Neutral Citation Number: [2015] EWHC 384 (Ch)

Case No: HC1200030

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 20/02/2015

Before:

THE HONOURABLE MR JUSTICE PETER SMITH

- -

Between:

(1) Rosserlane Consultants Ltd	**Claimants**
(2) Swinbrook Developments Ltd	
- and -	
Credit Suisse International	**Defendant**

- -
- -

Jeremy Cousins QC, Edward Cohen, Peter Head & Ian Higgins (instructed by **Gordon Dadds LLP**) for the **Claimants**
Helen Davies QC & Alec Haydon (instructed by **Herbert Smith Freehillls LLP**) for the **Defendant**

Hearing dates: 20-31 October, 3-13, 17-21 November & 10-12 December 2014

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE PETER SMITH

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Peter Smith J:

INTRODUCTION

1. This judgment arises out of the trial of the action in this case.

2. The dispute arises out of the sale of a 51% stake in the Shirvan Oil Company ("Shirvan") in Azerbaijan.

3. A list of abbreviations and a Dramatis Personae is attached to this judgment. The Claimants were the owners of CEG which held the above 51% stake.

4. Shirvan operated a well established oilfield in Azerbaijan known as the Kurovdag oilfield ("Kurovdag").

5. That was operated under a joint venture agreement ("JVA") dated 21st December 1995 with SOCAR the State Oil Company of Azerbaijan Republic.

6. The JVA was entered into initially between SOCAR and Whitehall (a Scottish Limited Partnership and the predecessor to CEG). On 28th January 2002 Whitehall changed its name to Caspian Energy Group and from 29th December 2003 Whitehall's interest in the JVA and Shirvan became invested in CEG. On 5th November 2004 CEG and SOCAR entered into a production sharing agreement ("PSA") which was intended to replace the JVA. This never occurred; the PSA was never implemented and was formally terminated by a written agreement dated 7th September 2007.

THE CLAIMANTS

42. The Claimants are respectively Rosserlane Consultants Limited a limited company registered in the Isle of Man and Swinbrook Developments Limited a limited company registered in the BVI. At all material times the Claimants have been ultimately owned by Doctor Zaur Leshkasheli ("Dr L") and his family interests. Rosserlane and Swinbrook were formerly the general partner and limited partner respectfully in CEG a limited partnership registered in Scotland.

8. The key individuals at CEG for the purposes of these proceedings in addition to Dr L were Vugar Akhundov (CFO), Joel Steinhart (a consultant to CEG through his firm Granite Management Ltd) and Eric Stuppard (the Finance Manager).

THE DEFENDANT

9. The Bank Defendant is an unlimited liability company and an indirect wholly owned subsidiary of Credit Suisse Group AG. The Bank's team was led by Peter Firmin a director of the Bank's Fixed Income Division ("FID").

10. Although not a party to the proceedings Credit Suisse Securities (Europe) Ltd ("CSS") was also engaged to act as a Financial Adviser to Dr L and CEG. Its M&A team included Vadim Benyatov the then head of CSS's Emerging Markets Group for the Former Soviet Union ("FSU"), Igor Ukrasin a Director and Victoria Pavlova a Vice President.

11. I will set out further in this judgment the structure of the various documents entered into between the parties in order for the position to be clearly understood.

ENTRY INTO CONTRACTUAL RELATIONSHIPS WITH THE DEFENDANT

12. By December 2006 CEG was in a position that its then existing lenders were putting pressure on it to repay or refinance its indebtedness with them. CEG's only asset was its interest in Kurovdag. In order to raise finance to repay that existing borrowing it would need to borrow monies. It was the expectation that any monies so lent would be secured on CEG. It was equally contemplated that the monies so advanced would be relatively short term to enable CEG to realise its 51% in Shirvan.

ARRANGEMENTS WITH DEFENDANT

13. Accordingly the Claimants borrowed $127m from the Defendant in December 2006 to replace its existing borrowings. They entered into a number of other agreements. First there was an agreement dated 14th December 2006 as amended on 14th May 2007 and 14th December 2007 between CEG and various other parties and the Bank dealing with the ***"equity upside"*** of a sale of CEG or related assets ("the Participation Agreement"). The claim arises under this agreement. On 13th December 2006 the Claimants retained CSS to act as their advisors in respect of the disposals of the assets/stock of CEG ("the M&A Agreement"). Third the parties entered into a security agreement ("the Security Agreement") on 14th December 2006 whereby the Claimants granted security over their interests in CEG to the Defendant.

TERMS OF JVA

14. The documents set out the basis upon which the oil could be removed from Kurovdag in collaboration with SOCAR. Under article 3 an Administration Board was established which comprised 6 members 3 appointed by CEG and 3 by SOCAR. The Board was thus deadlocked potentially in case of a dispute.

15. Article 4 set out the subject of the activity of the partnership funds and other funds. SOCAR's share was 49% and CEG's in effect is 51%. There were restrictions on transferring shares under article 6 which involved giving a transfer notice to the other party which has an option to acquire the shares.

16. The laws of the Azerbaijan Republic applied to the JVA except such cases when the laws were contradictory, incomplete or absent when the legislation of Great Britain would be applied (article 24).

17. Of significance were the respective obligations of SOCAR and CEG. In particular the latter was required to provide the financial funds to the JVA (article 5.3 (f)). It was the case that SOCAR believed CEG did not provide sufficient funding as required to develop Kurovdag.

18. The JVA could be terminated if the JVA ceased to exist or by mutual consent or on insolvency or if either party cannot or does not wish to fulfil the material obligations of the agreement (article 28). The agreement was effective for 30 years subject to mutual extension.

19. In effect it was CEG's rights under the JVA which were to be marketed.

20. The PSA was not as an attractive arrangement but as it was never implemented it does not significantly feature in this dispute.

TERMS OF THE LOAN AGREEMENT

21. The Loan Agreement is dated 14th December 2006 and was amended on 14th May 2007. CEG was the borrower and other companies of the same group as the Claimants were brought in as were CSS acting as a security agent.

22. Under clause 2 the Defendant advanced two loans to the Claimants. First was $150m second was a further $12m to be used by the Claimants under a drilling plan loan. As will be seen subsequently the Claimants obtained the drilling loan but did not use it for drilling and failed to repay it back when the Defendant required it to be paid back having discovered it had not been used for the purpose for which it was supposed to be. As I have said above the failure to invest by CEG was clearly a source of concern (to put it mildly) of SOCAR. The final repayment date in respect of each loan as defined was 14th December 2007. In addition to the loan CEG was obliged to pay interest on that final repayment date at a margin of 7% above LIBOR. That interest was to be paid on the final repayment date (clause 5.1). The loan agreement was covered by English law and a dispute was to be resolved in the Courts of England and Wales (with an option on the part of the Agents (as defined) to have the matter dealt with instead by arbitration (clause 30)).

23. The loan agreement was varied by a deed dated 13th December 2006 ("the Deed of Amendment") the relevant variation being an extension of the Final Repayment Date to 15th February 2008 and for the payment of a fee in connection with such an extension. A fee for this modest extension of two months was $10m (clause 7.2 as amended). That was in addition to the fees set out in the original Fee Letter.

TERMS OF THE SECURITY AGREEMENT

24. This agreement (which was amended on 14th May 2007) was between CEG and its various companies and CSS as the Security Agent. This provided for various types of security over CEG and its subsidiary companies' assets.

25. The only clauses that were considered significantly in the trial were those in relation to enforcement.

26. The Security Agent (not the Defendant) at any time after an Enforcement Event occurred was given power to sell any Group shares (clause 7.7). An Enforcement Event was defined as being when an event of default had occurred and was continuing or the non occurrence on or before a date falling 8 months after the date of the agreement of the completion of the sale of 100% of the equity interests of one equity owner or 100% of the assets. The significance of that 8 month date will become apparent when I set out the terms of the Participation Agreement which is linked.

27. Under clause 4 the Security Agent was given power to enforce the security in its absolute discretion in such manner as it thought fit and "***[should] not be liable to any charge or to any loss arising from any failure on its part to take any steps to enforce such security or for a manner in which it enforces or refrains from enforcing such security".*** The only restriction was the obligation to obtain at least $180m on a sale (see definition of Enforcement Event).

TERMS OF PARTICIPATION AGREEMENT

28. This is the major agreement in the dispute between the parties to this action. Significant from the Defendant's point of view as the extra monies due to it beyond the sums that were owed by way of capital and interest. If a sale occurred within what was defined as the midrange (meaning between $180m and $400m) the Defendant was entitled to 27% of the excess over $180m. If the sale was within the top range meaning greater than $400m then the Defendant was entitled to 27% between $180m and $400m and 12% of the excess. By the Deed of Amendment dated 13th December 2007 the equity upside payments due to the Defendant were varied. In respect of the mid range the percentage due to it was increased from 27% to 33%. This is of course in addition to the $10m fee referred to above.

MANDATORY SALE

29. The major claims under the Participation Agreement arise under clause 4 which provides as follows :-

> ***"4 Mandatory Sale***
>
> ***4.1 If by the date which falls eight months after the date of this Agreement (the "Trigger Date"), no Sale of 100% of the Equity Interests of one of the Equity Owners or 100% of the Assets has irrevocably completed, the Bank shall be entitled to force the Equity Owners to Sell, or procure the Sale of, the Equity Interests or the Assets (in whole or in part) to any purchaser provided that the Sale Proceeds from such Sale are not less than $180,000,000 ("Forced Sale").***
>
> ***4.2 For the puposes of effecting a Forced Sale, each of the Equity Owners:***
>
> ***4.2.1 hereby irrevocably appoints the Bank as its attorney to execute and do in its name or otherwise and on its behalf all documents, acts, deeds and things which the Bank shall in its absolute discretion consider necessary or desirable in order to implement the Forced Sale;***
>
> ***and***
>
> ***4.2.2 shall entitle the Bank to be involved in all aspects of the Forced Sale including liaising with the Equity Owners' advisers (financial, legal or otherwise) and coordinating the Forced Sale with the Equity Owners and their advisers.***
>
> ***4.3 Each of the Equity Owners shall execute all such deeds and documents and do all such things as the Bank may require for perfecting the transactions intended to be effected under or pursuant to this Clause 4.***
>
> ***4.4 From the Trigger Date until the completion of a Sale, the Selling Equity Owner shall provide a daily status report as to***

> ***the progress of any Sale upon request from the Bank and shall promptly provide such information and documentation concerning such Sale as requested by the Bank from time to time.***
>
> ***4.5 Each of the Equity Owners agrees that in connection with the power of attorney referred to in Clause 4.2.1 the Bank may appoint and remove one or more substitute attorneys at such times and on such terms as the Bank considers necessary or desirable including a substitute or substitutes to act under the terms of this Agreement (and so that each substitute has full power as the Equity Owners' attorney in accordance with the terms of the appointment).***
>
> ***4.6 The Equity Owners agree to indemnify and keep indemnified the Bank and any substitute attorney against all damages, liabilities, losses, costs or expenses which may arise from the exercise or purported exercise in good faith of any powers granted under this Agreement."***

30. The Trigger Date as defined was 14th August 2007. Thus if CEG had failed to obtain a sale before that date then the Defendant was entitled to force it to sell or procure the sale of the equity interest with a guarantee that the sale proceeds were not less than $180m.

31. There were then provisions in clause 4.2 and 4.3 whereby CEG and its companies irrevocably appointed the Bank as its attorney to execute and do in its name or otherwise on its behalf all necessary documentation and entitled the Defendant to be involved in all aspects of the enforced sale including with the Equity Owners and their advisors (financial, legal or otherwise) and co-ordinating the Forced Sale with Equity Owners and their advisors.

32. As will be seen the relevant advisor was CSS, an affiliated company of the Defendant.

33. Under Clause 4.6 CEG was obligated to indemnify the Defendant and any substitute attorney against all damages, liabilities, losses, costs or expenses which might arise from the exercise or purported exercise in ***good faith of any powers granted under the Participation Agreement.***

34. Further under clause 5.4 CEG was obligated to use all reasonable endeavours to solicit purchasers for the assets and complete a sale as soon as reasonably practical.

35. That latter obligation was firmed up in May 2007 by a variation which added a clause 5.5 as follows:-

> ***"5.5 Subject to Clause 2.1, each Equity Owner:***
>
> ***(i) shall use all reasonable endeavours to procure a Sale at the best price obtainable, to maximise the Equity Upside Payment; and***

> ***(ii) shall not take any action or omit to take any action which is intended to or reasonably likely to discourage any person from purchasing the whole or any part of the Equity Interests or Assets in a Sale provided that an Equity Owner may, subject to the prior written consent of the Bank in each case, solicit other bids in order to maximise the Equity Upside Payment".***

36. That puts an obligation on CEG to use all reasonable endeavours to procure a sale at the best price obtainable to maximise the Equity Upside Payment.

37. I have had no evidence as to how that variation occurred. It is to be noted that the Claimants' claim against the Defendant is in effect to plead that the Defendant was in breach of an implied term to the like effect.

38. It is also to be noted that at all times CEG was represented by a well known and international firm of lawyers. No evidence has been led to suggest that CEG and its officers were unaware of any of the terms of the various documents. Nor has any evidence been alleged to complain about the variations in May 2007 and December 2007 although they are clearly designed to better the Defendant's position as regards the Claimants' obligations to it and the monies that it was seeking to extract on any sale over and above repayment of its capital loan and interest at 7% above LIBOR.

ARRANGEMENTS WITH CSS

39. CEG an Dr Ls were obligated to enter into a retainer letter in respect of CSS on terms that were non negotiable. CSS was retained to assist CEG in (inter alia) identification of prospective purchasers and preparation of the market plan, screening of interested prospective purchasers, evaluating proposals and instructing and negotiating the sale and keeping CEG and its shareholders informed with the progress of any sale (clause 1). It was entitled to a fee of $100,000 per month for so acting and if a sale was consummated a further fee of $3,500,000 or 1% of the aggregate consideration which ever shall be the greater. Thus a minimum fee of $3,500,000 (although an extra nought has slipped into the Agreement) on a sale of CEG for up to $350m.

40. Under clause 5 CEG agreed to enter into a separate letter providing for an indemnity as set out in that letter.

41. Under clause 7 it provided that CSS was acting as an independent contractor with duties owed solely to Dr L and CEG and that the agreement together with the attached letter constituted the entire agreement between the parties in connection with this engagement. That is of course in contrast to the Participation Agreement which has no such clause.

42. The indemnity is wide ranging and only excludes liability for gross negligence or bad faith. The indemnity extends in favour of every Identified Person meaning ***"each member of the CS Group and all directors, officers, employees, controlling persons (if any), agents and representatives of each member of the CS Group".*** CS Group meant CSS and any subsidiary, subsidiary undertaking or branch of CS, its ultimate holding company and any subsidiary, subsidiary undertaking or branch of such holding company.

43. Thus it is argued by the Defendant that it has the benefit of that indemnity provision.

SUMMARY OF CLAIMS

44. The Claimants embarked on a sale of its interest in Kurovdag under the terms of the Participation Agreement. By 14th August 2007 despite that marketing process no offer was made which was acceptable to the Claimants. On 14th August 2007 the Defendant sent a Trigger Letter starting off the process whereby the Defendant had the right to force a sale of CEG. That process ensued. However by the Loan Repayment Date no buyer had emerged which led to the extension to 15th February 2008. By that date there were a number of potential buyers (as to which see further in this judgment). Various offers had been received but none was acceptable to the Claimants. On 15th February 2008 CEG was sold to Berghoff Trading Ltd ("Berghoff") a company controlled by Mikhail Gutseriev a founder and former Chief Executive of Russneft a Russian company. The price was $245m. CEG did not consent to that sale so the documents were effected by the Defendant under the terms set out in the Participation Agreement summarised above.

45. The Claimant puts its case on two bases. First it contends that when the Bank served the Trigger Letter on 14th August 2007 and took control of the sale process it was obliged to take reasonable precautions and exercise reasonable care to obtain the best price reasonably obtainable for CEG. The Claimants contend that that is an implied term in the Participation Agreement and arises from the nature of the particular relationship between the parties or as a result of the particular circumstances. Second it submits a duty of care in tort arises as a matter of common law although it accepts that this does not add anything to the implied term.

46. The nature of the claim was clarified by the Claimants in its closing (paragraph 22). The Claimants' case relies on a finding that the Bank owed a duty to the Claimants. If it did not the Claimants accept the claim would be dismissed. In particular it is ***not*** the Claimants' case that in the alternative it became responsible for CSS's performance of its obligations under the Engagement Letter but rather to the extent that the Bank sought to discharge its duty through the acts of CSS a failing by the Bank to discharge its obligations would be no less a failing because it was delegated to CSS. That difference to me is one of semantics rather than reality. The Claimants are still insisting that after the Trigger Letter the Bank became under a duty as alleged in the claim and failed in that duty if CSS did not carry out their functions with reasonable care.

IMPLIED TERM

47. The Claimants' case as originally pleaded was that there was an implied term that the Bank owed them a duty ***"to take reasonable precautions and exercise reasonable care so as to seek to obtain the best price reasonably obtainable, or alternatively a fair, true and proper market price upon such sale ….."*** The Amended Particulars of Claim contain an alternative case in tort but the reality is that was effectively abandoned by the Claimants in their opening (T1/30/4-6) and they were right to do so. The so called tortious duty adds nothing to the implied term in reality. This was affirmed in paragraph 121 of the Claimants' closing.

48. The Claimants in effect suggest that when the Bank exercised its rights following the Trigger Letter they became under a duty to obtain the best price in accordance with

the requirements set out above. The Claimants accept that the duty they seek to impose under the Participation Agreement is in effect an identical duty to that which would be owed by the Bank if it had exercised the power of sale under the Security Agreement. However it needs to be implied in to the Participation Agreement.

49. During the course of the Claimants' opening I raised a question as to whether it would be permissible to put the Participation and Security Agreements together and treat the sale as in reality one by the mortgagee with the consequence that the mortgagee's undoubted equitable duty would be applicable.

50. The Claimants resisted that temptation and maintained the stance that their contention as regards the duty in the Participation Agreement was a freestanding one arising out of that document and that document alone.

FACTUAL OBSERVATIONS

51. The various documents and the Participation Agreement were freely negotiated between the Bank and the Claimants up to their execution in December 2006. That said I have no doubt that the Claimants were in a desperate situation. They had to repay the substantial borrowings ($120m or thereabouts) by December 2006 failing which they would be in default. The Claimants had no means to repay that borrowing except by a sale of their indirect interest in Kurovdag. They had no other assets. It is fair to conclude that the Bank drove a very hard bargain. As part of that exercise it seems to me clear that the Bank ***deliberately*** sought to differentiate between enforcing its security and forcing a sale ***without*** enforcing its securities. The structure of the Participation Agreement gave the Claimants 8 months to find a buyer. If at the end of 8 months they were unable to find a buyer the Bank was then empowered to take control which is what it did. This is a voluntary arrangement but the Claimants might think it is not very voluntary. For example CSS were foisted upon them with non-negotiable terms and non-negotiable fees which were substantial.

52. Another example of lack of ability to negotiate on the part of the Claimants was the variation in May 2007 to put on them an express duty under the Participation Agreement to obtain the best price reasonably obtainable when they procured the sale. No one has explained why there was no corresponding duty put on the Bank either at the start or ***at that time.*** The Claimants throughout were represented by very experienced international lawyers and as I have said earlier in this judgment do not say that they did not understand the terms of the various documents and the obligations that were spelt out there ***expressly.***

53. If the Claimants had been desperate in 2006 the desperation must have magnified by December 2007. By that time they had tried to find a buyer for 8 months and had not found any. The Bank had exercised its right by the Trigger Letter to take over the sale process. It appears that no buyer was prepared to put in any kind of offer save one BSG Energy Holdings Ltd ("BSG"). This was a curious bid because the communications as shall be seen were between the Bank and BSG outwith the bid procedure. It seems to me that on analysis of the facts the Bank kept the BSG bid ***"in their pockets"*** as a fall back by December 2007 when the Claimants once again were faced with redemption but with no means to redeem.

54. The Claimants obtained a 2 month extension. However the price the Bank extracted for that was quite staggering. First they obtained a one off fee of $10m. Second they

re-jigged the percentage they were entitled to upon a sale up to $400m in excess of $180m from 27% to 33%. This as I have said was at the time when they had the BSG bid which was in excess of $180m but below $400m in their pockets.

55. This is the kind of disreputable conduct which is demonstrative of how the world views Banks when they operate. The Claimants were in difficulties and the Bank's reaction was simply to extract more money. I am not suggesting for one minute that that is actionable but it is reprehensible. It reflects an attitude that Banks seem generally to have in the modern world namely that they are indifferent to the difficulties of their customers and will simply exploit the situation as much as they can as opposed to helping them when they are in difficulties to get out of a problem. The Bank in this case was being rewarded quite handsomely under the original arrangement. It had its security that covered its capital. It had its interest rolled up at a high rate. It had a Participation Fee on the uplift on the price obtained. In addition CSS had its fee and its monthly management charges and finally the two months extension was bought at a stupendous price. The Bank laid off 80% of the risk of default on the debt to other investors. When the sale finally went through the Bank crowed (and that is the right word in my view) about the 75% return that had been obtained in 12 months. None of this affects the result I accept. It is however sadly demonstrative of the realpolitik of borrowing from Banks. There are ***"no negotiations"***; in reality I suspect the Claimants had no real prospect of doing anything other than accepting those terms.

56. I can only sigh ***"Oh tempora Oh mores"*** when I look at the Bank's conduct in this regard. However this is not a Court of morals and the decisions in the case must be made according to the law as opposed to my thoughts about the way in which the Bank behaved.

57. It seems to me clear that the Participation Agreement was carefully crafted by the Bank to have the benefits of control but without the responsibility of obtaining the best price reasonably obtainable. Whether it achieved that is a matter for debate in this action. I can see no other reason why the arrangements between the Claimants and the Bank would be structured in the way it was with a Security Agreement in a traditional form and a Participation Agreement which was somewhat unusual. This is reinforced by the various indemnity provisions deployed in the documents as set out above. The Bank was able (it would say) to achieve this because lending to the Claimants it is said would be high risk and therefore they were entitled to drive a hard bargain and extract as high as possible figure on account of that risk. The latter argument is regularly paraded by Banks but I have never understood the logic of ***"helping"*** borrowers in difficulties by charging them more to help them out of such difficulties.

IMPLIED TERM - THE LAW

58. The Claimants put their case on the implied term on 2 bases. First in selling CEG the Bank was the Claimants' agent. Agents it is submitted are subject to a duty when selling property to take reasonable care to obtain the best price reasonably obtainable.

59. Alternatively it is suggested that where a party has the power to sell another's property the law imposes a duty to take reasonable care as to the price achieved. The Claimants in their opening identified a number of instances where in different circumstances a duty was imposed. The Claimants submit those circumstances

strongly point to a similar duty being imposed on the Bank by way of analogy. Third they say that the Bank was analogous to that of a mortgagee.

60. In the alternative they submit that the duty should be implied as a result of the particular circumstances pursuant to ***Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988.***

TERM IMPLIED FROM PARTICULAR RELATIONSHIP

61. The Claimants' starting point is an extract from Chitty at paragraph 13-003.

62. The Claimants then submit that the duties are imposed as a result of a particular relationship. Thus it is contended arguments about ***Belize*** and an inevitable question ***why wasn't it express?*** are irrelevant. I can see that point in relation to certain standardised types of arrangements where Courts have implied terms when the Court consider it is appropriate to imply terms in such agreements. However the Participation Agreement is not an agreement of a particular type. It is I suspect uniquely drafted for the contract that ensued between the Claimants and the Bank.

63. I do not accept therefore that arguments about ***Belize*** (see below) are irrelevant. More importantly the question as to why it was not expressly set out is not irrelevant. It is a very significant (if only a negative) piece of evidence. The documents that were executed were done with the benefit of experienced lawyers. They were commercial agreements involving substantial sums and there is no suggestion that the Claimants did not understand the nature of the obligations that were expressed in the Participation Agreement. When the Participation Agreement is read there is of course no express obligation on either party (until May 2007) to discharge the sale of CEG and to obtain the best price reasonably obtainable in that exercise.

64. The silence on the change is extremely significant in my view. I have not had any evidence provided to me as to why that change occurred. More significantly I have not had any explanation as to how the Claimants could have agreed that variation which put an obligation expressly upon them of the type which they seek to put on the Bank by implication. It would have been the easiest thing in the world when that request to change the Claimants' obligations occurred to suggest (as the Claimants do) their implied terms should be set out expressly in reciprocity.

65. Both parties do have an implied obligation at the time of the execution of the Participation Agreement in December 2006 namely that of good faith. There is nothing significant in that implication. There are clauses which seek to limit the Bank's liability in respect of the exercise of their rights in good faith. The Claimants do not say that the Bank is in breach of any duty of good faith. That duty is akin to a duty to be honest see the observations of Scott LJ in ***Medforth v Blake [2000] Ch 86*** at page 103B.

66. In Chitty paragraph 13-004 the learned authors referred to what was called ***"traditional principles"***. The principles so described (having regard to the fact that the Court will not make a contract for the parties) are that it will be prepared to imply a term if there arises from the contract language itself and the circumstances in which it entered into an inference that the parties ***must*** have intended the stipulation in question. It is stated that traditionally an implication of this nature may be made in two situations. First where it is necessary to give ***business efficacy*** to the contract and

secondly where the term implied represents the ***obvious*** but unexpressed intention of the parties.

67. These principles can be discerned from some of the large number of authorities which were cited to me by both parties. By way of illustration only (without giving it any due significance) I refer to the Court of Appeal decision in ***Sir Martin Broughton v Kop Football (Cayman) Ltd & Ors [2012] EWCA Civ 1743***. This was an appeal against a decision I made when I rejected (on a Part 24 application by the Claimant) the Defendant's contention that there were various implied terms which would prevent the Bank (Royal Bank of Scotland) ("RBS") from selling the shares in Liverpool Football Club following the expiry of the agreed extension period to enable the Defendant to sell the relevant shares. Other aspects of the judgment related to case management issues which are not relevant to the present case. However on the question of implied terms Lewison LJ (with whom McCoombe and Tomlinson LJs concurred) said this:-

> ***"68 In his judgment of 22 October, the judge ruled against the Kop defendants on the question of implied terms. The agreements in relation to which they sought to imply the terms were compendiously referred to in the draft pleading. But the argument in this court focused more closely on two agreements referred to as the transaction co-operation letters. By those letters, RBS extended the time for repayment of facilities and the Kop defendants undertook to use all reasonable endeavours to achieve a refinancing of the facilities in full before the repayment date.***
>
> ***69 The implied terms are formulated as follows: (1) that RBS would not take any step or fail to take any step which would frustrate, impede or delay a refinancing of the facilities; (2) that RBS would co-operate with all reasonable requests from the defendants in relation to a refinancing; and (3) that each of the parties to the extension agreement would use their best endeavours to ensure that the sale process of Liverpool Football Club will be conducted in such a way as to sell LFC for its maximum value and would not take any step or fail to take any step which would impair the attainment of the maximum value for LFC. The first two of these terms are referred to in the pleading as "the refinancing implied terms" and the third as the "sale value implied terms".***
>
> ***70 The argument on implied terms faces formidable difficulties. The first point to make is that to which the judge alluded in paragraphs 112 and 113 of his judgment. For centuries the law has regulated the powers and duties of a mortgagee through the intervention of equity and not by the implication of terms into contracts of loan. This means that in general a mortgagee owns no common law duty of care to the mortgagor and there are no implied terms. This was stated by Robert Walker LJ in Yorkshire Bank v Hall [1999] 1 WLR 1713***

at 1728H and again by Lloyd LJ in the Socimer International and Standard Bank [2008] 1 Lloyd's Rep 558.

71 Mr Malek says that this is a bespoke contractual obligation and therefore the ordinary rules relating to implied terms apply. But in my judgment anyone trying to understand what the financing documents meant would know that they had been entered into against the background of this long legal history. As the judge rightly said, if the borrowers had wished to redeem the mortgages by coming up with the money, RBS could not have stopped them.

72 The Kop defendants say that the judge did not apply the legal test laid down in Attorney General of Belize v Belize Telecom, which they say altered the legal test. I do not think that it did. Lord Hoffmann said that a term would be implied because that is the "only meaning" consistent with the other provisions of the instrument and the relevant background and that the implied meaning is what the instrument "must mean". It follows that necessity is still the test. I accept that necessity is to be judged by reference to the reasonable expectations of the parties but that does not alter the test. That view is supported by the decision of this court in Mediterranean Salvage and Towage Ltd v Sea Mar Trading and Commerce Limited [2009] EWCA Civ 351; [2009] 1 Lloyd's Rep 639.

73 The judge referred to the criteria in BP Refinery (Westernport) Pty Ltd v the Shire of Hastings [1978] 52 ALR 20 and concluded that the suggested terms were neither necessary nor obvious. That, in my judgment, was a perfectly permissible approach. It cannot in my judgment be plausibly suggested that the judge applied the wrong legal test.

74 In the present case, RBS decided not to exercise their powers of enforcement as mortgagee. Against that background, it would be very surprising if it undertook obligations as onerous, let alone more onerous, than that which would have applied to it in equity if it had decided to exercise its powers of enforcement.

75 Moreover, in our case, the agreements into which the Kop defendants say that the terms are to be implied are, on the face of them, agreements which impose no positive obligation on RBS at all. The only consideration that RBS gave was the forbearance to enforce its existing rights and remedies under the mortgage. It is an ambitious undertaking to impose positive obligations on RBS by way of implication in such an agreement.

76 This leads on to the next point. Given that RBS had rights and remedies under the mortgage, it is inconceivable that the

finance documents which simply postponed the repayments date would have been understood to have imposed upon RBS any obligation more onerous than those which equity would have imposed on it in its capacity as mortgagee.

77 The duties that equity imposes on a mortgagee in relation to a realisation of the secured property is a duty to take reasonable care to achieve the best price. That duty does not oblige him to improve the property or to wait for improvements in the market. It is inconceivable that, against that background, the reasonable reader would have understood RBS to be accepting the more onerous sale value implied term, particularly in circumstances in which RBS was not in fact exercising its power of sale.

78 So far as the refinancing implied terms are concerned, the Kop defendants rely on decisions to its effect that, where a contract requires the co-operation of all parties to a contract, there is an implied term that co-operation will be forthcoming. But that is dependent on the express terms of the contract. Since RBS undertook no express obligation to do anything, I do not see what necessity there is to imply any term about co-operation. If the borrowers came up with the money, RBS would have been obliged to accept the tender and release the security. That is the obligation imposed by equity and in my judgment it is enough.

79 The last of the implied terms is that RBS would not take any step, or fail to take any step, which would frustrate, impede or delay a refinancing of the facilities. By refinancing, the Kop defendants obviously mean repayment of the RBS loan. But, plainly, if RBS were to exercise its power as mortgagee, for example by appointing a receiver or by exercising its power of sale that would impede or delay a refinancing. So the suggested implied term is inconsistent with RBS's existing rights and obligation, which is another reason why this term cannot be implied.

80 In addition, as the judge observed, things have moved on since these agreements were made. Although refinancing was still an option, the main focus was on achieving a sale of the club and, as I have said, the implied term was pleaded in relation to all documents without differentiation. The judge was therefore entitled, as he did, to look at the documents in the round and to say that efforts made to advance the contractually agreed objective of a sale of the club could not have been understood to amount to a breach of any previous agreement, even though those agreements were said to remain in full force and effect would therefore refuse permission to appeal on this question too, with the result that I would dismiss this application.

68. The "traditional" approach to implied terms can be discerned from the decision of ***BP Refinery (Westernport) PTY Ltd v Shire of Hastings [1977] 180 CLR26.*** The majority opinion of the Privy Council was given by Lord Simon of Glaisdale with whom Viscount Dilhorne and Lord Keith of Kinkel agreed with Lords Wilberforce and Morris of Borth-y-Gest dissenting.

69. In his opinion Lord Simon said this:-

> ***"40. Their Lordships do not think it necessary to review exhaustively the authorities on the implication of a term in a contract which the parties have not thought fit to express. In their view, for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that "it goes without saying"; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract"***

As is apparent from the judgment of Lewison LJ in the ***Kop*** case above I applied those 5 criteria.

70. Lewison LJ rejected the submission that the ***Belize*** case altered the legal test (ibid paragraph 72).

71. I turn now to consider the ***Belize*** decision ***[2009] 1 WLR 1988***.

72. The opinion of the Board was delivered by Lord Hoffman. He said this about the question of implication in to an agreement:-

> ***"17 The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls. "***
>
> ***18 In some cases, however, the reasonable addressee would understand the instrument to mean something else. He would consider that the only meaning consistent with the other provisions of the instrument, read against the relevant background, is that something is to happen. The event in question is to affect the rights of the parties. The instrument may not have expressly said so, but this is what it must mean. In such a case, it is said that the court implies a term as to what will happen if the event in question occurs. But the***

implication of the term is not an addition to the instrument. It only spells out what the instrument means.

19 The proposition that the implication of a term is an exercise in the construction of the instrument as a whole is not only a matter of logic (since a court has no power to alter what the instrument means) but also well supported by authority. In Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board [1973] 1 WLR 601, 609 Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:

"[T]he court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves."

20 More recently, in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, Lord Steyn said:

"If a term is to be implied, it could only be a term implied from the language of [the instrument] read in its commercial setting."

21 It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean. It will be noticed from Lord Pearson's speech that this question can be reformulated in various ways which a court may find helpful in providing an answer – the implied term must "go without saying", it must be "necessary to give business efficacy to the contract" and so on – but these are not in the Board's opinion to be treated as different or additional tests. There is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?

22 There are dangers in treating these alternative formulations of the question as if they had a life of their own. Take, for example, the question of whether the implied term is "necessary to give business efficacy" to the contract. That formulation serves to underline two important points. The first, conveyed by the use of the word "business", is that in considering what the instrument would have meant to a reasonable person who had knowledge of the relevant background, one assumes the notional reader will take into account the practical consequences of deciding that it means one thing or the other. In the case of an instrument such as a commercial contract, he will consider whether a different construction would frustrate the apparent business purpose of the parties. That was the basis upon which Equitable Life Assurance Society v Hyman [2002] 1 AC 408 was decided. The second, conveyed by the use of the word "necessary", is that it is not enough for a court to consider that the implied term expresses what it would have been reasonable for the parties to agree to. It must be satisfied that it is what the contract actually means.

23 The danger lies, however, in detaching the phrase "necessary to give business efficacy" from the basic process of construction of the instrument. It is frequently the case that a contract may work perfectly well in the sense that both parties can perform their express obligations, but the consequences would contradict what a reasonable person would understand the contract to mean. Lord Steyn made this point in the Equitable Life case (at p. 459) when he said that in that case an implication was necessary "to give effect to the reasonable expectations of the parties."

24 The same point had been made many years earlier by Bowen LJ in his well known formulation in The Moorcock (1889) 14 PD 64, 68:

"In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men"

25 Likewise, the requirement that the implied term must "go without saying" is no more than another way of saying that, although the instrument does not expressly say so, that is what a reasonable person would understand it to mean. Any attempt to make more of this requirement runs the risk of diverting attention from the objectivity which informs the whole process of construction into speculation about what the actual parties to the contract or authors (or supposed authors) of the instrument would have thought about the proposed implication. The imaginary conversation with an officious bystander in Shirlaw v Southern Foundries (1926) Ltd [1939]

2 KB 206, 227 is celebrated throughout the common law world. Like the phrase "necessary to give business efficacy", it vividly emphasises the need for the court to be satisfied that the proposed implication spells out what the contact would reasonably be understood to mean. But it carries the danger of barren argument over how the actual parties would have reacted to the proposed amendment. That, in the Board's opinion, is irrelevant. Likewise, it is not necessary that the need for the implied term should be obvious in the sense of being immediately apparent, even upon a superficial consideration of the terms of the contract and the relevant background. The need for an implied term not infrequently arises when the draftsman of a complicated instrument has omitted to make express provision for some event because he has not fully thought through the contingencies which might arise, even though it is obvious after a careful consideration of the express terms and the background that only one answer would be consistent with the rest of the instrument. In such circumstances, the fact that the actual parties might have said to the officious bystander "Could you please explain that again?" does not matter.

26 In BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 180 CLR 266, 282-283 Lord Simon of Glaisdale, giving the advice of the majority of the Board, said that it was "not … necessary to review exhaustively the authorities on the implication of a term in a contract" but that the following conditions ("which may overlap") must be satisfied:

"(1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying' (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract".

27 The Board considers that this list is best regarded, not as series of independent tests which must each be surmounted, but rather as a collection of different ways in which judges have tried to express the central idea that the proposed implied term must spell out what the contract actually means, or in which they have explained why they did not think that it did so. The Board has already discussed the significance of "necessary to give business efficacy" and "goes without saying". As for the other formulations, the fact that the proposed implied term would be inequitable or unreasonable, or contradict what the parties have expressly said, or is incapable of clear expression, are all good reasons for saying that a reasonable man would not have understood that to be what the instrument meant."

73. One starts with paragraph 17 of the opinion. The Participation Agreement as regards the Bank's liability to the Claimants does not expressly provide what happens when some event occurs. As Lord Hoffman said the usual inference is nothing is to happen. If the parties had intended something to happen the instrument would have said so. If the event has caused loss to one or other of the parties the loss lies where it falls. In my view that is extremely significant in the present case because the parties plainly addressed the question of imposing duties on the Claimant and the Bank as regards the sale. There is no other explanation that can be given for the variation in May 2007.

74. Further in paragraph 18 Lord Hoffman points out sometimes a reasonable addressee would understand the instrument to be something else. The implied term is then implied to spell out what the instrument means. In the present case when one reads the Participation Agreement it is clear what is meant to happen upon certain events. What is missing is the Claimants' desire to impose by implication a burden on the Bank which is not in the Agreement. I do not see applying paragraph 18 of Lord Hoffman's opinion that the Participation Agreement can be read to require something else. In paragraph 19 of the opinion Lord Hoffman reminds us all that the implication of the terms is an exercise on the construction of the instrument as a whole and is not only a matter of logic since the Court has no power to alter what the instrument means. Finally in paragraph 22 he observes that it is not enough for a Court to consider the implied term expresses what it would have been reasonable for the parties to agree to. It must be satisfied what the contract means. Whilst I can understand that it could be said that it is reasonable to put the duty on the Bank as contended for by the Claimants I have difficulty understanding how that is necessary for the purposes of the Participation Agreement. I note what Lord Hoffman says in paragraph 26 in relation to the 5 requirements in ***BP Refinery***.

75. Like Lewison LJ I do not accept that Lord Hoffman intended to overturn what is said in the ***BP Refinery*** case. If one looks at those 5 conditions I do not see that the implied term satisfied condition (2) or that it is so obvious it goes without saying. Finally in effect it contradicts an express term after May 2007.

76. As Lord Hoffman says on those formulations in paragraph 27 ***"as for the other formulations, the fact that the proposed implied term will be inequitable or unreasonable or contradict what the parties have expressly said, or is incapable of clear expression or good reasons for saying that a reasonable man would not have understood that to be what the instrument meant".***

77. The Claimants referred me to the observations of Lewison LJ in his well known book ***"The Interpretation of Contracts (5th Edition)"*** at paragraph 6.02 where he said this:-

> ***"Test for Implied Terms as Legal Incidents***
>
> ***6.02 Where the Court is asked to imply a term as a legal incident of a particular legal relationship, the strict test of necessity need not be satisfied. The Court is concerned with the broader questin of policy.***
>
> ***As has been seen, the court has recently isolated a special category of implied terms, namely those where the court is asked to imply a term as a legal incident of a particular***

> ***relationship, as a default rule which will apply unless specifically excluded. These kinds of implied term are not based upon the intention of the parties, actual or presumed, in a given instance, although the provenance ofa particular term may well have been the commonplace use of such a term in earlier times in contracts of that type, so establishing what later would become the default rule.***
>
> ***Where the court decides that a term should be implied as an incident of the legal relationship it is really deciding a question of substantive law. In Emmott v Michael Wilson & Partners Ltd Lawrence Collins LJ, speaking of the implied obligation of confidentiality in an arbitration agreement said:***
>
> ***"The impied agreement is really a rule of substantive law masquerading as an implied term."***
>
> ***Is this of any legal significance, in terms of the criteria which must be satisfied before such a term will be implied:"***

78. At first sight that appears to contradict what Lewison LJ said in the ***KOP*** case. However it is not a contradiction. In that part of the text (and remembering the observations in ***Cordell Clanfield Properties [1969] 2 Ch 9***) he is dealing with a large number of cases over the years where the Courts have implied terms in to particular types of contracts. This is the distinction identified in the observations of Baroness Hale in ***Geys v Societe General London Branch [2013] 1 AC523*** at [55] :-

> ***"55 In this connection, it is important to distinguish between two different kinds of implied terms. First, there are those terms which are implied into a particular contract because, on its proper construction, the parties must have intended to include them: see Attorney General of Belize v Belize Telecom Ltd [2009] UKPC 10, [2009] 1 WLR 1988. Such terms are only implied where it is necessary to give business efficacy to the particular contract in question. Second, there are those terms which are implied into a class of contractual relationship, such as that between landlord and tenant or between employer and employee, where the parties may have left a good deal unsaid, but the courts have implied the term as a necessary incident of the relationship concerned, unless the parties have expressly excluded it: see Lister v Romford Ice & Cold Storage Co Ltd [1957] AC 555, Liverpool City Council v Irwin [1977] AC 239.***
>
> ***57 Whatever the test to be applied, it seems to me to be an obviously necessary incident of the employment relationship that the other party is notified in clear and unambiguous terms that the right to bring the contract to an end is being exercised, and how and when it is intended to operate. These are the general requirements applicable to notices of all kinds, and there is every reason why they should also be applicable to employment contracts. Both employer and***

> ***employee need to know where they stand. They both need to know the exact date upon which the employee ceases to be an employee. In a lucrative contract such as this one, a good deal of money may depend upon it. But even without that, there may be rights such as life and permanent health insurance, which depend upon continuing to be in employment. In some contracts there may also be private health insurance. A person such as Mr Geys going on holiday over Christmas and the New Year, needs to know whether he should be arranging these for himself. At the other end of the scale, an employee who has been sacked needs to know when he will become eligible for state benefits. "***
>
> ***58 It is necessary, therefore, that the employee not only receive his payment in lieu of notice, but that he receive notification from the employer, in clear and unambiguous terms, that such a payment has been made and that it is made in the exercise of the contractual right to terminate the employment with immediate effect. He should not be required to check his Bank account regularly in order to discover whether he is still employed. If he does learn of a payment, he should not be left to guess what it is for and what it is meant to do."***

79. When one looks at paragraphs 57-58 Baroness Hale is not purporting to give any clear indication as to what is the relevant test for implied terms. In paragraph 55 she identified the two occasions when the Courts can imply terms. The second of those are classes of a particular contractual relationship. The former type are those where the particular term is implied in a particular contract because on its proper construction the parties must have intended to include them (referring to ***Belize)***. She then observes ***"such terms are only implied where it is necessary to give business efficacy to the particular contract in question".*** In the ***Geys*** case the Court was dealing with a contract of employment hence the reference to the two types of implication.

80. There is no question that the particular relationship in the present case is of a particular class of contractual relationship (category 2).

81. There are therefore, no policy considerations for the implication of the term contended for by the Claimants.

82. I was reminded by the Defendant in its closing (paragraph 175) that the Participation Agreement like the agreement in ***KOP*** impose no positive implications on the Bank at all. As the Court of Appeal recognises in its judgment at [73] that is a further reason why a suggestion of an implied positive obligation should fail. That is of course in line with Lord Hoffman's observations in ***Belize*** about silence of obligation at paragraph [17] referred to above.

83. I was referred by the Defendant to the Court of Appeal decision in ***Socimer International Bank Ltd (In Liquidation) v Standard Bank London Ltd [2008] Bus LR (CA).***

84. In that decision there was a commercial agreement between the Claimant Bank and the Defendant Bank over the sale by the Defendant of a portfolio of shares purchased by the Claimant but not fully paid for. The issue was whether the Defendant's obligation to value a portfolio was to conduct an honest but otherwise subjective valuation or as the Claimant said analogous to the duties of a mortgagee with a power of sale the Defendant was bound to take reasonable care to find their true market value. The Judge at first instance rejected the Defendant's case and found instead the Defendant had by analogy the duties of a mortgagee with the power of sale.

85. The Court of Appeal allowed the Defendant's appeal and refused to imply a term as suggested by the Claimant in that case.

86. The Defendant naturally relied upon this case because on a factual basis it has similar characteristics to the present issue. However I remind myself that in the question of an implied term where one is not concerned with a class of contract the question as to whether or not the term should be implied is one of construction of that agreement according to the normal principles of construction. Thus decisions on implied terms in the cases which are not class orientated are entirely specific to that case and cannot establish a precedent for a completely different case.

87. Rix LJ addressed the question that would arise where a contract allocates only to one party power to make decisions (see paragraph 60 of his judgment) after reviewing various authorities he came to the following conclusion:-

> ***"66 It is plain from these authorities that a decision-maker's discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith, and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality. The concern is that the discretion should not be abused. Reasonableness and unreasonableness are also concepts deployed in this context, but only in a sense analogous to Wednesbury unreasonableness, not in the sense in which that expression is used when speaking of the duty to take reasonable care, or when otherwise deploying entirely objective criteria: as for instance when there might be an implication of a term requiring the fixing of a reasonable price, or a reasonable time. In the latter class of case, the concept of reasonableness is intended to be entirely mutual and thus guided by objective criteria. Gloster J was therefore, in my judgment, right to put to Mr Millett in the passage cited at para 57 above the question whether a distinction should be made between the duty to take reasonable care and the duty not to be unreasonable in a Wednesbury sense; and Mr Millett was in my judgment wrong to submit that it made no difference which test you deployed. Lord Justice Laws in the course of argument put the matter accurately, if I may respectfully agree, when he said that pursuant to the Wednesbury rationality test, the decision remains that of the decision-maker, whereas on entirely objective criteria of reasonableness the decision maker becomes the court itself. A similar distinction was highlighted by Potter LJ in para 51 of***

> ***his judgment in Cantor Fitzgerald. For the sake of convenience and clarity I will therefore use the expression "rationality" instead of Wednesbury-type reasonableness, and confine "reasonableness" to the situation where the arbiter on entirely objective criteria is the court itself."***

88. Rix LJ then went on to consider the case of ***Phillips Electronic Grand Public SA v BSkyB [1995] EMLR 472*** where he observed that the case was a useful and authoritative modern restatement of the relevant principles upon which terms may be implied and a rational of doing or not doing so. He reviewed it at paragraph 105 and said this:-

> ***"105 The other authority which I need to mention at this point is the only authority cited in oral submissions by either party on the question of any implication (going beyond those of good faith and rationality etc discussed above). That is Phillips Electronique Grand Public SA v. British Sky Broadcasting Limited [1995] EMLR 472 (CA). Although not reported other than in a highly specialised series of reports, it is a useful and authoritative modern restatement of the relevant principles upon which terms may be implied and of the rationale of doing or not doing so. The judgment is of Sir Thomas Bingham MR and is a judgment of the court also constituted of Stuart-Smith and Leggatt LJJ. Sir Thomas Bingham said (at 480/482):***
>
> ***"Both parties accepted as an accurate and comprehensive statement of the law on the implication of terms into commercial contracts the formulation of Lord Simon of Glaisdale on behalf of a majority of the Judicial Committee of the Privy Council in BP Refinery (Westernport) Pty Ltd v The President, Councillors and Ratepayers of Shire of Hastings (1978) 52 ALJR 20 at 26:***
>
> ***Their Lordships do not think it necessary to review exhaustively the authorities on the implication of a term in a contract which the parties have not thought fit to express. In their view, for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) It must be reasonable and equitable; (2) It must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.***
>
> ***This passage, to which the judge paid close attention in reaching his decision, distils the essence of much learning on implied terms. But its simplicity could be almost misleading.***
>
> ***The courts' usual role in contractual interpretation is, by resolving ambiguities or reconciling apparent inconsistencies,***

to attribute the true meaning to the language in which the parties themselves have expressed their contract. The implication of contract terms involves a different and altogether more ambitious undertaking: the interpolation of terms to deal with matters for which, ex hypothesi, the parties themselves have made no provision. It is because the implication of terms is potentially so intrusive that the law imposes strict constraints on the exercise of this extraordinary power.

There are of course contracts into which terms are routinely and unquestionably implied. If a surgeon undertakes to operate on a patient a term will be implied into the contract that he exercise reasonable care and skill in doing so…Again, quite apart from statute, the courts would not ordinarily hesitate to imply into a contract for the sale of unseen goods that they should be of merchantable quality and answer to their description and conform with sample…

But the difficulties increase the further one moves away from these paradigm examples. In the first case [that of the surgeon], it is probably unlikely that any terms will have been expressly agreed, except perhaps the nature of the operation, and the time and place of operation. In the second case [that of sale of goods], the need for implication usually arises where the contract terms have not been spelled out in detail or by reference to written conditions. It is much more difficult to infer with confidence what the parties must have intended when they have entered into a lengthy and carefully-drafted contract but have omitted to make provision for the matter in issue. Given the rules which restrict evidence of the parties' intention when negotiating a contract, it may well be doubtful whether the omission was the result of the parties' oversight or of their deliberate decision; if the parties appreciate that they are unlikely to agree on what is to happen in a certain not impossible eventuality, they may well choose to leave the matter uncovered in their contract in the hope that the eventuality will not occur.

The question of whether a term is to be implied, and if so what, almost inevitably arises after a crisis has been reached in the performance of the contract. So the court comes to the task with the benefit of hindsight, and it is tempting for the court then to fashion a term which will reflect the merits of the situation as they then appear. Tempting, but wrong. For, as Scrutton LJ said in Reigate v Union Manufacturing Co (Ramsbottom) Limited [1918] 1 KB 592 at 605,

"A term can only be implied if it is necessary in the business sense to give efficacy to the contract; that is, if it is such a term that it can confidently be said that if at the time the contract was being negotiated some one had said to the

> ***parties, 'What will happen in such a case', they would both have replied, 'Of course, so and so will happen; we did not trouble to say that; it is too clear'. Unless the court comes to some such conclusion as that, it ought not to imply a term which the parties have not themselves expressed…"***
>
> ***In the familiar cases already mentioned there could be little room for doubt what the parties' joint answer would have been had the question been raised at the outset. There would, almost literally, have been only one possible answer. But this may not be so where a contract is novel, known to involve more than ordinary risk and known to be more than ordinarily uncertain in its outcome. And it is not enough to show that had the parties foreseen the eventuality which in fact occurred they would have wished to make provision for it, unless it can also be shown that one of several possible solutions would without doubt have been preferred: Trollope & Colls Limited v North West Metropolitan Regional Hospital Board [1973] 2 All ER 260, [1973] 1 WLR 601 at 609-10, 613-14."***
>
> ***106 The judge made no mention of such doctrine or of any cases which discuss it. Implications of good faith and rationality, and of lack of arbitrariness or perversity, are standard, for they represent the very essence of business (and other) relationships. Once one goes beyond them, however, the matter becomes much more uncertain."***

89. He then went on to consider whether or not the term put forward by the Claimant ought to be implied in the agreement. He firmly rejected such submission in paragraph 108 ***"in my judgment an implied term is not necessary or sufficiently certain and I reject it".*** He then gave his reasons for that culminating in paragraph 117 as follows:-

> ***"The agreement was a carefully worked out contract between sophisticated parties. An implication in such circumstances is, as Sir Thomas Bingham said, "an altogether more ambitious undertaking". There is no standard term (other than that of good faith and rationality) which applies in such circumstances. Cooke J referred to the fact that Standard's terms differed from those of a standard set of terms known as the PSA/ISMA type agreements which made provision for a "Default Market Value" and which did not give to the seller the wide discretion which at that time it was common ground that Standard's terms gave to the seller in a default situation."***

90. In so doing he rejected the Claimant's analogy with a position of a mortgagee with equity in paragraph 122 as follows:-

> ***"In these circumstances, it is difficult to see how the analogy of the position of a mortgagee in equity could throw any light on the situation. In any event, I would respectfully agree with***

> ***what Lord Justice Lloyd has to say about that. In my judgment, the analogy breaks down. Standard's position is governed by its commercial contract, not by the law of equity. This is the world of sophisticated investors, not that of consumer protection. These merchants in the securities of emerging markets have made an agreement which speaks of the need for a spot valuation, not of the more leisurely process of taking reasonable precautions, such as properly exposing the mortgaged property for sale, designed to get the true market price by correct process. Meanwhile, the assets involved are those of Standard, not of Socimer: and the underlying background is that where the buyer defaults, he loses both the right to complete his purchase and his downpayment."***

91. Lloyd LJ's judgment concentrated on dealing with the relationship with that of a mortgagor and mortgagee (understandably). His judgment said the following:-

> ***"147 I agree, and wish to add only some comments on the analogy which the judge drew with the duties incumbent on mortgagees.***
>
> ***148 If parties enter into a transaction which is a mortgage, then the law imposes certain obligations on the mortgagee, and confers certain rights on the mortgagor, which go back to the intervention of equity in the early development of mortgages. Although a mortgage is a contractual transaction, the imposition of such duties has nothing to do with the implication of terms in a contract under the general law of contracts: see Yorkshire Bank v Hall [1999] 1 WLR 1713, at 1728D. Whether these duties are imposed on a given party depends only on whether, on the true analysis of the transaction, it is or is not a mortgage.***
>
> ***149 Other consequences may follow if the transaction is a mortgage, for example obligations to register the security if it has been created by a company, failing which it may be void against a liquidator or other creditors.***
>
> ***150 It is therefore important to draw a clear distinction between a transaction which is a mortgage, on the one hand, and one which, however similar it may be to a mortgage in economic or commercial effect, is not a mortgage as a matter of true legal analysis.***
>
> ***151 In some circumstances it may not be easy to determine whether an agreement does or does not create a mortgage: see, for example, Welsh Development Agency v Export Finance Co [1992] BCC 270. In the present case, however, it was common ground, and the judge rightly accepted, that the agreement did not involve lending, nor security for a debt,***

and therefore it did not amount to, or involve the creation of, a mortgage.

152 At paragraph 42 of her judgment, the judge summarised the duties imposed on a mortgagee in respect of the exercise of powers to realise the security. At paragraph 43 she said that

"similar principles must apply, with the necessary adjustments, to the valuation powers of a mortgagee, or a person in an analogous position to a mortgagee, such as Standard, in circumstances such as the present, where the valuation is conducted by the seller in order to fix the amount of the buyer's indebtedness to the seller and the quantum of the buyer's deficiency, if any."

153 Mr Auld had submitted that such duties did not apply because they arose only from the relationship of mortgagor and mortgagee. She rejected that argument, and said at paragraph 43 that, given the rights of Standard, there was "every reason for the implication of a duty closely analogous to that of a mortgagee". At paragraph 45 she said that

"if a term is to be implied, it should be one that imposes on Standard a duty, in doing its valuation, to take reasonable precautions to value the Designated Assets at "the fair" or "the true market" or "proper" value of such Assets as at the termination date and cannot simply value at nil, simply because there does not happen to be a purchaser, or a quoted bid price on that date."

154 That passage suggests that she was proceeding on the basis of the implication of a term into the contract, but by analogy with the terms imposed by law in relation to a different type of transaction, to which this agreement had economic similarities. It seems to me, with respect to her, that she was led by that similarity into drawing, and applying, an analogy with mortgage law, while overlooking, on the one hand, the need to justify the implication on the basis of conventional contract law and, on the other hand, the fact that, in relation to a mortgage, the duties by reference to which she drew the analogy do not derive, and cannot be derived, from such a process of implication, but are imposed as a matter of general law, which does not apply in the present case because the transaction is not a mortgage.

155 It seems to me that the duties to which a mortgagee is subject are no guide at all on the question whether it is legitimate to imply into the contract a term under which Standard would be subject to such a duty such as the judge found.

> ***156 I therefore disagree with the judge's proposition in her paragraph 43 that "similar principles must apply, with the necessary adjustments, to the valuation powers of … a person in an analogous position to a mortgagee, such as Standard, in circumstances such as the present", and with her conclusion on the point expressed at her paragraph 45.***
>
> ***157 Like Rix LJ, I consider that the requirements of necessity and otherwise which are laid down by the law of contract for the implication of terms cannot be satisfied in the present case in respect of the term which the judge held ought to be implied into the contract. For those reasons, and for all the reasons given by Rix LJ, I would allow this appeal."***

92. A number of observations can be made in respect of Lloyd LJ's judgment. First he rightly identifies that whether the equitable duty of a mortgagee arises depends on whether or not the transaction truly considered is or is not a mortgage. That is why I was concerned to ensure that the Claimants' case was not based on treating the Participation Agreement as in reality as a mortgage. As I have said above that was rejected. Thus the Court of Appeal in ***Socimer*** make it quite clear that it is wrong to draw an analogy with obligations that are imposed in the relationship of the mortgagor and mortgagee are quite different relationships with a contract.

93. Unsurprisingly the Defendant places great emphasis on that case. It like the ***Kop*** case are cases where special contractual arrangements are entered into between a mortgagor and a mortgagee in documents which actually have nothing to do with that relationship.

94. I do not regard the Participation Agreement as being a particularly complicated or sophisticated document especially when (as in this case) one has the assistance of experienced commercial lawyers. As I have said it is not contended by the Claimants that the document was unclear nor is it said that it was not understood. What is in effect said is that it is ***"unfair".*** That is not in my judgment a sufficient basis for implying the term put forward for the Claimants.

95. I refer back to paragraph 122 of Rix LJ's judgment. The position under the Participation Agreement is not that of mortgagor or mortgagee nor is it a matter of mortgagor or mortgagee by analogy. The Participation Agreement merely regulated the inevitable sales process that was contemplated by the short term nature of the monies advanced by the Bank. It clearly had a fall back in the event that there was no sale. It could, if driven to it, exercise its rights under the Security Agreement and realise the secured assets and if it did so as mortgagee it would have the equitable duty to account (unless that liability was somehow restricted or taken away by agreement). That is not necessary for this decision because there is no argument over the Security Agreement.

96. The position between the parties is governed by the Participation Agreement which is a commercial contract between sophisticated investors and the Bank. It is not a matter for consumer protection. The terms in my view were harsh (I repeat what I said above). However equally the harshness or otherwise of the terms is not for argument

in the present case. The Claimants clearly had little or no choice; the failure to obtain the money from the Defendant would have meant that they would have become in default with regard to their existing borrowings and that would have been the end of the matter subject to the realisations by those prior secured creditors.

97. The Participation Agreement as originally drawn said nothing about any duty to obtain the best reasonable price whether by the Claimants or the Bank when the sale process was being conducted by the Claimants (before the Trigger Date or after). Both parties were interested before and after in the equity by virtue of the upside provisions. Both therefore had an incentive to obtain as much money as possible. Nevertheless as Rix LJ observed in ***Socimer*** the limited obligations in commercial contracts are those of good faith for the reasons he gave (see above).

98. Further it must be appreciated as the Defendant contends in its closing that even after the Trigger Date the Claimants were not excluded see for example their continuing entitlement to bring about a consensual sale (clause 2.1). The power of the Bank to enforce the equity owners to sell or itself procure the sale does not oblige it to take action and or exercise its entitlement under clauses 4.2 and 4.4 to be involved in the sale co-ordinating with the Claimants. The only change was the addition of clause 5.5 by the May alteration. Before that it seems to me that both parties had a good faith duty to co-operate with each other in the sale with the Claimants given the first clear run for 8 months and then the Bank having a right (but not an obligation) to serve the Trigger Letter after that period with no successful sale. Even thereafter the sale only became non consensual (as actually happened) if the Claimants refused to participate. In that eventuality the Bank had their powers to ensure that a sale was put through and it could not be obstructed by the Claimants refusing to sign requisite documents.

99. The only change which occurred thereafter was the addition of clause 5.5. No evidence was led before me explaining that change (which in my view altered the respective duties as regards the Claimants to the Defendant but not vice versa). It was clearly done by the Bank to strengthen its position. I have no evidence to suggest that change was not understood or objected to in any way.

100. It is certainly true that the Participation Agreement and the other documents were all carefully crafted by the Bank to maximise its position at the expense of the Claimants. However that of itself does not give rise to a cause of action and the Claimants do not say it does. This as I have said was reinforced in May 2007 and when the extension took place in December 2007. The large monies extracted from the Claimants were justified by the Bank as being because there was a high risk but in fact the evidence does not support that in my view. By December 2007 the Bank had an offer from BSG in their pocket which would enable them to make a recovery of their loan and the interest and an upside figure of at least $20m. Given the strength of that offer the Bank's reaction was to extract more money. I do not accept for those reasons there was any significant risk justifying those greater extractions. Once again however that is questionable but not actionable.

101. Under clause 4.2.1 of the Participation Agreement for the purpose of effecting a forced sale the Claimants irrevocably appoint the Bank as its attorney ***"to execute and do in its name or otherwise and on its behalf all documents, acts, deeds and things which the Bank shall in its absolute discretion consider necessary or desirable in order to implement the forced sale;".***

102. Further under clause 4.3 the Claimants are required to execute all such deeds and documents and do all such things as the Bank might require for perfecting the transactions intended to be effected under or pursuant to clause 4.

103. Finally under clause 4.5 the Bank is given power to appoint or remove any of the attorneys.

104. Clause 4.6 contains an indemnity provision which the Bank will rely upon but I will deal with that separately when I examine all the other indemnity provisions in the various documents.

105. It is suggested by the Claimants that this procedure under clause 4 constitutes the Bank an agent of the Claimants and imposes on it full fiduciary duties that applied to agents when it sells.

106. There are similar provisions in the Security Agreement see clauses 7.7 (a) and 4.4. The Claimants assert that the Bank is therefore the Claimants' agent and owes a duty of due care and diligence when selling goods on the principal's behalf. The Claimants then (paragraph 36 of its closing) state, ***"obviously that applies to an attorney selling under a power of attorney".***

107. However I do not accept that analysis. The Bank is not appointed agent for providing any services to the Claimants. It was given the right to do certain things in the ***name*** of the Claimants for the purposes of protecting the Bank's own interests. There was no appointment of the Bank as agent on some general basis and its duties were confined to those which arise expressly or impliedly under the Participation Agreement.

108. There is nothing new about this process. It must be recalled that the assets to be sold were the shares in the company which was party to the JVA. Those shares will be registered at a company register and for a sale to be effected the shareholder is required to execute any share transfer. Obviously if the Claimants wished to be difficult they would not co-operate in that exercise. Hence the provision enabling the Bank when it chooses to force the sale to prevent such difficulty by signing the documents on behalf of the Claimants. It is therefore a limited operation namely the execution of documents to implement a sale which the Bank has forced under the terms of the Participation Agreement. Such provisions are not uncommon. For example a legal mortgage of shares is effected by a transfer of the shares to the mortgagee subject to an agreement for their retransfer on repayment of the loan i.e. the form of a legal mortgage that applies to all property before 1925 but which was no longer applicable to mortgages of land after that date. As has long been said the old mortgages of realty with an absolute conveyance with a proviso for redemption by a particular date followed by a purported vesting in the mortgagee after that date have been described as ***"one long suppressio veri and suggestio falsa".*** That procedure still applies of course to personalty hence the procedure of an absolute registration to ensure a legal mortgage of shares is obtained.

109. In practice in the case of shares an equitable mortgage would be affected by a deposit of the share certificate and even transfers executed in blank (see generally ***Fisher and Lightwood*** paragraphs 17.22 and following). Equally in the case of an equitable mortgage of land provisions are generally provided whereby the owner of the land grants a power of attorney to the equitable mortgagee to enable it to transfer a legal

title when a sale occurs (assuming the extra mortgage is not under deed and protected by section 101 of Law of Property Act 1925). The purpose of all of these devices is to enable the lender in each case to realise its rights under the relevant document. In the case of mortgages it is to sell and transfer the legal title; in the case of the Participation Agreement it is to procure a forced sale. In no case such as those is the lender a true agent for the purposes of selling the borrower's property as such on behalf of the borrower.

110. Another example is the case of the equitable mortgagee of registered land see ***Re: White Rose Cottage [1964] Ch 483; 940.*** Although the sale looks like a sale by the mortgagor in reality it is a sale by the mortgagee enforcing its rights. It is difficult to realise in what way such a sale is taking place when one looks at the documents. So one looks at the reality of the underlying transaction see the exchange in 1977 Conv 45 between Mr Peter Millett QC (as he then was) and Mr PW Smith (as he then was).

111. Therefore the argument put forward by the Claimants that there are some agency like duties imposed on the Bank is wrong and I reject it.

A GENERAL DUTY

112. In their opening submissions the Claimants contended that there was an implied term as they suggest from the nature of the relationship which arises in any case where A is empowered to sell or dispose of the property of B.

113. In paragraph 32 of their closing the Claimants return to this. It is heavily dependent in my view on the Claimants' analogy with that of a mortgagee which as I have set out above I do not accept for the reasons that Lloyd LJ gave in ***Socimer***.

114. The wide ranging agency duty in a commercial agreement was rejected by Sales J in ***Torre Asset Funding Ltd v RBS [2013] EWHC 2670 (Ch)*** paragraphs 142-148. That accords with my view in relation to the Participation Agreement. In so saying I am not suggesting that one decision on the construction of a particular document has any binding nature as regards how the later document is to be construed. Each document has to be construed according to the particular case.

115. The same applies in my view to the Claimants' reference to the duties under a pledge or in the case of an administrator of a company. I do not see that it is possible to read into these various decisions a general duty of the type the Claimants contend for being imposed on someone merely because they sell the property of another. It all depends on the nature of the case and the documents on a case by case basis.

116. Equally the various examples given in paragraph 41 of the Claimants' closing do not amount to authority for the proposition that there is a general rule as contended for by the Claimants. None of the cases purport to do so save perhaps ***re Charnley Davies Ltd (No (2)) [1990] BCLC 760*** where Millet J (as he then was) says:-

> "***It was common ground that an administrator owes a duty to a company over which he is appointed to take reasonable steps to obtain a proper price for its assets***"

117. That was said to be an obligation that the law imposes on anyone with a power whether contractual or statutory to sell property which does not belong to him. The

role of an administrator of a company is far removed in my view from the Bank exercising its rights to procure a forced sale under the Participation Agreement. In so far as Millet J purports to say there is this general duty as is suggested in the sentence above I would respectfully disagree with him. The point does not appear to have been argued and it is totally contrary to the various cases I have set out above culminating in ***Socimer***. Those cases would have all been decided differently had there been such a general proposition. No one has argued that before the Claimants as far as I am aware and I reject it. All of the examples given by the Claimants are in my view case by case decisions and do not purport to create a general duty as contended for by the Claimants. Further the Claimants in paragraph 42 of their closing say:-

> ***"There is no good reason why a mortgagee selling pursuant to a mortgage should be treated differently from a mortgagee selling pursuant to a power of attorney in the same (or indeed a different) deed. Nor is it sensible to suggest that the distinction is that a mortgagee's duty is owed in equity. Quite apart from the anachronism inherent in such an argument, the pledgee's duty is owed at common law."***

118. That with respect to the Claimant seems to be an argument that the Bank exercising its right under the Participation Agreement is in reality a mortgagee selling under a security; a point which I flagged up and which the Claimants rejected (paragraph 123 of their closing).

119. The construction of the Participation Agreement in my view was carefully created by the Bank to give it a method of control ***without*** that control being as a mortgagee. There is nothing new in the Bank operating that way. The whole development of the law of receivership arose in the 19th century because mortgagees did not wish to be liable to account as mortgagees in possession by enforcing the security. That led to the device of the receiver which was a creation to enable the Bank effectively to obtain control without assuming the equitable duties imposed on such mortgagees. The receiver was inevitably constituted as the ***"agent of the mortgagor"*** (subject of course in the cases of companies in liquidation) see ***Sowman v David Samuel Trust Ltd [1978] 1 All ER 616.*** The agency is an illusion because in reality the receiver is realising assets that are credited first to the mortgagee. Thus the Participation Agreement with the back up of the Security Agreement is in my view designed to avoid the Bank having any of the duties imposed as the Claimants would suggest.

120. There is nothing missing from the Participation Agreement which requires an implied term to deal with it. The provisions were bilateral until the May variation but the alteration in Clause 5.5 does not have any impact on the construction of the Participation Agreement which must be construed as to its meaning when it was entered into. What that Clause does however is demonstrate evidentially that the Bank at least addressed the fact that the Participation Agreement did not put any higher obligation either on the Claimant or it as regards the sale. The Bank chose to reinforce its position and the Claimants without demur and without any explanation given to me, agreed it. It was only then, in my view that the disparate obligations emerged that it was a matter of agreed variation and nothing to do with any perceived inadequacy in the Participation Agreement in its original format.

121. The Participation Agreement is perfectly workable in its form without the need to have recourse to the implied term as contended for by the Claimants. It is a tightly

drawn (but in my view not particularly complicated) agreement designed as I have said to give the Bank maximum protection but minimal exposure as regards liability to the Claimants. The court however is not in a position to re-write bargains and the plain fact in my view is that the Claimants freely entered into this arrangement with this tightly drawn agreement and cannot complain that it does not provide them with better protection than they now wish to obtain. I have sympathy with the Claimants but sympathy is not a basis for rewriting agreements either. They were clearly in a difficult position in December 2006 and that clearly put the Bank in a strong position as regards setting out documents that were non-negotiable (a familiar theme for those who borrow large sums of money from Banks).

122. None of this is complained about by the Claimants.

123. There are issues over the various indemnity provisions but that involves a question of liability if I find that there was a duty and that provisionally that duty was broken. The clauses do not in my view assist in construing the Participation Agreement at this stage to see whether there is an implied term as contended for by the Claimant save in one respect. The Participation Agreement by Clause 4.6 provided an indemnity on the part of the Claimants to the Bank "***All damages liabilities and losses, costs or expenses which may arise from the exercise or purported exercise in good faith of any powers granted under this Agreement***".

124. The Claimants contended that that clause was designed to protect the Bank for third party liabilities and not from its own breaches. I will deal with this below but I would observe that it is surprising that the Bank should attempt to exclude liability for breaches arising from these exercise of powers "***in good faith***" without addressing a liability that might arise out of duty to take reasonable care which is a higher duty. That shows in my mind bearing in mind the commercial nature of the agreement and the parties and their representation that the duty contended for by the Claimants would not have arisen by implication.

CONCLUSION ON IMPLIED TERM ISSUE

125. In my view the Participation Agreement is a self standing commercial agreement freely negotiated between the parties and is complete in its form without the need of any implied terms as alleged by the Claimants. No other decisions which involve the construction of different agreements are definitive as to my views as to the construction. Nevertheless the ***Kop*** case, the ***Socimer*** case and the observation of Lord Hoffmann in ***Belize*** [paragraph 17] show that the Participation Agreement was a carefully crafted agreement (albeit designed to give the Bank maximum protection and minimal exposure) but does not have the implied term in it as the Claimants contend.

126. The Claimants suggested that the agreement would be very one sided. To the extent that the Bank had protection by the control after the Enforcement Date I would agree. However, one needs to look at the overall picture of the Participation Agreement and it is wrong to construe it solely by reference to what happened after the Enforcement Notice. The agreement was carefully structured in my view. The position was the Claimants needed the Bank's money in December 2006. They needed it to get rid of their existing creditors and thus obtain a breathing space whereby they could sell the only asset to repay their debt and make a profit (which they did in any event). They obtained the breathing space of 8 months. They were given the control during that

period of the sale exercise. Both parties are incentivised to achieve the best price possible because of the Upside Agreement. There is therefore no need to imply the duty contended for by the Claimants. After the Enforcement Notice was served the Bank became "the masters" but the Claimants were not excluded; it was merely a shift in the balance of control. Nevertheless the position was still that both parties were actively involved in the sale process and were both again still incentivised in any event to maximise the sale so far as it was possible.

127. It should not be forgotten that this was a relatively short period of finance to enable the Claimants to achieve the object of the sale of Kurovdag. The Participation Agreement in its express provisions is complete and I therefore reject the Claimants contention that the Bank was subject to the implied term that they seek.

128. My conclusion therefore is to dismiss the Claimants' action because they have failed to establish the implied term contended for.

129. I cannot of course stop there because it is possible this case will be taken elsewhere and a higher court might come to a different conclusion. Given that I propose to go on and deal with the evidence both non expert and expert which was extensively led to deal with the claims on the basis that there was a breach of this duty.

THE CLAIMS

130. This part of the judgment requires me to identify the claims made at the start of the trial which contrast somewhat with the claims made at the end of the trial.

131. I should say a little about the factual background to the dispute before I go on to deal with the allegations of breach. The proceedings concern the sale of CEG whose sole asset was a 51% interest in Shirvan the operator of Kurovdag field. It is the largest onshore field in Azebaijan (21 km x 5 km with over 1100 wells). It is a mature oil field having commenced production in 1955. It is located in the Kura basin some 120 km South West of the Azeri Baku, and to the East of the Kura River. The sale which has led to the claim took place on 15 February 2008 and was made to Berghoff a company linked to Mr Gutseriev.

132. To the North West of Kurovdag is Mishovdag field ("Nations Field"). Prior to its sale by Nations Energy (a Canadian company) Nations Field was operated by the Karasu Operating Company and the Kura Valley Operating Company under a PSA . The Nations Field is smaller than the Kurovdag. Nations Energy sold its interest in it for $340 million on 22nd February 2008 to Global Energy Azerbaijan Limited ("Global") another company linked to Mr Gutseriv.

133. Immediately to the South of Kurovdag is its southern extension known as the Karabagli North (referred to as the "Salyan field"). That was at all material times operated by Salyan Oil Limited under a PSA between SOCAR and CNODC Chinese State Oil Gas Corporation. Logically the Salyan field is a continuation of Kurovdag.

134. Prior to 15 February 2008 Kurovdag was exploited by CEG under the joint venture with SOCAR from 1995. At that time SOCAR had sought the assistance of Dr L for the purpose of modernising its portfolio of oil and gas fields in Azerbaijan including Kurovdag. On 20th December 1995 the JVA was entered into and CEG ultimately succeeded to the original JVA partner Whitehall. On 5th November 2004 CEG and

SOCAR entered into a PSA which was intended to replace the JVA but ultimately that was never implemented and was formally terminated by a written agreement dated 7th September 2007.

REPORTS

135. A number of reports between 2004 and 2006 were prepared in relation to Kurovdag including production enhancement studies and a study on Water Flooding ("WF") a method of enhancing the extraction of oil by flooding the underground strata. Those reports were :-

1) Petro Alliance (June 2004) which was a full 3D seismic survey for Kurovdag in June 2004.

(ii) Schlumberger produced a report in December 2004 on estimated reserves in Kurovdag based in volumetric and Decline Curve Analysis.

(iii) Halliburton produced a report in August 2005 on a production enhancement project aiming to increase production from currently producing in idle wells.

(iv) Halliburton produced a second report in 2005 containing a geological proposal for the drilling of appraisals/development wells in the southern sector of Kurovdag.

(v) Halliburton produced a further report dated 24th August 2005 of a potential from enhanced recovery from selected areas of Kurovdag by water injection.

(vi) Amec in September 2005 carried out an infrastructure study to assess the capacity of Kurovdag oil collection system.

(vii) Miller & Lents carried out an estimate of reserves for the southern area of Kurovdag only.

137. CEG began in 2006 to investigate potential means of exploiting the field for Kurovdag potential. It formed a view that as a small private company it either needed to expand or bring on board a strategic partner.

RPS REPORTS

138. In March 2006 CEG commissioned RPS to carry out an independent reserves evaluation of Kurovdag. It is a highly respected independent consultancy specialising in petroleum reservoir evaluation and economic analysis whose reports are highly regarded in the oil and gas industry. The first report was dated 20th October 2006 ("RPS 1"). It produced a later report on 1st May 2007 ("RPS 2") by way of an addendum to RPS 1.

139. RPS 1 evaluated CEG's 51% interest incurred under both a JVA basis and a PSA basis and arrived at a valuation on a net present value with 10% discount ("NB 10") of $536.9 million based on total 2P reserves of 146.3 million barrels with CEG's interest being 76.6 million barrels on the basis of JVA and 42.8 million barrels on the basis of PSA.

140. The classification 2P is the catagorisation given to reserves which are proved and probable. This is in contrast to 1P which are proved oil reserves and 3P which are proved, probable and possible oil reserves.

141. The Claimants contend that this was a conservative estimate given that the oil price escalator used by RPS did not reflect the extent of oil price increases that actually took place. Between December 2006 and February 2008 the Brent spot oil price rose from $64.74 a barrel to $90 a barrel and the consensus analyst estimates for long term oil price had also been adjusted up by a figure of 19.2. It is interesting to reflect how the price of oil has varied during the course of the trial. At the time of the reports that were produced for the action most experts agreed that the likely oil price for the foreseeable future was in excess of $100 a barrel.

DEALINGS WITH THE BANK

142. In May 2006 CEG made the decision not to proceed with an IPO in London and Dr L was introduced to the Bank's Peter Firmin (a Director in the Bank's Fixed Income Division) by Mr Benyatov who then was the Head of Emerging Markets Group for the FSU (excluding Russia), Central and Eastern Europe and Israel.

143. Both Mr Firmin and Mr Benyatov gave evidence before me. CEG did not immediately enter into a loan with the Bank but instead took short term loans on 31st May 2006 and 11th August 2007 which were repayable in December 2006.

144. In November 2006 negotiations for a loan recommenced between CEG and the Bank. In the meanwhile on 2nd December a company which subsequently feature in the sale process ONGC made an offer to acquire 100% of CEG's interest in Kurovdag comprising $125 million for 31.25% plus an option to acquire the balance 68.75% of 275 million total 400 million. This was based on RPS 1 and CEG rejected it because (inter alia) it did not take into account the impact of WF as subsequently developed in RPS 2.

145. On 11th December 2006 Stone & Webster prepared a further report on Kurovdag on the Bank's instructions. This was done in order to assess whether the Bank's proposed loan to CEG of $127 million would be adequately secured. Its conclusion was that RPS 1 was thorough, the reserves estimate considered to be reasonable and the flexible approach towards interpreting data and making improvement adjustments appropriate.

146. On 13th December 2006 the Bank's emerging markets team (including Mr Firmin) prepared a Credit Committee Memo as part of the Bank's due diligence and this was submitted to a committee of the Bank's credit risk management department. That memo set out credits for enterprise evaluation analysis for CEG based on comparables, comparable transactions, multiples and a DCF (Discounted Cashflow) basis. All of the valuations were in respect of a JVA basis and were respectively (1) 388 million to 466 million, (2) 514 million (3) 537 million (RPS valuation)/678 million (CEG valuation included). On the basis of those figures the Bank would be well covered as regards the $120m it was being asked to lend to repay the indebtedness that was then outstanding and due for repayment in December 2006.

147. The second RPS report which took into account WF increased the value of Kurovdag from 536.9 million to 966.9 million. This was based (the Claimants contended) on a

conservative oil price basis and a modest oil production programme of 280 million barrels. Further the RPS 2 report did not take into account any gas reserves. The Claimants contend that Schlumberger's technical report stated that there were 12.2 billion cubic meters of gas. As I understand under the JVA the gas is made available for local consumption at no cost. The case turns entirely on the oil production and the valuation ensuing on that oil production.

NEGOTIATIONS WITH THE BANK

148. Mr Akhundov the CFO of CEG gave evidence about the business plans and ensuing negotiations with the Bank. Dr L in his witness statement confirmed that he agreed with Mr Akhundov's evidence.

149. The negotiations with the Bank started initially with Mr Benyatov. They were carried out with a measured process until the crucial decision had to be made in December 2006. The existing finance arrangements were such that a $20 million penalty would be payable to Ashmore one of the creditors if the loan facility was not renewed. Mr Benyatov was arrested by the Romanian authorities and remained in custody for several months. This did not appear to have any significant impact on the negotiations and the decision of Credit Suisse to loan the Claimants the $128 million required to redeem the outstanding loans. It is said that Mr Firmin led the negotiation exercise and produced the documents. Mr Firmin said they were not negotiable apparently.

150. Mr Benyatov was released in late July and participated in the sale by the Bank after the Trigger Notice. It will be seen that I have disbelieved him on a number of points. After the trial the Claimants wrote to me to inform me that his conviction by the Romanian authorities over an investment fraud had been upheld on appeal, albeit the sentence of 10 years' imprisonment has been reduced to four and a half years. He disputes it and is still supported by the Bank (although I do not suppose for one minute that they would take any action against him whilst the proceedings were unresolved). I do not think any of this has any relevance to the task before me.

151. No evidence was adduced by the Claimants in respect of the creation of the loan documentation. It is negatively not suggested that the terms were not understood and not agreed. They were stated to be non-negotiable and clearly no negotiations took place.

152. The primary purpose was to obtain a 12 month breathing space to enable CEG's interest to be sold. The amount advanced included $15m to be used for a drilling project. As should be seen the $15m was taken but not used for that purpose. The Participation Agreement included a self-serving declaration that all parties had independent legal advice before entering into it. Nothing turns on that and the Claimants do not say that they did not have requisite legal advice before entering into any of the documentation.

153. SOCAR were not consulted over this re-financing. Technically they were not entitled to be consulted. The relationship with SOCAR clearly deteriorated in 2007-2008. Dr L suggested that he had good relationships but I do not accept that. Further as shall appear below SOCAR's attitude to a disposal of CEG's interests had an impact on interested purchasers. Ultimately in cross examination Dr L accepted that when he had a deal in place provisionally he would have to go and obtain the agreement of

SOCAR. He accepted that if SOCAR refused that would be the end of that particular sale. What he failed to accept is that his attitude to SOCAR worsened the position and that impacted adversely on bids that were made. However whether legally SOCAR could control it or not was irrelevant. SOCAR was a state entity and simply was in a position to make things difficult if not impossible for CEG and any purchaser of its interests. It is quite clear for example from the evidence (as to which see below) that SOCAR were determined once they found out that Dr L was selling his interest in Kurovdag to ensure that he was not in effect going to walk away from the JVA and make a large profit. This is well demonstrated by a number of actions SOCAR took including allowing BSG to draft a letter dated 5th February 2008 on its behalf which was designed to sabotage any possible sale to anybody other than BSG.

STRUCTURE OF THE PARTICIPATION AGREEMENT

154. Putting aside the technical provisions the structure of the Participation Agreement is in effect to give the Claimants an 8 month window to find a buyer with the assistance of CSS and thereafter the Bank takes over if it serves the appropriate notice (it not being obliged so to do). CSS remain involved in that stage also. As I have said above it is wrong to say that the effect of the Trigger Letter was to exclude the Claimants further from the sale process; it merely gave the Bank a right to force a sale over the teeth of the objections of the Claimants.

THE FIRST M&A PROCESS

155. This process produced no offer which was acceptable to the Claimants.

156. The M&A process involving ***"teasers"*** being sent out to a number of targeted companies (some 45 in total) identified by CSS. Dr L in his evidence objected that the process was too much of a scatter gun and not focused. CSS was not the sole organisation conducting the sale. Dr L himself also made direct contact with parties whom he thought might be interested. Significantly (in the light of the claim as ultimately presented) Dr L in his witness statement (paragraph 68) said that at the first M&A stage he perceived that Indian and Chinese buyers were amongst the highest and most competitive in the market and that the intent was to focus on them rather than potential Russian bidders. ONGC who had shown interest before the loan agreement was entered into is a company in which there are Indian interests. Dr L admitted in cross examination that he might have been wrong to adopt the approach of excluding Russian companies (T4/120) he also admitted that he told Mr Ukrasin in December 2006 that he did not want the Russian companies contacted because he believed they would conspire with SOCAR to take the ownership of CEG without paying a fair price for it (T4/143-145). This reluctance to contact the Russians in my view causes considerable difficulties to the Claimants. There is no logic in it being undesirable to contact the Russians in the first M&A process but not only desirable but a matter of complaint in respect of a failure to contact the Russians in the second M&A process.

157. Whatever the complaint about a scatter gun approach it is clear the Claimants went along with it without protest. Indeed Mr Akhundov's unchallenged witness statement (paragraph 48) demonstrated that whatever their concern about the CSS list ultimately a compromise list of bidders was agreed. This accords of course with the fact that the Claimants were in control of that process. I have said also above that the Claimants were seeking buyers through other sources as well at the same time.

158. The process involved two stages. Key prospective bidders were sent details of a limited nature of the detail of Kurovdag (a teaser). They were also sent a confidentiality agreement which would have to be signed in order to obtain further information that would be contained in a process letter with a copy of a Confidential Management Presentation/Confidential Information package before making an indicative bid. In the second phase an interested company would choose whether to make a bid or an offer. However any phase 1 bid was on the basis that it was not binding. If any phase 1 bid looked interesting they would be given access as part of phase 2 to a Data Room containing information which allowed the bidders to conduct any necessary due diligence. They were also invited to attend a management presentation given by the Claimants' representatives together with the CSS team. At the end of phase 2 a bidder if still interested would present a final offer together with its proposed draft Sale and Purchase Agreement ("SPA") including any amendments proposed to the Claimants' sellers.

159. CSS identified 50 prospective companies and after some discussions with the CEG team that was whittled down to some 26. That number was increased. I attach to this judgment a document prepared by the Defendant. The first part is the bidder in relation to the pre Trigger Date period. The next part is the same exercise in relation to post Trigger bids.

160. It will be seen that 39 were approached. Some had previously been approached by CEG such as ONGC and PKN Orlen for example. The latter is interesting because their investigations led them to believe that Kurovdag was only worth $100m. They were ejected from the process for their views on value and because of an alleged leak by them of information. Some were also approached by HB Global (for example Caspian Meridien item 9) another organisation seeking to sell the Claimants' interest in Kurovdag.

161. The table shows that only 4 companies made an indicative bid in the first process. Of those 4 ONGC (who had made a bid before in 2006) made an indicative bid of $400m but ultimately their bid was $300m with a further $50m on recovery of the upfront investment. That was rejected by the Claimants on a valuation basis, because of the apparent leak of information and the insistence of an offer of condition of SOCAR consent.

162. PetroVietnam offered indicatively $1.2bn but did not proceed further because it said it was not able to obtain the regulatory permits in the required time frame. PCG Turicum made an offer of $600m but would only bid if it was guaranteed of its success. The last one was PKN Orlen which was an indicative bid of $450m but their statement reducing it to $100m was of course fatal to their bid.

163. The first M&A process had therefore produced very little by May 2007. None of that can be blamed on the Bank. The Claimants were in control of that process.

164. At the very least this shows the sale of CEG was going to be a difficult process. It also shows the wide ranging differences in its valuation ($1.2bn to $100m). Those differences were obtained despite access to the same material which makes it even more difficult to analyse. Further one has to take into account that by May 2007 the RPS 2 report with its increased valuation had been released. Thus for example ONGC made an indicative bid of $400m in terms of its letter of 2nd March 2007 but reduced

it after it had seen the 2nd RPS report and despite the increased optimism of that document.

165. Nothing happened in the sales process following this initial round until the Trigger Letter was served by the Bank on 14th August 2007. There is no complaint made about that; indeed it was believed by the parties that a lull should occur so as to dispel any sense of desperation in the market as regards the sale. The sale had become public. It is impossible to decide how that occurred but nevertheless it became public in the oil industry press. Some of the bidders might well have been responsible for it but it is impossible to come to any conclusion as to how the proposed sale became public. Various published articles are identified in the Defendant's opening (paragraphs 166-169).

BAKU MEETING

166. By June 2007 the Bank became concerned about the relationship between SOCAR and CEG. In particular the Bank was concerned about CEG's failure to implement the Drilling Plan. Accordingly on 28th June 2007 it wrote to CEG to arrange a meeting with SOCAR to be attended by CEG and the Bank. This was an important meeting because it was the first time the Bank met SOCAR face to face. Dr L did not attend. His reasons for non attendance were unconvincing. It was clear in my mind that he skulked Achilles-like in his tent and would not go unless he was asked. SOCAR did not want to ask him so he did not go despite the fact this was the first meeting between his JVA partners and his Bankers. Mr Firmin wrote to SOCAR shortly after the meeting and it is clear that the meeting and the contents of the meeting came as a great shock to him. His letter dated 11th July 2007 had an opening paragraph which to my mind gave the game away ***"I very much enjoyed meeting you and your team and look forward to further discussions with you on [the JVA] and other subjects of mutual interest. The frank and open discussion particularly hearing SOCAR's perspective on the status of [the JVA] and the historical perspective was valuable and informative".*** He then set out various matters which were discussed. The extent of distrust between the parties is well illustrated by the email from Rodger Littlechild to Dr L after the meeting which is (to put it mildly) extremely critical and derogatory about SOCAR.

167. SOCAR replied affirming their opposition to the drilling program. The reason for the opposition at this stage was that their relationship with CEG was low and they wanted rid of them that is clear. They would not agree to this arrangement because whilst CEG has to put up the initial expenditure it is taken off the revenue until it is repaid. Thus SOCAR would end up paying 49% of the drilling program when they had no confidence in CEG. Further CEG had obtained $15m for the drilling program when the program had not taken place.

168. During his cross examination Dr L revealed for the first time that he had always considered the consent of SOCAR to a sale of CEG's interest was a prerequisite whatever the contractual documents might say. This evidence is summarised in the Defendant's closing (paragraphs 130-133). It seems to me that when one is developing an oil field in a country which is a member of the FSU (Former Soviet Union) when that country is your partner it is inevitable whatever documentation says you are likely to be in difficulties if you fall out with them. Equally whatever the documentation might say it is extremely likely that if a successor is presented to them as a fait accompli that too would create difficulties. The relationship between

SOCAR and Dr L was clearly antagonistic. Ultimately he accepted that he hoped to arrange a deal without the prospective buyers approaching SOCAR and then he would approach SOCAR for their consent. He accepted that if no consent was forthcoming that would be the end of the deal.

169. Thus by the end of July 2007 there was no acceptable buyer despite CEG having had 8 months to find such a buyer.

170. In my view this and the results of the subsequent marketing process under the second M&A operation unless it is flawed is the best indication of the true worth of Kurovdag. However intriguing and apparently well researched expert valuations are they are necessarily hypothetical and the fact that the Claimants were unable to obtain any buyer at all when they were in control of the process is telling in my view as to the likely value of CEG.

171. Given those failures it was inevitable the Bank would serve a Trigger Notice and it duly did.

EVENTS POST TRIGGER NOTICE

172. Despite the Bank's attempts to portray itself as being like the ***"British Adviser"*** to some oriental potentate they were in reality in control of the sales process after they served the Trigger Notice. Thus for example on the day before the service of the Trigger Notice (13th August 2007) Mr Firmin was reporting internally ***"we are now getting involved. Truth is the client was a bit of a jerk on limiting who CSS can approach. Now FID is running the process we can open it up more sensibly and have recently agreed the same with the client".*** The day after the Trigger Notice Mr Firmin confirms this to CEG ***"Pursuant to our meeting of yesterday and the terms of the Participation Agreement please find attached a copy of the letter to CEG from Credit Suisse (CS) which I delivered to Dr [L] yesterday"*** i.e. the Trigger Notice.

173. He continues ***"Going forward CS will co-ordinate all M&A activity so please ensure CEG copy and involve CS with all correspondence with potential interested buyers as well as all advisors of CEG. Please can CEG consult with CS before approaching any potential interested buyer……"*** On 15th August 2007 Igor Ukrasin (of CSS) sent an email to others within the CS group referring to a proposed Sales process post the Trigger Notice saying ***"FID is now in control of the sale process (essentially they could force the client to do certain things he was not prepared to do i.e. go to a broader universe of buyers) we are planning to re-launch the process…."***.

174. The lack of respect to CEG is well demonstrated by Mr Firmin's internal emails. On 15th August he wrote internally to James Mahoney ***"frustrating at least with puppets you can go to the guy who pulls the strings……..unfortunatlely in this case he is a muppet he has wasted 4 hours I did not have on this today. Will have a cold one tonight and will try to decipher the Dr's cryptograph in the morning – no doubt it will be a mmm call.*** James Mahoney replied ***"I think at the 9th month we take over the process clause was one of the most prudent things I have ever seen negotiated….. as it turns out".*** Peter Firmin replies ***"Yep good for the leadership of the M&A sale process….. doesn't help us with the real problem….. without SOCAR coming onside it will be hard to get businesses to play ball".***

175. Mr Mahoney' s reply ***"Agreed but this sort of crap out of the client is all I have heard over the last 2 weeks really points out how badly things have been done by them so far this year".***

176. On cross examination Mr Firmin affected not to be able to explain the expression ***"mmm call"*** In my view he lied. He knew full well what he meant but was unwilling to explain it no doubt because it was derogatory.

177. On 17th August an exchange of emails took place internally within the Bank and CSS about an approach to BSG. Peter Firmin said the approach was ***"this is a disaster. This name in particular needs to be approached extremely carefully given history. "FID plans to approach this name. Please recall this email".*** That attracted a reply (inter alia) ***"What does FID have to do with it?"*** Mr Firmin replied ***"FID is the client who is selling".***

178. Mr Firmin made the position clear to the Claimants on 23rd August 2007 in a email:-

> ***"Zaur***
>
> ***As noted during our meeting on 14th August and as discussed previously, we plan to implement a new phase of the M&A process. The process will be implemented similarly to the prior sales process but on a more accelerated basis and with a wider list of potentially interested parties……The list of buyers we will be approaching over the next few weeks is attached."***

179. It is quite clear and I so determine that after the Trigger Notice the Bank took over and controlled the second M&A process. Whilst CSS had previously been involved in my judgment and I so determine CSS thereafter were reporting to the Bank in priority to CEG although as a matter of banking practice CEG were being charged for the privilege. The attitude of the Bank to CEG is demonstrated by the derogatory internal emails.

180. The stance of Mr Firmin and Mr Ukrasin in evidence under cross examination that they were not in control was incredible and I reject it. I do not believe that they seriously believed that their evidence on that point was true.

181. A side issue identified by the Claimants in their closing was the destruction of the Bank's M&A expert evidence (Mr Tolkien) on the issue of control. In his first report (C179) he said from the documents he had seen it did not appear that Mr Firmin was leading the M&A process. That was quite right ***on the documents he had seen***. However he had not seen any of the ones identified above. He accepted that the email at [G29/7706] showed that Mr Firmin was effectively saying ***"we are the masters now".***

182. That email exchange is illuminating. Having been told by Mr Firmin that FID is the client who is selling Steven Hellman replied ***"Well ….. that is good to know…."*** Peter Firmin replied ***"Obviously …… that is internal, confidential info and not to be shared with anyone outside CS.*** Steven Hellman replied ***"We are not aware of any of this. Was told it was an outside party. Apologies."***

183. Finally Peter Firmin replied ***"For the outside world it is an outside party who is selling. FID is controlling the sale process and will be the final determiner on who is approached and what terms are agreed and accepted. The current owner of the asset is a "character" hence our control is a good thing as it will streamline the decision making process and close in for a credible offer……All confidential."***

184. Given that Mr Tolkien withdrew his initial stance and asserted that from the documents he had now seen that Mr Ukrasin, Ms Pavlova and Mr Taylor with support from Mr Benyatov were running the M&A process and he acknowledged that he had now seen emails showing Mr Firmin stating he was running the process. It was unfortunate (and professionally embarrassing for Mr Tolkien) to be led into a conclusion in his report which was unsupportable when looking at documents which were not shown to him. I do not know how that happened but it is a classic example of how vitally important in cases like this is a close scrutiny of contemporary documents which are written or considered when litigation is not a prospect.

185. I accept the Claimants' submissions summarised in paragraph 144 of their closing that after the Trigger Date CSS acted entirely as the Bank's agents throughout the period up until the conclusion of the sale and whilst it was still retained by the Claimants (for paying purposes alone) control and direction passed to the Bank which was running the process under the direction of Mr Firmin.

186. That makes the Bank responsible to the Claimants for any failure on the part of CSS as the entire sale process was controlled and directed by the Bank.

ALLEGED BREACHES OF DUTY

187. The major claim by the Claimants against the Bank is that in the second M&A process it failed properly to target relevant potential bidders. In a clarification of their Amended Particulars of Claim dated 7th February 2014 the Claimants identified 17 companies in respect of this allegation.

188. This is of course in addition to the 89 post Trigger Date organisations who were contacted by the Bank (as set out in the Bank's schedule annexed to this judgment). Much time was spent on analysing these various ***"lost bidders"*** but by the time closings had been reached the Claimants' ***"lost bidders"*** were reduced to 5 (all Russian) namely GazpromNeft, Tatneft, TNK-BP, Zarubezhaneft JSC, Russneft.

189. In addition there is a free standing allegation in respect of BSG that the Bank in late August 2007 told Mr Steinmetz (the controller of BSG) that the Bank was looking to sell CEG for $200-$250m. There are other allegations in respect of BSG namely concentrating on a sale to it, failing to have regard to any specified valuations but instead pitching the asking price well below its true value.

190. I have attached a copy of the information provided by the Claimants at 27th November 2014 which is a summary of the entirety of the Claimants' complaints against the Bank. In that document for the first time they identified the price that they contend could have been obtained (namely $630m) and that the transaction would have been a consensual one on that basis in that the Claimants would have participated in the sale and would have been willing to give warranties. That document also revealed the percentage chance lost namely 65% but not the basis as to how that figure was arrived at.

FAILURE TO CONTACT RUSSIANS

191. It will be recalled that during the first M&A process the Claimants were extremely reluctant (to put it mildly) that there should be any contact with the Russians despite its claims of breach against the Bank that the Russians were potentially attractive bidders. That attraction is based on the fact that they were large companies, had former Soviet Union links with Azerbaijan (I am not persuaded that is an advantage necessarily) and were to varying degrees embarking on a process of expansion. Further it is fair to say in my view that the clear difficulties about SOCAR would more easily be capable of being overcome by large companies from Russia.

192. It is however interesting to note that one of the reasons that Dr L was reluctant to allow the Russians in the first bidding process was that he thought they might conspire against him with SOCAR. It is undoubtedly the case in my view that Dr L believed there was a SOCAR conspiracy to deprive him of any benefit from the sale of CEG. It is also clear (and acknowledged by it) that within the Bank and CSS Dr L was considered to be paranoid because of this reference to a SOCAR conspiracy. However one must not lose sight of the well known observation ***"just because you are paranoid does not mean they are not out to get you".***

193. It is quite clear in my view that SOCAR were determined to make sure that Dr L did not obtain a large profit by selling CEG and departing from the JVA. Whether that is a justified stance is impossible to determine and is actually irrelevant. It was plainly there for all to see. Nevertheless it made the sale difficult and explained in reality Dr L's reluctance to bring SOCAR in to the sale process at all. The Bank (especially after the July 2007 meeting) was clearly aware of the SOCAR problems. It was referred to in the correspondence above when the Bank served the Trigger Notice. It is clear that Dr L's views that SOCAR were out to get him were justified. Whether SOCAR were justified or not is neither here nor there but the letter of 5th February 2008 is an extraordinary letter for SOCAR to have written (see below).

GAZPROMNEFT

194. As early as 14th August 2007 GazpromNeft was identified by the Bank as a potential bidder. Mr Khitrov (the Bank's man in Moscow) on 14th August 2007 sent an email to Mr Firmin ***"I could talk to the top people in Rosneft, GazpromNeft who are acquiring like mad…….let me know how you would like to proceed."*** That attracted a reply giving a summary of the opportunity Mr Firmin having contacted him earlier in the day saying that the Bank were looking to sell a 51% interest in an onshore existing oil field in Azerbaijan and it was suggested that he (PF) should run this by you (i.e. Khitrov) to see if you are aware of any names that may be interested in such an opportunity. The identified likely price range would be $400m plus or minus $50m.

195. Mr Khitrov had replied that the potential interested parties may be plenty which led to him replying that GazpromNeft were acquiring like mad.

196. Mr Khitrov replied on the same day saying that he had checked out a few contacts without disclosing the names but when they heard of an oil asset in Azerbaijan everyone came up with the Claimants' name and that the rumour was the stake is worth $200m.

197. Mr Firmin replied ***"Very helpful. I chuckle at these low ball rumours – borrower worth more (a prior notorious low ball bidder offered $300m) – also a field next door is in the process of being sold and is one third the size and will sell for more than $200m. Can you give me a list of names you believe are worth approaching formally and I will check first then revert with a plan to move forward."***

198. Mr Khitrov was the Bank's Director of Structured Finance in Moscow.

199. The low ball bidder was BSG who had submitted an informal bid through Mr Steinmetz of $300m. BSG did not believe $300m reflected the maximum price that it would be prepared to pay for CEG (see Mr Philips' witness statement paragraph 38). This investigation was entirely Bank led. For example when Ms Pavlova of CSS tried to contact Mr Khitrov she was told by Mr Firmin that FID was co-ordinating with Mr Khitrov. Ms Pavolva's email is somewhat plaintive ***"Peter, we have been making calls to coverage offices to follow up on the status of the CEG process. One of the people that is not reachable at all is Yuri Khitrov. Can you please let us know what is the best way to get him on the phone so that we can find out about the status of a bunch of buyers (currently supposed to be responsible for at least 5 according to our records).***

200. Peter Firmin chased Mr Khitrov by an email of 10th September 2007. He replied Lukoil was ready to sign a confidentiality agreement but they were saying it would take them a couple of months to come to a firm decision. On 19th September 2007 Peter Firmin reported that he ***"[has] heard back from the Russian FID coverage guy [i.e. Khitrov] all other Russian names we have approached are not interested in the asset. Reasons given are a range of "know the asset and have no interest in it…cites corporate reasons…….or others give no reply to repeated calls***".

201. Mr Ukrasin sought feedback but the emails that passed between Mr Firmin and Mr Khitrov on that day were sparse. Mr Khitrov merely said ***"No luck with others – some are saying they know the asset and have no interest etc."***

202. That was the end of the Bank's attempts to contact the Russians. GazpromNeft was identified on the contact list prepared at the end of September 2007 as being ***"not interested".***

203. Mr Khitrov was not called as a witness by the Bank. Nor was any credible explanation given as to why he was not called. The Bank attempted to close off this line of enquiry by conceding that the Bank did not contact GazpromNeft.

204. Mr Firmin dealt with the approach to the Russians by Mr Khitrov in paragraphs 117-121 of his witness statement. He did nothing other than summarise what the above mentioned exchange of emails was. He said nothing about the concession by the Bank that the Russians had not been contacted. Unsurprisingly he was cross examined on this (T9/194 et sec). As part of that cross examination Mr Firmin said that he was really concerned to hear from Mr Khitrov that his contacts were telling him the asset was going on the market for $200m and that he was even more concerned when he was told that Mr Khitrov's clients thought it was worth $200m (T9/204 continuing to T10). The inconsistency between the ***"not interested"*** noting of GazpromNeft's interest and the Bank's concession that GazpromNeft were not contacted was not explored.

205. Given that lack of exploration I am sceptical about whether Mr Khitrov actually did anything at all. Mr Khitrov has not given evidence and his absence is not explained. Given the fact that he stated that GazpromNeft were not interested despite the fact that the Bank accept he had not contacted GazpromNeft my conclusion is that Mr Khitrov did not contact any of the Russians at all. Mr Firmin having delegated that exercise to Mr Khitrov left it to him. He simply accepted the brief statement by Mr Khitrov that they were not interested and amended the contact list accordingly on 21st September 2007. Merely because Mr Khitrov sent emails saying there was no interest I do not accept that as being so. My conclusion is that he did not contact any of them for reasons which remain completely unexplained. There is no reason why the Bank could not have explained this by interviewing and calling Mr Khitrov. It has not done so and I have not been given any reason for that lack of calling which has any credibility. It is for those reasons I conclude that despite Mr Khitrov's emails in his absence in fact he did not contact any of the Russians and Mr Firmin failed to investigate that failure.

CONSEQUENCES OF FAILURE TO CONTACT THE RUSSIANS

206. GazpromNeft disappeared off the list of potential contacts at the end of September 2007. It is the Claimants' case that there would have been good prospects of GazpromNeft being a buyer had they been investigated after that date. The Claimants contend that GazpromNeft was acquiring like mad and that had GazpromNeft been pursued as a bidder then the sale would have been concluded at a price far exceeding $245m. It is also submitted by the Claimants that the prospects were sufficiently strong that it could be concluded that GazpromNeft itself represented a 65% chance of such a transaction (closing paragraph 420).

207. The main platform for the strength of the Claimants' submissions arises out of the evidence of Mr Matlashov. He had worked as an Adviser to the General Director of GazpromNeft. He has held that position since August 2007. He is extremely experienced in the oil industry having 45 years of management posts at various organisations in oil and gas production industry of the former USSR and the Russion Federation. Further in the period from 2000 to 2006 he was the First Deputy Minister of Energy of Russia and was in charge of production activity at oil and gas production energy organisations of the fuel and energy complex of Russia. He participated directly in the preparation and signing off of inter governmental agreements with Azerbaijan, Kazakhstan, Ukraine and Belarus for co-operation and interaction in the energy sector.

208. The scope of his job with GazpromNeft from August 2007 was the monitoring of the market of oil and gas production assets as well as working on transactions relating to the acquisition of oil and gas production assets. Part of his job duties involved searching for new oil and gas production assets in countries such as Iraq, Iran, Syria, Venezuela and Azerbaijan.

209. His evidence is that there was no contact made with him by Mr Khitrov either in September 2007 or any other time. He never met Mr Khitrov and if there had been any negotiations within GazpromNeft he would have been informed.

210. He found out about the Claimants in January 2008 and set up a meeting with Dr L. He in turn presented a teaser to GazpromNeft in early February seeking an investment offer for Kurovdag from Credit Suisse and advised the starting conditions on the price

on around $700m. The meeting took place between Mr Matlashov and Dr L in a meeting room in the Ritz Carlton Hotel in Moscow on 12th February 2012. Mr Matlashov says in his witness statement that he was fully informed of the potential of Kurovdag by a Professor IS Jafarov. At that time he was a colleague and worked as the Advisor to the General Director of GazpromNeft. He was a doctor of geological mineral science and was a well known specialist on the oil and gas resources in the Caspian region. He was born in Azerbaijan and worked for a long time in the oil and gas industry in that country. He therefore knew the entire hydro carbon resource base of Azerbaijan.

211. At the meeting Dr L stated the price was around $700m. In the opinion of Mr Matlashov's specialist this was within the boundaries of prices acceptable to discuss for the asset and under those conditions the price was acceptable for further negotiations. Those negotiations had to continue under a standard scheme using the appropriate official procedures within a time frame as determined by the parties. The meeting he believed was constructive and lasted 2.5 hours. However it never proceeded any further because CEG was sold to Berghoff on 15th February 2008 for $245m. It is obvious therefore that GazpromNeft's arrival at that late stage had no prospect of achieving a sale in its direction unless an extension of the extended deadline was granted. Even then it is clear from Mr Matlashov's evidence that the extension would have to be for several months because of the lengthy due diligence procedures required by GazpromNeft. Mr Matlashov said had they have been contacted in September 2007 then GazpromNeft would have been able to conduct a comprehensive pre investment analysis and complete all other internal procedures although he accepted it was difficult to say exactly how much time that would have taken because it was dependent on each case. If there was a competitive bid situation he said that he believed GazpromNeft might well have accelerated the transaction process assuming it was sufficiently of interest to GazpromNeft.

212. In his second witness statement Mr Matlashov set out evidence showing the acquisitive actions of GazpromNeft in that period and the setting up of an internal group to study potential assets. Mr Matlashov gave evidence by video link. That method of giving evidence is notoriously difficult. It is difficult to convey evidence live and is even more difficult for the cross examiner. That was exacerbated by Mr Matlashov perhaps harking back to his days when he was a Minister and believing he was there to talk as long as he thought appropriate as opposed to dealing with questions. He also had the habit (which is often seen in Russian politicians) of forcefully presenting their evidence by banging the table. He regularly over talked Counsel examining him and regularly carried on talking when both she and I had asked him to stop.

213. Despite all of that his evidence was solid and credible.

214. It shows that if GazpromNeft had been approached in September there was a very good prospect that it might have purchased within time and might even have shortened its due diligence procedures.

215. Unsurprisingly he was questioned as to the time that would have been required. Thus he made it clear that GazpromNeft was ***"Always…..cautious"*** [T14/82]. Further it was by no means clear how long he thought the due diligence exercise would take. I asked him [T14/105]:-

"MR JUSTICE PETER SMITH: Now, if the due"

4 diligence process that GazpromNeft requires had

5 started in September 2007, would there have

6 been a good chance of completing that exercise

7 by February 2008.

8 A It is very hard to presume.

9 MR JUSTICE PETER SMITH: I understand it

10 is difficult, but can you do your best and give

11 me a broad idea.

12 A: It is very hard to say whether it could

13 have been settled by February 2008.

14 MR JUSTICE PETER SMITH: Yes. I would

15 like you, if you can, to give me your opinion

16 as to how good the prospects were of completing

17 the exercise by February 2008. It is five

18 months.

19 A: I don't know. I cannot give you an exact

20 answer. It might be three or four months, it might

21 be half a year. It might be more. It is very hard

22 to tell. To give -- I am not in a position to give

23 an exact answer."

SITE VISITS

216. As shall be seen below Dr L adopted a policy of not allowing site visits. Mr Matlashov was therefore cross examined over what would have happened had a site visit been refused [T14/82-83]:-

"Q: Now, would you have expected your

21 technicians to visit the field as part of their due

22 diligence process?

23 A: Definitely, absolutely.

24 Q: If Dr Leshkasheli had indicated that he

25 was not prepared to allow a site visit, so a visit

1 to the field, until GazpromNeft had provided a firm

2 offer for CEG, what impact, what effect, would that

3 have had on GazpromNeft?

4 A: I don't know what conditions Leshkasheli

5 should have given. Sorry, I don't know. Then that

6 would be the end of our transaction if he didn't let

7 them go.

8 MR JUSTICE PETER SMITH: I want him to

9 understand, I am not sure by that answer he has

10 necessarily understood that your question was

11 predicated by an assumption of access at

12 a later stage, not --

13 MS DAVIES: Okay. Mr Matlashov, focusing

14 on the position in the due diligence process,

15 if Dr Leshkasheli had said that there could be

16 no visit to the field before GazpromNeft made

17 a firm offer, a priced offer for CEG, what

18 impact would that have had on GazpromNeft?

19 A: Then we would have said goodbye to

20 Dr Leshkasheli."

217. The Bank unsurprisingly in view of that evidence in its closing addressed the Claimants' policy about visits extensively.

218. Dr L's evidence started by saying that there was ***"a policy that nobody gets a site inspection until they have actually made their final bid and that bid is acceptable to you"*** [T4/21].

219. It was difficult to discern the reason for this attitude but ultimately it became clear that he did not want strangers at the site because that might alert SOCAR [T4/93, T4/26 and T7/79(Mr Akhundov)].

220. As is set out in paragraph 460 of the Defendant's closing a number of potential bidders asked for a site inspection and were rejected namely ONGC, Statoil, Petrovietnam and Tata.

221. Dr L did not deal with the question of a site visit when required by GazpromNeft in his evidence. In both the first M&A and the second M&A processes site visits were not permitted. In the second round of course the Claimants were unable to demand that but Mr Akhundov requested that references to site visits be removed from the final bid process letter which Mr Firmin agreed with. However in paragraph 429 of their closing the Claimants said ***"GazpromNeft (the ideal candidate and strong purchaser) had been approached as they should have been by September 2007 and had agreed to proceed with their investigations on the basis of the starting point of $700 million, it is inconceivable that Dr Leshkasheli would not have granted access to the site to GazpromNeft if requested, even before the making of a bid."***

222. The Bank takes a number of objections to that. First they say the burden is on the Claimants to establish that and they led no evidence on it. That latter point is unsurprising because the answers were not elicited until cross examination of Mr Matlashov by Ms Davies QC.

223. However Mr Tolkein the Defendant's expert acknowledged in cross examination that it was not usual for site visits to take place on the first round [T19/184].

224. The Defendant therefore submit that given Mr Matlashov's answer that is a crushing blow to the Claimants' submission that GazpromNeft would have been a strong potential bidder as it would have departed because Dr L would not allow it to have a site visit.

225. This factor demonstrates the difficulty of proof in all loss of chance cases.

226. That is highlighted in McGregor on ***"Damages"*** 19th Edition at paragraph 10 006 as follows:-

> ***"Further cases presenting this difficulty of showing the amount of profitable sales that would have been made by the Claimant had there been no tort or breach of contract by the Defendant have indicated that the Claimant is assisted by the principle in the very old case of Armory v Delamirie [93] ER 664 which has today received a new lease of life, the principle being that the Court is required to resolve uncertainties by making assumptions generous to the Claimant where it is a Defendant's wrong doing which has created those uncertainties."***

227. The impact of loss of a chance in this area is considered by the Court of Appeal in ***Browning v Messrs Brachers [2005] EWCA Civ 753*** where Lord Justice Jonathan

Parker gave the lead judgment. The judgment is long and the facts are of no significance to the decision before me. However he said this on the question of evaluation of a chance in the context of ***Armory*** as follows:-

> ***"The judge's general approach to the evaluation of the lost chance"***
>
> ***204 In the well-known case of Armory v Delamirie (1722) 1 Stra 505 the claimant, a chimney-sweeper's boy, found a jewel, and took it to the shop of the defendant (a goldsmith) to find out what it was worth. The defendant handed it to an apprentice, who, under the pretence of weighing it, told the defendant that it was worth three halfpence. The defendant offered the claimant that sum, but the claimant refused to take it and demanded the return of the jewel; whereupon the apprentice returned only the empty socket. The claimant sued the defendant in trover. The trial of the action took place before Pratt CJ and a jury. The Chief Justice ruled that the claimant was entitled to maintain an action against the defendant in trover. The significance of the case, however, lies in the direction which the Chief Justice gave to the jury as to the measure of damages. In the course of the trial, the jury had heard evidence from witnesses in the trade as to the value of a jewel of the finest quality of the right size to fit the socket. The brief report of the case concludes as follows:***
>
> ***"…. the Chief Justice directed the jury that unless the defendant produce the jewel, and show it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages: which they accordingly did."***
>
> ***205 It has been recognised in subsequent authorities that in so directing the jury the Chief Justice was applying a general principle to the effect that, in a case where the defendant has wrongfully deprived the claimant of property of value (be it an item of physical property or a chose in action), the court will, save to the extent that it is persuaded otherwise by the defendant, assess the value of the missing property on a basis which is generous to the claimant.***
>
> ***206 Thus, in Allen v Sir Alfred MacAlpine & Sons Ltd [1968] 2 QB 229 (a case where, by reason of the negligence of the defendant solicitors, the claimant's claim had been struck out on grounds of inordinate delay) Diplock LJ said (at pp.265F-257B):***
>
> ***"It is true that if the action for professional negligence were fought, the court which tried it would have to assess what those chances were. But on this issue the plaintiff would be in a much more advantageous position than if he had sought, despite the inordinate delay, to establish liability against the***

defendant in the action which had been dismissed. Not only would there be available to him any advice or material which he had been given or obtained by his solicitor in support of his case in the dismissed action, but the principle of Armory v Delamirie …. would apply and would impose on the solicitor the onus of satisfying the court that the plaintiff's claim in the dismissed action would not have succeeded had it been prosecuted with diligence. This would be a heavy onus to sustain after so great a lapse of time."

207 Similarly, in Mount and Sharif Simon Brown LJ refers to Armory v Delamirie as establishing a principle to the above effect (see the passages cited by the judge in the course of his judgment).

208 In Mount, Moore-Bick J (giving the first judgment in the Court of Appeal) rejected a submission by Mr Mount (who appeared in person) that, in the passage in his judgment in Allen v MacAlpine quoted above, Diplock LJ was referring to the legal, as opposed to the evidential, burden of proof. Simon Brown LJ took the same view. Having stated (proposition 1 at p.510D) that the legal onus is on the claimant to establish that he has lost something of value, Simon Brown LJ went on to say this (proposition 4 at 511B-C, dealing with the evaluation of what the claimant has lost):

"Generally speaking one would expect the court to tend towards a generous assessment given that it was the defendants' negligence which lost the plaintiff the opportunity of succeeding in full or fuller measure. To my mind it is rather at this stage that the principle established in Armory v Delamirie …. comes into play." (Emphasis supplied)

209 To the same effect is paragraph 39 of Simon Brown LJ's judgment in Sharif (quoted earlier).

210 I respectfully agree that the principle in Armory v Delamirie is not directed at the legal burden of proof; rather it raises an evidential (i.e. rebuttable) presumption in favour of the claimant which gives him the benefit of any relevant doubt. The practical effect of that is to give the claimant a fair wind in establishing the value of what he has lost.

211 Channon is, in my judgment, simply another example of the application of the Armory v Delamirie principle in the context of loss of a chance. As I read Potter LJ's judgment in Channon, his approach in applying that principle is entirely consistent with Mount and Sharif. Thus, Potter LJ considered first what would have been "the best order which could reasonably have been hoped for" (paragraph 45), before going on to discount it "on the basis of uncertainty" (paragraph 47).

> ***212 In the instant case, in my judgment, the judge correctly directed himself by reference to the relevant authorities as to the general approach which he should adopt in valuing Mr and Mrs Browning's lost chance. His two-stage approach of inquiring as to the amount of damages which would "most probably" have been awarded at the notional trial, and then discounting the resulting sum to take account of the uncertainties on the issue of liability, is in my judgment an entirely legitimate approach, provided of course that in addressing each of the two stages due regard is had to the Armory v Delamirie presumption."***

228. In ***Zabihi v Janzemini [2009] EWCA Civ 851*** the Court of Appeal considered the question of burden of proof on the Claimant on the loss of a chance and the consideration of the ***Armory*** principle. The judgment was that of the Chancellor as follows:-

> ***"The relevant passages in McGregor on Damages 17th Ed are in the following terms:***
>
> ***"8-001. A claimant claiming damages must prove his case. To justify an award of substantial damages he must satisfy the court both as to the fact of damage and as to its amount. If he satisfies the court on neither, his action will fail, or at the most he will be awarded nominal damages where a right has been infringed. If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages:...***
>
> ***8-002. On the other hand, where it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason of awarding no damages or merely nominal damages."***
>
> ***Later, after reference to the judgment of Vaughan Williams LJ in Chaplin v Hicks, the editors refer to the judgment of Devlin J in Biggin v Permanite [1951] 1 KB 422, 438 that***
>
> ***"Where precise evidence is obtainable, the court naturally expects to have it [but] where it is not, the court must do the best it can."***
>
> ***The editors continue:***
>
> ***"Generally therefore although it remains true to say that "difficulty of proof does not dispense with the necessity of proof the standard demanded can seldom be that of certainty."***
>
> ***Counsel for Mr Janzemini contends that the judge was wrong not to insist on proper proof of loss by Mr Zabihi by***

establishing exactly what was handed over and adducing expert evidence as to its value. He contends that this case does not fall into any of the eight categories listed later in Chapter 8 of McGregor on Damages. He suggests, in effect, that the judge was wrong to have done his best on the material available.

I do not think that this part of the second ground is separate from the third ground comprising grounds 3 to 5 both inclusive. The judge's reliance on the statements in McGregor were distilled into the principle stated in paragraph 280 that

"the court must do its best on such evidence as it feels able to accept to place some kind of value on jewellery which, on this footing, Mr Janzemini would be shown to have converted even if its precise identity cannot be established and therefore its value must be in doubt."

If the judge was entitled to accept the evidence on which he relied as sufficient evidence of value then no one can doubt that he was required to do his best. If it was not sufficient evidence of value then the judge's conclusion was wrong for that reason; not that he should not have tried to do his best.

So I pass to the second limb of the second ground, namely the proper application of Armorie v Delamirie. Blackburne J referred to it in paragraph 285 of his judgment but it is unclear to me whether and to what extent he applied it. In Armorie v Delamirie a chimney sweep's boy took 'a jewel' which he had found to a goldsmith for a valuation. The goldsmith's apprentice removed the stones from their socket, offered the sweep's boy three halfpence and when the offer was refused merely handed back the socket. The sweep's boy sued the goldsmith for damages in trover. Several valuers gave evidence as to the value of jewels of a size to fit the socket. Pratt CJ directed the jury that:

"...unless the defendant did produce the jewel, and show it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages."

Such a presumption cannot be of unlimited application. As I pointed out, with the agreement of the other two members of the court, in Malhotra v Dhawan [1997] Med.L.R. 319, 322 the principle must be subject to, at least, the following limitations:

"First if it is found that the destruction of the evidence was carried out deliberately so as to hinder the proof of the plaintiffs claim then such finding will obviously reflect on the credibility of the destroyer. In such circumstances it would

> ***enable the court to disregard the evidence of the destroyer in the application of the presumption. That is not this case.***
>
> ***"Second, if the court has difficulty in deciding which party's evidence to accept then it would be legitimate to resolve that doubt by the application of the presumption. But, thirdly, if the judge forms a clear view, having borne in mind all the difficulties which may arise from the unavailability of material documents, as to which side is telling the truth I do not accept that the application of the presumption can require the judge to accept evidence he does not believe or to reject evidence he finds to be truthful."***

229. In addition Hamblen J declined to apply the ***Armory*** principle in ***Porton Technology Funds v 3M UK Holdings Ltd [2011] EWHC 2895 (Comm).***

230. Hamblen J summarised the law as follows:-

> ***"The Claimants submitted that where, as here, the very actions of the defendant in breaching the contract have made the quantification of damages more difficult, the Court should resolve any uncertainties in favour of the claimant. They relied upon the old decision of Armory v Delamirie (1722) 1 Strange 505, in which a boy chimney sweep had found an item of jewellery in a chimney and taken it to a goldsmith to be valued. The goldsmith told the boy that the piece was worth three halfpence, which the boy refused, and the goldsmith returned it to the boy having removed the jewel. The boy sued the goldsmith in trover. Pratt CJ directed the jury that "unless the defendant produce the jewel, and show it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages". "***
>
> ***In Browning v Brachers [2005] EWCA Civ 753, [2005] PNLR 44, Jonathan Parker LJ described the principle at [205] as being that:***
>
> ***73. "in a case where the defendant has wrongfully deprived the claimant of property of value (be it an item of physical property or a chose in action), the court will, save to the extent that it is persuaded otherwise by the defendant, assess the value of the missing property on a basis which is generous to the claimant."***
>
> ***That was a case which concerned the inability of the claimants to pursue a claim in earlier proceedings as a result of the negligence of their solicitor. In those circumstances, Jonathan Parker LJ held that, when seeking to quantify the value of the claim that had been lost, the principle raises:***

74. "an evidential (i.e. rebuttable) presumption in favour of the claimant which gives him the benefit of any relevant doubt. The practical effect of that is to give the claimant a fair wind in establishing the value of what he has lost."

In a different context, the Court was required in Fearns v Anglo-Dutch Paint & Chemical Co Ltd [2010] EWHC 1708 (Ch), to consider the damages to which the claimant was entitled as a result of the defendants' unlawful conduct in inducing the claimant's franchisees to buy paint directly from the defendants. George Leggatt QC (sitting as a Deputy Judge) rejected the claimant's argument that the defendants' conduct had caused the collapse of his business. He held that it was nevertheless necessary to determine what loss had been suffered, and noted at [70] that while this "necessarily involves a large element of conjecture", the need for such conjecture "is itself a consequence of the Defendants' conduct". The Deputy Judge held that the principle in Armory v Delamirie applied and required the Court "to resolve uncertainties by making assumptions generous to the Claimant where it is the Defendant's wrongdoing which has created those uncertainties". He noted that this accorded with the principle applicable to the assessment of damages in a case of patent infringement, that while the object remains to compensate the claimant and not punish the defendant, "damages should be liberally assessed": see Lord Wilberforce in General Tyre & Rubber Co v Firestone Tyre & Rubber Co Ltd [1975] 1 WLR 819 (cited by the Deputy Judge at [24]).

Most recently, in Double G Communications Ltd v News Group International Limited [2011] EWHC 961 (QB), the Court was required to estimate the likely sales of a board game based on the Sun Newspaper's 'Page 3' brand. Eady J referred to the principle of Armory v Delamirie and gave the claimant "as fair a wind as the evidence permits" when assessing damages (at [99]).

3M submitted that the Claimants' reliance on these authorities for a supposed principle that generous assumptions should be made in their favour on the assessment of loss was misplaced. It was 3M 's case that the Double G Communications decision was the most relevant and recent authority and that it shows that where the Court has to assess damages flowing from the breach of an obligation to market a product, reference to this line of authority is not "of much practical help, since the Court has to approach the evidence specific to this particular case and come to a conclusion, in the light of it, as to how successful the product would have been on a balance of probabilities" (at [6]). As that decision also confirmed (at [4]), in such a

> ***case, "the burden lies clearly upon [the Claimant] to establish its losses, according to the civil standard of proof" (at [4]).***
>
> ***Reference was also made to the Court of Appeal decision in Zabihi v Janzemi & Othrs [2009] EWCA Civ 851 in which Armory v Delamirie was distinguished and it was stated that the application of the principle is subject to limitations – see [31-32] and [50-51]. Moore-Bick LJ further observed that the decision was difficult to reconcile with the indemnity principle and the principle that the claimant must prove his loss. I respectfully agree.***
>
> ***This is not a case concerning the value of goods which the defendant has refused to produce or of the suppression of evidence, as in Armory v Delamirie. Nor is it a case involving the loss of the chance of success in legal proceedings, as in Browning v Brachers. It is a claim for lost profits for breach of contract. There is factual and expert evidence before the court relating to that claim. There is documentation before the court relevant to the claim. The evidential playing field is a level one. Whilst it is correct that the claim involves a degree of conjecture, that is the case in relation to very many contractual damages claims and in all such cases it can be said that it is the defendant's breach of contract which has made that conjecture necessary. As a matter of authority there is no requirement to apply the principle of Armory v Delamirie to a case such as the present, and as a matter of principle I consider that there is good reason not to do so and that the application of the principle should not be extended further than is necessary.***
>
> ***Even if that be wrong, in accordance with what was stated in Browning v Brachers, any presumption would only arise in a case of doubt and in arriving at the findings set out below I have not found there to be sufficient doubt to give rise to any presumption that might otherwise be applicable."***

231. It seems to me that I should draw the following conclusions:-

1) Even in the loss of chance cases the legal ***burden*** of proving a loss is on the Claimant.

2) As it involves the loss of a chance and it is argued that the Defendant caused that loss a Claimant can in appropriate circumstances be given ***"a fair wind"*** in how the Court is satisfied as to that loss. Any doubts should be resolved in favour of the Claimant to the best advantage.

3) The Judge must do the best he can with the evidence before him.

232. The Defendant's attack is not actually on the Claimants' evidence it is on the confident statement in paragraph 429 that ***"it is inconceivable that Dr Leshkasheli would not have granted access to the site to GazpromNeft if requested, even before the making of a bid…."***

233. Although it is true that Dr L considered GazpromNeft sufficiently special to make a specific trip one has to realise that that was an event in February when the end of the line was fast approaching in respect of the extension.

234. There is as the Bank rightly says in its closing no evidence at all that Dr L would have allowed access to GazpromNeft. The evidence is to the contrary; namely (1) the Claimants' policy was no access and (2) if there was no access GazpromNeft would say ***"Goodbye"***. The presumption of giving the Claimants in a case like this the benefit of the doubt does not to my mind extend to undermining the evidence that has ***actually been led***. You cannot use the presumption to overcome unfortunate answers extracted from cross examination of witnesses. Dr L gave no evidence about his policy in relation to site access re GazpromNeft. He (and others) gave evidence in respect of all others that they would not have access.

235. It seems to me therefore that the Claimants should not be given the benefit of the doubt in the best way to conclude there was a possibility or probability that GazpromNeft would have been given access so as to undermine the Claimants' other evidence as regards access.

236. The result is that I conclude that there is no evidence to show that GazpromNeft would have been treated any differently to others namely that they would not have been granted access and would have said ***"Goodbye".***

237. This is unfortunate because it is quite clear in my view that the Bank failed in regard to their duty in not investigating GazpromNeft at all. On the evidence that I have set out above it is quite clear that GazpromNeft would have been serious bidders and probably the strongest.

238. If that process had been started in September 2007 what would have ensued? First it is clear that the due diligence process might well have been long and could have stretched to February 2008 and beyond. It seems to me quite clear that if there was a serious bid from GazpromNeft there would have self evidently been an extension in December 2007 (one was already put in place). Equally in my view if there had been an extension requested in February 2008 it would have been granted. My reasons are as follows. First I do not believe the Bank seriously thought they were at risk and would have seen a further extension request as an opportunity to extract yet another premium from the Claimants. Second by that time GazpromNeft would have been doing their due diligence for 5 months at least. It would have been presented to the Bank by the Claimants that GazpromNeft were clearly serious bidders, had embarked on a lengthy and expensive due diligence process and were close to making a bid. Given those two factors I would conclude (applying the ***Armory*** principle above) that these potential objections raised by the Defendant ought to be disregarded in favour of the Claimants. I say that because the failures of the Defendant to approach GazpromNeft at all are the cause of the Claimants loss of the opportunity of selling Kurovdag to GazpromNeft.

239. The third point that is to be considered is at what price GazpromNeft would have come in. The Claimants say given Mr Matlashov's evidence he was not deterred by a price of $700m the effect is that his evidence as a whole would substantiate there was indeed a substantial chance of a sale to GazpromNeft at a price far exceeding $245m from that starting point. I am not convinced. I will deal with the evidence (such as it is) as to the value of Kurovdag in more detail below but it is significant in my view that all of the pre Trigger Date bidders who made an indicative offer substantially reduced their firm consensual figure or even did not make one. ONGC for example made an indicative offer of $400m. Petrovietnam put in an indicative bid of $1.2bn but did not make a final consensual bid. PCG Turicum put in an indicative bid of $600m but would only bid if were assured of succeeding. PKN Orlen put in an indicative bid of $450m and then reduced it to $100m.

240. One finds a similar story in the second M&A process. Petrovietnam came back and put in an indicative bid of $295m and increased it to $324m but did not proceed because it could not obtain SOCAR's consent. Hecton Investments put in an indicative bid of $500m but did not proceed further. Perenco and Tata put in bids of $300m but did not proceed. Dogan put in a bid of $325m but did not proceed. Vitol put in a bid of between $50m and $100m but did not proceed.

241. Given the large array of companies summarised above who made indicative bids one can see several of them made bids around the kind of figure of $700m but never made a bid of anything like that after they had done their own due diligence.

242. The evidence of the bidding figures both pre and post Trigger Date in my view is significant in a number of ways. First it shows the likely amounts in rough terms that were going to be bid. Second the evidence of the large numbers of companies that did not proceed after due diligence shows that there were in the market perceived to be clear difficulties and risks involved in acquiring Kurovdag. Third the evidence in my view is the best evidence of what the value would be to be attributed to Kurovdag and it is nowhere near the $630m put forward by the Claimants in their closing.

OTHER RUSSIAN BIDDERS

243. I have assumed against the Bank that no approach was made by Mr Khitrov. In the case of these bidders the Claimants' evidence in my view is scanty. It actually prays upon the evidential presumption from the ***Armory*** case as suggesting that they should be given the benefit of any doubts in their favour. In my view the ***Armory*** case does not go to that for the reasons that Moore-Bick LJ and Hamblen J gave above. The legal burden of proof is on the Claimants. They might adduce evidence that might switch the evidential burden to the Bank. What you cannot do however is put forward a poor case and then seek to pray in aid the presumption. That is demonstrated by my determination as regards GazpromNeft. The Claimants on this analysis are actually better off if they produce virtually no evidence as opposed to where they produce evidence. There is no reason to suppose that any of these large Russian companies would have reacted in any different way to GazpromNeft. First they would have undoubtedly have requested a site inspection in all probability and the likelihood is that they would have said ***"Goodbye"*** if they were rebuffed which is what would have happened on the evidence. Equally there is no evidence to show that they would (whatever the date of their starting point) have been willing to pay a price so out of line with all the other interested parties identified under the first M&A process and the second M&A process.

244. I do not therefore see that the Claimants have established any case in respect of the other Russians at all. That is because there is nothing in their evidence of any substance that begins to enable them to invoke the ***Armory*** principle of giving them the benefit of the doubt.

BSG

245. That leaves the outstanding claim against the Bank in relation to their treatment of BSG. It was a company that plainly spent its time trying to find assets that were being sold under distress and purchasing them as cheaply as possible. That is why they were described as ***"low ball"*** bidders. It is clear that they had an interest in Kurovdag from August 2007. That is shown by the evidence of Zac Phillips who was called by the Claimants. He is an extremely experienced chemical engineer with extensive experience of working in the oil and gas industry including Russia, Azerbaijan, Kazakhstan and Turkmenistan. His work included having responsibility for M&A activity including all aspects of due diligence, finance and deal structuring and asset valuation of oil and gas opportunities.

246. During the period 2006-2008 he was the CFO of BSG Energy Ltd ("BSG"). He was also the CFO of DB Petroleum Ltd which was a joint venture between BSG and Dubai World. His role included identifying and analysing potential acquisitions.

247. He worked with Beny Steinmetz ("Mr Steinmetz") who was the owner of BSG. He became aware of the availability of Kurovdag while negotiating to acquire a smaller adjoining site the Karasu site. Mr Steinmetz on 16th August 2007 was emailed by Mr Hellman who was the head of the Investment Banking Russia of CSS. He revealed that the Bank had another asset for sale in Azerbaijan. Mr Steinmetz replied saying he knew about Kurovdag and it was complex and political. The purpose of that approach Mr Phillips said was a tactic on the part of Mr Steinmetz to highlight potential problems with a view to presenting himself as the best and only buyer. This was especially in relation to SOCAR when Mr Batt (another employee of BSG) sent an email saying ***"NOBODY will be able to buy this asset except….. ourselves…."*** Mr Steinmetz arranged a meeting with Mr Benyatov CSS' head of Emerging Market Groups for the FSU (excluding Russia, Central and Eastern Europe and Israel now free from release from the incarceration in Romania). Mr Phillips said that he, Mr Steinmetz and Mr Batt were together in Tel Aviv and they had a telephone conversation with Mr Benyatov. In that conversation Mr Phillips said that Mr Benyatov said that he could not confirm how much was owed to the Bank but he wanted to make sure that they cleared the lending and made a return. The amount to achieve that he said would be words to the effect of ***"$200m should do it".*** Mr Benyatov in his witness statement (paragraphs 16-18) was not sure. He did not believe he was on a telephone call with BSG at that time. He did not believe that during the second M&A process ongoing to December 2007 that he told BSG that the Bank was willing to sell CEG for $200-£250m.

248. He did not deal with this convincingly in cross examination in my view [T11/61-69] culminating on his comment ***"the fact of the matter is I do not remember having these discussions".*** [T11/77]. Having seen Mr Benyatov his tentativeness in my view leads me to conclude that on the basis of Mr Phillips' evidence he did tell them that ***"$200m would do it".***

249. If he did that in my view that would be a serious breach of the Bank's duty if it had a duty of reasonable care in obtaining the best price obtainable. I have already observed that in my view the Bank is vicariously liable for CSS' activities and the fact that Mr Benyatov was a CSS man is irrelevant.

250. Mr Phillips' evidence was that BSG's calculations was that the valuation of Kurovdag was potentially in excess of $800m on the basis of $8 per barrel and even if the price of oil fell to $5 a barrel the field would be worth $500m. This seems to me to be a very rough and ready approach because I do not see on the expert evidence that any clear position as to the amount of oil that was recoverable from Kurovdag could have been obtained in 2007. However Mr Phillips perceived that in view of the $200m indication by Mr Benyatov it was a steal. In other words to talk colloquially at that kind of price a purchase would be worth a punt. It was obvious both to him and Mr Steinmetz this was either a fire sale or a forced sale. That was the position in reality. The Claimants' position was very difficult at the outset as I have set out above. It became worse after the Trigger Notice had been served.

AUTUMN 2007

251. BSG never became part of the formal bidding process. However as Mr Phillips shows in his witness statement he carried on his due diligence. He considered the two RPS reports. RPS he believed was well known and respected within the oil industry and he noted that the second of those reports arrived at an economic valuation of CEG's interest in the sum of $966.8m. He considered this was already out of date by August/September 2007 because the price of oil had increased and believed that if RPS updated its report then its economic valuation would also have increased. Given the low figure Mr Benyatov put on it he did not think it necessary to do any more detailed due diligence. Mr Steinmetz had already made the informal bid of around $300m but Mr Phillips said that did not represent the figure that BSG was prepared to pay for CEG in view of the August meeting i.e. he would not pay as much as $300m.

252. During the autumn period communications continued between BSG and the Bank. In those negotiations Mr Steinmetz reduced his offer by 21st December 2007 to $175m but Mr Firmin sought a minimum of $200m and possibly $220m when the Claimants would give appropriate warranties.

253. As I have said BSG did not become part of the formal bidding process it seems to me that the Bank would be keeping them ***"in their pocket"*** as a minimum way out if the formal bidding process did not produce a bid.

254. That indeed proved to be the case. No formal final bid was made by anyone in the second M&A process. It will be recalled that the loans were due for repayment on 14th December 2007. An extension to the loans until 15th February 2008 was obtained. I have already commented on the terms of that renewal.

255. In January 2008 Mr Firmin discussed the sale of the debt with BSG. There was a meeting between Mr Firmin and Dr L in London on 11th January 2008 and on 13th January 2008 Mr Firmin informed Dr L that there was a window of opportunity to get the deal done with BSG at $220-$225m. Dr L confirmed to Mr Firmin that he would sell CEG on a consensual basis if this was achieved. On the same day BSG orally indicated a willingness to pay $230m subject to conditions and review of information in the data room but Mr Firmin indicated that he doubted that Dr L would actually

agree a consensual sale at $220-$225m. Ultimately BSG made a written offer of $230m which was forwarded to CEG. That was on 26th January 2008.

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256. In paragraph 58 of his witness statement Mr Phillips asserted that their level of bids were on the basis of the continued information that the Bank were giving them of the level of offers that would be acceptable. That might have been the position up until January 2008 but events changed in February 2008. In my view and I so find BSG made bids at this level for two reasons. First it was BSG's practise of bidding low when they perceived the assets were under a distress sale. Second my view is that BSG believed there were no other players in the field and that they had SOCAR in their pocket.

257. The latter point is well demonstrated by the quite extraordinary letter that SOCAR sent on 5th February 2008. BSG's solicitors in January 2008 drafted a letter for SOCAR to send to CEG. It was never sent. However a second letter was drafted and that was sent by SOCAR to CEG on 5th February 2008. The letter is quite an extraordinary letter. It asserted first that CEG committed a number of serious breaches on the JVA. Second it referred to the fact that CEG had granted security over its share under the JVA and SOCAR requested details of those and third it asserted that CEG had failed to invest in the development of Kurovdag in breach of its obligations under the JVA agreement. The letter was clearly designed to frighten off any other bidders as they would see it was possible (to put it mildly) that any purchaser of CEG's interest would walk into litigation with SOCAR. From the point of view of BSG's position of course it benefited BSG because self evidently it would be the sole bidder if all others were frightened off. Why SOCAR did this remains unclear although it is fair to say that it had had enough of CEG. Whether that belief was justified or not is not actually irrelevant to the issues before me. There were certainly as I have set out above an element of animosity between SOCAR and CEG by this time. BSG were confident therefore that their position was strengthened by their relationship with SOCAR which was of such strength that SOCAR was prepared to allow itself to be used as a postbox to make allegations against CEG the effect of which could only either see off bidders or reduce the price that people would be prepared to pay for its assets in the JVA.

258. However it is clear that BSG misjudged the market. On the same day CSS had discussions with Mr Gutseriev. On the next day (6th February 2008) Mittal showed a revised interest. On 12th February Mittal indicated that they would not be interested in a forced sale due to a lack of representations and warranties. On the same day Dr L had a discussion with Mr Burkey the Bank's Managing Director and Head of Emerging Markets when it was made clear to him that the Bank could not keep extending the loan indefinitely and that there was a consensual offer from BSG at $230m. Further if CEG was not sold consensually the Bank could force a sale for a lower price than that figure of $230m currently on offer. The same day Mr Gutseriev offered $260m for a consensual sale and the Bank wrote to CEG and the Claimants stating it was currently considering whether to exercise its right to force a sale given the state of the negotiations between CEG and potential purchasers.

259. The next day Mittal increased its offer to $242.5m but $42.5m of that was to be paid into an escrow account. Mr Firmin on the same day told BSG that they had the last

look at $250m. BSG did not increase their offer. On that day Mr Gutseriev proposed a purchase of $240m but that was pushed up the next day to $245m.

260. Seeing that uncontested factual analysis as to what happened in February it seems clear to me that even though the Bank was in breach of the implied duty (if it existed) as regards the revelation back in August 2007 that $200m would do it that breach did not cause the Claimants any loss. I do not believe that BSG would have increased its offer and I do not believe the Claimants therefore lost an opportunity to push BSG's offer up.

261. Despite the fact that Mr Phillips privately valued Kurovdag at between $500m and $800m when they were given the opportunity of increasing their offer from $200m to $250m (or as little as from $230m to $250m on a consensual basis) BSG declined to do so. I do not see how they would have behaved any differently if they had not been told of the $200m. They clearly in their own minds fastened on the amount that they were prepared to put on the table to acquire what they perceived to be a distressed sale. If that was not acceptable then they walked away. They also clearly miscalculated on the strength of their position with SOCAR in that all the other buyers who arrived in February 2008 did not seem to be put off by the letter of 5th February 2008 or the stance of SOCAR.

262. The sale to Berghoff at $245m was not a consensual sale.

263. In the result that whilst I find there were failings on the part of the Bank none of them in my view would have led to any loss for the reasons I have set out.

264. That is the end of the case as regards the Claimants even if they had established the implied term. However obviously I will go on and consider in case I am wrong the question of damages in the event that the matters complained of do actually lead to a loss.

CONSIDERATION OF THE WITNESSES

265. The non expert witnesses were cross examined extensively for a number of days. In the event that exercise served to eliminate a large number of issues but it meant that the live evidence was not of significance when compared with the contemporary documentary evidence. Some was relevant. For example Mr Firmin regularly tried to down play his role after the Trigger Notice; a stance which was hopeless when one looked at the contemporaneous emails. Similarly Dr L attempted to down play the extent of the tense relationship between himself and SOCAR. As the evidence evolved it was quite clear that there was a serious breach in their relations. Whether or not this was justified is not clear and is actually irrelevant. It is not insignificant however that the perceived investment that Dr L's company was supposed to have brought to the exercise was not fulfilled. Indeed the evidence showed that Dr L misappropriated the $15m provided by the Bank as a loan for a drilling facility. Not only did he not use it for those purposes but refused to return it in late 2007. This had an adverse impact on his relations with the Bank in addition to SOCAR.

266. The Bank's attitude to Dr L does not reflect well on to the Bank. I have referred to it above and Mr Firmin's refusal for example to explain what he meant by ***"mmm"***. Elsewhere Mr Burkey referred to Dr L as a ***"fucking nutcase"***. The Bank's attitude to people did not stop of course with Dr L Mr Firmin wrote to Mr Mahoney on 15th

August 2007 describing Mr Steinhart as a ***"muppet".*** Further Mr Firmin in February 2008 misled Dr L about the size of the BSG bid at that time. He justified his actions in his evidence (see paragraph 175 of his witness statement and T10/121/6-19).

CLAIMANTS' LAY EVIDENCE

267. The Bank was extremely critical of Dr L in its closing.

268. It is fair to say that his reasoning for not contacting GazpromNeft (for example) during the pre Trigger process was bizarre. He believed that the Russians would conspire with SOCAR against him. It is equally true that after the post Trigger Date period the reasons why he alleged that he did not contact the Russians (namely that Mr Benyatov refused his offer of contacts were equally bizarre). There is therefore no reason as the Bank correctly submits in paragraphs 271 et sec in its closing why Dr L did not pursue the matter with GazpromNeft post the Trigger Notice. Given the tenor of Dr L's evidence about his success in contacting GazpromNeft late in the day and Mr Matlashov's evidence the Bank has a point. I will assess that when I come to deal with the Contributory Negligence Claim by the Bank.

269. The Bank is equally entitled to be critical about the SOCAR issue. I have dealt with this earlier. The various issues that the Bank has raised were issues that SOCAR had with Dr L and he knew it. The fact that he knew SOCAR were going to be difficult was in my view his reasoning for not attending the July 2007 meeting and further not approaching SOCAR about prospective bidders until after he had analysed the issue with them. Even then he acknowledged that whilst SOCAR had no contractual rights of refusal they could block a deal in practice and he would have to accept that. The height of SOCAR's willingness to interfere is of course the letter of 5th February 2008. What this does however highlight is the impact that the difficulties between Dr L and SOCAR would have had on a sale. It is undoubtedly the case in my view that any bidder once they became aware of that would have either not bothered at all or make SOCAR's consent conditional on any deal (as some did) or downgrade their indicative offer.

270. The Bank appended an appendix to their closing headed ***"Dr [L's] LIES".***

271. The first of those was his changing story about whether he met or spoke to Mr Benyatov and offered his contacts. There was much cross examination about this quite understandably because of the changes that occurred about this point in his witness statement, the Claimants' opening and his cross examination [T5/15-37]. Ultimately this allegation was not pursued in the Claimants' revised summary served on 27th November 2014. None of this actually matters in my view. The Bank assumed the burden of contacting GazpromNeft after they served the Trigger Notice. It was put on the original contact list and Mr Khitrov failed to deal with it. The point was understandably pursued extensively in cross examination but ultimately did not matter. In my view the Claimants were entitled to leave it to the Bank and thus rely on the Bank's expertise and equally were entitled to accept that it was not going to proceed when the Bank told the Claimants that the Russians were not interested. It is certainly true that Dr L's evidence was confused but I am not convinced that he lied. Equally the allegation that CSS told Mittal in January 2008 that $230m would secure the purchase in my view is unproven. I accept the analysis of the evidence by the Bank in appendix 1 paragraph C44 et seq. In my view this was made up by Dr L. I cannot believe that if he had been told by Mittal that CSS had said CEG was available

at $230m he would not have raised it with the Bank in vigorous terms. Even by January 2008 Dr L firmly believed that a minimum price was $500m.

272. In the event Dr L's lengthy evidence and cross examination does not by the time one reaches the reduced claim put forward on 27th November 2014 have any significant impact on the case.

273. The same goes to the other witnesses called by the Claimants save Mr Phillips with whom I have already dealt with earlier in this judgment. I fail to see how it can be seriously argued that BSG if they had ***not*** been told that CEG could have been had for $200m would have increased their offer. If one looks at the scenario in February 2008 they believed they were the sole runners because of their relationship with SOCAR and were given an opportunity to raise their bid but refused. If that was in a (wrong) belief that the asset could be acquired for $200m and they still were not prepared to pay $250m when Mr Phillips was of the view that Kurovdag was worth more than twice that I do not see that BSG would have put any more money on the table.

274. Mr Akhundov was demonstrated to be shown to be as the Bank put in its closing ***"extraordinarily loyal to Dr L"***. He accepted [T6/132] that he had been prepared to mislead the Bank on two occasions. For example he put forward written documents to it suggesting that money advanced by the Bank for the drilling remained in the Account in Baku when it had already been disbursed for unauthorised purposes. He also clearly lied to Tata when they sought an extension to 10th March 2008 [T7/98-105]. In the event his evidence is of no relevance to the refined issues put forward by the Claimants.

275. Mr Tamraz whilst being intriguing witness (who seemed more interested in debating world politics from a Middle Eastern aspect than the issues) advanced the case not at all.

276. In summary whilst I accept the Bank successfully (to varying degrees) destroyed the credibility of various witnesses that destruction did not affect my analysis based on the contemporaneous documents as set out above.

THE BANK'S WITNESSES

277. I found Mr Firmin to be an unsatisfactory witness. The best example was his determined attempt ***not*** to accept that he was in charge after the Trigger Notice. This when one looked at the contemporaneous emails (his) was untenable. His blind acceptance from Mr Khitrov that none of the Russians were interested was a failure on his part in my view. Given what Mr Khitrov said earlier he really ought to have probed Mr Khitrov's laconic response when being pressed by him. I do not believe I have had the full picture of Mr Khitrov provided by the Bank which has led to my conclusions against the Bank as set out earlier in this judgment.

278. I equally found Mr Benyatov's evidence unacceptable on at least the one issue of the discussion in August/September 2007 about what he told BSG. He had a quiet manner in giving his evidence. However I perceived there was steel about him and I reminded myself of what President Teddy Roosevelt said ***"speak softly and carry a big stick".*** He denied that he made any threats to Dr L but to my mind he would not have needed to express any because of my assessment of him above. Nevertheless the

only significant point of his evidence was in relation to whether or not he told BSG that CEG could have been acquired for $200m and I disbelieved him on that.

279. Equally nothing turned on the evidence of Mr Ukrasin and Mr Neimier.

THE EXPERTS

280. I granted the parties permission to call experts in the field of M&A to address the issue as to whether the M&A process adopted by the Bank in relation to the forced sale was a process which a reasonably competent M&A practitioner could have used. The Bank opposed such evidence and they have been proven right in retrospect. I did not need any expert evidence to decide whether the Bank had failed in the matters ultimately which were alleged against them. Those matters were plainly for me to determine and M&A evidence from experts would in my view have usurped my function as a Judge. In any event both experts acknowledged there was no established body of knowledge.

281. Further the case became a massive learning curve for the Claimants' M&A expert Mr Van Genderen. He had never given evidence before and had spent the whole of a year at least working exclusively for the Claimants. He allowed himself to become too close to the Claimants and their case and lost sight of his role as an expert with a duty primarily to assist me. The Bank has correctly identified the most telling example in respect of the two late ***"supplemental expert reports"*** that he tried to adduce late in the day but which I ruled as being inadmissible. In cross examination he regularly argued the case for the Claimants.

282. Further his evidence was seriously flawed because in preparing his reports he looked at the second M&A process in isolation without reference to the first process.

283. In the event none of this was any assistance to me.

VALUATION EXPERTS

284. Initially I granted both parties permission to call expert valuation evidence by my order of 21st October 2013. On 11th March 2014 I permitted both parties to call experts in the area of M&A. On 25th July 2014 I allowed the Claimants to call an extra expert Reservoir Engineer to discuss the matters identified in the Defendant's expert report dated 27th June 2014 prepared by Mr Wilson on the Bank's behalf.

285. In the event the Claimants called Mr Rogers and Mr Aron the Reservoir Engineering expert. The Bank called Mr Wilson who dealt with both valuation and reservoir engineering.

286. The purpose of the evidence was to establish the value of Kurovdag at various dates between 2007 and 2008. Both parties agreed that if damages were payable to the Claimants they were to be assessed on the loss of a chance of obtaining the market value as determined as opposed to the actual sale value which was $245m.

287. Mr Rogers in his final report expressed the view that as at 15th February 2008 CEG's interest would be valued at between $727 - $875m with the best price reasonably obtainable being $803m. Mr Rogers applied a discount of $15m for lack of representations and warranties.

288. By their closing the Claimants' valuation was reduced to $630m with a loss of chance of 65%. The sale price would require to have the $245m obtained removed leaving $385m and in addition the uplift amount payable to CSS (1% above $350m) (total $2.8m) and an additional uplift to the Bank of 33% on $155m and 12% on $230m totalling $78.75m leaving a balance of $303.45m. The Claimants then reduced that by 35% to take into account the 65% loss of a chance giving a final claim of $197,242,500 damages.

289. Mr Wilson's initial valuation was $259m with a discount of between $20m and $50m if it was a forced sale.

290. By the time of closing the Claimants' figures were $808m (15th February 2008), $760m (15th December 2007) and $593m (15th August 2007) the difference between those figures related mostly to change of oil price.

291. Mr Wilson remained at his original figure reduced to $238m.

292. RPS 2 had suggested a figure of $966.9m which was based on a lower oil price than that which prevailed in late 2007/2008.

293. The key areas as it evolved during the trial were as to (1) the depletion case; (2) water flooding and (3) oil price.

294. These wide ranging estimates as to the value of the oil to be extracted out of Kurovdag were based on the same technological evidence for both sides.

295. Very little was agreed between the experts both before and during the trial. Finally after the trial had concluded I was provided with a Scott Schedule which provided a 42 page comparison of the parties' respective stances and cross examination of those respective parties on the various issues. That formidable document reinforced the lack of agreement of the experts and the impossibility of my task of evaluating on an item by item basis which view should prevail.

296. The recourse to Expert evidence (which is necessarily hypothetical) by a Court in assessing loss is necessary ***if*** there is ***no*** other factual evidence available. This was demonstrated by the fact that Mr Wilson argued every point and rejected every conceivable factor which the Claimants' experts put forward as showing a potential for extraction of further oil from Kurovdag. Mr Wilson at the start of his cross examination accepted that he maintained the values in his reports of $238m and $259m not withstanding all the material that had been provided by Mr Aron and Mr Rogers. His attitude was a determined negative approach to any prospect that identified a higher figure for the value of Kurovdag. For example I asked him again to look in the figures in the RPS 2 report and said ***"I am sure you probably remember them don't you?"*** and the answer was ***"Yes I do."*** I then observed that when you saw them you must have laughed out load and his answer was ***"I did, yes. That is exactly what I did. I thought good grief and I certainly said more than good grief when I looked at the production profile which was going to go substantively higher than the peak production back in the early 1950s……"*** [T23/174]. Mr Wilson was not prepared to concede that any of the possible factors that Mr Aron put forward could produce a profitable outcome. However ultimately he recognised the intransigence of that stance and accepted that a buyer might well try a punt on some of those

possibilities leading to a favourable result see for example [T23/183-191]. Eventually he accepted that he would put a figure of $270m to take into account the possibilities.

297. Mr Aron had his own difficulties. On day 21 of the Trial he was asked about the Proposal that he had made to the Bank's solicitors in December 2013 when the Bank was considering engaging him as their expert and in particular his section in the Proposal which stated ***"Both the new wells and the proposed wells have a high degree of risk which does not appear to be reflected in the RPS work"*** It was therefore suggested to him [T21/123] that although he said he had a high confidence in the decline case and the drilling of new wells, this was not an honest view. Mr Aron commented that that was a very unfair thing to say.

298. The Bank in its closing (paragraph 80) criticised Mr Aron for not explaining how he had come to form two different views when making a presentation under the Proposal as opposed to when he was giving evidence for the Claimants. I think that is an unfair criticism because he would have felt inhibited by reason of legal professional privilege from revealing what he had said in this Proposal. The Claimants knew that Mr Aron had been approached by the Bank to act as a potential expert witness and were perhaps unwise to use such a witness. Equally Mr Aron was unwise to feel able to act for the Claimants. If it had been significant I would have concluded that I would be unwise to accept Mr Aron's views on that aspect because he was acting more like a ***"hired gun"*** than an independent expert.

299. The evaluation of all of this evidence would have been an impossible task. Fortunately I do not believe it is necessary.

300. The object of the exercise is to ascertain a market value of Kurovdag at around the time of the proposed sale i.e. between January 2007 and February 2008. It is self evident that such an exercise in respect of such a complicated item cannot be precise. Nevertheless the range of the experts is alarming based as it is on the basic same material. To be fair to the experts it shows in effect how difficult it is to value oil fields.

301. Kurovdag was an old field. It had started production in 1955 and it is obvious that assessing the amount of oil that could still be extracted from it would be a very difficult exercise. One would have to take into account how efficiently the previous extractions had occurred. One would have to take into account the availability of more modern processes and one would have to take into account the question of whether the field was of a uniform appearance. Finally all of this would have to be done against a background of the pressures of strict time limits for production of bids against the background of a forced sale. The experts had the luxury of time which none of the bidders would have had. In my view there is plenty of evidence available to me on the issue of market value. It is to be found in what bidders were prepared to offer and pay for Kurovdag. What people are prepared to pay is always the best indication of what a thing is worth. All of the matters put forward by the experts are simply calculations of what might have been done (subject to the above time constraints put on them) by companies who were interested in purchasing. If some companies used Mr Aron they would regard Kurovdag as being very promising (see BSG's internal analysis referred to above). If they used Mr Wilson they would have been told not to buy except at the very low figures. As I said during the course of the case it seemed to me that anybody interested in buying Kurovdag would be taking a punt and would therefore adjust their bids accordingly. It is significant that Kurovdag

still remains undeveloped 7 years after it was purchased by Mr Gutseriev. Further as I understand it the JVA has now been terminated and there is now a Participation Agreement with a different structure.

302. I therefore conclude that it is not necessary for me (or possible) to have any regard for the opinions expressed by the experts. It is as I have said not a scientifically accurate exercise but it is quite open to me to arrive at what I think is a biddable figure in the light of the uniquely available material of what happened in M&A one and M&A two. The only possible lowering of bids because of information provided to it is the BSG one but for the reasons I have already set out above I do not believe that would have led to BSG making a larger bid if it did not receive that information.

303. Dr L's bottom line figure was $500m and this coloured him in his approach to the bidding process in my view. It also coloured his approach to whether or not he would consent to sales. Any such bidder would of course have had access to the data and other material including the RPS 1 and RPS 2 reports together with the earlier reports which were made available. The RPS 2 report in particular was severely criticised in the trial. Although both Mr Tolkien and Mr Van Genderen believed bidders would not have placed much reliance on the RPS report that is in fact contradicted by the evidence of Mr Phillips. Nevertheless he too accepted that he would have used those reports as a starting point and would have tested their findings in more detail. I do not believe any bidder would have received any further precise evidence as to the availability of the reserves because of the time pressures and the difficulty (as demonstrated by the Experts) of coming to any firm conclusions. I believe that whatever figures that might have been provided to a bidder on a valuation basis would also have been reduced to take into account lack of warranties, problems with SOCAR and the risk of opinions of experts not coming up to proof.

304. The summary of the bids provided by the Bank in its opening (as attached to this judgment) show that in the first M&A round there was only one bid of $300m from ONGC with a possibility of another $50m. During the second M&A process only one made an offer (subject to SOCAR approval) namely Petrovietnam which offered $324m. Against that there was the reduced offer of $50m-$100m from PKN Orlen.

305. In the informal procedure that took place between December 2007 and 15th February 2008 a number of offers were made; the largest was Berghoff offering $260m. That was for a consensual sale. Its non consensual sale offer was $245m which was accepted.

306. The Claimants' final position was $630m. Assuming for the purpose of this analysis that GazpromNeft would have made a bid (as opposed to my findings above) I am firmly of the view that their due diligence which would have been conducted on probably a more thorough basis than all the other bidders and would have led GazpromNeft to downgrade its view that $700m was a figure which was within their parameters. I do not believe they would have merely lowered it by $70m to the Claimants' figure of $630m. This is between the two figures of $760m and $593m put forward by the Claimants' experts. In that context I disregard the events that went on in the second M&A process in November 2007 where it appeared that the Bank were willing to give back part of the sums to Dr L so that he would receive $75m more than it would appear to SOCAR [T5/141-146].

307. In view of the evidence of Mr Matlashov I accept that GazpromNeft would have been a keen buyer. This reflected at least one thing that Mr Khitrov said that had credibility namely that it was ***"acquiring like mad"*** I do not believe however they would have bid as high as $630m as contended by the Claimants. Taking into account the range of actual bids it seems to me that GazpromNeft would have paid something more but nothing like as much as the Claimants assert. In my view a more realistic figure for what GazpromNeft might have been willing to pay to secure the asset would be the figure referred to in paragraph 460 of the Claimants' closing of $400m.

308. I accordingly determine therefore that on the assumption that GazpromNeft were there as a prospective bidder that they would have paid up to $400m to acquire CEG's interest inKurovdag.

DAMAGES – LOSS OF A CHANCE

309. It is common ground between the parties that this is a loss of a chance case and therefore the Claimants have to establish no more than that by reason of the breach or breaches they had lost a substantial chance of selling CEG for a price in excess of $245m to one or other of the potential buyers. The origin of this claim is in the well known case of ***Allied Maples Group v Simmons & Simmons [1995] 1 WLR 1601.*** A substantial chance must be more than speculative. I have found that (putting aside all the other objections) GazpromNeft would have bid up to $400m. Equally I find that the Claimants because GazpromnNeft were never in a position of bidders that they have suffered a loss of a substantial chance that GazpromNeft would have acquired at that price. I accept the Claimants say the test is more than merely speculative and therefore not a high one.

310. The Claimants accept that the burden is on them to prove in the assessment their hypothetical actions would have either led to obtaining a benefit or avoiding a loss (***Allied Maples*** page161 G-8). Equally if a Defendant wishes to rely on their actions the burden in respect of those are on it. The Claimants' case has failed as regards GazpromNeft because they have failed for the reasons I have set out above to establish that there was any prospect that they would have allowed GazpromNeft access prior to a final bid. The consequence of that failure is that Mr Matlashov of course said that GazpromNeft's response would be ***"Goodbye"***. I equally accept that had there been a realistic prospect of there being a viable bidder at 15th February 2008 that required a short extension the Bank would have given it (to do otherwise would be ***"like Turkeys voting for Christmas"*** per Mr Benyatov at T11/152). Acceptance of that position by Mr Benyatov was in the period leading up to the original repayment date of 15th December 2007 but I cannot believe the position would have been any different in the lead up to the extension to 15th February 2008.

311. The evidence of Mr Matlashov is powerful. Assuming that for the purpose of this analysis GazpromNeft would have bid around $400m I have to assess what is the loss that the Claimants have sustained in a percentage term in respect of that value.

312. The Claimants in their closing (paragraph 516 et seq) submit (without any justification) that the appropriate percentage figure is 65% without any basis for it.

313. As I have said the price to which that percentage should be applied is $400m. It is clear that Mr Matlashov was not particularly concerned about warranties or SOCAR for that matter. It is not therefore necessary to analyse whether or not $400m would

be a forced sale or not. Equally whilst Dr L was unwilling to give warranties when asked in the actual process I believe at $400m he would have been likely to give warranties anyway.

314. The task for me is to assess the percentage chance that the Claimants would have had in excess of $245m. When one strips out all the distracting other potential bidders the reality is that the Claimants' strongest case is based on GazpromNeft. Assuming that GazpromNeft would have proceeded and made an offer (i.e. and not said Goodbye) the Claimants are entitled to submit that there was a substantial prospect that it would have proceeded to completion. This is based on Mr Matlashov's evidence which I have said was very firm and very convincing. I have rejected the Claimants' submission that his evidence shows they would have gone in as high as $630m for the reasons which I need not set out again. Nevertheless I believe at $400m GazpromNeft would have seen off the other bidders and it would not have made a higher bid. What therefore is the percentage of the loss that the Claimants sustained? It seems to me it is a very high percentage. The Claimants submit that it is 65% and I would not disagree with that. This is because of the strong and convincing evidence of Mr Matlashov and the evidence of Mr Phillips. I therefore would have concluded had the case reached this stage that the Claimants had established they lost a substantial chance (assessed at 65%) of securing a sale of Kurovdag to GazpromNeft for $400m.

CALCULATION OF LOSS

315. The Claimants at paragraph 521 of their closing calculated their loss on the basis of a sale price of $630m.

316. I recalculate the damages therefore as follows:-

1) Difference between sale price achieved ($245m) and the sale price that ought to have been achieved ($400m)……. $155m

Less

1) 1% fee payable to CSS above $350m (i.e. on $50m)……$500,000

2) Less uplift due to Bank 33% on $155m…..$51,150,000

Balance - $103,350,000 (of which 65% is $67,177,500)

CONTRIBUTORY NEGLIGENCE

317. As the Bank says in its closing (paragraph 723) this is only relevant if I decide that the Bank was in breach of the relevant duty and that the Claimants have succeeded in demonstrating that any breach of duty on the part of the Bank caused loss of anything more than a speculative chance that they might have sold CEG for more than $245m.

318. The Bank on that basis relies upon the matters pleaded in the Re Re Amended Defence following the evidence given by Dr L in the course of his cross examination in the course of which he referred to his having made the mistake himself of not contacting GazpromNeft sooner than he did (A/6/134 A-042).

319. I accept the Bank's contention that Dr L was acting as agent for the Claimants which was no more than his corportate vehicles being ultimately owned by him. The

Claimants had obligtions to use all reasonable endeavours to solicit purchasers for the equity interest and/or assets and complete a sale as soon as practibly possible (PA5.4). It also had an obligation to use reasonable endeavours to procure a sale at the best price obtainable to maximise the equity upside payment (clause 5.5 inserted in May 2007).

320. There cannot be a breach of the latter clause before May 2007 self evidently because the obligation did not exist before that date.

321. It is clear that Dr L had discussions in May 2006 with a Mr Gulev the Director General of GazpromNeft International. Dr L accepted that he had meetings with a professor Jafarov who had been hired by Mr Ryazanov the First President of GazpromNeft to become his Chief Advisor for assets [T3/117-118]. Equally the Claimants accept that in 2006 Dr L and others at CEG had conducted extensive discussions with the representatives of GazpromNeft with the view to possibly becoming at least CEG's strategic partner.

322. Mr Benyatov of CSS admitted to having been aware of Dr L's discussions. The Bank submits (paragraph 732 of their closing) that the point of these discussions is only retained as regards the Bank and submits that it is not adequate for the Claimants to elide the two entities together. Dr L admitted that he had not told Mr Firmin or Mr Ukrasin about the discussions. It is not alleged that Mr Benyatov informed the Bank of what he had been told by Dr L and it was not put to Mr Firmin that he knew about them. This the Bank contends leads inexorably to the conclusion that the Bank was not informed of them.

323. I do not agree for a number of reasons. First it is unrealistic in the context of the structure of the Partnership Agreement and other loan documents and the imposition on the Claimants of CSS to suggest that the Claimants have to be careful to ensure that anything that is relevant has to be communicated by them ***both*** to a representative of CSS and the Bank.

324. The Claimants are entitled to assume CSS and the Bank would talk between themselves. The idea that the Claimants have to tell ***both*** of them any relevant matters to cover the possibility that they would not exchange information is preposterous. Further the evidence shows there were extensive and regular communications between them (see for example the comments exchanged about Dr L when the Trigger Notice was sent).

325. Second if Mr Benyatov knew it the Claimants are entitled to assume that he would have told the Bank. It is not for the Claimants to establish that causal link; it is for the Bank to lead evidence they were positively not told by Mr Benyatov. Third all of this disappears in my view after the Trigger Date because I have determined that thereafter CSS was the agent of the Bank.

326. I therefore reject this head of contributory negligence alleged by the Bank.

327. The second allegation of contributory negligence is the failure on the part of Dr L to contact any Russian companies during the first M&A process between December 2006 and the Trigger Date. Such lack of contact is admitted. Two reasons emerged in the evidence. First Dr L perceived that he was better to concentrate on the Chinese and Indian buyers because they had more money than the Russians. Second he

believed that a Russian government led company would conspire with SOCAR against him.

328. Neither to my mind is a satisfactory explanation for his failure in this period. Further if either of those was a correct basis for not contacting the Russians they would have been equally applicable in the second M&A period. I accept that this was a failure on Dr L's part and thus a failure on the part of the Claimants to act in accordance with their contractual obligations set out above.

329. The third complaint lies in respect of the period between the first M&A process and the Trigger Letter. The next alleged contributory negligence is the failure to contact GazpromNeft following the rejection by CEG of the bid made by Omel in May 2007 and in particular failure to contact Professor Jafarov. By the time of the making and rejection of the Omel bid, Dr L was aware that these preferred targets which he had identified were not going to come up with a price which is acceptable to him. There is therefore no reason why he should not have revived an interest in GazpromNeft in particular in this period. He accepted it was a tactical mistake (T4/129 and T4/133-134) and that it was definitely his fault. He acknowledged whether or not he still believed the Russians would conspire with SOCAR he realised he had no choice but to approach them as the Trigger Date was fast approaching and deadline for repayment of the loan was only a few months away. He acknowledged he did not have a luxury anymore (T4/147).

330. This too in my judgment is a failure and breach of the terms set out in the PA by the Claimants.

331. The final area of complaint by the Bank is post-trigger date. It complains that he had failed to pass on to the Bank and/or CSS their contacts with GazpromNeft. Dr L acknowledged that he had not offered Mr Firmin the contacts (T5/18). The cross-examination of Dr L at T4/129-136 shows the failing of Dr L in relation to contacting the Russians after the offer from ONGC.

332. This culminated in his acceptance that there was no reason for the Russian oil companies not to have been approached (T4/149) as set out in the Bank's closing paragraph (747).

333. After the Trigger Date Dr L did not attempt to contact any Russians until December 2007.

334. The major failing in the part of the Bank's submissions on this in my judgment is its role post Trigger Dates. As I have set out above (and it cannot be argued with any kind of realism) the Bank took over the sale process. That is the precise purpose of serving the Trigger Notice. The Bank therefore controlled the sale after that and as I have said above CSS reported to them thereafter. The attempts by the Bank to put distance between it and CSS in respect of matters of communication which I have rejected as set out above are not relevant to the GazpromNeft failure alleged against Dr L.

335. The Bank had the duty to effect the sale after the Trigger Notice. It was well aware of the Russian possibilities. The Bank deployed Mr Khitrov to investigate that and he failed abjectly. Equally Mr Firmin as I have set out above failed properly to investigate the conclusion that Mr Khitrov communicated to him. By the end of

September the Claimants were told that none of the Russian companies was interested. They were told that by the Bank. It had the control of the sale at that time and at the end of the day the Bank and its agent CSS were M&A experts. They were being paid handsomely for that service and the Claimants had that foist on them at the start of the loan period.

336. When the Bank tells the Claimants in September 2007 the Russians are not interested they are entitled to assume that the Bank and CSS have done their requisite tasks with reasonable skill and care. It is clear that they did not do so.

337. The position therefore is that the Claimants were entitled to rely on the maxim ***"you do not hire a dog and bark yourself"***. The problem is that in this case the dog did not bark. It is quite clear as I have set out above that if GazpromNeft had been contacted in September 2007 there was a very good prospect that it would have completed its due diligence before February 2008 and probably would have obtained a short extension thereafter. The fact that that did not happen was entirely down to the Bank's failings.

338. It follows therefore, that any negligence on the part of Dr L attributed to the Claimants ***before*** that was not causative of any loss because had the Bank discharged its duty in the post Trigger Date period GazpromNeft would have been brought on board anyway.

339. I therefore reject the allegation that the damages should be reduced by reason of any contributory negligence on the part of the Claimants.

ALTERNATIVE ASSESSMENT

340. I have calculated the above figures on the basis that the Claimant have overcome the objection raised successfully as set out in the judgment above that they would not allow GazpromNeft access with a result that GazpromNeft would ***"walk away"***.

341. If I am wrong and the Claimants successfully argue that the right way to consider that is that there was a chance that they would have allowed GazpromNeft access then I should assess that chance. In my view there would be a chance that they would let GazpromNeft have access. If one translates that into the assessment of damages the loss of a chance should be similarly reduced from 65% to 20%. This is a hypothetical assessment that requires me to take into account that there is a chance that the Claimants would have allowed GszpromNeft accesss. I would therefore on that analysis reduce the overall chance to 20%. My calculation of 65% is based on the assumption that the Claimants established that GazpromNeft would have obtained access. I would thus calculate the damages on an alternative basis as being 20% of $103,350,000 namely $20,670,000.

LIMITATIONS AND THE INDEMNITY

342. The question of warranties in my view is at the end of the day irrelevant. I believe that the Claimants and Dr L at a price of $400m would have given suitable warranties. In any event the distance between Mr Rogers for the Claimant ($15m) on a price in the range between $260m and $245m and Mr Wilson ($20-$50m) is relatively modest in the context of this action. If an amount should be deducted for lack of warranties I would assess it at Mr Wilson's lower figure of $20m.

INDEMNITIES

343. I use that figure because it seems to me that Mr Matlashov did not give much significance to the warranties. The documentation drafted by the Bank included at various points clauses designed to minimise any liability it or companies within the group might have if they were in breach of some provisions in the relevant documents.

344. The most significant one is Clause 4.6 of the Participation Agreement.

345. That clause said "***Equity Owners agree to indemnify and keep indemnified the Bank and any substitute attorney against all damages liabilities losses costs or expenses which may arise from the exercise or purported exercise in good faith of any powers granted under the Agreement"***.

346. The Bank do not rely upon this as an exclusion but say that it is relevant as a matter of construction because it excludes liability when they act in good faith. Yet on the Claimants' case there is no exclusion for negligence. That is unusual to say the least. I agree with the Bank's argument that this is a piece of evidence which assists in leading to the conclusion that there is no implied term as contended for by the Claimants but rather the liability is limited to good faith with that exclusion in respect of liability.

347. It is not necessary to consider what that Clause excludes because on the Bank's case no reliance is placed on it to exclude liability for breach of an implied term to take reasonable care. I accept the Bank's submissions in that regard.

348. The Bank insisted that CEG and Dr L appointed CSS as their M&A advisors although it was not part of the contract. The terms of CSS' appointment were set out in the Mandate Letter and letter of Indemnity (which were signed by CEG and Dr L on 13 December 2006 and were executed on 14th December 2006 when the Loan and Participation Agreement were executed.

349. Clause 5 of the Mandate Letter provided:

> **"5.** ***INDEMNITY***
>
> ***Since [CSS] will be acting on behalf of the Shareholder and [CEG] in connection with its engagement hereunder, the Shareholder and [CEG] have entered into a separate letter agreement attached hereto providing for the indemnification by the Shareholder and [CEG] of [CSS] and certain related entities and persons. Such indemnification agreement is an integral part of this letter, and shall apply to this engagement and remain in full force and effect regardless of any completion, modification or termination of [CSS' engagements]*****"**

350. The Indemnity Letter referred to provides:-

> ***"To the parties…. Agrees (sic) that Indemnified person shall have no liability to the parties or their respective owners… for***

> ***any losses, claims, damages, charge or liabilities (1) relating to or arising from actions taken or omitted to be taken (including any untrue statements made or statements omitted to be made) by the Parties or by [CSS] with the consent of the Parties (2) otherwise relating to or arising out of the [Mandate Letter] except to the extent that any such loss, claim, damage, or liability covered by the sub-paragraph (3) has been finally Judicially determined by a court of competent jurisdiction to have resulted primarily from the gross negligence or bad faith of such Indemnified Person in performing the service as pursuant to the Engagement."***

351. The indemnified person was defined to me as ***"each member of the CSS Group".***

352. ***"CS Group"*** means CS and any subsidiary, subsidiary undertaking or branch of CS, its ultimate holding company and any subsidiary, subsidiary undertaking or branch of such holding company.

353. Thus the Bank argues that all parties in the CS Group which includes the Bank have the benefit of that exclusion and it makes them only liable for gross negligence or bad faith.

354. It would be seen that the indemnity arises from an Indemnified Person in performing the services pursuant to the "***Engagement***". The word "***Engagement***" is not defined in the indemnity letter but it is quite clear that it must relate back to the terms of the Engagement Letter which defines the scope of the engagement. The only organisation that is providing the services under the engagement is CSS. The Bank does not provide any services under that Engagement Agreement.

355. It seems to me as a matter of construction the indemnity if it is to be relied upon by the Bank, must be construed strictly against it on the contra proferentem rule. In my judgment the purpose of the Indemnity Letter is to protect any other organisations within the CS Group from any claims which might be brought against them arising out of the services provided under the Engagement Letter i.e. by CSS. In other words it is an Indemnity that prevents a potential claimant seeking to draw in other companies in the group to make them liable for the actions of CSS.

356. It does not in my view extend to a separate defined breach of duty by the Bank in its own separate obligations. Further the Bank is not a party to the Engagement Letter nor the Indemnity Letter.

357. I accept the Bank's contentions that it is possible to exclude a liability for negligence in respect of a breach of the mortgagees' duty of care for example. However, on the documents in question in my judgment they simply do not extend to a freestanding liability of the Bank. All of the allegations made (which have survived the trial) are direct claims against the Bank for its own actions. It follows that the clause cannot protect it from such breaches.

THE LOAN AGREEMENT

358. Clause 20.9 of the Loan Agreement contains an express "Exclusion of Liability" of the Agent and the Security Agent:

> "***Neither the Agent nor the Security Agent will be liable (including without limitation for negligence or any other category of liability whatsoever) for any action taken by it or in connection with any Finance Document, unless directly caused by its own gross negligence or wilful misconduct***".

359. Clause 7.7(a) of the Security Agent limits CSS' duty and excludes any liability to the Claimants under 14.4 which states:

> "***The Security Agent may in its absolute discretion enforce all or any part of such security in such manner as it sees fit and shall not be liable for any charge or for any loss arising from any omission on his part to take any steps to enforce such security or for the manner in which it enforces or refrains from enforcing such security.***"

360. Once again the Bank relies upon these provisions primarily as aiding its contention that the Bank owes no duty which would have otherwise been imposed on CSS as Security Agent.

361. The first point to make is that the exclusion benefits under the Loan Agreement is in favour of the Agent and the Security Agent. They are defined in clause 1.1 as CSS in both cases. It is a simple and obvious point to show that the Bank is party (11) and (12) under the loan agreement which is neither the Agent nor the Security Agent. I do not see how it can claim the benefit of Clause 20.9 therefore unless it was expressly conferred with the benefit of the clause and it clearly was not.

362. In addition Clause 20.9 expressly excluded the possibility of taking proceedings against any officer, employee or agent of the Agent or the Security Agent which demonstrates that the Bank carefully considered other potential targets for the claim for the breach of any obligations under the loan agreement but did not think it appropriate expressly to include itself as a recipient of the benefit of Clause 20.9.

363. In my judgment the wordings in the Security Agreement are equally fatal to the Bank's stance. The exclusion under 14.4 only benefits the Security Agent. That is CSS. As has been seen in the Engagement Letter the Bank has in other documents sought to give extended definitions to parties within the CS Group so as to confer the benefits of the exclusions on it. No such provision is found in the Security Agreement. Finally Clause 29 provides "***except as otherwise expressly provided in this Security Agreement the terms of this Security Agreement may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded***". I do not see how the Bank being a non party therefore has any rights under it.

364. Once again in my judgment the clause is designed to protect the Security Agent in respect of duties it carries out under that document. It has nothing to do with the Bank.

365. Therefore none of the provisions relied upon by the Bank will avail it in the event that the duty as alleged by the Claimants had been established.

LIST OF ISSUES

366. At the start of the trial 30 lists of issues were identified. The answers are as follows in the light of this judgment:-

A duty of good faith for both periods.

2) No.

3) Yes.

This does not arise.

This does not arise.

This does not arise.

(1) The Bank is liable for any failure of CSS but that does not arise on the issues. (2) CSS became the Agent for the Bank after the Trigger Date.

CSS acted as the Defendant's agent in attempting to achieve any of the three items identified in this section. However, it does not arise.

Yes.

This does not arise.

They were factors.

This does not arise.

This does not arise.

This does not arise.

These do not arise. I do not believe GazpromNeft would have been affected by any of these although these are factors which might lead and did lead in my view to lower bids.

$20 million.

$400 million.

If such a duty was established then yes.

This is answered earlier in the Judgment.

This was not made out.

This was not made out.

This was not made out.

This was not made out.

This was not made out.

This was not made out.

If there was such a duty then the Claimants lost a substantial chance of selling CEG for price in excess of $245m at a price of $400m. The purchaser in question would have been GazpromNeft and I assess the percentage at 65% or 20% (see above).

Yes in respect of GazpromNeft in the sum of $400m.

See the calculation.

I will hear submissions on that.

No.

367. I am grateful to the parties' respective legal teams (apart from a short prod by me in respect of the Core bundle in their preparation of the case) and the cogent and succinct and realistic submissions made by the respective parties.

OVERALL CONCLUSION

368. For all of the above reasons I dismiss the Claimants' action against the Bank.

IN THE HIGH COURT OF JUSTICE **Claim No.HC12E03108**

CHANCERY DIVISION

B E T W E E N :

(1) ROSSERLANE CONSULTANTS LIMITED

(2) SWINBROOK DEVELOPMENTS LIMITED

Claimants

and

CREDIT SUISSE INTERNATIONAL

Defendant

AGREED LIST OF ABBREVIATIONS

None of the parties makes any admissions by this document, which is intended simply to be a useful reference point

$/USD	US Dollars
1P	Proved Oil Reserves
2007 Extension Memo	The Bank's internal credit memorandum dated 12 December 2007 relating to the proposed two month extension of the Loan
2P	Proved and Probable Oil Reserves
3P	Proved, Probable, and Possible Oil Reserves
AAPG	The American Association of Petroleum Geologists
Administration Board	The Administration Board of Shirvan
AIM	Alternative Investment Market of the London Stock Exchange
APOC	Amended Particulars of Claim
Ashmore Loan	The loan provided by Ashmore to CEG in August 2006 to refinance the Khamar Loan, which expired on 15 December 2006
Azerbaijan	The Republic of Azerbaijan
bn	Billion
BOE	Barrel of Oil Equivalent
BIN Bank Letter	The letter dated 2 October 2007 signed by Mr Shishkanov as President of BIN Bank confirming the availability of $500m to Hecton

bbl	Barrels
Blocks	Designated areas of territory that have been licensed or contracted to enable their exploitation
BOPD	Barrels of Oil Per Day
BTC	Baku-Tbilisi-Ceyham
CA	Confidentiality Agreement, also referred to as NDA or Non-Disclosure Agreement
CAG	Comptroller and Auditor General
Capex	Capital expenditure
CEG Credit Memo	The Bank's internal credit memorandum submitted to the credit committee in December 2006
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIS	Commonwealth of Independent States
CPR	Competent Person's Report
CSI Loan	The loan provided by the Bank pursuant to the Loan Agreement
Engagement Letter	The agreement dated 13th December 2006 by which CSS was engaged by Dr Leshkasheli and CEG to act as their adviser with respect to disposals of the assets/stock of CEG (also referred to as the M&A Agreement, or the CSS Engagement Letter)
DCA	Decline Curve Analysis
DCF	Discounted Cash Flow
EBITDA	Earnings before interest, taxes, depreciation and amortisation
E&P	Exploration and Production
EPV	Expected Present Value
Equity Owners	Individuals and companies referred to in Schedule 1 of the Participation Agreement
Equity Upside	Amounts payable to the Bank pursuant to the Participation Agreement in certain circumstances
Equity Upside Payment	A payment to the Bank pursuant to the Participation Agreement
EV	Enterprise Value
Event of Default	An event of default pursuant to clause 17.1 of the Loan Agreement
FASB	The Financial Accounting Standards Board
FMV	Fair Market Value

February Further Information	The Claimants' Further Information served on 7 February 2014
FID	The Fixed Income Division of the Bank
Field	The Kyurovdag (sometimes spelled "Kurovdag") Oil and Gas Field
First Report	The First Report by RPS dated 20 October 2006, also referred to as RPS1
First M&A Process	The M&A process in respect of the sale of CEG which took place between January and May 2007
FOCs	Foreign Oil Companies
Forced Sale	A compulsory sale by the Bank as attorney of the Equity Owners pursuant to the Participation Agreement
FSU	Former Soviet Union
FVF	Formation Volume Factor
HB Global Engagement Letter	The letter originally dated 12 December 2006 and signed by Dr Leshkasheli by which HB Global was engaged to carry out marketing of CEG and subsequently replaced by a letter dated 12th March 2007
IBD	The Investment Banking Division of CSS
IGU	International Gas Union
Investors	The entities to which the Bank sold risk under the Loan: Thames River Capital, VR Global Partners LP, Plexus Fund, HBK Master Fund LP and Bankinvest
IRR	Internal Rate of Return
JV	Joint Venture
JVA	Joint Venture Agreement between SOCAR and Whitehall dated 25 December 1995 (to which CEG later succeeded)
Karabagli North	The oil field to the south of the Field, also referred to as the Salyan Field and sometimes spelt "Garabagli"
Karasu Site	The oil field to the North-East of the Field, acquired on 22nd February 2008 by Mr Gutseriev, also known as the Nations Field, or the Mishovdag Field
KYC	Know Your Client
Kyurovdag	The Kyurovdag (sometimes spelled "Kurovdag") Oil and Gas Field, also known as the Field
LNG	Liquified Natural Gas
Loan Agreement	The Loan Agreement dated 14 December 2006 as amended on 14 May 2007 between, inter alia, the Bank as original lender, CEG as borrower and the Claimants as guarantors.
LSE	London Stock Exchange

m	Million
M&A	Mergers and Acquisitions
M&A Agreement	The agreement dated 13th December 2006 by which CSS was engaged by Dr Leshkasheli and CEG to act as their adviser with respect to disposals of the assets/stock of CEG (also referred to as the Engagement Letter)
M&A Memo	Joint memorandum of the M&A experts dated 17 July 2014
MD	Measured Depths
Mishovdag Field	An oil field to the North-East of the Field, acquired on 22nd February 2008 by Mr Gutseriev, also known as the Nations Field, or the Karasu Site
mmbl	Million barrels
MMSTB	Million Stock Tanks Barrels
Nations Field	An oil field to the North-East of the Field, acquired on 22nd February 2008 by Mr Gutseriev, also known as the Karasu Site, or the Mishovdag Field
NAV	Nominal Asset Value
NDA	Non-Disclosure Agreement, also referred to as a Confidentiality Agreement, or "CA"
NHPV	Net Hydrocarbon Pore Volume
NOC	National Oil Company
NPV	Net Present Value
NPV10	Net present value, applying a discount rate of 10%
OFDI	Outward Foreign Direct Investment
OFM	Oilfield Management
Oil Field	An accumulation of oil and/or gas found deep underground
OOIP	Oil Originally in Place
OPC	Oilfield Production Consultants
Participation Agreement	The agreement dated 14 December 2006 and amended on 14 May 2007 between CEG and various other parties and the Bank, dealing with the "equity upside" of a sale of CEG or related assets in certain circumstances
PDP	1P Developed Production
PPDP	2P Developed Production
PRMS	The Petroleum Resources Management System
PSA	Production Sharing Agreement between CEG and SOCAR dated 5th November 2004
PVT	Pressure-volume-temperature

RPS1	The First RPS Report dated 20 October 2006 (also referred to as the First Report)
RPS2	The Second RPS Report dated 1 May 2007 by way of addendum to the First Report, also referred to as the Second Report
RPS Reports	The First Report and the Second Report
Sale Agreement	The agreement dated 15 February 2008 between the Claimants and Berghoff relating to the sale of CEG
SCF	Standard Cubic Feet
Salyan Field	The oil field to the South of the Field, also referred to as Karabagli North
SEC	The Securities and Exchange Commission
Second M&A Process	The M&A process in respect of the sale of CEG which took place from 14 August 2007
Second Report	The report by RPS dated 1 May 2007 by way of addendum to the First Report, also referred to as RPS2
Security Agreement	The security agreement dated 14 December 2006 between the Claimants and CEG and other parties by which the Claimants granted security over their interests in CEG
SEG	The Society of Exploration Geophysicists
SGOR	Solution Gas Oil Ratio
SPA	Sale and Purchase Agreement
SPEE	The Society of Petroleum Evaluation Engineers
Standard Competent Practice	The standard which the Claimants allege the Bank was required to meet in connection with the marketing and sale of CEG
STB	Stock Tank Barrel
Stone & Webster Report	The report by Stone & Webster dated 11 December 2006
STOIIP	Stock Tank Oil Initially In Place
STOOIP	Stock Tank Oil Originally in Place
SPE	The Society of Petroleum Engineers
Trigger Date	14 August 2007
Trigger Letter	The letter sent by the Bank to Dr Leshkasheli dated 14 August 2007 giving notice that the Bank was exercising its right under clause 4 of the Participation Agreement
TVD	True Vertical Depths
UAE	United Arab Emirates
Valuation Memo 1	Joint Memorandum of the valuation experts dated 22 July 2014

Valuation Memo 2	Joint Memorandum of the valuation experts dated 5 September 2014
VDD	Vendor Due Diligence
VLP	Vertical Lift Performance
WACC	Weighted Average Cost of Capital
WF	Waterflooding
WPC	The World Petroleum Council

IN THE HIGH COURT OF JUSTICE

Claim No.HC12E03108

CHANCERY DIVISION

B E T W E E N :

(1) ROSSERLANE CONSULTANTS LIMITED

(2) SWINBROOK DEVELOPMENTS LIMITED

Claimants

and

CREDIT SUISSE INTERNATIONAL

Defendant

AGREED DRAMATIS PERSONAE

Note: none of the parties makes any admissions by this document, which is intended simply to be a useful point of reference.

	Name	Role
A	**Berghoff Trading Limited**	
1	Brander Enterprises Limited	A company to which the benefit of Ligasoff Holding Limited's loans to Berghoff were assigned
2	Chrjstodolous G Vassiliades & Co	Legal Consultants
3	Dlinn, Felix	Director
4	GEA Holdings Limited	A company registered in the BVI which acquired the Claimants' interests in CEG together with Berghoff
5	Gutseriev, Mikhail	Founder and former chief executive of Russneft, uncle of Mr Shishkanov, negotiator of contract of sale of CEG to Berghoff
6	Ligasoff Holdings Limited	A company which made loans to Berghoff
7	Mittelmeer Nominees Limited	The legal owner of shares in Berghoff
8	Mittelmeer Secretaries Limited	The secretary of Mittelmeer Nominees Limited

	Name	Role
9	Shishkhanov, Mikail	Nephew of Mr Gutseriev, President of BIN Bank, alleged beneficial owner of Berghoff
B	**BSG Energy Holdings Limited**	
1	Al Ulama, Abdul Wahid	Group Chief Legal Officer of Dubai World Corporation
2	Apthorpe, Catherine	Lawyer, Corporate Department, MMS
3	Barnett, David	Lawyer
4	Batt, Paul	Employee focusing on business development in Russia and the CIS
5	Brooks, Jonathan	Partner, Corporate Department, MMS
6	Buchan, Gwen	Consultant, MMS
7	Clark, David	Group Treasurer
8	DB Petroleum Limited	A joint venture between BSG Limited and Dubai World – the proposed buying company put forward on 23 January 2008
9	DBP Kura Valley South Limited	A company through which Mr Steinmetz and Dubai World acted, understood to be a subsidiary of DB Petroleum Limited
10	Ernst & Young	A professional services firm, instructed by BSG/Dubai World to review the joint venture accounts of Shirvan
11	Fitzgerald, Lesley	PA
12	Leckie, David	Partner, MMS
13	Phillips, Zac	Chief Financial Officer
14	Sheikh, Rashid	Group Treasurer, Dubai World Corporation
15	Steinmetz, Beny	Owner
16	Thompson, Geoff	Chief Operating Officer, Dubai Multi Commodities Centre
C	**Caspian Energy Group LP (CEG)**	
1	Akhundov, Vugar	Chief Financial Officer
2	Eriksen, Klaus	Reservoir engineer and Water-flood team leader
3	Farzaliyev, Zaur	Translator for Phillip Maxwell in Baku
4	Haskell, Joe	Geological and Geophysical (“G&G”) Manager
5	Kushnirov, Valery	Technical Manager

	Name	Role
6	Leshkasheli, Dr Zaur	Principal
7	Littlechild, Rodger	Drilling Manager
8	Mammadtaghizada, Nigar	Assistant accountant for CEG in London
9	Maxwell, Phillip	General Manager of CEG in Baku
10	Nobes, Glenn	Consultant
11	Robb, Frank	Drilling Manager
12	Steinhart, Joel	Consultant through Granite Management Limited
13	Stuppard, Eric	Finance Manager (based in Azerbaijan)
14	Yarmammadov, Tarlan	ReservoirEngineer
D	**Credit Suisse International ("the Bank")**	
1	Afiouni, Adel	Managing Director, Middle East Fixed Income Division
2	Andrews, Christopher	Emerging Markets, Fixed Income
2a	Basaran, Kaan	Managing Director, Coverage Banker for Turkey
3	Bolger, Brian	Managing Director, Emerging Markets Group
4	Burkey, Nathan	Managing Director and Head of Emerging Markets Structuring for Central and Eastern Europe, Middle East and Africa, Fixed Income Division
5	Caldeiro, Javier	Managing Director - Emerging Markets Fixed Income Division, head of the Structured Lending Team
6	Chakrabarti, Kanad	Director, Emerging Markets Fixed Income
7	Chapman, Chris	Vice President, Legal & Compliance
8	Corson, Chris	Managing Director, Emerging Markets, Fixed Income, Investment Banking
9	Cruyssen, Bruno Vander	Fixed Income Division
10	Diop, Aisha	Fixed Income
11	Ede, Tamsin	M&A Product Control
12	Elzein, Saeb	Managing Director, Fixed Income, Middle East coverage
13	Firmin, Peter	Director, Fixed Income Division
14	Glushko, Valery	Credit Risk Management Committee

	Name	Role
15	Hammett, Paul	Director, Emerging Markets Sales
16	Johnson, Jason	Managing Director, Investment Banking Division, Energy Group, Hong Kong
17	Khitrov, Yury	Director, Structured Finance, Credit Suisse Bank Moscow
18	Krishna, Murali	Emerging Markets Fixed Income
19	Lee, Nataliya	Vice President - Credit Risk Management Committee
20	Leistner, Maria	Managing Director – Legal & Compliance
21	Lippuner, Bernhard	Head of Commodity Finance, Geneva
22	Mahoney, James	Vice President – Emerging Markets Fixed Income Division
23	McHardy, Jonathan	Head of Trading – Fixed Income
24	Nayak, Ram	Head of Emerging Markets Group
25	Niemeier, Markus	Director - Emerging Markets Fixed Income Division
26	Nydegger, Robert	Managing Director – Emerging Markets (Head of Special Opportunities)
27	Przewozniak, Jan	Credit Risk Management Committee
28	Rusli, Ridwan	Managing Director, Asia Energy & Natural Resources
29	Shamina, Anna	Associate, Emerging Markets Fixed Income
30	Studd, Kevin	Managing Director & General Counsel EMEA
31	Zinni, Vincenzo	Managing Director - Emerging Markets Sales
E	**Credit Suisse Securities (Europe) Limited (“CSS” / “CSSEL”)**	
	Investment Banking Division	
1	Averbuch, Doron	Managing Director - Coverage Banker for Israel [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
2	Barnosky, Daniel	Vice-President, Investment Banking, Energy Group
4	Bayur, Ugar	Managing Director, Emerging Markets Coverage Group for Turkey

	Name	Role
5	Begaliev, Talant	Director, Emerging Markets Coverage Group
6	Benyatov, Vadim	Head of Emerging Markets Group for the FSU (excluding Russia), Central and Eastern Europe and Israel
7	Berent, Leo	Director, Solution Partners, Credit Suisse Representative Office, Moscow [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
8	Bisceglia, Giovanna	PA, Investment Banking
9	Couch, Jeffrey	Director, Metals and Mining [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
10	Fletcher, Jeremy	Executive Officer. Metals and Mining [*unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
11	Flore, Mircea	Vice President , Investment Banking, CEMEEA Coverage Group
12	Goddard, Julie	PA to Igor Ukrasin and Victoria Pavlova, Pavel Moutchiev, Enrique Bernales and Paul Rootham
13	Hellman, Steven	Head of Investment Banking Russia [*unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
14	Hesketh, Emma	PA [*unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
15	Ionescu, Mihail	Vice President, Emerging Markets Fixed Income Division, Special Opportunities team
16	Janoskey, James	Managing Director, Head of European Oil and Gas
17	Kabysh, Dmitry	Vice President, Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
18	Katyal, Rajat	Vice President, Investment Banking Division, Corporate Finance [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
19	Kilsby, Susan	Senior Adviser – Investment Banking
20	Le, Anh	Analyst, Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]

	Name	Role
21	Leonel, Marlos	Broker, Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
22	Livingstone, David	Head of European Mergers and Acquisitions Group [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
23	Mazzucchelli, Marco	Head of EMEA Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
24	Melville, Hamish Leslie	Co-ordinator of European Investment Banking Committee [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
25	Mimaroglu, Emre	Head of Emerging Markets Coverage Group for Turkey [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
26	Moutchiev, Pavel	Associate, Investment Banking, European Energy Group [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
27	Nazarov, Alexander	Director, Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
28	Ozansoy, Mert	Associate, Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
29	Pavlova, Victoria	Vice President, European Energy Group
30	Petrosius, Antanas	Chief Executive Officer, Coverage Banker for Kazakhstan [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
31	Reeves, Simon	Investment Adviser [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
32	Saad, Fawzi Kyriakos	Managing Director, Russia, CIS and Turkey [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
33	Sool, Sofia	Managing Director, Emerging Markets, Russia and CIS [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
32a	Szwarc, Michal	A coverage Banker for Poland working for Credit Suisse

	Name	Role
34	Taylor, Michael	Associate, Investment Banking
35	Trifonov, Todor	Associate, Investment Banking
36	Ukrasin, Igor	Director, and Managing Director from 1 January 2008, Energy Group
37	Vega, Gene	Director, Commodities [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
38	Vetter, Frank	Director, Investment Banking
39	Wallace, Matthew	Managing Director, Co-Head European Energy & Resources Group [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
40	Zuloaga, Alfonso	Managing Director, Investment Banking [unable to verify that CSS staff rather than staff of some other Credit Suisse entity]
F	**Dogan**	
1	Akgun, Mustafa	Pragma
2	Aygen, Ayözger	Manager, Strategy and Business Development
3	Barlass, Sukru	Pragma
4	Sahbaz, Deger	Pragma
5	Ucarer, Halil	Pragma
6	Uzdiyen, Yahya	Strategy Group Chief
G	**GazpromNeft**	
1	Dyukov, Alexander	President
2	Gazprom	Parent company of GazpromNeft
3	Jafarov (also spelt Dzhafarov), Professor I.S.	Advisor to the Director General (now deceased)
4	Komarov, V.	Deputy Chairman of Gazprom
5	Matlashov, Ivan	Advisor to the Chairman of the Board
6	Tipikin, Svyatoslav	Director for Geology and Development
H	**HB Global Advisors Corp**	
1	Bahamin, Poupak	Lawyer, Heenan Blaikie
2	Black, Michael	Lawyer, Heenan Blaikie
3	Bouchard, Jacques	Director, International Development, Heenan Blaikie

	Name	Role
4	Garson, Allen	Partner, Heenan Blaikie
5	Heenan Blaikie	A Canadian law firm and affiliate of HB Global
6	Maher, Francine	Assistant to Jacques Bouchard
7	Robertson, Douglas	Lawyer, Heenan Blaikie
I	**Hecton Investments Limited**	
1	Bekish, Vladimir	
2	Driga, Valery	
3	Dudebout, Marie Helene	PA to Nadeem Khan, Dorsey & Whitney
4	Khan, Nadeem	Lawyer, Dorsey & Whitney
5	Turner, John	Lawyer, Dorsey & Whitney
J	**Lukoil**	
1	Kamyshenko, Sergey	Head of Debt Finance
K	**ONGC/Mittal**	
1	Biyani, Ram	Director – Mittal
2	Butola, R.S	Managing Director of ONGC Videsh Limited
3	Chattopadhyay, Chinmoy	Vice President, Procurement, Mittal Energy
4	Chu, Vanessa	Lehman Brothers Asia Limited, Investment Banking Division
5	Dutta, Tuhin K.	Senior Vice President, ONGC Videsh Limited
6	Gaitonde, Amol	Vice President – Lehman Brothers Asia Limited
7	Gupta, Ravi	General Manager (Business Development), Mittal
8	Jain, Parul	General Manager, Corporate Finance, ONGC Mittal
9	Maheshwari, Sudhir	Chief Financial Officer - Mittal
10	Martinez, Jorge	Heading of Natural Resources Asia, Lehman
11	Nayyar, Naresh	ONGC - Mittal
12	Oil and Natural Gas Corporation of India	An Indian Multinational oil and gas company
13	ONGC Mittal Energy Limited	A joint venture between ONGC Videsh

	Name	Role
		Limited and Mittal Investments SARL
14	ONGC Videsh Limited	A wholly owned subsidiary of the Oil and Natural Gas Corporation of India
15	Sarraf, DK	Chairman and Managing Director (Finance), ONGC
16	Singla, Rajesh K	ONGC Videsh Limited
17	Tandon, Rajan	Vice President -Mittal
18	Thomas, Joeman	Executive Director, ONGC Videsh Limited
L	**Netoil Inc**	
1	Steckel, Matthew	President
2	Tamraz, Roger	Founder and Beneficial Owner
M	**PCG Turicum**	
1	Peitrequin, Patricia	CEO
2	PT Energi Mega Persada tbk	Indonesian public company represented by PCG Turicum
3	Stahel, Oliver	Chairman of Viafina (Consultancy)
4	Wehrli, Michel	Attorney at Law
N	**Perenco Limited**	
1	Bidaux, Pascal	Reservoir Engineering Manager
2	Eager, Averil	Company Secretary
3	Ince, Muharrem	Business Development Manager
4	Spink, Paddy	Business Development Manager, Exploration and Operations
O	**Petrovietnam Investment and Development Company**	
1	Duong, Nghia Duc	Chief Accountant
2	Hong, Ha Xuan	New Ventures Coordinator
3	Nguyen, Kien	Legal Officer
4	Nguyen, Pham Dinh	New Ventures Department
5	Nguyen, Quoc Thap	Vice President
6	Nguyen, Quynh Lam	Managing Director
7	Nguyen, Thi Cam Tu	Legal Manager
8	Nguyen, Thien Bao	Member of the Board of Directors

	Name	Role
9	Nguyen, Tuan Anh	New Ventures Coordinator
P	**PKN Orlen S.A.**	
1	Biela, Beata	
2	Borkowski, Tomasz	
3	Byrne, Simon	Head of Oil and Gas, M&A Advisory, ABN Amro
4	Dariusz, Formela	Management Board Member [unable to verify]
5	Gaffney, John	Consultant, Gaffney, Cline & Associates
6	Geiger, Carsten	Director
7	Grebosz, Dariusz	Director, Investor Relations [unable to verify]
8	Hargreaves, Simon	Head of Growth Markets, ABN Amro
9	Herman, Andrzej	Supervisory Board Member [unable to verify]
10	Kapler, Rafal	Executive Director, Cost Management, Procurement and IT [unable to verify]
11	Kearney, Piotr	Director – Mergers & Acquisitions [unable to verify]
12	Kretkiewicz, Aleksandra	
13	Laskowska, Katarzyna	Specialist
14	Markiewicz, Mateusz	Head of Treasury [unable to verify]
15	McGhee, Paul	Gaffney, Cline & Associates
16	Moroz, Marek	Chairman of the Supervisory Board [unable to verify]
17	Mosinksi, Kazimierz	Supervisory Board [unable to verify]
18	Olejnik, Andrzej	Lawyer [unable to verify]
19	Pazura, Jerzy	Executive Director - Planning and Controlling [unable to verify]
20	Piatkowska, Magdalena	Senior Geologist, Exploration and Production Bureau
21	Pochwalksi, Marek	
22	Porembski, Leszek	Human Resources [unable to verify]
23	Prugar, Wieslaw	Deputy Director, Upstream Division
24	Seferovich, Patrick	Legal Adviser

	Name	Role
25	Tuszewicki, Waldemar	Deputy Director, Environmental Protection Department
26	Wira, Jaroslae	President of Board [unable to verify]
27	Woollen, Ian	Senior Geotechnical Advisor
Q	**Rosneft**	
1	O'Brien, Peter Lloyd	Vice President for Finance and Investments
2	Makarov, S	Chief Financial Officer
R	**SOCAR**	
1	Abdullayev, Rovnag	President/Secretary of the Board
2	Aliyev, Vagif	Head of Foreign Investments
3	Gassimov, Farrukh	Deputy to Chief of Legal Department
4	Orujov, Eldar	Chief of Legal Department
5	Shabazov, Eldar	A representative of the company
6	Yagubov, Davood	Deputy Head of Foreign Investment
S	**Summa Capital**	
1	Galaev, Magomed	CEO
T	**Tata Petrodyne Limited**	
1	Guha, Atanu	Vice President of Finance
	Deliberately left blank	
3	Mukopadhyay, Suprakash	General Manager
4	Raju, A V	Head, Technical
5	Sharma, VK	Executive Director
6	Thanawalla, N	Assistant Manager, Finance
U	**The National Investor**	
1	Almazrouei, Saeed	
2	Chowdhari, Rizwan	Vice President, InvestmentBanking
3	El Boraei, Ramy	Lawyer
4	Shakiba, Janet	Lawyer
5	Ugarov, Andrei	Director
V	**Turkiye Alphex**	
1	Huber, David	Co-Founder

	Name	Role
2	Kaya, Memet Ali	Co-Founder
3	Robinson, Dr Andrew	Co-Founder
4	Ulu, Murat	
W	**Urals Energy**	
1	Ivanov, Slava	Vice President, Business Development
X	**Vitol**	
1	Bujnowska, Magdalena	Corporate Secretary
2	Dellapina, Jeff	CFO
3	McBain, Alastair	President and CEO, Arawak Energy
4	Sagemo, Geir	
Y	**Zad Investment Company**	
1	HRH Prince Dr Mishoul bin Abdullah bin Turki bin Abdul-Aziz Al Saud	Owner of controlling interest

Z	**Miscellaneous**	
	Other Potential Bidders	
1	Aabar Petroleum Investments Company PJSC	A UAE company approached in January 2007
2	Abu Dhabi National Energy Company PJSC	A company approached in January 2007
3	Abu Dhabi National Oil Company	The state owned oil company of the UAE
4	Addax Petroleum	A potentially interested purchaser
5	Amerada Hess	Former name of the Hess Corporation, an American oil company
6	Arcadia Petroleum Limited	A company introduced to the M&A Process by Dr Leshkasheli in May 2007
6a	British Petroleum	A British multinational oil and gas company
7	Burren Energy New Ventures Limited	A company approached in January 2007
8	Caspian Meridian Project Limited	A potential bidder in the First M&A Process
9	Chinese National Off-Shore Oil Company	A Chinese state-owned oil company, approached in January 2007
10	Chinese Petroleum Corporation	A Chinese oil company
11	CNPC/Petrochina	A Chinese oil company
12	Delta Hydrocarbons	A company from which Ms Pavlova said

	Name	Role
		she was expecting a bid in October 2007
13	Dragon Oil	A company which operates mainly in Turkmenistan, which was substantially owned by Emirates National Oil Company
14	Dubai Investments Group	A Dubai company of potential interest
15	Emirates National Oil Company	A company which the Claimants allege should have been contacted during the Second M&A Process, which was a substantial shareholder in Dragon Oil
16	ESN	A Russian oil company mentioned to Mr Firmin by Mr Khitrov
17	Glencore Xstrata	An Anglo-Swiss company which was a potential bidder
18	Hellenic Petroleum	A company included on CSS' M&A Contacts List
19	Indian Oil Corporation Limited	An Indian oil company
20	Kuwait Energy Company K.S.C.	An upstream energy company
21	Kuwait Foreign Petroleum Exploration Company K.S.C	An international oil company approached in January 2007
22	Lundin Petroleum	A potential bidder introduced by HB Global
23	Mittal Investments SARL	joint venture partner in ONGC Mittal Energy Limited
24	MOL Group	A Hungarian oil and gas company
25	Naftna Industry a Srbije	A Serbian vertically integrated oil company, 51% of which was purchased by GazpromNeft for €400m in about 2008
26	Nations Petroleum	A company formerly with interests in Nations Field, previously known as Nations Energy
27	Oil India Limited	An Indian hydrocarbon exploration and production company
28	OMV Exploration & Production GmbH	A Central European oil and gas corporation, approached in January 2007
29	RAFI Oil	A trade and marketing company based in the United Arab Emirates
30	Reliance	A large private sector group in India whose activities include oil and gas exploration and production
31	Russneft	A substantial Russian oil producer, of which the founder and former chief executive was Mr Gutseriev

	Name	Role
32	RussNeft Absheron Investments Limited	A company associated with Mr Gutseriev, Mr Shishkhanov and Mr Kaluzhny
33	Sibir Energy	A Russian company approached as potential purchaser
34	Starleigh	A 100% subsidiary of Mittal Investments SARL
35	Statoil Apsheron a.s.	A potential purchaser introduced by HB Global
36	Sun Group/Suntera Energy	A potential bidder
37	Surgutneftegaz	A Russian oil and gas company pursuing a strategy of growth in 2007/2008
38	Tatneft	A Russian vertically integrated oil and gas company
39	Tomskneft JSC	A Russian company in which GazpromNeft acquired a 50% stake in 2007
40	Turkish Petroleum	A company which approached CEG before Dr Leshkasheli decided to sell it
41	Uniacke & Associates Inc	A company which was introduced by HB Global
42	Warburg Pincus	A New York private equity house, identified by Credit Suisse as a potential bidder
43	Zarubezhneft JSC	a Russian state company founded to develop oil and gas companies outside of Russia
44	Zarubezhneftegaz CJSC	Gazprom International, dealing with Gazprom's overseas projects, owned 100% by Gazprom
	Co-Investors	
45	Bankinvest	An entity to which the Bank sold risk under the Loan
46	HBK Master Fund LP	An entity to which the Bank sold risk under the Loan
47	Pavlichenkov, Andrey	Portfolio Manager, VR Capital
48	Plexus Fund	An entity to which the Bank sold risk under the Loan
49	Thames River Capital	An entity to which the Bank sold risk under the Loan
	Expert witnesses	
50	Aron, David	Reservoir engineering expert witness engaged by the Claimants

	Name	Role
51	Rogers, Stephen	Valuation expert witness engaged by the Claimants
52	Tolkien, Richard	M&A expert witness engaged by the Bank
53	Van Genderen, Robert	M&A expert witness engaged by the Claimants
54	Wilson, David	Valuation expert witness engaged by the Bank
	Others	
55	Al Junaidy, Sultan Hussain	Group Chief Executive & Board Member of ENOC
56	Al Suwaidi, Abdullah Nasser	A representative of Abu Dhabi National Oil Company
57	Aliyev, Heydar	The late President of Azerbaijan
58	Aliyev, Ilham	Current president of Azerbaijan, son of Heydar Aliyev
59	Amec Services Ltd	A company which carried out an infrastructure facilities rehabilitation study in September 2005
60	Anantharaman, Venkat	Managing Director, Credit Suisse Securities (India) Pvt Limited
61	Ashmore Group	A group of companies which made the Ashmore Loan to CEG in August 2006
61a	Ayub, Kamal	Business acquaintance of Dr Leshkasheli
62	Bakshi, Gagan	Vice President, Investment Banking, Credit Suisse Securities (India)
63	BIN Bank	A Bank which wrote a letter in support of Hecton's bid on 28th September 2007, and whose President is Mr Shishkanov
64	Bokersman, Professor Arkady A.	Employee of Zarubezhneft JSC
65	Boundy, Francis	Technical Director of RPS and supervisor of the RPS Reports
66	Brown, Jim	Manager, Production Geology, RPS
67	Cabba, Traian	CEO, Trimar Energy Group. Introduced to the sales process by HB Global in around March 2007, represented Hecton, and later introduced Mr Gutseriev to the Bank.
68	Caspian Energy Group Limited (BVI)	A company beneficially owned by Dr Leshkasheli which was a party to the PSA with SOCAR
69	China International Trust and Investment	One of the Chinese companies identified by

	Name	Role
	Corporation	the Claimants in their Further Information dated 9 June 2014
70	China National Oil and Gas Exploration and Development Corporation	A Chinese State-owned oil and gas corporation
71	Chugh, Suresh	President of IFM Resources
72	Chadbourne & Parke	CEG's legal advisers at the time of the Loan
73	Cornhill Nominees Limited	A company registered in England and Wales which wholly owns Roanoaks Trading Limited
74	CPC	Taiwan Chinese Petroleum
75	DeBeer, Shane	A lawyer at Chadbourne & Parke
76	Djojohadikusumo, Hashim	The former owner of the Nations Field
77	Doerig, Hans Ulrich	Former Vice-Chairman (now Chairman) of the Board of Directors of Credit Suisse Group AG
78	Dougan, Brady	CEO of Credit Suisse Group
79	Evans, Mark	Global Head of Credit Suisse's IT Security Operations Services Team
80	Global Energy Azerbaijan Limited	The purchaser of CEG's interest in Shirvan on 20 March 2008 in exchange for two promissory notes maturing on 29 March 2013
81	Global Energy Inc.	A company associated with Mr Gutseriev, Mr Shishkhanov and Mr Kaluzhny
82	Gordon Dadds LLP	Solicitors for the Claimants
83	Great Wall Drilling Company	A subsidiary of CNPC engaged in petroleum engineering and services
84	Gulev, Valeriy	Managing Director and CEO Director General of CJSC Zarubezhneftegaz
85	Halliburton	An oil field services company which carried out 3 studies on the Field in 2005
86	Hamza, Abbas	Associate of Dr Leshkasheli
87	Herbert Smith Freehills LLP	Solicitors for the Bank
88	Hirschler, Philip	General Counsel - Nations Petroleum
89	IFM Resources Inc	Investment Banking and consulting company registered in New Jersey
90	Imanov, Mammad	General Director of Shirvan

	Name	Role
91	Kaluzhny, Max	An individual involved in the sale to Berghoff and an entity called Avery Advisors
92	Karasu Operating Company	A company owned by Mr Djojohadikusumo operating in the Nations Field
93	Kastil, Peter	An intermediary who approached Dr Leshkasheli in late February 2008
94	Kazakh Oil and Gas Company	An oil and gas company based in Kazakhstan
95	Khamar Holdings Limited	A company from which CEG borrowed $40m in June 2006
96	Khemka, Vikram	A representative of Suntera Energy/Sun Group
97	Khoory, Saeed	A representative of Dragon Oil plc/ENOC
98	Khoury, Mohammed	A senior manager of Dubai World
99	Kotler, David	A Managing Director at Lazards
100	Kura Valley Operating Company	A company owned by Mr Djojohadikusumo operating in the Nations Field
101	Lazards	A Bank from which Dr Leshkasheli sought to obtain refinancing in January 2008
102	Lehman Brothers	The investment Bank representing ONGC
103	Leshkasheli, Michael	Head of the local drilling team responsible for the Field, and Dr Leshkasheli's brother
104	Lia Oil Company	A company for which Dr Leshkasheli worked as the Russian General Manager in the early 1990s
105	Liming, Liu	Deputy General Manager, New Ventures Department, Sinochem
106	Maclay, Murray & Spens LLP	DB Petroleum's lawyers
107	Mayfair Energy Group Limited	A company registered in England and Wales, owner of the Claimants, whose shares are held by Roanoaks
108	McGuire Woods	A law firm acting for Berghoff through its partner Walter White
109	Miller & Lents	An oil and gas consultancy firm which carried out a study on the Field in November 2005
109a	Mishra, Binoy	A contact of Dr Leshkasheli with connections to the Tata Group
110	Ostrovsky, Sergei	A lawyer at Ashurst who previously acted

	Name	Role
		for CEG
111	Owen, Christopher	A lawyer at Chadbourne & Parke acting for CEG at the time of the Loan
112	PetroAlliance	A company which provided a full 3D seismic survey of the Field in June 2004
113	Petrofac Limited	A company providing oil field services, registered in Jersey
114	Polonio	An entity with related to Khamar and the West Siberian Oil Company
115	Quale, Bryan	A director of Rosserlane
116	Rausi, Jamal	Formerly the President of Sigma Oil
117	Reinish, Klaus	The London Business Development Manager of Gazprom
118	Rick, Petree	An individual representing a Middle Eastern investor involved in the First M&A Process
119	Roanoaks Trading Limited	A company registered in the BVI, owner of Mayfair, wholly owned by Cornhill
120	Rosserlane Consultants Limited	The First Claimant, beneficially owned by Dr Zaur Leshkasheli and his family interests, formerly the general partner of CEG, with a 90% interest therein
120a	RPS Energy	International consultancy to the oil and gas industry
121	Salyan Oil Limited	Operator of the Salyan wells
122	Sawyer, Mark	A representative of Dragon Oil plc/ENOC
123	Schlumberger	A service provider to the oil and gas industry which produced a study on the Field in December 2004
124	Shayakhlmetov, Rinat	A representative of Tatneft
125	Shirvan Oil Limited Liability Enterprise	Joint venture between CEG and SOCAR; operator of the Field
126	Sinochem Petroleum E&P Co Ltd	Chinese exploration and production company
127	China Petroleum & Chemical Corporation	A Chinese oil and gas company
128	Solovyev (also spelt Soloviev), V.	Assistant to the Deputy Energy Minister of Russia (Professor Yanovksy)
129	Stone & Webster Management Consultants,	Management consultants engaged by the

	Name	Role
	Inc	Bank to report on the First RPS Report
130	Swinbrook Developments Limited	The Second Claimant, beneficially owned by Dr Leshkasheli and his family interests, formerly the limited partner of CEG with a 10% interest therein
131	Syubaev, Nurislam	A representative of Tatneft
132	Tabrizi, Dr Reza	A contact of Dr Leshkasheli who acted as the conduit with GazpromNeft via Mr Rausi
133	Tischenko, Alexander	A representative of Tatneft
134	Whitehall International Traders LP	Scottish limited partnership controlled by Dr Leshkasheli, predecessor of CEG
135	Yanovsky, Anatoly Borisovich	Deputy Minister of Industry and Energy (Russia)
136	Yeo, Ian	A solicitor at Herbert Smith acting for Credit Suisse in relation to the loan to the Claimants
137	Zaretsky, Alexander	An individual with whom Dr Leshkasheli agreed a $20m commission payment if a sale price of $700m was achieved

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Glencore Xstrata	Z17
Global (Global Energy Azerbaijan Limited)	Z80
Global Energy Inc.	Z81
Glushko, Valery	D14
Goddard, Julie	E12
Grebosz, Dariusz	P7
Gupta, Ravi	K7
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Gulev, Valeriy	Z84

Gutseriev, Mikhail	A5
GWDC (Great Wall Drilling Company)	Z83
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Hammett, Paul	D15
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Haskell, Joe	C4
HB Global (HB Global Advisors Corp)	H
HBK (HBK Master Fund LP)	Z46
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Heenan Blaikie	H5
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Hellman, Steven	E13
Herman, Andrzej	P9
Hesketh, Emma	E14
Hirschler, Philip	Z88
Hong, Ha Xuan	O2
HRH Prince Dr Mishoul bin Abdullah bin Turki bin Abdul-Aziz Al Saud	Y1
HSF (Herbert Smith Freehills LLP)	Z87
Huber, David	V1
IFM (IFM Resources Inc)	Z89
Imanov, Mammad	Z90
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Indian Oil Corporation Limited	Z19
Ionescu, Mihail	E15
Ivanov, Slava	W1
Jafarov (also spelt Dzhafarov), Professor I.S.	G3
Jain, Parul	K8
Janoskey, James	E16
Johnson, Jason	D16
Kabysh, Dmitry	E17

Kaluzhny, Max	Z91
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KazCo (Kazakh Oil and Gas Company)	Z94
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Khamar (Khamar Holdings Limited)	Z95
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Khemka, Vikram	Z96
Khitrov, Yury	D17
Khoory, Saeed	Z97
Khoury, Mohammed	Z98
Kilsby, Susan	E19
Komarov, V.	G4
Kotler, David	Z99
Kretkiewicz, Aleksandra	P12
Krishna, Murali	D18
KUFPEC (Kuwait Foreign Petroleum Exploration Company K.S.C)	Z 21
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Kushnirov, Valery	C5
Kuwait Energy (Kuwait Energy Company K.S.C.)	Z 20
Laskowska, Katarzyna	P13
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Lee, Nataliya	D19
Lehman Brothers	Z102
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Leonel, Marlos	E21
Leshkasheli, Dr Zaur	C6
Leshkasheli, Michael	Z103
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Ligasoff Holdings Limited	A6
Liming, Liu	Z105
Lippuner, Bernhard	D21
Littlechild, Rodger	C7
Livingstone, David	E22
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Lundin Petroleum	Z 22
Maher, Francine	H6
Maheshwari, Sudhir	K9
Mahoney, James	D22
Makarov, S	Q2
Mammadtaghizada, Nigar	C8
Markiewicz, Mateusz	P14
Martinez, Jorge	K10
Matlashov, Ivan	G5
Mayfair (Mayfair Energy Group Limited)	Z107
Mazzucchelli, Marco	E23
Maxwell, Phillip	C9
McBain, Alastair	X3
McGhee, Paul	P15
McGuire Woods	Z108
McHardy, Jonathan	D23
Melville, Hamish Leslie	E24
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Mimaroglu, Emre	E25
Mishra, Binoy	Z109a
Mittal (Mittal Investments SARL)	Z 23
Mittelmeer Nominees Limited	A7

Mittelmeer Secretaries Limited	A8
MMS (Maclay, Murray & Spens LLP)	Z106
MOL Group	Z24
Moroz, Marek	P16
Mosinksi, Kazimierz	P17
Moutchiev, Pavel	E26
Mukopadhyay, Suprakash	T3
Nations (Nations Petroleum)	Z26
Nayak, Ram	D24
Nayyar, Naresh	K11
Nazarov, Alexander	E27
Netoil (Netoil, Inc)	L
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Nguyen, Thi Cam Tu	O7
Nguyen, Thien Bao	O8
Nguyen, Tuan Anh	O9
Niemeier, Markus	D25
NIS (Naftna Industry a Srbije)	Z 25
Nobes, Glenn	C10
Nydegger, Robert	D26
O'Brien, Peter Lloyd	Q1
Oil India Limited	Z 27
Olejnik, Andrzej	P18
OMV (OMV Exploration & Production GmbH)	Z28
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ONGC (Oil and Natural Gas Corporation of India)	K12
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Orujov, Eldar	R4

Ostrovsky, Sergei	Z110
OVL (ONGC Videsh Limited)	K14
Owen, Christopher	Z111
Ozansoy, Mert	E28
Pavlichenkov, Andrey	Z47
Pavlova, Victoria	E29
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Peitrequin, Patricia	M1
Perenco (Perenco Limited)	N
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Petrovietnam/PIDC (Petrovietnam Investment and Development Company)	O
Phillips, Zac	B13
Piatkowska, Magdalena	P20
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Plexus Fund	Z48
Pochwalksi, Marek	P21
Polonio	Z114
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PT Energi (PT Energi Mega Persada tbk)	M2
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Przewozniak, Jan	D27
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Rausi, Jamal	Z116
Reeves, Simon	E31
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Roanoaks (Roanoaks Trading Limited)	Z119
Robb, Frank	C11
Robertson, Douglas	H7
Robinson, Dr Andrew	V3
Rogers, Stephen	Z51
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Rosserlane (Rosserlane Consultants Limited)	Z120
RPS (RPS Energy)	Z120a
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RussNeft Absheron Investments Limited	Z32
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Sagemo, Geir	X4
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Sarraf, DK	K15
Sawyer, Mark	Z122
Schlumberger	Z123
Seferovich, Patrick	P24
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Shakiba, Janet	U4
Shamina, Anna	D29
Sharma, VK	T5
Shayakhlmetov, Rinat	Z124
Sheikh, Rashid	B14
Shirvan/JV Company (Shirvan Oil Limited Liability Enterprise)	Z125
Shishkhanov, Mikail	A9
Sibir (Sibir Energy)	Z33
Singla, Rajesh K	K16
Sinochem (Sinochem Petroleum E&P Co Ltd)	Z126
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Solovyev, V.	Z128
Sool, Sofia	E33
Spink, Paddy	N4
Stahel, Oliver	M3
Starleigh	Z34
Statoil (Statoil Apsheron a.s.)	Z35
Steckel, Matthew	L1
Steinhart, Joel	C12
Steinmetz, Beny	B15
Stone & Webster (Stone & Webster Management Consultants, Inc)	Z129
Studd, Kevin	D30
Stuppard, Eric	C13
Summa (Summa Capital)	S
Sun Group/Suntera Energy	Z36
Surgutneftegaz	Z37
Syubaev, Nurislam	Z131
Szwarc, Michal	E32a
Swinbrook (Swinbrook Developments Limited)	Z130
Tabrizi, Dr Reza	Z132
Tamraz, Roger	L2
Tandon, Rajan	K17
Taylor, Michael	E34
TAQA (Abu Dhabi National Energy Company PJSC)	Z 2
Tata (Tata Petrodyne Limited)	T
Tatneft	Z38
Thames River Capital	Z49
Thanawalla, N	T6
The National Investor	U
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Tipikin, Svyatoslav	G6
Tischenko, Alexander	Z133
Tolkien, Richard	Z52
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Turkish Petroleum	Z40
Turicum (PCG Turicum)	M
Turner, John	I5
Tuszewicki, Waldemar	P25
Ucarer, Halil	F5
Ugarov, Andrei	U5
Ukrasin, Igor	E36
Ulu, Murat	V4
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Uzdiyen, Yahya	F6
Van Genderen, Robert	Z53
Vega, Gene	E37
Vetter, Frank	E38
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Warburg Pincus	Z42
Wehrli, Michel	M4
Whitehall (Whitehall International Traders LP)	Z134
Wilson, David	Z54
Wira, Jaroslae	P26
Woollen, Ian	P27
Yagubov, Davood	R6
Yanovsky, Anatoly Borisovich	Z135
Yarmammadov, Tarlan	C14

Yeo, Ian	Z136
Zad Investment Company	Y
Zaretsky, Alexander	Z137
Zarubezhneft JSC	Z43
Zarubezhneftegaz CJSC	Z44
Zinni, Vincenzo	D31
Zuloaga, Alfonso	E40

Pre Trigger date

No.	Bidder	Approached?	Signed Confidentiality Agreement?	Indicative offer?	Data room access?	Management presentation?	Firm consensual offer?	Reasons for not pursuing
1.	ONGC/OVL/OMEL	✓ (Approached by Suresh Chugh in 2006)	✖ (CEG had shared data directly in 2006)	**US$400m** (further US$30m on recovery of investment) **G17/4321**)	✓ **G20/5005**	✖	**US$300m** (further US$50m on recovery of upfront investment) (**G25/6418-22**)	Valuation Leak Offer contained condition of SOCAR consent (**G25/6538**)
2.	Petrovietnam	✓ (**G14/3664**)	✓ (**G15/3732**)	**US$1.2bn for 100% Shirvan (G16/4308)**	✓ (**G20/5177**)	✖ (**G24/6147**)	✖	Unable to secure regulatory permits in required timeframe (**G25/6510**)
3.	PCG Turicum	✓ (**G16/4163**)	✓ **(G16/4187**)	**US$600m** (**G16/4304)**)	✓ (**G21/5252**)	✓ (**G21/5274**)	✖	Would only bid is assured of succeeding Loathe to enter a costly bidding process with an uncertain outcome (**G25/6440-6443**)
4.	PKN Orlen	✓ (Previously approached by CEG - (**G12/3057**) and **G13/3173**)	✓ (**G16/4188**)	**US$450m** (**G17/4356**)	✓ (**G20/5004**)	✓ (**G21/5286**)	✖	Their reservoir engineers (Gaffney Cline) said that the value on their reserve numbers was below $100m Ejected from process for their views on value and alleged leak. (**G23/5979**)

Pre Trigger date

No.	Bidder	Approached?	Signed Confidentiality Agreement?	Indicative offer?	Data room access?	Management presentation?	Firm consensual offer?	Reasons for not pursuing
5.	Turkiye Petroleum Alphex One	✓ (**G16/4225**)	✓ (**G16/4271**)	✖ (**G20/5003**)	✖	✖	✖	Understand that support of SOCAR and Azerbaijan not yet obtained and without this will not participate (**G20/5003**)
6.	Perenco	✓ (**G13/3373**)	✓ (**G15-3727**)	✖ (**G17/4335**)	✖	✖	✖	"*Smallish, difficult ownership structure, they are working on another project in the former soviet union"* (**G17/4335**)
7.	Petrofac	✓ (**G26/6902** and **G28/7303-1**)	✓ (**G28/7230-1-7430-4**)	✖	✖	✖	✖	"*The size of the asset and its risk profile are inconsistent with our strategic objectives*" (HSF010215 – **Not yet in TB**)
8.	Burren Energy	✓ (**G13/3372** / **G14/3633-1**)	✓ (**Core 7880-1**)	✖	✖	✖	✖	"*Essentially we see the assets as relatively mature and having less upside than we would wish*"" (**G30/4262-1-4262-2)**
9.	Caspian Meridian	✓ (HB Global **G24/6122-1**)	**?** (access approved by Akhundov **G24/6145-1-6145-2**)	✖	✖	✖	✖	N/A

Pre Trigger date

No.	Bidder	Approached?	Signed Confidentiality Agreement?	Indicative offer?	Data room access?	Management presentation?	Firm consensual offer?	Reasons for not pursuing
10.	CNOOC	✓ (**G14/3706-1**)	✓ (**G15/3721-003-3721-006**)	✖	✖	✖	✖	"*due to the time constraint caused by a very long holiday and very limited information our team feels uncomfortable to submit an offer by the due date, even* [if] *it is an indicative one*" (**G16/4225-1**) "*there was insufficient technical information to justify the seller's projections in the IM. Based on that alone, they were not comfortable submitting an indicative bid*" (**G16/4263-5**)
11.	Chinese Petroleum Corporation	✓ (**G13/3373-1**)	✓ (**G16/4015-3**)	✖	✖	✖	✖	"*CPC are not answering calls or returning emails … Clearly not at all switched on, and I would presume out, unless they send something by 2 March*" (**G16/4263-5**)
12.	Deutsche Bank (Intermediary)	✓ (**G25/6621**)	✓ (**G25/6622-6625**)	✖	✖	✖	✖	Access terminated by Akhundov "*because of some reasons*" (**G26/6794-6795**)

Pre Trigger date								
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Reasons for not pursuing**
13.	Genuity Capital (Intermediary)	✓ (**G22/5779-1/5779-2**)	✓ (**G21/5279**)	✖	✖	✖	✖	Intermediary, so not directly interested. (**G22/5779-1/5779-2**)
14.	Notre Dame Capital (Intermediary)	✓ (**G21/5273-1**)	✓ (**G21/5273-1**)	✖	✖	✖	✖	No feedback as approached through HB Global
15.	PEXCO	✓ (**G27/7178-1**)	✖	✖	✖	✖	✖	No response to Confidentiality Agreement – reverse enquiry by company known by Akhundov
16.	Statoil	✓ (**G20/5109**)	✓ (**G20/5156-1/5156-14**)	✖	✖	✖	✖	"*we have decided to pass on this one, after careful consideration*" (**G22/5778-3**)
17.	The National Investor (Intermediary)	✓ (**G26/6918**)	✓ (**G27/6961**)	✖	✖	✖	✖	Intermediary – were taking this to several parties (**G27/6974**)
18.	Trimar Group (Intermediary)	✓ (**G21/5295**)	✓ (**G21/5295**)	✖	✖	✖	✖	N/A
19.	Uniacke & Associate (Intermediary)	✓ (**G21/5273**)	✓ (**G21/5273-6**)	✖	✖	✖	✖	N/A

Pre Trigger date

No.	Bidder	Approached?	Signed Confidentiality Agreement?	Indicative offer?	Data room access?	Management presentation?	Firm consensual offer?	Reasons for not pursuing
20.	Aabar	✓	✓ (**G15/3993-1/3993-4**)	✖	✖	✖	✖	"*feedback is a no due to size, and same for Aabar*" (**G17/4339-1/4339-2**)
21.	Arcadia Petroleum	✓	✓ (**G25/6592**)	✖	✖	✖	✖	No response – approached through Joel Steinhart (**G25/6592-5**)
22.	Babcock	✓ (**G27/7177-1/7717-2**)	✖	✖	✖	✖	✖	Could not agree Confidentiality Agreement (**G28/7234-1/7234-4**)
23.	CEPSA	**?**	✖	✖	✖	✖	✖	N/A
24.	CITIC	✓ (HB Global – **G13/3348-1**)	✓ (**G22/5651-2-5651-5**)	✖	✖	✖	✖	No response after reviewing first round data room
25.	CNPC	✓ (HB Global – **G13/3348-1-3348-3**)	✖	✖	✖	✖	✖	Contacted by HB Global, CSSEL followed up (**G28/7234-1-7234-4**)
26.	Hellenic Petroleum	✓ (**G13/3371-1**)	✖	✖	✖	✖	✖	No response to Ukrasin's email
27.	IOC	**?**	✖	✖	✖	✖	✖	N/A
28.	KPC	✓ (**G13/3326-1**)	✖	✖	✖	✖	✖	"*not interested at this stage. It will be another 3-4 months before they will start investing*" (**G13/3326-1**)

Pre Trigger date								
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Reasons for not pursuing**
29.	KUFPEC	✓ (**G13/3321-1**)	✓ Core (**13205-1-13205-4**)	✖	✖	✖	✖	Said "*no*" with no reason given (**G17/4334-1**)
30.	Lundin Petroleum	✓ (HB Global – **G26/6692-1-6692-2**)	✓ (**G26/6692-3-6693-6**)	✖	✖	✖	✖	"*we are not interested. Primary reasons are that this will require a capital intensive rehabilitation and development plan for what we view as a limited upside potential in a high risk environment.*" (**G27/7082**)
31.	Mubdala	✓ (**G13/3384-1-3384-2**)	✖	✖	✖	✖	✖	"*too small even at 35,000bbl per day to make an impact as a company they are not ready to operate. However they like the country and will explore other opportunities*" (**G13/3384-1-3384-2**)

Pre Trigger date								
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Reasons for not pursuing**
32.	OMV	✓ (**G13/3371-2-3371-3**)	✓ (**G15/3719-1-3719-4)**	✖	✖	✖	✖	"*In our opinion, a re-development would require big efforts for which OMV would not be able to provide the technical input and reservoir management as required. We already have a number of similar old fields in our portfolio that at the moment suffer from lack of our attention and reservoir management.*" (**G16/4064-6**)
33.	Petronas	✓ (**G15/3770-1-3770-2)**	✖	✖	✖	✖	✖	"*not too keen on "expensive acquisitions*" (**G29/7735-1-7735-2)**
34.	PTT EP	✓ (**G13/3348-4-3348-7)**	✖ (**G14/3481-1-3481-2)**	✖	✖	✖	✖	N/A
35.	Qatar	**?** (HB Global)	✖	✖	✖	✖	✖	N/A
36.	Reliance	✓	✖ (Allowed access to data room without Confidentiality Agreement – **G27/7140-1**)	✖	✖	✖	✖	N/A

Pre Trigger date								
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Reasons for not pursuing**
37.	Sinochem	✓ (**G14/3633-6**)	✓ (**G15/3901-1-3901-4**)	✖	✖	✖	✖	"*We reviewed your information carefully during the past month. Unfortunately, the result turned to be disappointing. Based upon the production history of the field and typical wells, we cannot justify the production profile, which peak at 49000b/d. At the same time, the CAPEX and OPEX expenditure you provided, in terms of per barrel, for the future years seems to be higher than we expected. The decrease in oil production and abnormally high costs resulted in low value, which seems abnormal according to our common knowledge. Under such circumstances, we think it better for us to quit at this stage.*" (**G19/4819-4825)** "*Upon our review, however, we don't think our numbers match the sell's expectations*" (**G19/4870-1-4870-7**)

Pre Trigger date								
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Reasons for not pursuing**
38.	Sinopec	✓ (**G14/3481-1-3481-2**)	✖ (**G15/3770-1-3770-2**)	✖	✖	✖	✖	N/A
39.	TAQA	✓	✖	✖	✖	✖	✖	"*Taqa, we met them on Wednesday with JJ, and feedback is a no due to size* " (**G17/4339-1-4339-2**)

Post Trigger Date									
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Firm forced sale offer?**	**Reasons for not pursuing**
1.	Berghoff	✓	✓ (**G52/14076**)	✖	✓	✖	**US$260m**	**US$245m** (**G53/14171**)	N/A
2.	BSG	✓ (**G29/7722**)	✓ (**G47/12580**)	✖	✓ (**G47/12674**)	✓ (Meeting rather than formal presentation – **G49/13206**)	**US$230m** (**G51/13842**)	**Informally offered US$200m** (**G51/13683**)	Steinmetz needed to agree with the Sultan the increased purchase price to $250m for a forced sale but could not do so (**G52/14144-1**)
3.	Mittal	✓ (**G46/12165**)	✓ (HSF006201- **Not yet in TB**)	✖	✓ (**G48/12796**)	✓ (Meeting rather than formal presentation –**G49/13151**)	**US$242.5m** (**G52/14084**)	✖	Offer not accepted by CEG
4.	Petrovietnam	✓ (**G30/7844**)	✓ (**G15/3732**)	**US$295m** (**G33/8974**)	✓ (**G34/9112**)	✓ (**G37/9916**)	**US$324m** (**G41-10955**)	✖	Could not obtain SOCAR's consent (**G50/13489**)
5.	Hecton Investments (Intermediary)	✓ (HB Global - **G34/9265**)	✖	**US$500m** (**G34/8991**)	✓ (**G39/10468**)	✖ (Information meeting with Credit Suisse - **G45/11855**)	✖	✖	Information came to Hecton's attention that: (i) SOCAR was terminating joint venture; (ii) drilling

Post Trigger Date									
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Firm forced sale offer?**	**Reasons for not pursuing**
									programme not approved; (iii) no confirmation from SOCAR re non-exercise of purchase option; (iv) security for loan has been used on an unsatisfied loan (-**G42/11127**) "*They said the only way to get this deal done is to get the blessing from SOCAR and they are going to get it.*" (**G45/11855**)
6.	Perenco	✓ (**G32/8494**)	✓ (**G15/3727**)	**US$300m** (**G33/8916**)	✓ (**G34/9262**)	✓ (**G36/9843**)	✖	✖	"*Perenco had a board meeting yesterday and the transaction was rejected. He said that for technical reasons the asset is not the type they are*

Post Trigger Date									
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Firm forced sale offer?**	**Reasons for not pursuing**
									interested in." (**G43/11375**)
7.	Tata	✓ (**G27/7191**)	✓ (**G16/4257**)	**US$300m** (**G33/8952**)	✓ (**G34/9173**)	✓ (**G36/9723** and meeting with RPS - **G36/9848**)	✖	✖	Could only be in a position to submit a bid by 10 March 2008 at the earliest, required site visit and interaction with SOCAR. (**G46/12238**) Also asked for exclusivity but told by Akhundov that a field visit could not be arranged before they had an understanding of the price offered. (**G47/12684**)
8.	Dogan	✓ (**G30/8065**)	✓ (**G32/8671**)	**US$325m** (**G34/9279**)	✓	✓ (**G37/9910)**	✖	✖	"*They will not participate because (confidentiality) they still think Socar is not softening their stance*" (**G45/11953**)

Post Trigger Date									
No.	**Bidder**	**Approached?**	**Signed Confidentiality Agreement?**	**Indicative offer?**	**Data room access?**	**Management presentation?**	**Firm consensual offer?**	**Firm forced sale offer?**	**Reasons for not pursuing**
9.	Vitol / Arawak	✓ (**G30/8097**)	✓ (**G31/8335** and **G34/9106**)	**US$50-100m**	✓ (**G35/9365**)	✓ (**G36/9722**)	✖	✖	"*Vitol came back with range of $50 to $100mm. Have told them that we cannot continue at such levels*" (**G42/11341**)
10.	ONGC	✓ (**G33/8775**)	✓ (First M&A process)	✖	✖	✖	✖	✖	"*Obtaining SOCAR's approval would under any circumstances be required and would be essential before OVL parts with its funds to CEG*" (**G32/8490**) "*We have decided not to participate in the ongoing bid process*" (**G34/9172**)
11.	Nations Energy	✓ (**G32/8567**)	✖	✖	✖	✖	✖	✖	"*Nations are not interested*" (**G33/8858**)
12.	Reliance	✓	✓	✖	✓ (**G27/7140-1**)	✖	✖	✖	"*the Reliance technical team agree with the production*

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									profile and development plan, but think it would be challenging for them to achieve the rapid ramp-up as projected. They are not in a position to make any kind of bid at this stage" (**G27/7214**)
13.	Petrofac	✓ (**G26/6901-1**)	✓ (**G28/7442-1**)	✖	✖	✖	✖	✖	"*We have reviewed the data for Project Casper and have decided that we do not wish to pursue it, at this time.*" (**G30/7914-007**) "*The size of the asset, and its risk profile, are inconsistent with our strategic objectives.*" (**G30/7923-1-7923-2)**

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14.	PT Energi Mega Persada Tbk: "EMP"	✓	✓	✖	✖	✖	✖	✖	"*EMP declined (focused on other things right now).*"
15.	TPAO	✓ (**G31/8347**)	✓ (**G16/4271**)	✖	✓ (**G34/9246**)	✖	✖	✖	"*They understand the situation pretty well (heard the messages from socar etc). They still think it might be worth sitting down with socar and asking them a question what would it take to get the deal done.*" (**G34/9219**) "*they are not bidding*" (**G35/9537**)
16.	CNPC (China National Petroleum Corporation)/CNODC (a JV between Petrochina and CNPC)	✓	✓	✖	✓	✖	✖	✖	"*She (contact at CNPC) said "bit small" and I asked twice in 2-3 wks time period and no further followup from her thereafter*"

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									(**G20/5051-1-5051-2**). Also contacted by HB Global. (**G22/5630-1-5630-2**) Also contacted by CEG (**G25/6544-1-6544-2**)
17.	Addax Petroleum	✓	✓	✖	✓	✓	✖	✖	"*This decision is primarily based on the results of a thorough technical review of the comprehensive data base ... In the undisputed presence of considerable remaining potential in the Kurovdag asset it was concluded that the recognised potential*

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									does not reach the order of magnitude required to meet Addax' internal investment criteria to approve of a new country entry." (**G50/13491**)
18.	MOL	✓	✓	✖	✓	✖	✖	✖	None given.
19.	Avante Petroleum	✓	✓	✖	✖	✖	✖	✖	None given.
20.	Delta Hydrocarbons	✓	✓	✖	✖	✖	✖	✖	None given.
21.	Lukoil Overseas	✓	✖	✖	✖	✖	✖	✖	None given.
22.	Ensearch Petroleum	✓	✖	✖	✖	✖	✖	✖	"*given the last date of bidding only a week away, it is going to be impossible for us to study the technical data and put together a competitive bid. We feel we will not be able to do justice*

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									with the bidding unless we have at least 3-4 weeks to do the preliminary techno-commercial analysis of the oil field available for acquisition. Hence we may have to let the opportunity pass" (**G33/8856-8857**)
23.	Mitsui	✓	✖	✖	✖	✖	✖	✖	*" Sumitomo Corp., Mitsui, INPEX also indicated the concerns over future opex and capex"* (**G34/9004-1**)
24.	Mitsubishi	✓	✖	✖	✖	✖	✖	✖	" *Mitsubishi indicated that they were somewhat additionally concerned about the country risk profile"(***G45/9004-1**)

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25.	Itochu	✓	✖	✖	✖	✖	✖	✖	"*We considered to proceed to next step, but we would like to withdraw from moving next step for this time. However, as you know, we are basically interested in such producing fields information, specially Azerbaijan. We are welcome to receive such information from You*". (**G30/8012-1-8012-3**)
26.	KNOC	✓	✖	✖	✖	✖	✖	✖	*" They have very preliminary interest in this asset however long holiday in Korea they cannot meet the target 28th Sep" (***G33/8912-067-8912-068***)*

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27.	Sumitomo	✓	✖	✖	✖	✖	✖	✖	"*declined -- size was good but foresee technological difficulty going forward*" (**G33/8743-1-8743-2**)
28.	INPEX Holdings	✓	✖	✖	✖	✖	✖	✖	"*INPEX also indicated the concerns over future opex and capex*" (**G34/9004-1**)
29.	PT Medco	**?**	✖	✖	✖	✖	✖	✖	It is not clear if PT Medco were approached or not. *"Apparently this has already been shopped right around Asia earlier this year and Medco were shown it but declined due to previous experiences in FSU. Good thing I checked before*

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									sending it to the Chairman again…!" (**G31/8426-1-8426-2)**
30.	Nippon Oil	✓	✖	✖	✖	✖	✖	✖	"*Nippon Oil indicated that the proposed field, is not in its strategic focus area (Mexico, Vietnam, Australia, North Sea) and reflecting the concerns over future operating expense/capex, makes it difficult for them to further evaluate"* (**G34/9004-1**)
31.	Global Steel	✓	✖	✖	✖	✖	✖	✖	None given.
32.	Max Petroleum	✓	✖	✖	✖	✖	✖	✖	None given.
33.	Kazakhmys	✓	✖	✖	✖	✖	✖	✖	Unable to agree confidentiality agreement

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									(**G33/8939-1-8939-6**)
34.	Delta Oil	✓	✖	✖	✖	✖	✖	✖	None given.
35.	EIC	✓	✖	✖	✖	✖	✖	✖	None given.
36.	Injaz Mena	✓	✖	✖	✖	✖	✖	✖	None given.
37.	Al raihi	✓	✖	✖	✖	✖	✖	✖	None given.
38.	Noor	✓	✖	✖	✖	✖	✖	✖	None given.
39.	M1	✓	✖	✖	✖	✖	✖	✖	None given.
40.	Kuwait Energy	✓	✖	✖	✖	✖	✖	✖	None given.
41.	ENOC	✓	✖	✖	✖	✖	✖	✖	None given.
42.	Qurain Petrochemical Industries Company	✓	✖	✖	✖	✖	✖	✖	"*this opportunity appears too early stage/upstream*" (**G31/8197-1**)
43.	Alon	✓	✖	✖	✖	✖	✖	✖	"*Alon is not looking at this area, at all"* (**G31/8340**)
44.	Paz	✓	✖	✖	✖	✖	✖	✖	"*no interest. Main reason is the country/political risk*" (**G31/8301**)

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45.	Delek	✓	✖	✖	✖	✖	✖	✖	"*Delek is busy with other projects (again, the country is a major hurdle).*" (**G31/8340**)
46.	Merhav Group	✓	✖	✖	✖	✖	✖	✖	*"Merhav not interested in a refinery"* (**G31/8340**)
47.	Israel Corp	✓	✖	✖	✖	✖	✖	✖	"*Israel corp has confirmed that they will not look at Caspian. Rationale given was they are evaluating multiple investment opportunities at the moment and their human resources are stretched too thin*" (**G31/8214**)
48.	Devon Energy	✓	✖	✖	✖	✖	✖	✖	None given.
49.	Occidental	✓	✖	✖	✖	✖	✖	✖	None given.
50.	Anadarko	✓	✖	✖	✖	✖	✖	✖	None given.

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51.	Marathon Oil	✓	✖	✖	✖	✖	✖	✖	*"Mro said no interest in azerb"* (**G31/8369-1)**
52.	Chevron	✓	✖	✖	✖	✖	✖	✖	*"Thanks for sending us the CEG opportunity. I bounced it off our operating unit and we are not interested. Mature play and concern over HES liabilities. But again, we appreciate the opportunity to consider it."* (**G31/8424-1**)
53.	ConocoPhillips	✓	✖	✖	✖	✖	✖	✖	None given.
54.	Amerada Hess	✓	✖	✖	✖	✖	✖	✖	None given.
55.	Petro-Canada	✓	✖	✖	✖	✖	✖	✖	None given.
56.	Nexen	✓	✖	✖	✖	✖	✖	✖	None given.
57.	Talisman	✓	✖	✖	✖	✖	✖	✖	None given.

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58.	Rompetrol	✓	✖	✖	✖	✖	✖	✖	"[they do] *not want to proceed…their scepticism won unfortunately*" (**G32/8674-1-8674-2**)
59.	Petrol-Invest	✖	✖	✖	✖	✖	✖	✖	Not approached (**G31/8302**)
60.	NIS	✓	✖	✖	✖	✖	✖	✖	"*The Government has now decided, under pressure, to instruct ML to prepare the privatisation documents. The process will start later this year and, under these circumstances, it is difficult to go ahead with something that would be a sizeable upstream acquisition, when the focus of their capex is the Pancevo*

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									refinery" (**G32/8567-1**)
61.	INA	✓	✖	✖	✖	✖	✖	✖	None given.
62.	Penta	✓	✖	✖	✖	✖	✖	✖	None given.
63.	PPFI	✓	✖	✖	✖	✖	✖	✖	None given.
64.	Soco International	✓	✖	✖	✖	✖	✖	✖	None given.
65.	Premier Oil	✓	✖	✖	✖	✖	✖	✖	"*a step out to Azerbaijan at this point would be a step too far given everything else going on at Premier*" (**G33/8848-1-8848-2**)
66.	Tullow	✓	✖	✖	✖	✖	✖	✖	None given.
67.	Venture Production	✓	✖	✖	✖	✖	✖	✖	None given.
68.	Melrose Resources	✓	✖	✖	✖	✖	✖	✖	None given.
69.	Dana Petroleum	✓	✖	✖	✖	✖	✖	✖	"*this is outwith our current area of focus*" (**G30/7929-7930**)

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70.	Maersk Oil	✓	✖	✖	✖	✖	✖	✖	None given.
71.	Production Services Network (PSN_	✓	✖	✖	✖	✖	✖	✖	"*not interested in taking equity interest in fields, but could have interest in partnering with a consortium*" (**G35/9332-9342**)
72.	Saipem	✓	✖	✖	✖	✖	✖	✖	None given.
73.	ENI	✓	✖	✖	✖	✖	✖	✖	*"they want to rebalance thier portfolio with higher exposure to OECD countries and they are still "digesting" the recent Russian and GOM acquisitions"* (**G33/8844-1**)
74.	Guvnor	✓	✖	✖	✖	✖	✖	✖	None given.
75.	Trafigura	✓	✖	✖	✖	✖	✖	✖	None given.
76.	Technip	✓	✖	✖	✖	✖	✖	✖	None given.

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77.	Urals Energy	✓	✖	✖	✖	✖	✖	✖	None given.
78.	Sibir	✓	✖	✖	✖	✖	✖	✖	None given.
79.	ESN	✓	✖	✖	✖	✖	✖	✖	None given.
80.	Summa Capital	✓	✖	✖	✖	✖	✖	✖	"*they know the asset and have no interest*" (**G33/8768**)
81.	Rosneft	✓	✖	✖	✖	✖	✖	✖	None given.
82.	GazpromNeft	**In dispute**	✖	✖	✖	✖	✖	✖	None given.
83.	Omnimex	✓	✖	✖	✖	✖	✖	✖	None given.
84.	KOC	✓	✖	✖	✖	✖	✖	✖	None given.
85.	General Enerji	✓	✖	✖	✖	✖	✖	✖	"*as a relatively new company they are looking for greenfield opportunities and not ones that are primarily legacy operations with upside tied to secondary recovery skills which is*

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									something they don't have and are not keen to pursue as investments at this time." (**G33/8300-1**)
86.	First Reserve (Intermediary)	✓	✖	✖	✖	✖	✖	✖	None given
87.	Blackstone (Intermediary)	✓	✖	✖	✖	✖	✖	✖	None given.
88.	Warburg Pincus (Intermediary)	✓	✖	✖	✖	✖	✖	✖	"Geographical risk" (**G32/8569-1**)
89.	Carlyle / Riverstone (Intermediary)	✓	✖	✖	✖	✖	✖	✖	None given