of housekeeping, and it**

relates to the order that your Ladyship made on 28 October which was --

MRS JUSTICE GLOSTER: Remind me.

MR GILLIS: It was amending -- can I hand it up? (Handed)

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: It was amending the overlap issues as against the Chancery defendants in order to introduce the constructive trust, resulting trust claim.

MRS JUSTICE GLOSTER: Yes, I remember.

MR GILLIS: I've mentioned this to my learned friends, the Chancery defendants. Your ladyship made the order on Day 15 but we've never received a sealed copy of the order.

MRS JUSTICE GLOSTER: Whether I've signed it or not, why don't I just sign it now?

MR GILLIS: If your Ladyship could do that.

MRS JUSTICE GLOSTER: This is just -- it's in the Chancery Division action?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: But that's all right, I haven't got to go and get Mr Justice Mann to co-sign it?

MR GILLIS: No. This was brought to Mr Justice Mann's attention after you had made the order and he has confirmed it in the Chancery proceedings as well. It is just a formality, we don't actually have a sealed copy.

MRS JUSTICE GLOSTER: Right. I'll say this can be sealed. There you are.

MS DAVIES: My Lady, may I mention one other point of housekeeping?

MRS JUSTICE GLOSTER: Mr Gillis, that's all you have?

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: Thank you very much.

MS DAVIES: It's to do with the transcripts. Behind the scenes there has been much correspondence between the parties about translation issues arising in relation to the transcripts. The interpreters have now, as it were, signed off on the final version. That's gone to Addleshaw Goddard. I'm sure that the corrected transcripts will be uploaded very quickly but I just wanted to mention that there is that process that has been --

MRS JUSTICE GLOSTER: Okay. Will they be corrected final transcripts? I mean, I don't want to have to go to three different transcripts of Day 15.

MS DAVIES: No, my understanding is that they're corrected final transcripts.

MRS JUSTICE GLOSTER: Yes, I see.

MS DAVIES: And that hasn't affected the page numbering, otherwise all these wonderful documents might be -- but that hasn't happened, because they are sort of words and

so on in places.

MRS JUSTICE GLOSTER: So if, for example, in quotations from transcripts something has changed, are you going to bring that to my attention?

MS DAVIES: My Lady, we will do that. I can't say on my feet now whether I know there's anything that's changed in our submissions --

MRS JUSTICE GLOSTER: It's just that if you quoted a particular nugget, and as a result of the work that you've all done behind the scenes it has now changed, I don't want to be the one who has to go and check each reference you've made to check that it hasn't been amended.

MS DAVIES: I entirely understand that, my Lady. We will get that exercise done.

MRS JUSTICE GLOSTER: Okay.

MS DAVIES: It may be that there isn't anything, I just don't know, but we will check.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: My Lady, the only thing that remains from this side of the court, and I'm sure I speak on behalf of all the counsel teams for all the parties, is to thank your Ladyship for the way in which your Ladyship has conducted the case.

MRS JUSTICE GLOSTER: That's very kind of you.

MR RABINOWITZ: Also, if I may, the transcript writers and I'm sure the translators as well.

MRS JUSTICE GLOSTER: I would certainly like to say thank you very much to the translators, to the IT people and to the transcript writers because we've cracked through, with everybody's cooperation, very quickly, and in fact that goes for the witnesses as well. We have actually cracked through and finished pretty much on time.

Right, is there anything else that from a practical point of view that needs to be dealt with now? No?

MR RABINOWITZ: I don't believe so, my Lady.

MRS JUSTICE GLOSTER: You will have tomorrow to move your papers. I'm sitting tomorrow on something else but I don't know whether it's in this court or not, hopefully it won't be, but you can liaise with my clerk about that.

Very well, thank you very much.

(3.48 pm)

(The hearing concluded)

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