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Case No: HC-2012-000165

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

Royal Courts of Justice

7 Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 09/05/2018

Before:

THE HONOURABLE MR JUSTICE HILDYARD

Between:

(1) Bank St Petersburg PJSC	**Claimant**
(2) Alexander Savelyev	
- and -	
(1) Vitaly Arkhangelsky	**Defendant**
(2) Julia Arkhangelskaya	
(3) Oslo Marine Group Ports LLC	

- -

THE HONOURABLE MR JUSTICE HILDYARD

Tim Lord QC, Simon Birt QC, Richard Eschwege (instructed by **Reynolds Porter Chamberlain LLP**) for the **Claimants**

The Defendants appeared by their McKenzie friend, **Mr Pavel Stroilov** and on 12 April 2016, 4-5 May 2016 and 8 July 2016 by **Alexander Milner** (instructed by Withers LLP) on issues of Russian law and valuation

Hearing dates: 28-29 January, 1-4 February, 8-9 February, 12 February, 15 February, 17-19 February, 22-25 February, 29 February-4 March, 7-8 March, 10-11 March, 16-18 March, 21 March, 23 March, 4-6 April, 8 April, 11-12 April, 14-15 April, 18 April, 4-5 May, 6-8 July and 11 July 2016

Further written submissions 25 July 2016, 29 July 2016

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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 Hon. Mr Justice Hildyard :

Outline summary of claim and counterclaim

1. This awkward case, in which the Claimants have been represented at trial by two Leading Counsel and a junior instructed by a London firm, whereas the Defendants and Counterclaimants have been represented only by their McKenzie friend, has generated a multiplicity of factual disputes and legal arguments; but the parties' respective cases may be summarised at a high level quite shortly.

2. The Claimants claim against the First Defendant (whom I shall refer to as "Dr Arkhangelsky", although in some quotations he is referred to as "Mr Arkhangelsky") under six personal guarantees (the "Personal Guarantees") and one personal loan (the "Personal Loan").

3. The Personal Guarantees on which the Claimants rely relate to the indebtedness to the First Claimant (the "Bank") of various companies within the large group known as the Oslo Marine Group ("OMG") which Dr Arkhangelsky controlled.

4. The Claimants' case is that the Personal Loan was obtained by Dr Arkhangelsky to service interest due in respect of such loans to OMG companies.

5. Towards the end of 2008 the OMG companies, in common with many other enterprises in Russia and elsewhere, suffered extreme financial difficulties.

6. The parties are agreed that, in light of those difficulties, and some time before the end of the year 2008, there was an agreement that the dates for the payment of interest under the loans should be extended. There is a dispute as to whether the capital repayment dates were also rescheduled. The Claimants contend that specific and different repayment dates were left to be determined in individual agreements, and that in the case of two loans (known as the First and Second PetroLes Loans), for example, the extension provided for was only until March 2009.

7. Dr Arkhangelsky is adamant that there was an agreement that all payment dates were agreed to be extended to June 2009. According to him, it was only on that basis that he was prepared to agree somewhat unusual arrangements, known as "repo agreements". These repo agreements provided for the transfer of shares in the principal OMG companies to what Dr Arkhangelsky understood to be Special Purpose Vehicles ("SPVs") controlled by the Bank, subject to an obligation on the part of the Bank to transfer the shares back "[a]fter the complete fulfilment of the Group's obligations to the Bank".

8. According to the Claimants, however, Dr Arkhangelsky had nothing else to offer: the repo arrangements were his own suggestion and bought him some time in respect of some loans, to be memorialised in due course, but did not buy him the general moratorium alleged, which the Claimants insist was never agreed.

9. The arrangements and repo agreements were supposed to be described in a memorandum, and a memorandum was indeed prepared by the Bank (the "Memorandum"). However, the Memorandum did not mention any general moratorium

(including on capital repayments), reinforcing the dispute between the parties as to whether such a moratorium was ever agreed.

10. By early 2009, it was clear that the OMG companies were unable to pay interest and then principal due under the loans. In particular, by February 2009, it was clear that the PetroLes loans could not be repaid on time, if at all. Whether and when the OMG companies went into default depends upon the answer to the dispute as to whether and to what extent the loans, and in particular the PetroLes loans, were rescheduled.

11. It is the Bank's case that the PetroLes loans became due for repayment at the end of March 2009, that all of the OMG companies went into default in the first half of 2009; and that it was then entitled to and did serve demands for repayment both in respect of the principal indebtedness (including the Personal Loan) and under the guarantees (including the Personal Guarantees, as well as certain other intra-group company guarantees), and then to enforce against and realise the assets pledged to it to secure the loans.

12. The Bank, early on in a protracted process, seized control of the pledged assets, already having control of the companies by virtue of the transfer of shares under the repo arrangements. Dr Arkhangelsky challenged both the repo arrangements and the Bank's seizure of OMG's assets and contended that it was not entitled to call in the loans as it had.

13. After various protracted legal disputes and court cases in Russia, in which initially the Defendants were successful, the Bank obtained judgments which it enforced on all the OMG loans.

14. The total sums owed by the OMG companies to the Bank, including sums which are not the subject of the Bank's claim, amounted, as at 7 September 2015, to RUB 2.181 billion (approximately £20 million at an exchange rate of £1 = RUB 108 as at 7 January 2016)). After various recoveries, as at 7 September 2015 the total of the Bank's claim in roubles amounted to RUB 1.797 billion (approximately £16.5 million at the exchange rate above stated). The Bank seeks to recover the shortfall under the Personal Guarantees.

15. Dr Arkhangelsky and his wife ("Mrs Arkhangelskaya", the Second Defendant and Counterclaimant), on the other hand, have claimed that the Personal Guarantees were forgeries, or at least were put forward and unwittingly signed well after the event of the loans. Until shortly before trial they claimed that the Personal Loan was an invention also and that the documentation was forged.

16. Dr and Mrs Arkhangelsky also deny ever having been duly notified of the demands for payment under the alleged Personal Guarantees and Personal Loan.

17. They deny that Dr Arkhangelsky is under any personal liability to the Bank accordingly.

18. They also, together with the Additional Party, Oslo Marine Group Ports LLC ("OMGP"), make a very extensive counterclaim on the basis that: (a) the Bank acted in breach of terms agreed for the rescheduling of the loans, and was not entitled to make demand under the Personal Guarantees, and (b) the Bank used OMG's short-term or

medium term cash flow difficulties arising in consequence of the global crisis towards the end of 2008 to implement a classic and notorious scheme of fraudulent raiding of OMG's assets, having identified that the OMG businesses had a value, or at least potential value, well in excess of the loans, and huge business potential.

19. Their case is that the Bank, "with the assistance of corrupt officials or courts", took advantage of OMG's undisputed difficulties in late 2008 and engineered and implemented a 'raid', the features of which (they say) fit precisely into one of the classic schemes for raiding distressed businesses identified in a report in 2011 by the National Anti-Corruption Committee, a body which investigates suspect practices in the Russian Federation.

20. The Counterclaimants contend that, far from being (as the Claimants would have it) a series of sporadic reactions to Dr Arkhangelsky's alleged dishonesty and hostile actions, the Claimants carefully orchestrated and implemented the scheme by first putting in place the means of securing and then acquiring control of the OMG companies, and then contriving a series of what they contend were fake or sham auctions, whereby first to launder the assets, and then to enable the ultimate sale of the businesses and assets at rock-bottom prices to a web of companies ultimately controlled by the Bank and/or the Second Claimant ("Mr Savelyev") or their associates. Mr Savelyev is a very substantial shareholder and for many years was Chairman of the Bank.

21. Dr and Mrs Arkhangelsky and OMGP (together, in the context of their Counterclaim, "the Counterclaimants") portray themselves, therefore, as the victims of a state-assisted and dishonest conspiracy, which resulted in them being stripped of their valuable businesses, having to flee to France, virtually penniless, leaving Mr Savelyev and the Bank holding and controlling through associated companies valuable assets which Dr Arkhangelsky had built up.

22. The Counterclaimants seek to recover the difference between the value of the OMG businesses, alternatively the assets, thus 'raided'. The value of the Counterclaim, if established, is disputed; but according to Dr Arkhangelsky the discrepancy between the realisations achieved and the true value of the businesses and assets realized by the Bank may be as much as US$ 500 million.

23. That huge discrepancy is presented, moreover, as the crux of the Counterclaimants' case, from which fraud may be inferred.

24. The Bank entirely rejects the Counterclaim. Its case is that the moneys it lent were not applied in the development of the businesses of the OMG companies which had, in truth, very little value, and that it was in the position of trying to save something from a wreckage. The Bank contends that the notion of a dishonest raiding scheme is fanciful and assumes a pre-determined sequence which would have been impossible to direct and is far from the truth.

25. The Bank's case is that Dr Arkhangelsky presided over a financial pyramid and that the OMG companies which he controlled, far from being genuine and successful businesses, were vehicles for borrowing huge sums against grossly overvalued assets.

26. The Bank further asserts that a significant proportion of these sums were syphoned off and hidden from creditors so as to enrich Dr Arkhangelsky personally, and the remainder of which were largely used to pay off the interest on previous loans.

27. According to the Bank, it was because of this that when the global crisis of 2008 hit, the borrowings on which the pyramid depended (and in respect of which, according to the Claimants' case, Dr Arkhangelsky was required to and did provide personal guarantees) could no longer be serviced, and fresh borrowings could not be obtained. Collapse became inevitable.

28. The Claimants depict Dr Arkhangelsky as a thoroughly dishonest man, who left Russia to flee from his creditors. They contend that he has contrived increasingly fanciful allegations of forgery of the Personal Guarantees (saying he is not bound by any of them), political intrigue and asset 'raiding' on the part of the Claimants to seek to evade liability under those Personal Guarantees which, in light of the massive shortfall between the realised value of the assets which stood as security and the amount of the loans, represent the Bank's only remaining recourse.

29. The Claimants seek to strip away these alleged contrivances, and to make good what they present as an ultimately straightforward case that Dr Arkhangelsky is bound by the Personal Guarantees and by the Personal Loan he signed and must pay up accordingly. They reject the Counterclaim as unsubstantiated, false and dishonest; and they also seek declarations to that effect as the only available means of properly vindicating their position and reputations.

30. Each side's case, therefore, depends on establishing the other side's dishonesty. There is no escape from such a finding, one way or the other.

31. Further, and despite the fact that the parties' overall cases can be summarised shortly, there is no escape either from the factual detail and issues of both foreign (in this case, Russian) and domestic law, especially in the context of the Counterclaim.

Logistics of the trial and the disparity in legal representation

32. The trial occupied the Court for 46 sitting days (including ten days sitting in France since the Defendants dared not leave, for fear of arrest at any border) as well as many other reading days. The Bank called 12 factual witnesses and 3 expert witnesses. Dr and Mrs Arkhangelsky each gave evidence; and the Counterclaimants also called 6 factual witnesses and 3 expert witnesses. In addition, both the Bank and the Defendants each adduced written evidence from a handwriting expert; and the Bank and the Counterclaimants also put forward one expert each to give evidence as to the value of the relevant businesses; but none of those additional four experts was called, the handwriting experts because the dispute became narrow and to some extent incapable of definitive resolution by expert evidence, and the business valuation experts because the Counterclaimants could not afford to do so, and a stand-off was agreed subject to re-visiting the matter should that prove necessary in the light of this judgment.

33. All this generated nearly 10,000 pages of transcript and over 200 files of documents. The written closing submission on behalf of the Claimants comprised some 631 pages

and 1210 paragraphs, with 3,477 footnotes; and that does not include numerous appendices and schematics.

34. The Claimants have throughout been represented by an impressive slate of Counsel instructed by Reynolds Porter Chamberlain LLP ("RPC"): Mr Timothy Lord QC, Mr Simon Birt QC and Mr Richard Eschwege. The Defendants and Counterclaimants have not been professionally represented for the majority of the trial.

35. At every stage in these complex and fraught proceedings I have been concerned about the inherent disparity in the parties' firepower in terms of representation, and the obvious and formidable difficulties which confront parties who do not have the benefit of legal representation in marshalling and presenting their own case and in challenging and testing that of their opponents.

36. That concern has been partly attenuated by the impressive efforts of an extraordinarily capable McKenzie friend, Mr Pavel Stroilov ("Mr Stroilov") who (with my permission) assisted and spoke for the Counterclaimants throughout, and by the more discrete but invaluable assistance given by Mr Alexander Milner of Counsel, who stepped in for the Counterclaimants *pro bono* on certain aspects of the case, especially in relation to the expert evidence and on an issue of illegality which I later describe. I am very grateful to both of them, as should be the Defendants/Counterclaimants.

37. I have kept under constant and anxious review my decision, made at the PTR only after considerable hesitation, to try the case notwithstanding these difficulties. I have in particular taken constant account of the observations of Elias LJ (as he then was) in refusing permission for an appeal against that decision (as it seems to me, also not without hesitation, and indeed misgivings, acknowledging nevertheless that it would have been "a very serious matter for a case of this kind, in which, of course, there is a cross-appeal which alleges very serious allegations of fraud,…[to be]…effectively adjourned forever").

38. The disparity in the apparent resources and level and depth of representation between the parties has called for responsible constraint from Counsel for the Claimants, and it has required me to intervene more often than would usually be my preference and practice, and to consider and question each and every reference, footnote and submission with especial care.

39. I should perhaps note that by far the greater difficulties have arisen in the context of the Counterclaim, since the main claim is more confined, and has been considerably more straightforward. I have sought to consider every avenue opened or explored by that Counterclaim, and to follow up every reference, whilst keeping in mind also that the process must be fair also to the Claimants, and that it is not for the Court to devise its own arguments or otherwise 'descend into the arena'.

40. Rather than rely on the selection in the written closing submissions, I have felt it necessary to re-read the entirety of the transcripts of evidence, and all the documents referred to in the course of trial, as well as in the nearly 3,500 footnotes in the Claimants' Closing Submissions. This has been a long process, involving review of

many thousands of documents, which I trust explains at least in part the delay in providing this judgment, which I nevertheless regret.

41. In the end, I have satisfied myself that the process, though tortuous, has been such as to enable me to reach a decision after full and fair consideration of the evidence and of the competing submissions and legal arguments. Of course, whether my ultimate conclusions are perceived by others to be right is a different matter: but I am satisfied that they have not been skewed in consequence of the different resources of the parties.

Parties and factual background

42. After that introduction and high-level summary I start this inevitably very long judgment with a description of the parties and an elaboration of the relevant factual background.

The Bank

43. The Bank is the largest privately-owned bank in the St Petersburg region and the North-West of Russia. It was incorporated in 1990 when the system of specialised state banks was introduced in what by then had become the Russian Federation. Its original name was joint stock company Lenbank (formerly the Leningrad Regional Directorate of Zhilsotsbank of the USSR).

44. Mr Savelyev acquired shares in the Bank and became Chairman of its Management Board in 2001, having been approached by the then management of the Bank in the wake of the financial crisis in Russia in that year, sometimes referred to as "the rouble crisis".

45. The Bank has since then grown substantially. Its assets in 2001 were some US$ 100 million, and are now some US$9 billion.

46. Its standing has grown also. In 2007 it became the first Russian privately-owned bank to make an Initial Public offering ("IPO") by listing on Moscow Interbank Currency exchange (known as "MICEX") and the Russian Trading System Stock Exchange ("RTS"). It now has more than 55,000 corporate clients and around 1.4 million individual clients.

47. A mark of its growing standing overseas is that in October 2011 the European Bank for Reconstruction and Development ("EBRD") acquired a stake in it of some 6.17% of the Bank's ordinary shares. Its shareholders include well known and respected western financial institutions, such as JP Morgan, Credit Suisse and UBS.

Mr Savelyev

48. Mr Savelyev, the Second Claimant and second defendant to the Counterclaim, graduated from Tupolev Kazan Aircraft University. He has, since its formation, been a substantial shareholder (direct and indirect) in the Bank. His personal direct shareholding in 2009, as disclosed in the Bank's accounts for that year, was 29.9% of the voting shares. However, that is not the extent of his interests.

49. The accounts for 2009 record that he also held 19.9% of a body corporate called 'Issardy Holdings Limited' which held 19.9% of the Bank's voting shares. In addition, it was there recorded that he had a call option agreement with his sister-in-law, Ms Lyudmila Stepanova ("Ms Stepanova"), to buy 81% of a body corporate called 'System Technologies Ltd' holding 19.36% of the Bank's voting shares.

50. Furthermore, through another body corporate called 'Verniye Druzya' (which means 'Loyal Friends'), which he owned 100% of the shares until 2015 when they were transferred to another vehicle called 'Sovet Direktorov LLC' ("Sovet Direktorov", which is the Russian for 'Board of Directors'), he controlled further shares. Under cross-examination Mr Savelyev told me this of these arrangements through Verniye Druzya:

> "Q. So, Mr Savelyev, do I understand correctly that the purpose of that company is simply as a vehicle for distributing shareholding between managers of the Bank and your daughter?
>
> A. I would like to say before the court, because of course my daughter holds an option from the three holders of the shares, and in the event of non-performance of certain covenants, the daughter is entitled to buy the shares from these three holders of the shares.
>
> Q. What covenants?
>
> A. I do not recall all the covenants now, but for the most part, it's to do with the Bank's capital, following the Bank's strategy, and there have been many provisions that the Bank managers need to comply with.
>
> Q. So in a way, Verniye Druzya is your tool for control of the Bank, isn't it?
>
> A. I never denied that I control the Bank, however, I would like to say that everything here is correct and the Bank's managers, as of today, own the shareholding and have an option with my daughter, between them and my daughter.
>
> Q. Yes, thank you. Then just back to my question, so really, that is the purpose of Verniye Druzya LLC, really to exercise that control and to exercise that arrangement between you and the other top managers; is that the purpose of Verniye Druzya or is it doing anything else?
>
> A. That is the global purpose of the company. The thing is that I am not a young man and I would like to see in time that Verniye Druzya company and my daughter would exercise control of the Bank in the future period."

51. Mr Savelyev, who in addition appears to have owned or controlled further shares in the Bank through other corporate vehicles, also had control at management level, as its Chairman. He described his role in that capacity as "principally a strategic one": together with its Management Board (see later) he "set the strategy for the Bank". However, his evidence was that he had few day-to-day dealings with customers. There is a dispute about this, it being the Counterclaimants' case that he made a practice of having frequent personal meetings with the Bank's 30 or so largest clients.

52. The Counterclaimants depict the Bank as to all intents and purposes, and at all material times, Mr Savelyev's fiefdom. Mr Savelyev personally is perceived by the Counterclaimants as being the principal architect of the conspiracy against them and the 'raid' of the OMG assets, acting with the assistance of well-placed friends and contacts. He is also said by the Defendants/Counterclaimants to have threatened Dr Arkhangelsky and his family and to have encouraged criminal investigations and prosecutions against Dr Arkhangelsky by the Russian authorities with a view to discouraging any resistance to the Bank's objectives. They accuse him of dishonesty and serious wrongdoing accordingly.

53. Mr Savelyev is also said by the Counterclaimants to have been acting in all this with the assistance of his friends in high places, and especially Mrs Valentina Matvienko ("Mrs Matvienko"). She was Governor of St Petersburg from 2003 until 2011 and since 2011 has been Chair of the Federation Council of Russia (the country's third-highest elected office). Also said to have been involved in the 'raid' are two allegedly "corrupt officials" in the state apparatus of St Petersburg ultimately controlled by Mrs Matvienko during her tenure, namely Gen. Vladislav Piotrovsky, at material times the head of St Petersburg police ("Gen. Piotrovsky") and Lt. Col. Levitskaya, at material times the St Petersburg chief prosecutor.

54. Mr Savelyev rejects these claims; and he has become a Second Claimant to these complex and expensive proceedings for the sole purpose of seeking declaratory relief to vindicate his conduct and reputation, although it is fair to note that it was always intended by the Counterclaimants to join him as a defendant, so it was inevitable that he would be a party.

Key personnel within and witnesses of fact for the Bank

55. The Bank also called as witnesses of fact the following key personnel within the Bank in addition to Mr Savelyev.

56. Mr Vladislav Guz ("Mr Guz") is the current Chairman of the Management Board. At the material time he was on the Management Board and the Major Credit Committee (the "BKK"), and was responsible for corporate customers like OMG.

57. Ms Olga Volodina ("Ms Volodina") is the Senior Vice President of the Bank. From 2007 until March 2015 she was the Deputy Chairman and sat on the Management Board, as well as the BKK. At the material times, she was in charge of the Credit Risk Directorate and so was responsible for monitoring the Bank's reserves and credit risk.

58. Ms Kristina Mironova ("Ms Mironova") is currently Deputy Chairman of the Management Board. From October 2008 until April 2009 she was the Deputy Director of Investrbank, the branch which managed the Bank's lending to OMG. She had to deal with OMG's borrowing difficulties at the time. She then became the Director of the Client Monitoring Department. The Defendants allege that she is a conspirator. They also allege that she has given false evidence both in these proceedings and in anterior proceedings brought by the Counterclaimants in the BVI which were stayed to enable proceedings by agreement in this jurisdiction (in Claim No. BVHC (COM) 70 of 2011, "the BVI Proceedings").

59. Ms Tatiana Kosova ("Ms Kosova") was the Director of the Bank's Legal Department from 2007 until 2013. She is currently the Advisor to the Deputy Chairman of the Management Board, Ms Mironova. Ms Kosova's statement sets out the various steps that the Bank took to enforce its security once OMG defaulted. There is no pleaded allegation that she is a conspirator or that she acted in any way dishonestly, but the Defendants have appeared recently to indicate that they consider her in some way to be part of the 'fraud'.

60. Mr Andrei Belykh ("Mr Belykh") is the Bank's Director who worked with "Big Corporate Clients". At the material times, he was the Director of Clients and Bank Branches, and was OMG's initial contact at the Bank. His direct superior was Mr Guz.

61. Ms Ekaterina Shabalina ("Ms Shabalina") was the Director of Investrbank until summer 2008 at which point Mr Oleg Platonov took over as Director. In her role she met Dr Arkhangelsky and was involved in some of the lending decisions. She no longer works for the Bank.

62. Ms Viktoria Yashkina ("Ms Yashkina") worked in the Credit Department of Investrbank under the supervision of the director of the Credit Department, Ms Anna Borisova ("Ms Borisova"). She, along with others, was responsible at Investrbank for the OMG lending file. A witness statement was served on behalf of Ms Yashkina but this was withdrawn on Day 31 of the Trial without objection and accordingly she was not called to give evidence.

63. Ms Elena Blinova ("Ms Blinova") shared with Ms Yashkina responsibility for the OMG file in the Credit Department at Investrbank. She covered for Ms Yashkina during the latter's maternity leave from February to October 2008.

64. Ms Tatyana Stalevskaya ("Ms Stalevskaya") was and is the Deputy Director of the Department of Client Monitoring. She worked in the Bank's corporate finance department, and reported to Mrs Irina Malysheva ("Mrs Malysheva").

65. Ms Natalya Patrakova ("Ms Patrakova") worked at a junior level in the Investrbank Credit Department in 2008. Her only involvement in the events material to these proceedings was to witness Dr Arkhangelsky sign certain documents in relation to the Personal Loan. Her witness statement is two pages and of limited compass. She no longer works for the Bank. Dr Arkhangelsky has recently said that her evidence is a "piece of fiction". Ms Patrakova is currently on maternity leave from her employer.

66. In addition to these employees, the Bank also called as a witness Mr Vladimir Alexandrovich Sklyarevsky ("Mr Sklyarevsky"). He is the General Director and owner of a company called 'Strategiya Korporativnskyh Investitsiy I Finansov' (usually referred to as "SKIF"), which focused on corporate restructuring and refinancing of distressed banking assets.

67. SKIF had originally been incorporated by the Bank under the name 'BSBP-Finans' in 2003 and was a long-standing client: Mr Sklyarevsky estimated that by 2009, around 60% to 70% of SKIF's restructuring and distressed assets management work was carried out for the Bank. Mr Sklyarevsky is not, himself, alleged to be a conspirator but his company SKIF is.

68. The Bank also called Mrs Elena Vladimirovna Yatvetsky ("Mrs Yatvetsky", whose maiden name was Goncharuk), a Russian qualified lawyer and legal adviser to an investment and private equity group based in St Petersburg called the "Renord-Invest Group". Mrs Yatvetsky was a late entrant to the list of witnesses for the Claimants in circumstances described later.

69. As will become apparent, the Renord-Invest Group came to play a central role in the developing saga: it is alleged by the Defendants to have been part of the conspiracy to seize Zapadny Terminal LLC or "Western Terminal", and Scandinavia Insurance Company LLC/Stravahoe Obschestvo Scandinavia LLC, or "Scan", and to buy up their distressed assets at a fraudulent undervalue.

70. The Renord-Invest Group is said by the Claimants and appears at least nominally to be owned by Mr Mikhail Alexandrovich Smirnov ("Mr Smirnov"), possibly in association with another businessman, Mr Leonid Zelyenov ("Mr Zelyenov"). Dr Arkhangelsky and the Counterclaimants do not accept this: their case is that the Renord-Invest Group is controlled and probably owned by Mr Savelyev and/or the Bank and their "loyal friends" or associates.

71. Mr Smirnov, who is a former employee of the Bank, is a central figure. He provided a detailed witness statement, which was of especial interest in its description of Renord-Invest and its group companies' participation in the repo arrangements and asset sales. But, in the course of the trial, and after various efforts to accommodate him, I was told that he was too ill to attend and a confidential medical report was submitted in support. Although the Claimants also relied on Mr Smirnov's evidence by way of a Civil Evidence Act notice, Mrs Yatvetsky appeared, in effect, as his understudy, though she gave an interestingly different picture of the role of the Renord-Invest Group.

Other persons of primary relevance who were not called for the Bank

72. Certain other individuals of importance to the story, in addition to Mr Smirnov, could undoubtedly have assisted me but were not called.

73. Mrs Malysheva was the most obvious of these. Mrs Malysheva was the Deputy Chairperson of the Bank and at material times in charge of corporate financing. It was she who called in Mr Smirnov, the Renord-Invest Group, Mr Sklyarevsky and SKIF to assist the Bank when it became clear to the Bank in early 2009 that OMG could not

avoid default, and it was she who, with Mr Smirnov and Mr Sklyarevsky, directed the Bank's relationship with OMG and Dr Arkhangelsky thereafter (subject to the ultimate control of Mr Savelyev). She and her husband and son had material shareholdings in the Bank. She is alleged to have been a conspirator.

74. There is no doubt that Mrs Malysheva would have been a witness of central importance. She gave a witness statement dated 30 December 2011 in the BVI Proceedings on which the Bank relies by way of a Civil Evidence Act notice. However, by the time of the trial she had apparently ceased to work for the Bank, and the Bank has maintained that she has not been prepared to assist the Claimants. I was given to understand that under the Russian law, it would not have been permissible for the Bank to require her to attend as part of her severance agreement.

75. Mrs Matvienko did not give evidence either. At an earlier stage of the proceedings I had asked whether she would, and suggested that her attendance might help to dispel the Defendants' suspicions as to covert assistance or connivance on the part of the state authorities: but I was informed (at an interlocutory stage, when I enquired) that she was an important and busy person and would not be doing so.

The Defendants/Counterclaimants and their witnesses of fact

76. Turning to the Defendants/Counterclaimants, their witnesses of fact were Dr Arkhangelsky and Mrs Arkhangelskaya, and six others.

77. Dr Arkhangelsky comes from a family of some renown in Northwestern Russia, as he was anxious to tell me in a speech he made at the commencement of his oral examination. He told me that his grandfather had won the Nobel Prize for Economics (according to him, the only Russian to have done so); his father was a professor of biology; and his mother was one of the top executives in the Northwestern Russia medical system.

78. Dr Arkhangelsky himself was educated largely in St Petersburg, but he also spent time abroad at university in Norway and in Germany. He said that this experience abroad encouraged him to adopt 'Western' business and accountancy standards, of which he initially boasted of some familiarity but of which he asserted ignorance when later cross-examined.

79. Dr Arkhangelsky does not appear to lack self-confidence. He appeared to me to harbour no doubts as to his own abilities. He described himself to me as "probably the best student in the university." He told me that:

> "While being a student of the second and while being a student of the second and third year at University of St Petersburg, I've already been given a guest professor lectureship in City University of London, in University of Munster, in Insurance Academy of Oslo, Stockholm, Copenhagen, Finland and so on. So I have been well regarded that time, when I was only 20."

80. After a period of overseas study, apparently, Dr Arkhangelsky got a PhD for a paper comparing Norwegian and English marine insurance conditions and implications for

the Russian market, and then worked in a leading insurance company's office in Moscow which was later acquired by Zurich Insurance.

81. In his speech at the beginning of his oral evidence, Dr Arkhangelsky described his career thereafter in his own words as follows:

> "At some stage I understood that I was too young and too smart to be employed, and I thought that, having all this background, why not go back to St Petersburg and to start my own business. Considering that most of people working in Moscow were above 50 or 60, not speaking any language, still trying to live in the Soviet conditions and didn't want to implement anything modern and European, which was quite strange for me while I spent about 10 or 15 years abroad, so I decided why not come back to St Petersburg and establish a company called, at that time, Scan Marine Consulting. I think it was a really successful venture, so in a short while I managed to obtain the most important, most famous Russian international clients, like all the major oil and gas companies, for whom I've been doing reinsurance generally in markets in London, in Norway, in other Scandinavian countries and in Bermuda. So, as I have written in the witness statement, it has been really one of the first Russian insurance, reinsurance broking companies. And then I decided, why not to go forward, while at that time it was a time of restructuring of the international insurance markets of 9/11 and so on. So I've been rather deep in that subject and I decided, why not to build up something special, local. And later on, when the market would be a better market, not depressed after 9/11, then I would be able to sell this to international players, to international insurance companies with whom I've been working and whom I've been knowing personally. So I've been knowing personally directors of major energy syndicates at Lloyd's and so on, so we've been well regarded, so we've been knowing each other quite well and I believe that in case they wanted to touch Russian market, my business would be the best business for them to buy, or, if not whole, at least a share. Then at some stage, we understood that -- I employed quite a number of good, young people, so most of the people in my office have been between 20 and 35, all of them speaking languages, having experience international experience, got some, at least, partial international education, and I thought that I built up quite a good and modern team and we could easily expand, and definitely one of the areas of expansion was that time I thought the assets of the ex-Baltic Shipping Company. You know, in St Petersburg, in the Soviet Union, one of the major shipping companies was the Baltic Shipping Company, trading worldwide and so on, and as long as my mother has been, let's say, one of the top executives of that community, and she's been known by everybody, so all the ex-directors and captains and so on, they've been personal friends

> with our family and so on, so I decided -- and this company had been bankrupted, so it has been a number of big scandals and beginning of the 1990s, so it has been divided to many, many different parts and pieces, and so they called it -- some of them, they called it privatisation; some of them called it bankruptcy, but it was a big collapse of criminal things all around there. So I found out that -- then I was the age of less than 30, and I had a good family reputation and I found out that the ex-assets of Baltic Shipping Company had been distributed and divided among hundreds of people who had been considering each other as enemies, so one had been owning a piece of land, another had been owning water at this piece of land, a third one was owning electricity at this piece of land, and they were considering that each of them were stealing assets from each of them. So it has been quite a complicated story. I found myself that I am able to come in discussions, negotiations with these people, and even considering that they are enemies between each other, I consider that I can come and make an agreement with them because they were not considering me as the criminals, as they were considering each other as criminals, so they could have a confidence, especially because of the family connections and my mother's great reputation there. I went around the market while knowing all these people from my childhood, and made a preliminary agreement that I buy each and every piece. So initially it was an Onega Terminal, then it came to Western and Vyborg Port and so on. And so then I've been doing a lot of interviews to Russian media at that time, and they said: what is the secret of your success story? And I said -- I was telling at that time that if you watched a movie, Pretty Woman, so it's absolutely the same what I have done. So I was just collecting assets which were considered not to be interested, each and every, and then by different M&A transactions, I was changing their status, changing documents, changing the purpose of use, obtaining clients and so on."

82. Dr Arkhangelsky also struck me as having a propensity to see things as he wished them to be in his ego-centric view of the world; and he tends to regard any detractors or criticism as either lamentably misinformed or inferentially dishonest.

83. Dr and Mrs Arkhangelsky married in 2002. They have three children, now aged 13, 11 and 9. The effect on their family life of the events with which this judgment are concerned must have been devastating, whatever may be the rights and wrongs of the matter.

84. The stress on the family was evident in Mrs Arkhangelskaya's demeanour and tone. She struck me as a quieter, much more hesitant, person than her husband. She was certainly more reserved in giving her evidence, though on occasion defensiveness and what appeared to me to be bouts of despair about her family's predicament made her appear truculent.

85. She has a degree in accountancy and audit. She says she had little knowledge of or involvement in her husband's business. However, she states in her witness statement that she considers that under Russian law the assets of OMG belonged to her husband and herself in equal shares "however they might be held as to legal ownership".

86. Mrs Arkhangelskaya was joined as a defendant because (a) what purports to be her signature is on a number of formal 'spousal consents' in respect of the Personal Guarantees in issue, and (b) in May 2009, and thus after the Bank had started making demands under some of the Personal Guarantees, she was the transferee of some of Dr Arkhangelsky's assets under what was described as a marriage contract (though obviously the document post-dates their marriage by some 7 years).

87. As well as being a counterclaimant with her husband in these proceedings, she was a claimant with him in proceedings in the BVI Proceedings. The BVI Proceedings were eventually stayed, and then in substance recommenced here, in circumstances rehearsed in a judgment of the Court of Appeal reported at [2014] EWCA Civ 593 (and my own judgment at [2013] EWHC 3529 (Ch)).

88. Although her witness statement emphasises that she believes the facts pleaded by her husband to be true, Mrs Arkhangelskaya explained in her oral evidence that:

> "my husband does everything for us, on our behalf. I do have to take part in this, even though I do not like taking part in this, but because we are the defendants here, I have to take part in this."

89. My impression is that Mrs Arkhangelskaya veers between bewilderment and anger about her and her young family's predicament and remains uncertain whom to blame for it; and she retreats into denial, and (it seems) occasional bouts of extravagance, to cope with it.

90. The Counterclaimants also called the following further witnesses.

91. Mr Robin Bromley-Martin ("Mr Bromley-Martin") is Chief Executive of a company called 'Port Evolution and Development Limited', and a partner at an entity called 'Neutralis Asset Management LLP', which specialises in emerging market project finance and between 2007 and 2009 also traded as or through another entity called 'Oxus Border Finance LLP' ("Oxus"). In addition, he has other interests in the field of corporate finance, focusing on emerging markets. He gave evidence, on which he was cross-examined, as to the work he did, mostly through Oxus, for Dr Arkhangelsky in relation to his and OMG's plans for development of their respective assets. Mr Bromley-Martin seemed almost to straddle a line between expert and factual evidence. He did his best: but the revelation of a number of very material inaccuracies in documentation he had helped to prepare undermined him.

92. Mr François Ameli ("Mr Ameli") is a French lawyer. He was called to the Paris Bar in 1993, and is a Professor at the University of Paris Pantheon-Sorbonne, and a lecturer in the fields of international trade law, international contracts, international law and arbitration. He is one of the legal representatives of Dr and Mrs Arkhangelsky in France. He has been representing them in matters before the French courts and other authorities,

in particular, the French Office for the Protection of Refugees and Stateless Persons ("OFPRA"). He has given a number of statements in these proceedings and in the BVI Proceedings.

93. Mr Mikhail Eduardovich Nazarov ("Mr Nazarov") is a Russian lawyer who has represented Dr and Mrs Arkhangelsky in Russia in relation to various criminal charges brought against him, and also Mrs Arkhangelskaya in certain enforcement proceedings detailed later. A regrettable feature of his evidence was that he said he had never been made aware of the Court's order for specific disclosure of certain of his documents, but (as was revealed by correspondence disclosed by Dr Arkhangelsky, waiving privilege to do so) that was untrue.

94. Mr Grigory Pasko describes himself as a Russian investigative journalist and former political prisoner. The main drift of his evidence was that 'raiding' of businesses and persecution of their owners, with the connivance of the Russian courts and the assistance of state authorities, has been a commonplace in Russia; and that this case fitted a well-established pattern of (to quote an article he wrote in October 2011) "threats, power games and court actions" forcing the target to abandon his businesses and flee for safety, that then being portrayed by the raider as "a flight from responsibility". He also had interviewed Mrs Malysheva at some length: and both sides, in her absence, relied on what she said, to little effect in my view. What he had to say was general and journalistic: it was interesting, but not of evidential substance and therefore not of much assistance.

95. Ms Deliya Meylanova is an associate solicitor at Withers. Her evidence was somewhat peripheral.

96. Also, in the interlocutory stages of the proceedings, Ms Lukina (Director-General of Vyborg Port LLC, as below described) provided a witness statement dated 5 April 2013 earlier in the proceedings in support of Dr and Mrs Arkhangelsky but not for the purposes of the trial: she explained that in doing so she was afraid lest she be subjected to "revenge or pressure" from the Bank and Mr Savelyev, whom she described as having "a huge power and influence".

97. The Defendants and OMGP also relied on the witness statement of Mr Vladimir Ashurkov. He is now a full-time anti-corruption campaigner, who founded, with another such campaigner (Mr Alexey Navalny) the Foundation for Fighting Corruption. Having become subject, whilst in the UK, to what he stated he believes to be "a politically motivated criminal prosecution on charges of misappropriation of electoral funds during Mr Navalny's campaign for election as the Mayor of Moscow in 2013" he sought, and in 2015 was granted, political asylum here. His brief, and the subject of his witness statement, was to "investigate connections between certain individuals" including Mrs Malysheva, her son and husband, Mr Smirnov and Mr Sklyarevsky. His evidence took the matter no further. He did not give oral evidence.

Expert witnesses

98. Expert evidence was given on: (a) handwriting and documentary authenticity; (b) banking practice in Russia; (c) Russian law; and (d) business and asset valuation.

99. Dr Audrey Giles ("Dr Giles") and Mr Robert Radley ("Mr Radley") provided reports, on behalf of the Claimants and the Defendants respectively, on the authenticity of identified documents. Neither gave oral evidence.

100. Mr Mikhail Turetsky ("Mr Turetsky") gave expert evidence on behalf of the Claimants (by report and orally) on the approach of lending banks in Russia to defaulting borrowers as at the end of 2008, the repo arrangements in this case, and the procedure by which a lending bank enforced its security. Professor Guriev gave evidence (by report and orally) on these matters. He was acting *pro bono* for Dr Arkhangelsky because "a person like Mr Arkhangelsky deserves justice and I would like to support his right to justice". He was somewhat partisan. He had not looked at the specific repo agreements, but his generic observations were of some assistance. He had never actually been involved in any enforcement decisions taken by a bank.

101. The expert witnesses on Russian law were Professor Peter B Maggs ("Professor Maggs"), a Professor of Law specialising in Russian law at the University Of Illinois College Of Law, for the Claimants, and Dr Vladimir Gladyshev ("Dr Gladyshev"), a practicing attorney in Moscow who divides his time between Russia and London, for the Defendants and OMGP. Both are experienced expert witnesses in their fields. Professor Maggs tended to be didactic, Dr Gladyshev to be discursive, but both were of assistance to me.

102. The experts on Russian real estate valuation were, for the Claimants, Mr Tim Millard ("Mr Millard"), a chartered surveyor and head of the advisory department at Jones Lang LaSalle in Moscow responsible for Russia and the CIS, and, for the Defendants and OMGP, Ms Ludimila Simonova ("Ms Simonova"), a Senior Accredited Appraiser of the American Society of Appraisers ("the ASA"), a partner of IRE Ukraine LLC, a licensed appraisal firm in Ukraine, who holds a PhD in Civil Engineering.

103. Mr Millard insisted on a market approach even when no market could be demonstrated. Ms Simonova had no practical experience of selling property in Russia at all; her theoretical approach begged many questions; and she tended to intransigence. I am sure both wanted to assist me; but I regret to say that I did not feel able to place safe reliance on either.

104. On the market valuation of businesses, Mr Yegor Popov ("Mr Popov"), like Ms Simonova a member of the ASA, but also a partner in Deloitte Corporate Finance within ZAO Deloitte & Touche CIS, gave expert evidence for the Claimants. Mr Luke Steadman, a Chartered Accountant with particular experience in accounting and valuation, and a partner at a firm of forensic accountants called Alvarez & Marsal Global Forensic and Dispute Services LLP, gave expert evidence for the Defendants and OMGP. Neither was called, the Defendants pleading shortage of funds. There was in the end some unsatisfactory uncertainty as to whether the Court should proceed on the basis of the written evidence. It was left that the Court would determine whether that was fair and sufficient, or whether it required further evidence after reaching its conclusion whether it would be relevant, and when the issue of funding might be re-visited.

The OMG companies

105. Turning to the corporate entities in the OMG, there were two parent companies, Oslo Marine Group LLC (otherwise known as Group Oslo Marine LLC or "GOM") and OMGP, and a variety of subsidiaries.

106. A simplified corporate structure chart for the OMG companies (prepared by the Claimants but not disputed) is attached marked 'Annex [1]'.

107. In his main trial witness statement, Dr Arkhangelsky described the Group as, by 2008, including:

> "9 principal operating companies which owned a variety of real estate at port sites in St Petersburg and other locations in the St Petersburg region. At the same time it was also developing its insurance, reinsurance and broking businesses as well as offering medical insurance, pension and tourism services…By the end of 2008, the group employed a total of around 620 people across its various companies."

108. The relevant subsidiaries of Oslo Marine Group LLC or GOM included:

(1) Scan, notionally at least an insurance company. Dr Arkhangelsky was its Director-General. Scan owned various pieces of real estate, including land at Onega Terminal in the port of St Petersburg, in St Petersburg itself at Pravdy Street, and just outside St Petersburg at Sestroretsk and also at Tsvelodubovo.

(2) Lesopromyshlennaya Kompaniya Scandinavia LLC, known as 'LPK Scandinavia', 'LPK Scan', or 'Scandinavia Timber', a timber company. Dr Arkhangelsky's mother-in-law, Ms Tarasova was Director-General and the legal owner of 100% of the shares (presumably for GOM). According to Dr Arkhangelsky, it bought timber from PetroLes LLC ("PetroLes") (see below) which it exported through Western Terminal. It also owned real estate at Onega Terminal.

(3) PetroLes was also involved in the timber business as a wholesaler. Its Director-General was Mr A.N. Shevelev ("Mr Shevelev").

(4) Leasing Company Scandinavia LLC, known as 'LK Scandinavia' or sometimes 'Scandinavia Leasing', was a business leasing company, which Dr Arkhangelsky described as specialising in business leasing technical and industrial equipment, cargo ships and specialised vessels, and real estate. Dr Arkhangelsky further described it as "among the largest leasing companies in Russia by capital."

(5) Vyborg Sudokhodnaya Kompania, known as 'Vyborg Shipping Company LLC' or 'Vyborg Shipping', which was established in 2007 to transport containers and cargo, with an ultimate objective of launching a regular line service from Vyborg to western ports. Ms Krygina was its Director-General.

109. The relevant subsidiaries of OMGP included:

(1) Western Terminal, which owned an 8.1-hectare site at the port of St Petersburg known as Western Terminal, including two berths, Number 15 of which handled mostly timber exports and Number 16 of which handled oil products. Mr Vinarsky was its Director-General.

(2) Onega LLC ("Onega"), which carried on the port handling business, and which, having acquired the land at Onega Terminal, immediately set about constructing a new 'Roll-on, Roll-off' ("Ro-Ro") facility (see below), intended to attract car imports previously handed for the Russian market via Finnish ports which led to considerable delay and cost. Dr Arkhangelsky was its Director-General.

(3) Vyborg Port LLC, which in around 2007, with finance from Vozrozhdenie Bank ("V-Bank") of around RUB 1 billion, acquired the port of Vyborg; this is located about 120 kilometres north-west of St Petersburg, near to Finland and indeed connected to it by the Saima Channel. Vyborg Port covers some 16 hectares and had 13 berths, including 8 cargo berths, 4 covered warehouses with a total area of 2,170 square metres and open hard standing areas of some 67,000 square metres. Ms Lukina was its Director-General.

110. In addition, it appears that OMG had a number of substantial real estate assets held through subsidiary or associated companies, including:

(1) A commercial and residential development at Novosaratovska in southeastern St Petersburg, measuring 50,580 square metres, owned by Medstrakhkom LLC;

(2) A residential development at Solnechnoye, to the north of St Petersburg and near Sestroretsk on the Gulf of Finland, owned by Novy Gorod LLC, a subsidiary of Karelia LLC which Dr Arkhangelsky says was owned by him;

(3) A residential development near Taitsy, 40km south of St Petersburg, measuring 90ha and also owned by Novy Gorod LLC;

(4) Commercial premises in Gatchina, 55km south of St Petersburg, owned by Svir LLC, which (according to Dr Arkhangelsky) was an indirect subsidiary of LPK Scandinavia; and

(5) A large business centre on Moskovsky Prospekt in central St Petersburg, owned by Rusiv LLC.

The Bank's relationship with OMG

111. OMG became a customer of the Bank in 2006. Their relationship expanded considerably over the course of that year, 2007 and the first part of 2008.

112. Mr Belykh, who was in charge of corporate client relationships and of allocating clients to the Bank's various branches, recalls meeting Dr Arkhangelsky in May or June 2006 to discuss the Bank's potential financing of OMG companies.

113. He recalls that Dr Arkhangelsky "had interesting plans and came across as young and ambitious". In support of his plans, Dr Arkhangelsky relied upon a letter from a deputy

of the St Petersburg Parliament requesting support for OMG, and addressed to Mrs Matvienko, who was then the governor of St Petersburg.

114. After this initial meeting, Mr Belykh sent Dr Arkhangelsky to one of the Bank's subsidiary branches, "Investrbank". The Bank's Investrbank branch had experience of large corporate financing and was also the branch closest to Dr Arkhangelsky's offices. It dealt with OMG and arranged all the loans to the group. In 2006, Ms Shabalina was Director of Investrbank and Ms Prokhor was Deputy Director.

Hierarchy within the Bank for credit approvals

115. There was a strict hierarchy within the Bank for credit approvals. This was explained by Ms Blinova and Ms Shabalina from their experience of working in the credit department in Investrbank between 2005 and 2009 and between 2002 and 2008 respectively. In summary this was as follows.

116. When a Bank customer sought a loan in excess of certain amounts or on terms which were not standard, Investrbank's Minor Credit Committee ("MKK") would consider the information prepared by the credit department, and make a recommendation to the Major Credit Committee (as above, the "BKK"). That recommendation would be forwarded to the Department of Expertise on Credit Projects (which was independent of the credit departments of the various branches) for analysis and its opinion. The BKK, of which (for example) Mr Belykh was a member, would in turn consider the information and if the amount of the loan sought exceeded its own credit limits it would make its own recommendation to the Bank's Management Board which made the final decision.

117. Amongst those on the Management Board were Mr Guz (to whom Mr Belykh reported), who from 2004 to 2009 was its Deputy-Chairman and who was then its First Deputy Chairman from 2009 to 2014 (whereupon he became its Chairman), and Mr Savelyev, who was Chairman from 2001 until 2014.

The Bank's loans to OMG

118. OMG opened a number of accounts with the Bank. Over the course of 2006 and 2007 and in early 2008 the Bank provided a variety of loans to OMG. For example:

(1) On 30 June 2006, the Bank provided a loan of RUB 110 million to Onega (the "First Onega Loan") further to Onega's application on 22 June 2006. This was to finance the construction of the Ro-Ro facility at Onega Terminal. The security consisted of a mortgage over two pieces of real estate in Sestroretsk (which is north of St Petersburg) owned by Scan, various corporate guarantees from OMG (including, according to the Bank, a Scan guarantee), and (also according to the Bank) a personal guarantee from Dr Arkhangelsky. According to the Bank, there was also a spousal consent apparently from and signed by Mrs Arkhangelskaya in respect of the personal guarantee.

Dr Arkhangelsky disputes both the Scan and personal guarantee in respect of this loan. However, it appears that two direct debit agreements were entered into, apparently under Scan's corporate seal, in relation to the alleged Scan guarantee,

one between the Bank, Scan and CJSC Promsvyazbank and the other between the Bank, Scan and CJSC Invest Bank, both dated 26 July 2006. Dr Arkhangelsky told me that he could not remember signing either, though he might have done "among thousands of documents which I signed"; and he also said that even if he did sign, it would have been irrelevant, since they were "empty accounts" and "it would not have been really working".

(2) On 9 March 2007, the Bank provided a loan of RUB 354 million to PetroLes (the "First PetroLes Loan"). The First PetroLes Loan, like the Second PetroLes Loan (see below), was secured by pledges over real estate at Onega Terminal owned by Scan, and (according to the Bank) by an alleged personal guarantee in the case of the First and by a Scan guarantee in the case of the Second PetroLes Loan (though Dr Arkhangelsky denies the guarantees).

(3) On 30 November 2007, the Bank provided a loan of RUB 450 million to LPK Scandinavia (the "2007 LPK Scandinavia Loan"). The security consisted of a mortgage over real estate at Onega Terminal (owned by Scan and by LPK Scandinavia), and (according to the Bank) a Scan guarantee and a personal guarantee (though again Dr Arkhangelsky denies the guarantees).

(4) On 26 December 2007, the Bank provided a loan of RUB 400 million to Onega (the "Second Onega Loan"). The security consisted of a mortgage over real estate at Onega Terminal (owned by Scan and by LPK Scandinavia), and (again according to the Bank) a Scan guarantee and a personal guarantee (both again denied by Dr Arkhangelsky).

(5) On 28 March 2008, the Bank provided a further loan of RUB 80 million to PetroLes (the "Second PetroLes Loan"), secured as previously described above.

119. Valuations reports in respect of the security pledged were provided by a Russian valuer called 'Lair LLC' ("Lair"). Lair was on the Bank's approved list of accredited valuers: at the invitation of the Bank, Dr Arkhangelsky selected Lair from that list and OMG employed them. The Bank accepted Lair's valuation reports in extending the relevant loans.

120. Within Investrbank, the OMG lending was handled on a day-to-day basis by the Credit Department under the supervision of Ms Borisova. Her juniors included Ms Yashkina and Ms Blinova. Ms Yashkina was initially responsible for the OMG files, but she went on maternity leave in around February 2008, and so Ms Blinova took over responsibility for the OMG files in her absence.

121. Mr Belykh also had meetings with Dr Arkhangelsky at various intervals. He recalls:

> "At one of these meetings [Dr Arkhangelsky] explained that he planned to create a large group of companies centred around Vyborg Port, which he intended to acquire. Part of OMG would own a shipping business, another part of OMG would own a port, and another a maritime insurance company. In addition, Mr Arkhangelsky intended to develop or purchase (as part of OMG)

> a timber company. This created an almost closed circle of business opportunities, by which I mean he would have a group of companies that would encompass the entire downstream process. It seemed to me to be very ambitious, but from letters he provided to the Bank…he appeared to have government support, which is important for infrastructure projects."

122. By early 2008, Dr Arkhangelsky who in 2006 had been a new customer for Investrbank, was considered one of the branch's VIP clients. Ms Shabalina recalled that:

> "Mr Arkhangelsky seemed to me to be full of ideas, and was interested in new projects."

123. Dr Arkhangelsky also had loans from other banks, such as a loan from V-Bank (see paragraph [109(3)] above) when in 2007 he acquired Vyborg Port. Mr Guz, who was responsible for key corporate customers, recalled discussions with Dr Arkhangelsky as follows:

> "At some point in 2007, I recall learning (I cannot now recall exactly from whom) that OMG had acquired the Vyborg Port with a loan that had been granted to it by Vozrozhdenie Bank [V-Bank]. It looked from the outside that OMG was receiving large amounts of money from a reputable bank and that Mr Arkhangelsky's business venture was supported by the government. His acquisition of Vyborg Port and the government support for the redevelopment projects he was seeking to undertake gave him credibility so far as I was concerned and suggested that maybe his business plan might after all be feasible. I can recall further meetings with Mr Arkhangelsky in which he reassured me that on top of everything, the federal and regional governments were supporting his plans. He mentioned certain names of federal and regional government officials who were supporting his business plans, but I cannot now recall them. This was relevant because any large infrastructure project requires federal and regional government support to be feasible. In the light of these matters, when Mr Arkhangelsky subsequently requested larger loans for OMG, the Bank was prepared to consider and grant those requests."

Loans to Vyborg Shipping in 2008

124. In early 2008, Dr Arkhangelsky sought the Bank's assistance for a new project to purchase vessels and operate them from Vyborg Port. He was looking to "expand substantially" the fleet of Vyborg Shipping to create a fleet of 30 cargo ships. To finance the project, he sought from the Bank a number of loans to be made to Vyborg Shipping (which had opened an account with the Bank in September 2007), or SPVs owned by it.

125. The proposal involved the Bank taking as pledges for the loans vessels which were foreign owned and registered abroad rather than in Russia. The Bank had not done this before. In March 2008, Investrbank drew up a credit report for a number of loans to Vyborg Shipping of up to RUB 2.1 billion.

126. As mentioned above, Dr Arkhangelsky's plan was to create a cargo fleet for Vyborg Shipping. His expressed objective was first to acquire 10 vessels, and then build 20 more vessels. A Cypriot company, Land Breeze Holdings Ltd ("Land Breeze"), would own companies registered in the Marshall Islands, each one of which would own one of the vessels. They would charter each vessel to Land Breeze, which would sub-charter them to Vyborg Shipping. The vessels would be mortgaged to the Bank, and (according to the Bank at least) Scan and Dr Arkhangelsky were each to give guarantees.

127. In late March 2008, according to the minutes of a meeting on 26 March 2008, the Management Board agreed to grant the facility of up to RUB 2.1 billion against certain security: a mortgage over each vessel, a guarantee from Scan, and a personal guarantee from Dr Arkhangelsky (it being noted as regards the last that it would be "without financial due diligence at the time of preparing the report and in the course of loan agreements monitoring and without life and accident insurance").

128. The drafting of the documentation for this was undertaken by Ms Blinova. She was the Chief Specialist at Investrbank responsible for analysing the lending requirements of Investrbank's clients, monitoring their financial positions and credit status, and drafting documentation to record the basis and terms of any loans. (As mentioned above, she had stood in for Ms Yashkina who had been in charge of lending to OMG companies but who was on maternity leave at about this time.)

129. Ms Blinova explained in detail in her witness statement the various loan documents she prepared. These were as follows:

(1) A loan agreement numbered 3500-08-01203 for the First Vyborg Loan, dated 28 March 2008, in the sum of RUB 310 million stipulating security by way of a mortgage over the 'OMG Gatchina' ("*Gatchina*"), a Scan guarantee, and a personal guarantee from Dr Arkhangelsky accompanied by a spousal consent form apparently signed by Mrs Arkhangelskaya. Ms Blinova received shareholder resolutions from Vyborg Shipping and from Scan, each signed by Dr Arkhangelsky, authorising the loan and the guarantee. The relevant accounting information on the loan and guarantees was entered onto the Bank's system.

(2) A loan agreement numbered 3500-08-1279 for the Second Vyborg Loan, dated 17 April 2008, in the sum of RUB 342 million stipulating security by a mortgage over the vessel 'OMG Tosno' ("*Tosno*"), a Scan guarantee and personal guarantee from Dr Arkhangelsky accompanied by a spousal consent apparently signed by Mrs Arkhangelskaya. Dr Arkhangelsky signed shareholder resolutions for Vyborg Shipping and Scan authorising the loan and the guarantee. Ms Blinova emailed a draft personal guarantee and Scan guarantee to Dr Arkhangelsky and referred to the need for his wife to give her consent. She made the relevant accounting entries on the Bank's system.

(3) A Loan Agreement numbered 3500-08-01342 for the Third Vyborg Loan, dated 30 April 2008, in the sum of RUB 360 million stipulating that it was secured by a mortgage over the vessel 'OMG Kolpino' ("*Kolpino*"), a Scan guarantee and personal guarantee from Dr Arkhangelsky. Dr Arkhangelsky signed shareholder resolutions for Vyborg Shipping and Scan authorising the loan and the guarantee. Ms Blinova made the relevant accounting entries on the Bank's system.

130. In July 2008, Dr Arkhangelsky sought a fourth loan for Vyborg Shipping, but this time, rather than provide a vessel as security, he proposed that land owned by Western Terminal be pledged. On 16 July 2008, the Bank's Management Board approved the request to change the type of security, and noted the forms of security given, including (it appears) a personal guarantee.

131. The Bank agreed to provide the Fourth Vyborg Loan dated 21 July 2008, in the sum of RUB 1.088 billion, "for the purpose of rent payments under the time charter agreements", and to be used "strictly in accordance with its target purpose". OMG's stated purpose was to make payments under time charters for two vessels, named the '*Tikhvin*' and the '*Luga*'.

132. The security for the Fourth Vyborg Loan, however, was not any vessel, as had been the case for the first three Vyborg Loans. The loan was to be secured by a mortgage over land at Western Terminal (namely SV Berth 15 and the Western Terminal land plot of some 73,000m^2), a Scan guarantee and a personal guarantee from Dr Arkhangelsky.

133. It was Dr Arkhangelsky who suggested the use of real estate as security rather than another vessel. The mortgage agreement agreed the value of the real estate for the purposes of the pledge to be RUB 1.286 billion.

Pledged and unpledged assets at Western Terminal

134. The real estate assets at Western Terminal also included what Dr Arkhangelsky described as another berth, berth "SV-16", and "two railway tracks", which were not pledged to the Bank. Under the Russian cadastral rules, those assets were registered separately from the land they were located in, which was registered as a single plot and pledged to the Bank. There was a dispute as to the value of those unpledged assets. According to the Bank, these additional 'assets' were in a very dilapidated state and added nothing to the value of the Western Terminal site.

135. The Bank described SV-16 as "in truth…little more than a decrepit jetty" with an area of only 120m^2 with a length of 33.5m and a width of 3.03m, only accessible from the land plot pledged to the Bank. The two tracks, according to the Bank, were outside the Western Terminal site and on land owned by a third party, the Severnaya Verf shipbuilding plant, which was a state-owned military shipbuilding company.

136. The Counterclaimants, however, maintained that both had material value: berth SV-16 and the railway tracks would significantly increase the capacity of any business operating the Terminal, if owned by the same business as berths SV-15 et al.

137. For comprehensiveness, it may be recorded that there were some further 'assets' within the Western Terminal site, but these had no value because they could not actually be

pledged at all: they had no title entry in Rosreestr, the Russian Registry of real property rights. There was an 'Administrative Building' which was a two storey 'temporary structure' (in effect, a portacabin), and a one storey guard 'house', neither of which was (or could be) registered in Rosreestr.

138. There is also reference to a document which purports to be a 'spousal consent' signed by Mrs Arkhangelskaya. In Ms Blinova's absence on holiday the requisite agreement was drafted by the credit department. It appears that Dr Arkhangelsky signed shareholder resolutions for Vyborg Shipping and Scan authorising the loan and the guarantee. Dr Arkhangelsky does not dispute the loan advanced to Vyborg Shipping, but does dispute that he signed the Scan and Personal Guarantees given in respect of the First, Second and Third Vyborg Loans.

Fourth Vyborg Loan

139. The Fourth Vyborg Loan has given rise to some controversy. In their Opening Submissions, the Defendants and OMGP suggested that by "mid-2008, Vyborg Shipping r[a]n into difficulties, and the vessel intended as a pledge for the 4th loan was not delivered in time" and so "Western Terminal assets were offered as a substitute pledge *ad hoc* and at a very short notice." However, Dr Arkhangelsky's evidence makes no mention of any vessel "intended" as a pledge; to the contrary, he suggested he "originally" offered various plots of land. There is good reason for Dr Arkhangelsky's evidence not referring to any "intended" vessel: the truth (as I find) is that, notwithstanding the significant sums advanced to Vyborg Shipping under the Third and Fourth Vyborg Loans, which had been advanced specifically and solely to make payments under the various time charters, Vyborg Shipping did not acquire the three relevant vessels, the *'Volkhov'*, or the *'Tikhvin'*, or the *'Luga'*.

140. This has inevitably raised the question as to where the proceeds of the Third and Fourth Vyborg loans went. It is the Claimants' case that they "simply disappeared into OMG" and were then "diverted into Mr Arkhangelsky's pocket".

141. Dr Arkhangelsky denied this; but his evidence as to what had happened was far from clear. He suggested, without any documentary support, that what he termed "prepayments" for the vessels had been made, but "due to the crisis at whatever, October, November, December, final delivery have not been done, and so we lost quite a lot of money, I think". He sought to explain his vagueness on the basis first that "shipping is rather a complex thing" and secondly, that "…it's Olga Krygina who'd been taking care about all these…" (and, knowing she had not been called as a witness, suggested that "you speak to her first"). I cannot accept that evidence; and, though I do not think that it is established that Dr Arkhangelsky pocketed the money himself, I find that the moneys have never been accounted for.

Other Vyborg Loans

142. Returning to the description of the various borrowings and their terms, all the Vyborg Loan Agreements (as well as the PetroLes loans) also required the borrower to maintain a stipulated percentage of turnover (100% in the case of the First to Third Vyborg Loans, 70% in the case of the Fourth Vyborg Loan and the First PetroLes Loan and a

specific sum of RUB 250 million per quarter in the case of the Second PetroLes Loan) on settlement and currency accounts of the relevant borrower at the Bank. These enabled the Bank (in theory at least) directly to monitor trading performance.

143. Ms Blinova's witness statement recounts that, during August 2008, the Bank sent chaser emails to OMG in respect of the valuation report it needed for the Western Terminal security, as well as the direct debit agreements between other banks and Vyborg Shipping and Scan as guarantor.

Further loans in 2008

144. In the course of the first half of 2008, there were various changes to OMG's existing loans from the Bank.

145. For example, the First PetroLes Loan was extended by a year until 5 March 2009, and there were also various changes in security and extension for the First Onega Loan in that its repayment date was extended by a year until 27 June 2009. According to Ms Blinova's evidence, the extension was reflected in amendments to the various guarantee agreements (though LPK Scandinavia was removed as a corporate guarantor of the First Onega Loan).

146. As mentioned above, the Bank had previously granted a loan to LPK Scandinavia in November 2007 (the 2007 LPK Scandinavia Loan). LPK Scandinavia now sought a further loan in the form of an overdraft facility. The Bank granted the overdraft facility up to the sum of RUB 145 million by an agreement dated 25 June 2008 (the "2008 LPK Scandinavia Loan"). The only security required, according to the Bank, was a personal guarantee from Dr Arkhangelsky, to which his wife should give her consent. But Dr Arkhangelsky disputes the personal guarantee.

Dr Arkhangelsky's plans for a vertically integrated cargo and shipping business

147. As these loans illustrate, Dr Arkhangelsky viewed all the port and real estate assets as a whole and as having both individual and synergistic value and combined potential.

148. He described his overall plans for the Group in his 16th Witness Statement as follows:

> "All of the port and real estate assets described above were acquired with the specific intention of developing them in order to realise their full commercial potential. My medium to long term objective for the Group was that it would become a vertically integrated shipping and stevedoring business, concentrating on servicing transhipment traffic in the Baltic. There was an increasing demand for cargo and container transhipment services in Russia, particularly in the St Petersburg ports which were suffering from congestion. I thought that if the Group could capture that demand and satisfy it through its three ports at Vyborg, Onega and Western Terminal it could outperform its competitors and potentially make a great deal of money.

> …
>
> Clearly, these plans were extensive [and] could not be achieved overnight. They were going to require substantial investment and would be rolled out in phases over the course of several years…"

149. I address in greater detail below the difficulties of funding these plans, and whether they were ever realistic (it being the Claimants' case that they were not, and that indeed they were entirely fanciful). But a brief description of the three terminals, and of the shipping company, may assist in understanding Dr Arkhangelsky's grand design.

The Western Terminal site

150. I have described the assets, both pledged and unpledged at Western Terminal in paragraphs [134] to [138] above. Western Terminal had in Soviet times formed part of a larger, state-owned military terminal, which in the past had handled and stored special refrigerated containers and nuclear waste. However, it was not disputed that when in 2007 Dr Arkhangelsky acquired it the Western Terminal site was in a poor state: little more than a timber yard, and (in Dr Arkhangelsky's own words) "like a swamp and not all the territory is used".

151. Moreover, although Dr Arkhangelsky described the Terminal as having its own railway spur and major road junctions, it became clear that at least the railway was on a separate plot which had been in State ownership but was never in OMG's. Design work for development carried out by a German firm, Schuppertbau, suggested an initial costs estimate for the proposed work of US$200 million.

The Onega Terminal site

152. The Onega Terminal property consisted of 4,506.5m^2 warehouse and supporting space, and 55,208m^2 of land. It was designed for Ro-Ro and containing handling and storage. It comprised four warehouses and administrative buildings and three land lots, owned by Scan and LPK Scandinavia.

153. A particular problem was and remained that the site did not include a berth or direct outlet to the sea, which is obviously vital for any port facility. Instead, Onega's access to a berth was provided by an unrelated third party, The Sea Fish Port of St Petersburg ("SFP"), through a related company, ROK No. 1 Prichaly CJSC ("ROK No.1 Prichaly").

154. A business plan prepared in October 2008 estimated that Dr Arkhangelsky's plan for a larger and more sophisticated Ro-Ro and container transhipment facility at Onega could cost some RUB 36 billion (then just over US$1 billion).

Vyborg Port

155. When Vyborg Port was acquired it mainly handled bulk commodities, including, in particular, coal and timber products. Dr Arkhangelsky's avowed aim was to modernise the port, increase its cargo throughput capacity and develop a multi-functional container and Ro-Ro terminal. Funding of at least €115 million was sought.

Vyborg Shipping

156. As is already apparent from the loans for that purpose described above, Dr Arkhangelsky also planned to expand Vyborg Shipping's fleet of vessels: it had started with just one (the '*Gatchina'*). A business plan, which Dr Arkhangelsky described as having been prepared by Lair and which is dated April 2008, envisaged the creation of a fleet of 30 cargo ships as part of what the report described as OMG's:

> "Strategic goal [being] to create a vertically integrated holding in the field of sea cargo shipping – from order placement to cargo delivery, where all the links of the chain are the companies of the Oslo Marine Group."

OMG's development plans and funding requirements for Western Terminal

157. Dr Arkhangelsky's avowed plans for the extensive development of Western Terminal were the focus of a large part of the evidence at trial. He set out in his 16th witness statement the three stages he apparently envisaged:

> "The first stage would involve building an open storage area at berth 15, reconstructing a railway track to connect the port to the main railway system, dredging the channel in front of the terminal, and finishing the construction of berth 15. The second stage would include the reconstruction of berth 16, the building of open storage for containers, the construction of a railway link to berth 16, purchasing port handling equipment and installing a container crane. Finally, at the third stage, we planned to reclaim the bay northwest of berth 16, construct a pile-supported berth, build further storage space, install a second container crane and extend the railway track along the pier."

158. Such a development plan was by no means straightforward. In particular, Dr Arkhangelsky explained:

> "The development plans entailed the removal of a man-made island near the entrance to the port. From a practical perspective, I understood this to be relatively straightforward. Once this had been done and the bay north of berth 16 dredged, access to Western Terminal by sea from the Gulf of Finland would have been easier than to competing terminals. The island would need to be removed by the state authorities because the land and water were the property of the state. No investments or payments were needed from Western Terminal itself. All I needed to do was try to speed up the process as much as possible. I was seeking to do that by lobbying my contacts and colleagues in the Ministry of Transport and local government."

159. Dr Arkhangelsky set out in his witness statement what he considered were the 'competitive advantages' of Western Terminal which he considered justified investment to "exploit as much as possible". These included, in his perception:

(1) The advantage that Western Terminal would own its own berths, whereas (according to him) in most ports the berths belong to the state and are rented at a price dictated by the government, which may be high.

(2) Its location, which he describes as "the best…in the Greater Port of St Petersburg…well connected to major road junctions and [having] its own railway spur", allowing "intermodal connections and access" setting it apart from competitors and allowing it to outperform them "in terms of cargo turnaround or handling time".

(3) Its border control point and bonded customs facilities, which Dr Arkhangelsky considered would allow it to speed up cargo handling time, increase throughput and maximise capacity.

(4) What Dr Arkhangelsky described as its "high quality infrastructure" (though this was at odds with its previous description, as also with Mr Bromley-Martin's description of it in the course of his cross-examination as "A lot of mud").

(5) Its vertical integration, and having the option of filling any drop in throughput by redirecting cargo from Vyborg or Onega, so ensuring (so Dr Arkhangelsky suggested) near 100% operational capacity, "significantly more than its competitors".

160. To assist in realizing these ambitions, Dr Arkhangelsky intended, it seems, to make use of his political contacts. Thus, for example, he referred to the fact that in 2008 he created a 'supervisory board' for OMG:

> "With a view to assisting it to obtain financing and political support for its ongoing development projects. Alexander Shokhin, the president of the Russian Union of Industrialists and Entrepreneurs and former deputy prime minister of Russia, agreed to be its chairman. The other members included Vyacheslav Ruksha, a former deputy transport minister, Vadim Lopatnikov, the chairman of the St Petersburg Audit Chamber, Vitaly Klimov, a member and former chairman of the Leningrad Regional Assembly, Lars Kolte, the Chairman of the Council of Europe Development Bank, and Oleg Preksin, the vicepresident [sic] of the Russian Banking Association. All these individuals had excellent financial and political connections and were well placed to assist the Group in achieving its funding objectives."

161. However, Dr Arkhangelsky also acknowledged that his plans for Western Terminal required "substantial investment". Considerable capital and borrowings would be required. He told me that "obtaining financing for the various projects was going to be critical, and this occupied an increasingly large proportion of my time."

Dr Arkhangelsky's search for finance in 2008

162. The preliminary cost estimate for the development of Western Terminal was US$ 220 million. This called for project finance. Dr Arkhangelsky approached Oxus to assist. Oxus, it may be recalled, was a project finance company run by two partners, one of whom was Mr Bromley-Martin.

163. Mr Bromley-Martin recalls that in early 2008, "Clyde & Co approached us saying that they had a client who wanted assistance with financing and managing a development project."

Basis on which finance was sought: Information Memorandum and Business Plan for Western Terminal

164. From around May 2008, Oxus started work on a draft Information Memorandum (the "IM") containing a Business Plan for the development of Western Terminal, and which according to Dr Arkhangelsky was "used to approach potential lenders".

165. This IM painted a rosy picture of the value of and prospects for development, and of the investment already made; and it was on the basis of that presentation that potential lenders and finance-providers were invited to provide funds.

166. It suffices for the present to summarise its presentation as follows:

(1) The Western Terminal was described as having been acquired in 2007, in a "very run-down condition".

(2) The stated acquisition cost was US$220 million: this was said to have been paid in cash by OMG.

(3) An up-to-date value for the site was stated to be US$188 million, "in its present state".

(4) It was stated that OMG had "already put in US$140 million of equity into the facility".

(5) The IM's 'Business Plan' for the development of Western Terminal included an upgrade of the two existing berths, reclamation of the adjacent area and the creation of a new (third) berth.

(6) The stated funding requirement was for US$300 million in long term debt to fund the upgrade of the terminal and to repay $90 million of short term debt used to acquire the terminal in 2007. There was stated to be "considerable asset backing for the debt, given the size and location of the facility".

(7) The Business Plan assumed that US$ 220 million would be invested in the years 2008 to 2011, over three phases, and predicted that Western Terminal's turnover by 2011 would be 500,000 TEU per annum (TEUs being a standard unit of cargo capacity based on the volume of a 20-foot long intermodal metal box container known as a 'Twenty Foot Equivalent Unit').

(8) On the basis of these assumptions, Mr Bromley-Martin produced two financial models for the development: one dated 18 July 2008 and a later model dated 11 September 2008.

167. Mr Bromley-Martin said that "We had been instructed that various state organisations would need to – and would – approve the development plans at Western". Mr Bromley-Martin explained that he created a financial model to underpin the IM.

Inaccuracies in the draft IMs: the "enormous untruth" and unrealistic TEU figures

168. There is no doubt that the draft IMs (in all their versions) were materially inaccurate on matters fundamental to any investment or lending decision.

169. The most blatant and significant inaccuracies concerned two matters of fundamental importance to any investor or lender: (a) the statements as to the acquisition costs and subsequent investment in the facilities; and (b) the projection as to the capacity of the Western Terminal as measured by annual TEUs.

170. The statement of acquisition costs disguised perhaps the most egregious and troubling fact in the case: an admitted discrepancy between the figure given in the IM as the cost of acquisition and initial development and the actual amount paid.

171. Taking for these purposes the version of the IM sent out to banks to attract investment in July, August and September 2008 as the final version ("the final draft IM"), it was therein represented that Western Terminal had been acquired for US$220 million. Thus:

(1) Under the heading "Financials", the final draft IM stated:

> "Western was only acquired in 2007, and therefore there is little reliable financial information available prior to the date of acquisition. The Western Terminal was acquired for US $220 million, which was funded by OMG's internal resources ($140 million) and short term debt ($80 million)."

(2) Under the heading "Capital structure and potential site value", the final draft IM stated:

> "OMG acquired Western in 2007 for the sum of US $220 million, which was paid for with cash by OMG. Western has no external debt at present, but loans totalling US $90 million taken out by OMG relate entirely to the acquisition of the terminal. The site has been valued both for acquisition purposes and now for the fundraising. Last year it was valued at US $166 million, and in June 2008, it was valued at US $188 million, in its present state."

172. As to the funding requirement, the final draft IM stated as follows:

> "Funding Requirement

> OMG are therefore seeking to raise up to $300 million in long term debt to fund the upgrade of the terminal and to repay $90 million of short term debt used to acquire the terminal in 2007.
>
> The key elements of this debt are:
>
> - Asset backing
>
> There is considerable asset backing for the debt, given the size and location of the facility.
>
> - Gearing
>
> The parent company has already put in US$140 million of equity into the facility."

173. In fact, these statements contain or disguise what the Claimants describe in their written Closing Submissions as "an enormous untruth" and "fatal falsehood". The truth was that Dr Arkhangelsky had bought Western Terminal for only about US$ 40 million in May 2007; furthermore, the alleged equity investment of US$140 million had not taken place.

174. In that regard:

(1) The 15 May 2007 share purchase agreement between OMGP and Premina Limited ("Premina") records a purchase price for the shares in Western Terminal of RUB 1.069 billion, which is the approximate equivalent of US$40 million at the time. Dr Arkhangelsky exhibited this share purchase agreement to his 1st affidavit in the BVI.

(2) The US$ 40 million figure (equivalent to approximately RUB 1 billion) accords with the acquisition cost of Western Terminal set out in Dr Arkhangelsky's witness statement for trial, in which he said:

> "…in May 2007, OMGP purchased the shares in Western Terminal, which owned a 8.1 hectare site at the port of St Petersburg (also known as Western Terminal). Western Terminal was also acquired partly with the aid of loans from Vozrozhdenie Bank [V-Bank] that were secured on Vyborg Port. The purchase price for Western Terminal was just over RUB 1 billion, which I considered to be very low considering its location and commercial potential."
>
> (emphasis added)

According to Dr Arkhangelsky, he borrowed the entire US$ 40 million from V-Bank.

(3) That accords with Mr Bromley-Martin's evidence that the Western Terminal site cost "relatively little".

(4) The figure of RUB 1.069 billion, likely to have been taken from the May 2007 share purchase agreement, appears in OMG's audited accounts as the acquisition cost for Western Terminal.

(5) In various Russian proceedings later, which OMG commenced in 2009 in order to unwind the transfer of shares in Western Terminal it had been required to transfer under repo arrangements later described, OMG relied on the figure of RUB 1.069 billion as the purchase price for Western Terminal.

(6) Dr Arkhangelsky himself emphasised the low price in his evidence. He suggested that he had paid a low price because Western Terminal had been owned by a "criminal group" and no other businessman was prepared to deal with them. According to Dr Arkhangelsky, the port assets had had a "very difficult previous history". They were damaged goods (and no doubt remained so).

(7) In his oral evidence, Dr Arkhangelsky further suggested that he had spent an additional US$ 20 million (or RUB 500 million) from OMG's balance sheet which constituted expenses and additional costs, including paying off some debt and as part of the due diligence. This had not appeared in Dr Arkhangelsky's witness statement. Apart from his say-so, there is no evidence that Dr Arkhangelsky did make payments of a further US$ 20 million on Western Terminal, but if true, at most, OMG spent US$ 60 million on acquiring Western Terminal and related costs.

175. Under cross-examination, Dr Arkhangelsky was confronted by this falsehood. He gave the following evidence.

Dr Arkhangelsky's evidence that he paid bribes of about US$160 million

176. First, Dr Arkhangelsky tried to explain the discrepancy between the acquisition price of Western Terminal as set out in the purchase contract and the price set out in the final draft IM by suggesting that he had to pay "separate funding" as part of a "special investment project" in order to acquire territory at Western Terminal which was covered in water and was to be reclaimed. He alleged that the share purchase contract related only to the existing eight hectares of land, whereas the acquisition price in the final draft IM also related to the territory covered in water.

177. This was not suggested in Dr Arkhangelsky's witness statement (or Mr Bromley-Martin's) and was not true. The final draft IM itself contained reference to the potential purchase of a further four hectares, which was to be reclaimed as part of the development, but that territory had not been acquired in May 2007 and so could not explain the US$ 220 million figure. Any reclamation of the water territory at Western Terminal was part of the very development for which financing was sought; it did not relate to the original acquisition cost of the site as represented in the final draft IM.

178. Second, Dr Arkhangelsky sought to suggest that Mr Bromley-Martin had misunderstood the acquisition price for Western Terminal, that "there is definitely some logic behind that, so I think it's better to speak to him first". But this smacked of playing

for time: it was OMG which had provided the US$ 220 million figure to Mr Bromley-Martin.

179. Finally, with nowhere else to go in order to explain the extraordinary discrepancy, Dr Arkhangelsky alleged that in relation to Western Terminal he had made corrupt payments of US$ 160 million to a Mr Dmitrienko, the head of the Russian Federal Agency for Ports and Shipping. His evidence was as follows:

> "A. We paid $40 million for acquiring pieces of land and assets of the Western Terminal which had the property rights, but we also acquired investment project for these 4 hectares of land, and it had other additional value, and so I assume that here we are speaking about these both projects.
>
> Q. And are you saying that you actually paid, you actually paid extra money for these other rights?
>
> A. Of course, as I said to you before, yes.
>
> Q. And how much did they come to?
>
> A. I think the figures are correct, and as I said --
>
> Q. Sorry, $180 million; is that right? Makes up the shortfall, does it?
>
> A. No, because initially we paid 40, then we paid 20 more.
>
> Q. So $160 million, is that right?
>
> A. Yes, and --
>
> Q. Sorry, $160 million represents the extra payment, does it, for these extra rights?
>
> A. I think so. I don't have all these figures and the currencies right now but, as I said, we have paid quite substantial amounts, even personally, to officials.
>
> Q. Up to US $160 million?
>
> A. Quite big amounts, yes. It has been done in stages because the project was ongoing, and as I mentioned in the open court, I paid personally to Mr Dmitrienko, who at that time was head of the federal agency.
>
> Q. How much did you pay him?
>
> A. It has been quite a number of instalments been transferred to different accounts, and been connected to different stages. I don't remember all the figures now.

> Q. And why were those payments made? Why were those payments made?
>
> A. Why? Because he was a Russian bureaucrat who was responsible for development in this territory, and unless he would not agree and unless he would not support this project, that project would not be realised."

180. Thus, it was ultimately Dr Arkhangelsky's case that the explanation for the discrepancy was that he had had to pay vast bribes, seeking to justify that on the basis that the way of things in the Russian Federation (and in particular St Petersburg) made such payments a necessity, and the price of doing business and expanding the Western Terminal in accordance with his plans:

> "A. …Your Lordship, it is quite important to note that we are not able -- we were not able to do – in the aquatoria of the port of St Petersburg, we are not able to do ourselves anything because it's the federal things and it is only federal government who can do this. And that was normal that we were paying to officials to include these substantial amounts in the federal budget.
>
> Q. Was it a bribe, Dr Arkhangelsky, in effect? It was, wasn't it?
>
> A. Yes, it is. It is.
>
> Q. So you had to bribe a federal official in order to be able to get your Western Terminal acquired?
>
> A. No. We acquired the Western Terminal --
>
> Q. Mm hmm.
>
> A. -- but for the future development of that, as long as the project had been quite big and important, we had to bribe, yes.
>
> Q. And without paying the bribe, you wouldn't have been able to develop Western Terminal at all, would you?
>
> A. No. We are speaking about -- it's very well described in the investment memorandum that even the territory and the state at which it was, in 2007 or 2008, would be possible to handle 500,000 containers. What we are speaking about, we are speaking about much greater development, because, as your Lordship probably could notice, that the draught at the berth at Western Terminal is 4.5 metres. So, by dredging by the federal authorities, we could bring it to 14 metres, which is the maximum draught of the channel of St Petersburg, and that could enormously increase the capacity and the profitability of the project."

181. Thus, in more detail, the upshot of Dr Arkhangelsky's oral evidence was:

(1) The difference between the US$ 40 million acquisition cost for Western Terminal in the purchase contract and the US$ 220 million represented in the IM was in large part to be explained by the payment of US$ 160 million to just one Russian official and his son. The relevant official was, according to Dr Arkhangelsky:

> "The key Russian person, Russian official responsible for that project. He was taking care about this project personally himself."

(2) These payments were allegedly made in 2007 and 2008, no one else within OMG was aware of them, and the payments came from OMG's balance sheet.

182. Although the bribes were allegedly only directly made in relation to Western Terminal, according to Dr Arkhangelsky they were also necessary for OMG's port asset business as a whole:

> "A… to be absolutely correct, the same person is responsible for all the ports and shipping, and having relations on Western Terminal would mean his general support to other projects also.
>
> Q. So by making these payments, you were securing the support of officials to all three of your port businesses?
>
> A. Absolutely."

183. The explanation (payment of bribes) may be more arresting; but the basic fact that the latest draft IM presented an entirely false figure is important in itself too. It was accepted that the figure for the acquisition cost was not inserted by mistake. It was the figure intended to be inserted and was based (I accept and find) on answers given to Oxus after specific enquiries it made to OMG.

184. Mr Bromley-Martin was cross-examined about this, and in particular the source of the figure, and his view as to its amount relative to the poor condition of the Terminal. He emphasised that he had not seen the share purchase contract showing the true figure. He acknowledged that the US$220 million figure:

> "Struck me as being rather a lot, I must admit, but that was the information we received from our clients."

185. Mr Lord, when cross-examining Mr Bromley-Martin, clarified that he was not suggesting that Mr Bromley-Martin knew that "the cost was different". It is a fact, however, that Oxus had had available to it the OMG accounts which recorded the Western Terminal acquisition price: Mr Bromley-Martin had exhibited them to his witness statement. Even if Oxus only received the accounts in September 2008, as Mr Bromley-Martin suggested, it made no changes to the October version of the IM.

186. In his oral evidence, Mr Bromley-Martin sought to suggest that he only reviewed the accounts as a "civil engineer, not as an accountant", but the price was clearly recorded

and required no experience to understand it, and in any event, his "more financially literate" colleagues also checked the accounts.

187. No satisfactory explanation as to why the discrepancy was not spotted ever emerged. I can only conclude that Oxus's due diligence was remarkably deficient; and that Mr Bromley-Martin and his colleagues were too easily satisfied by Dr Arkhangelsky's assurances, thrown off course of consistent enquiry by the difficulties he described in getting any "meaningful information" from OMG and then further distracted and subsequently convinced by a valuation just before the final version of the IM in October stating the Terminal to be worth US$220 million.

188. None of that, however, explains or excuses the fundamental misrepresentation of the acquisition cost in the final draft IM.

189. A second important element in the analysis of Western Terminal in the final draft IM was the figure for annual TEUs: that is the measure of the capacity of the terminal and perhaps the most significant indication of its potential. It is thus of considerable significance that this figure was haphazardly and inconsistently stated in the various drafts of the IM, including the final draft IM, giving the impression that it was plucked out of the air.

190. A comparison of the IM's drafts shows as follows:

(1) The first draft (which the metadata suggests was produced on 27 May 2008) had a figure of 300,000 TEUs per annum. That capacity projection depended on the figures for the storage space and berth dimensions of the developed Western Terminal site. Those figures, however, remained exactly the same in the final draft of the IM.

(2) The second draft (which the metadata suggests was produced on 29 May 2008) had a figure of 7,000 TEUs per annum. Mr Bromley-Martin suggested that that figure was "clearly a typo" because it was "clearly completely wrong" ("you wouldn't have a discussion about a container terminal doing 7,000 TEU per year. You could do that in your back garden"). Yet the 7,000 figure appeared elsewhere in the draft where it was stated:

> "…It should be noted that Western are only projecting a capacity of 7,000 TEUs per annum upon completion of their development of the facility, representing of 0.1 per cent of the St Petersburg market."

This suggests some considered analysis of the St Petersburg market.

(3) The third draft (which the metadata suggests was produced on 18 June 2008) had a figure of 35,000 TEUs per annum. Mr Bromley-Martin said, again, that this was a "typo". Once again, the 35,000 also appeared elsewhere in the draft: this time it being later stated:

> "It should be noted that Western are only projecting a capacity of 35,000 TEUs per annum upon completion of their

> development of the facility, representing of *[sic]* 0.5 per cent of the St Petersburg market."

191. It is difficult to know quite what to make of this extraordinary inconsistency on a figure going to the heart of the value and prospects of the Western Terminal and the likely perceptions of potential investors and lenders. I would be disposed to accept that the 7,000 TEU figure is an aberration, or perhaps a monthly rather than a yearly figure. But the wild differences at least cast further doubt on the final draft IM figure of 500,000 TEU per annum. That figure is almost impossible, to my mind, to justify.

192. The only evidence for it really is the say-so of Mr Bromley-Martin, based on information he had apparently garnered from others with more expertise: he accepted that at the time (of the IMs), his port experience was "largely in bulk materials rather than containers, so therefore I was relying upon other people's information" though he went on "…since then, in the last five years, I've done nothing but container terminals, hence, I'm rather more fluent on the subject myself…" . He was adamant, not only that the other figures were 'typos', but more importantly that, based on information he said he had been given by others (the one with experience in Gdansk, the other with experience in Singapore) the 500,000 TEU figure in the final draft IM was correctly stated and entirely justified:

> "A. I see no relevance to the fact that I changed a draft in an internal document to the fundamental point, and that is that 8 hectares is capable of handling at least 500,000 TEU per year.
>
> Q. If we go back, please, to to the original draft [IM]…you can see that you included some statistics…"
>
> A. Mm hmm.
>
> Q. Which I don't think feature later, in later drafts: can you see halfway down the sentence there is a sentence:
>
> "Other statistics. 30,000 TEUs per hectare and 1 metre of quay equals 1,000 TEUs."
>
> A. That was just an aide-memoire to me.
>
> Q. Yes, but Mr Bromley-Martin, weren't you there setting out what would be the orthodox or conventional figure for TEUs per hectare?
>
> A. That was the the historical information that I found on the internet which was later disproved by updated practice in the industry.
>
> Q. As you were led to believe by Dr Arkhangelsky in this information…

> A. Vitaly had nothing to do with us finding this information at all.
>
> Q. But when you started out, your first draft information memorandum…
>
> A. The person I was relying on at this stage was actually James Sutcliffe, based on his experience at Gdansk; he was a major input. There was also another gentleman who was helping us as well, who was in Singapore, who was also a long-standing container manager operator, so we were getting the bulk of information from those two gentlemen.
>
> Q. I'm going to suggest, Mr Bromley-Martin, that a figure of 30,000 TEUs per hectare, in other words, 240,000 TEUs per annum, is a more realistic estimate for the potential container capacity or turnover of this developed site?
>
> A. I've already told you a few minutes ago, with modern methodology, modern software that you can stack…if you look at my sheet here, I've used two and a half containers' height. Most container terminals are using between four or five, so with modern systems you can greatly increase the volume of container throughput…"

193. I was not persuaded by this evidence, borrowed from others, and contradicted by the contemporaneous notes quoted. I accept the Claimants' submissions that:

(1) Even on the most generous assumptions, the total capacity figure would need to be halved. The first draft of the IM itself recorded a figure for capacity per hectare at "30k TEUs per hectare". On a site of 8 hectares, Western Terminal's capacity would therefore have been 240,000 TEUs per annum. There was only a finite land space at Western Terminal, and it was not physically possible to have greater capacity given the constraints of the site. The figure of 30,000 TEUs per hectare is consistent with the expert analysis of Mr Popov of Deloitte, who was instructed on behalf of the Claimants, and who analysed the capacity at other container terminals and found an average of 27,000 TEUs per hectare per annum. It is also consistent with the analysis contained in Mr Steadman's supplementary report.

(2) Mr Bromley-Martin sought to justify his figure, not on the basis of the data which he had at the time, which he acknowledged was "very thin indeed", but by reference to "modern methodology, modern software" to stack containers. The relevant question, however, is whether in 2008 a lender contemporaneously evaluating the IM would have considered the figure realistic. The Claimants submitted, and I accept, that it would not have done so.

(3) It is of interest that during re-examination, Mr Bromley-Martin sought to rely on OMG's draft business plan. That document, however, showed that OMG was

predicting that by the third stage of the project, it planned to reach transhipment volumes of 16,730 TEU by mid-2010.

(4) In April 2009, OMG produced a presentation to attract equity investors which set out an overview of OMG's port businesses. As to 'Terminal One' (i.e. Onega) and 'Terminal Two' (i.e. Western Terminal) the document said:

> "Upon completion of development Terminal One (St.-Petersburg) will be capable of handling up to 150,000 Ro-Ro units and 100,000 TEU per annum
>
> Upon completion of development Terminal Two (St.-Petersburg) will be capable of handling 1 MTPY of general cargo and up to 100,000 TEU per annum."

The presentation further undermines any of the IM's capacity figures. Dr Arkhangelsky disowned the document as a draft.

(5) In any event, the final draft IM figure of 500,000 TEUs was subject to assumptions that were never and could never have been fulfilled, and especially capital expenditure of US$220 million and the construction of a third berth.

194. In light of these inconsistencies, and unrealistic assumptions, I accept the Claimants' case and find that there was no sufficient basis for a projected TEU capacity of 500,000 per annum, which implausibly implied that by 2011 Western Terminal would have become the second largest container handling terminal in Russia.

195. The final draft IM was thus fatally flawed. It disguised the fact that some US$160 million attributed to the acquisition cost was in reality not attributable to acquisition, nor to investment; and it presented a materially inaccurate picture of the capacity and thus the prospects of the Western Terminal.

Efforts to raise finance for Western Terminal

196. Nevertheless, armed with a draft IM (or perhaps more than one version, the evidence is not clear), Dr Arkhangelsky said that he and Oxus met various international banks during the summer of 2008, and that non-disclosure agreements were entered into with a number of banks. It is not clear whether it was the final draft IM or some earlier draft which was provided to such banks.

197. There is very little, if any, documentary record or other evidence of any of the meetings which Dr Arkhangelsky said had taken place, except in respect of BNP Paribas.

198. In the first week of September 2008, Oxus and Dr Arkhangelsky went to Paris to meet BNP Paribas. On 12 September 2008, BNP Paribas provided a letter of interest with its thoughts on the development of Western Terminal.

199. BNP Paribas noted Dr Arkhangelsky's objective to raise US$ 300 million, and that of the US$ 300 million debt facility, US$ 220 million was stated to be required for the redevelopment of Western Terminal, and US$ 80 million was required to restructure

OMG's debts. BNP Paribas said it would need to go through a due diligence and financing process with Western Terminal. It set out its various requirements, and suggested that if an advanced business plan was ready due diligence could take 3 to 4 months.

200. Oxus replied to BNP Paribas on 19 September 2008, saying:

> "As an overview, OMG would be delighted if you were to take the lead in a syndication of the debt, subject to the normal due diligence and contract…"

201. On 25 September 2008, BNP Paribas provided to Oxus a formal proposal to act as a structuring and arranging bank in connection with the financing of the development of Western Terminal. The letter noted:

> "…although we are confident that the Project will be able to raise limited recourse debt, we believe that given the local environment and the limited precedent in infrastructure project financing in Russia, a number of structuring issues will need to be carefully reviewed and addressed before providing a comprehensive arranging offer. We believe also that commercial bank's debt market cannot be the only financing route and other financing sources (Multilateral Institutions and/or ECAs) will need to be implemented in order to reach a successful financing.
>
> We believe therefore that significant preliminary works need to be carried out at this stage in order to elaborate the most appropriate financing structure for the Project…"

202. BNP Paribas set out its proposals for its services, including a monthly retainer fee of €25,000 plus a success fee for its services. The proposal stated:

> "When appointed, we will start reviewing the financial model prepared by Oxus and providing comments to ensure that it answers lenders usual requirements. On the basis of our preliminary review, the model may need to be substantially amended and we would like to discuss the most efficient process to do so with you."

203. The letter also stressed the need for due diligence and a detailed risk analysis:

> "We also suggest that the due diligence related to the market be undertaken as a matter of priority. We would therefore need to be advised by an independent technical consultant, which will in term also opine of the technical aspects of the Project…
>
> The above activities will culminate in the fatal flaw analysis and a detailed risk analysis of the Project and related mitigation strategy as may be deemed necessary in the context of raising a long term project financing."

204. It is quite clear from the exchanges of correspondence between Oxus and BNP Paribas that the latter, whilst still wishing to encourage some involvement for which it would be remunerated, had fundamental concerns about the viability of the underlying proposition. Thus:

(1) It was clear that BNP Paribas did not accept any of the previous modelling which had been provided to it by Oxus/OMG. In his oral evidence, Dr Arkhangelsky was reluctant to concede this, but the letter speaks for itself. Mr Bromley-Martin acknowledged that "clearly they wanted to go into considerably more detail than the model we had."

(2) BNP Paribas wanted further market due diligence. Dr Arkhangelsky referred to the market study by EC Harris which had been commissioned for the Vyborg Port project, which he had given Oxus, to suggest that "all these things [had] been done". That is not correct. BNP Paribas wanted further market due diligence which was independent of OMG. OMG could not in any event, rely on the EC Harris report from August 2008, not least because it related to Vyborg Port, not Western Terminal.

(3) BNP Paribas wanted there to be advice from an independent technical consultant.

(4) BNP Paribas was not satisfied with the Lair valuation of Western Terminal, and wanted its own valuation "produced by an internationally recognised valuer".

(5) BNP required (not unusually) that after the due diligence works had been carried out, there would be a fatal flaw analysis and detailed risk analysis.

205. Dr Arkhangelsky did not proceed with the BNP Paribas proposal. His evidence in his witness statement was:

> "In October 2008 Oxus and BNP continued to negotiate the detailed terms of the mandate letter. The terms were essentially agreed, but BNP required the Group to pay a monthly retainer fee of €25,000 for their services in addition to all the other fees and expenses related to other professional advisers and consultants. October 2008 was a time of enormous uncertainty in the markets and I did not think that the Group could commit to this expenditure at that time. I expected that the cash flow position would improve over the coming months and intended to take the project forward as soon as we were able to do so."

206. The glib suggestion that "the terms were essentially agreed" thus gives a false picture. BNP Paribas may have been prepared to start the fundraising process if OMG paid it a retainer, but there was no deal without payment. Indeed, to explain away his non-payment of the retainer, his oral evidence suggested that terms had not been agreed with BNP Paribas.

207. Even more striking is the fact that, by that time, it would appear that Dr Arkhangelsky could not spare a monthly retainer fee of just €25,000 for assistance in raising loan on better terms which could have saved OMG (by its expert Mr Bromley-Martin's

calculation) roughly $50,000 per day in interest charges. This throws a stark light on the dire cash position in OMG and Western Terminal by autumn 2008. Dr Arkhangelsky vividly accepted this in his oral evidence:

> "…We had 50 companies, quite a number of companies been in a difficult situation due to the most difficult timing of the world financial crisis. So my target was really the target of a crisis manager, just to understand the priorities and -- you know, each rouble, or each dollar, whatever you want, we've been considering very seriously. So that was really a very difficult time."

208. It may be, as the Bank suggested, that there was another reason for Dr Arkhangelsky shying away from any commitment. He may have appreciated that if BNP Paribas went ahead and carried out the independent due diligence that it required, that would have focused forensic investigation on the Western Terminal project which would have exposed unpalatable features about his and OMG's business practices, and especially the payment of huge bribes. Thus, the Bank argued, Dr Arkhangelsky knew that the project would never pass the requirements of lenders, and so was not going to spend any of his money on it.

209. I return later to that too: for the present suffice it to say that no bank ever did make an offer to or in fact provide any such funding for Western Terminal.

Dr Arkhangelsky's alleged efforts to fund his expansion plans for Onega Terminal

210. In addition to his plans for Western Terminal, Dr Arkhangelsky's witness statement speaks of his efforts also to acquire additional land and cargo handling and other facilities at Onega Terminal in accordance with another business plan which Dr Arkhangelsky said was prepared by Lair in October 2008 (see paragraph [119] above).

211. As with his avowed plans for Western Terminal, these were nothing if not ambitious; but his evidence as to their funding was markedly more vague and problematic, not least because (as previously explained) the part of Onega Terminal that OMG owned did not have its own berth, OMG was reliant on co-operation agreements with the owners of the only berths, namely SFP, the holding company of ROK No. 1 Prichaly, which thus had a strong negotiating position.

212. The plans envisaged the expenditure of RUB 2.3 billion to acquire additional land at the terminal (which was needed to give it is own berth), RUB 5.9 billion to purchase cargo handling and other equipment and RUB 9 billion to develop the land and construct the necessary port facilities.

213. It is the Claimants' case that these plans were always entirely fanciful or 'pie in the sky'. Dr Arkhangelsky's witness statement was vague and unsupported by any compelling documentary evidence, and his cross-examination increased its fragility rather than its substance. He rattled off names of third parties with whom he said he was conducting negotiations; and he referred to having signed, in September 2008, a contract on behalf of Scandinavia Trading Company (in the OMG) to acquire 100% of

the shares in a company which owned the largest parcel of neighbouring land (11 acres) which OMG wanted to integrate and develop, and to having paid a deposit to acquire a freight forwarding company also. Most significantly for the prospect of development, he said that throughout 2008 there were negotiations through Onega for the acquisition of 100% of the shares in either SFP or ROK No. 1 Prichaly. But in no case was a contract signed; and Dr Arkhangelsky depicted his efforts as having been "frustrated and overtaken by the events of early 2009".

214. Two evidential details provide an insight into the reality (or unreality) of these grand expansion plans. One is that a potential mandate agreement with Mr Bromley-Martin's company, RBM Resources Ltd ("RBM") under which RBM was to manage the development, was never finalised or signed "for the same reasons that prevented me from signing the mandate with BNP". The second is Dr Arkhangelsky's reliance on a couple of documents which he described as constituting "written expressions of interest", but which on inspection constituted no more than acknowledgments of Dr Arkhangelsky's overtures and requests for more detailed information for "preliminary due diligence". That this is as far as Dr Arkhangelsky had got by February/March 2009 speaks for itself.

Similar plans for expansion of Vyborg Port

215. A similar picture emerges in relation to the plans for the development of Vyborg Port. Dr Arkhangelsky maintained that the EBRD was willing to provide that funding, and further that OMG also had productive discussions with a Russian bank called KIT Finance about a US$150 million bond issue. Neither eventuated, and both were dismissed as pipe-dreams at best by the Claimants.

216. Dr Arkhangelsky's propensity to read as constituting virtual commitment bland communications indicating little or no more than that potential investors or financiers were considering a proposal is illustrated by his reliance on a letter from the EBRD to Mr Yuri Novikov, Deputy Chairman of V-Bank, dated 21 January 2009. This simply informed him that EBRD was "considering a project finance of up to EUR 115 million to OMG for the reconstruction and modernisation of Vyborg Port", and referred to information on its website (of which no record was provided to me).

217. Dr Arkhangelsky's assertion that thereafter, in March 2009, EBRD "approved financing" is not supported by any evidence, and is inconsistent with his witness statement that as at March 2009 EBRD had not yet conducted its final review and due diligence. His assertion that the EBRD website in March 2009 published a confirmation of its intent to finance the project was not substantiated.

218. Furthermore, Mr Lord referred Dr Arkhangelsky in cross-examination to a draft basic term sheet which not only expressly stated at the top that it did "not constitute an offer or commitment by EBRD" but also provided for all the assets of the proposed borrower (Vyborg Port) to be pledged: but all those assets had already been pledged to another bank, namely V-Bank. I should record that I did not find at all convincing Dr Arkhangelsky's attempt to explain this as being likely to be resolved with V-Bank.

219. As to Dr Arkhangelsky's parallel discussions with KIT Finance, which also undertook an interesting and revealing review and modelling exercise of OMG's financial position (see below), it emerged that EBRD and KIT Finance were not informed or aware of the other's involvement. It is clear that OMG's alternative fundraising projects would each have destroyed and cancelled out the other because lenders would have been concerned if it transpired that the borrower was also trying to obtain finance for other projects at the same time.

220. The same goes for the other track being pursued with BNP. It seems likely that Dr Arkhangelsky appreciated this: an indication of that being that he baulked at any suggestion of an inter-creditor deed which would instantly have revealed the position.

221. As it was, neither EBRD nor KIT Finance ever committed to raising any funds for OMG.

Failure to obtain outside financing for development plans left OMG dependent on the Bank

222. The broader fact is that OMG never obtained financing for its development plans from any of V-Bank, Sberbank, VTB, Vnesheconombank, or any of the other some 25 banks and other lenders whom Dr Arkhangelsky (allegedly) approached in 2008 and 2009 (or at any other time).

223. This was entirely at odds with Dr Arkhangelsky's claim in his witness statement for trial that "The banks took the Group very seriously and invariably expressed interest in supporting it" and that he could "see no reason" why he should not have been able to refinance his debts to the Bank.

224. Had that been true, there would have been every reason for Dr Arkhangelsky to keep the Bank informed about his negotiations with prospective lenders. It would have given him leverage in his dealings with the Bank to show that he had alternative sources of finance. But it was not; it was a delusion, and his claim in the same witness statement to have "kept the Bank apprised in relation to the development plans partly to demonstrate that the Group had a bright future and that its debts would be repaid" was likewise false.

The OMG business was built on sand

225. The truth is, as the Claimants put it, that the OMG business was built on sand, and OMG could not survive on its operational turnover, but could only survive by borrowing money to buy more assets to support further borrowing.

226. In addition to the proof of the pudding being in its inability to even begin to service its loans, this is also revealed by an analysis of OMG's financial statements, and, in particular, OMG's combined audited accounts for the year ended 31 December 2007 dated 14 August 2008.

227. Dr Arkhangelsky was cross-examined on these at some length, despite his quite vehement protests that this was not fair or helpful since neither he nor his examiner

could be expected to fathom the intricacies of IFRS accounting. This culminated later (after his cross-examination had concluded) in him urging me:

> "to be very careful in any suggestion done by Mr Lord in respect to IFRS accounts considering the fact that he's absolutely not a specialist in this area…"

228. He had earlier said this:

> "I am very much concerned on all the discussions we had here in respect to IFRS accounts. So it's really a very complex matter and you cannot judge it, you know, from the point of view of standard logic."

229. I accept that IFRS accounting has its complexities, and, at least to the uninitiated, its mysteries. Further, Dr Arkhangelsky exhibited both the 2007 OMG consolidated accounts and the Scan accounts to his first BVI affidavit and had given an explanation of the main figures, and his reluctance before me to answer questions that plainly arose was unsatisfactory. In any event, the audited accounts are intended to speak to, as it were, the world; and they tell a story that in basic outline is beyond neither logic nor understanding.

230. The Combined Income Statement for the OMG 2007 shows as follows:

(1) Income appears to have been US$ 116 million, of which the bulk (US$ 85 million) was from sale of goods.

(2) Gross profit was only US$ 3.8 million.

(3) Interest received (Financial income) was US$ 1.725 million, but interest paid (Financial expenses) was US$ 14.913 million, meaning OMG had net interest payments out of group of US$ 13.188 million.

(4) There was an entry for 'Negative goodwill' of US$ 50.857 million. Note 6.19 gave further details.

(5) There was an entry for 'Change in fair value of investment property' of US$ 5.12 million.

(6) Net profit was said to be US$ 45.767 million.

231. That figure for net profit, however, requires, and duly received at trial, some further analysis of its derivation. As to that, Note 6.19 shows that for 2007, OMGP acquired Western Terminal LLC for US$ 40.289 million, but the business's total fair value was put down as US$ 85.813 million, giving a figure for negative goodwill of US$ 44.524 million. Other acquisitions associated with Western Terminal were also re-valued, to give a total negative goodwill figure of US$ 50.857 million. 'Negative goodwill' arises when a business is purchased below what is said to be its fair market value, such that the buyer makes a resulting gain and it can be accounted as income. Almost all the 'profit' was thus derived from the accounting 'gain' represented by the apparent

doubling of the value of Western Terminal over the space of 8 months from the date of its acquisition.

232. But the 'gain', even if substantiated by proper valuations, is a one-off gain, not an operational or recurring item, and it cannot support the buyer's ability to meet any of its monetary liabilities in the short term.

233. Similarly, the change in fair value of investment property which results from the revaluation of real estate is a 'one-off' event which does not indicate trading performance and should also be treated as a non-operational item on the profit and loss statement.

234. As the Claimants pointed out, if negative goodwill is removed from the Combined Income Statement, i.e. if the 'income' attributable to the acquisition of certain businesses was removed, then OMG's net profit for 2007 of US$ 45.767 million would have been wiped out, and OMG would have made a substantial loss. The same is true of the removal of the entry for change in fair value of investment property.

235. Dr Arkhangelsky had no substantive answer to either. His attempt to deflect the point by suggesting that it was the product of IFRS accounting beyond logic or lay explanation was entirely unpersuasive. As again the Claimants noted, the point is neither mysterious nor anything to do with any peculiarity of IFRS accounting. The simple point is that OMG only made a 'profit' in 2007 because it acquired businesses which were then re-valued and the resulting 'gain' booked in the accounts. If these 'gains' from business acquisition and revaluation were to be removed, the accounts show the following:

(1) As at 31 December 2007, OMG's net interest liabilities of US$ 13.188 million exceeded its operating profit of US$ 3.799 million, and therefore the Group could not cover those interest payments from its operating income.

(2) As at 31 December 2007, OMG's operating activities were loss-making on a cash basis.

(3) Once the accounts are adjusted to remove negative goodwill and the charge in fair value of investment property, as at 31 December 2007 OMG made a net loss of US$ 10.21 million.

(4) In the light of the above, as at 31 December 2007, OMG was unable to service its debt obligations.

236. Properly analysed, therefore, the accounting information confirmed the increasingly obvious reality that, whatever might be its potential, for the present OMG was borrowing to survive and had to go on doing so without any real prospect of servicing its increasing debt burden.

OMG's financial difficulties: autumn 2008

237. That then is the background of OMG's rapidly developing cash crisis, and its almost total dependence on the Bank (and V-Bank), towards the end of 2008. By then, and

probably throughout, the reality was that OMG was substantially, if not completely, reliant on the Bank for financial support; and the Bank was aware of that, regarding it both as its exposure and its opportunity.

238. By autumn 2008, and in addition to loans from other banks, OMG had 15 loans (including overdrafts) from the Bank, amounting to RUB 3.7 billion. Dr Arkhangelsky said:

> "…the majority of the Group's debts at that time were owed to the Bank and Vozrozhdenie Bank [V-Bank]. The Group's debt to the Bank stood at approximately RUB 3.7 billion, while around RUB 2 billion was owed to Vozrozhdenie."

239. Although Dr Arkhangelsky's position was that OMG "continued to be in a sound financial position and was able to service its loan obligations in a timely manner" until November 2008, it is plain (and I find) that by autumn 2008 OMG was already in deep trouble, and that in truth Dr Arkhangelsky was well aware of this.

240. The first ostensible sign of trouble from the point of view of the Bank came in mid-September 2008 when (as recorded in an email dated 15 September 2008 from Ms Prokhor to Mr Belykh) PetroLes failed to comply with its financial covenants. (I return later to the curiosity that the table attached to that email does not list some of the Personal Guarantees now asserted by the Bank to have been provided by Dr Arkhangelsky.)

241. A vivid illustration of OMG's difficulties is that, whereas the amounts coming into the OMG accounts before September 2008 were in the millions of roubles, by the autumn, they were only in the thousands of roubles, and were insufficient to cover any substantial part of the interest due on the OMG loans.

242. In his evidence, Mr Belykh confirmed that, by around October 2008, he was hearing from a number of sources within the Bank, and Ms Volodina and Ms Mironova in particular, of growing concerns regarding OMG's financial position.

243. Mr Belykh said that in response he had had at least two meetings with Dr Arkhangelsky, who had sought to reassure him that the problems were there, but that they were only temporary, and had brought letters of comfort from other Russian banks (in this context Mr Belykh mentioned, in particular, Vneskekonom Bank and VTB Bank) to support his position and request for temporary facilities.

244. OMG's gathering difficulties were further described in Ms Blinova's evidence:

> "Up until autumn 2008…the OMG companies appeared to be good borrowers and made their repayments on time. However, I remember that OMG began to have financial difficulties during the second half of 2008, and started to default on its lending obligations.
>
> In early October 2008, I emailed Ms Krygina in relation to the failure by Vyborg Shipping to maintain the minimum turnover

> in accounts with the Bank as set out in the Vyborg loan agreements. Another OMG company, PetroLes, had similar difficulties. On 27 October 2008, I emailed Mr Berezin and Ms Kirikova [at OMG, see below] noting that the turnover of LPK Scandinavia…was RUB 73.4 million where it should have been RUB 362.5 million. Because of the failure to maintain the requisite turnover levels, the Bank increased the interest rates on the loans.
>
> By the end of October [2008], I recall that the OMG companies were continually failing to comply with their obligations under the loan agreements…I therefore prepared draft notices of demand to Mr Arkhangelsky in respect of his guarantee obligations in relation to each of the loans…
>
> It also started to become difficult to get information from the OMG companies…"

245. Dr Arkhangelsky blamed this cash crunch on two factors. First and foremost, he depicted this as an inevitable consequence of the global crisis, and the uncertainties in the international freight market which it occasioned, rather than anything particular to OMG. Dr Arkhangelsky said this:

> "…the global financial crisis which followed the collapse of Lehman Brothers on 15 September 2008 had an immediate impact on many businesses worldwide, including those in the shipping and ports sectors. I had many contacts in the port business all over Russia through the Russian Ports Association, and I was aware that the problems the Group was facing were by no means unique."

246. Secondly, he cited seasonal cash flow difficulties:

> "…the Group's cash flow in the winter months was invariably weaker than during the rest of the year because of the extreme weather conditions which limit access to the port of St Petersburg."

247. The fact that OMG was already in difficulty by September 2008, and the fact that winter weather in St Petersburg's Port cannot explain the cash collapse of all the OMG companies across the board, both suggest that there were other underlying and systemic difficulties, more particular to OMG.

OMG's need by the end of 2008 to reschedule its borrowings

248. Dr Arkhangelsky accepted that by late November 2008 he anticipated that OMG would be unlikely to be in a position to resume servicing its loans, which by then exceeded some RUB 3.7 million to the Bank, and some RUB 2 billion to V-Bank, which had a mortgage over the land at Vyborg Port), "until the spring of 2009 at the earliest."

249. The need for both temporary facilities to avoid default, and for a longer term rescheduling of OMG's obligations, was by this time, therefore, unavoidable and acute.

Two disputed transactions

250. Even so, Dr Arkhangelsky was reluctant to admit that it was necessary for him to enter into two transactions as a matter of urgency at the end of October 2008 to enable GOM to cover interest payments due by OMG at the end of October and November 2008.

251. The transactions were (a) a loan of around RUB 30 million to Dr Arkhangelsky from a client of the Bank called Tekno SPb ("the Tekno loan"); and (b) a loan of RUB 130 million to Dr Arkhangelsky (personally) from the Bank, i.e. "the Personal Loan".

Tekno loan

252. Dr Arkhangelsky has never accepted that he entered into the Tekno loan.

253. There are, I must say, odd features in relation to it. There appears to have been no formal agreement in writing, and it seems to have been arranged by Mr Platonov (who had taken over as Director of Investrbank from Ms Shabalina) without reference to others in the credit department (including Ms Volodina). Further, whilst in the BVI Proceedings, Ms Mironova, who was at the time Deputy Director of Investrbank, gave evidence that it was she who organised the loan, she later had to clarify that she had not done so, confirming that it was Mr Platonov's doing.

254. However, there is no doubt (and I find) that Dr Arkhangelsky did receive from Tekno funds in the sum of RUB 33 million, and (since the contrary was not put to either Ms Volodina or Ms Mironova, who appeared to accept its accuracy) I accept that this was on the terms described in what Ms Volodina described as "an information note" provided by Mr Platonov on 2 December 2008 ("Mr Platonov's note").

255. Mr Platonov's note casts an interesting light on both sides. It appears that Mr Platonov arranged the loan in the context of a likely non-payment of loan interest by Vyborg Shipping at the beginning of November 2008 and:

> "to prevent the Bank from having [to make] a significant amount of provisions, and [was] used not to cover the needs of companies but oriented towards Bank's revenue. Initially, the loan was obtained for 7 days since V.D. Arkhangelsky expected inflow from sales of a plot of land in the amount of RUB 1 billion, as well as a loan from Petrokommerts Bank in the amount of RUB 2 billion. Due to a delay in the said financing, the term of the loan was extended for 21 days. During this time, the client [Dr Arkhangelsky] paid a portion of the loan in the amount of RUB 18 million independently; final deadline for repaying the loan also was on 28 November 2008."

256. That date, 28 November, was also both the date on which several interest payments became due from OMG, and the date of the (disputed) Personal Loan (as to which see further below).

The risk to the Bank in November 2008

257. By November 2008, the signs of OMG's serious and systemic financial difficulties were beyond disguise. Although OMG was only one problematic client in the difficult circumstances as they were then, it was Investrbank's largest borrower at the time, owing approximately RUB 4 billion, and its difficulties increasingly took up time for Investrbank's staff to address.

258. Ms Mironova described in her witness statement the growing nervousness within Investrbank that OMG would default on its collective debts, but also recalled that:

> "Mr Arkhangelsky was very quick to remind the Investrbank's employees of his apparently impeccable repayment history and just as quick to reassure everybody that this was a short term cash-flow problem and that the monies would soon be flowing in the large amounts as they had been before."

259. This did not tally, however, with the fact that the cash shortfalls were spread across the group. As Ms Mironova (who took over from Ms Prokhor as Deputy Director of Investrbank on 30 October 2008) put it in her witness statement:

> "Once I began to examine the OMG loans and review OMG's financial information in around mid-November 2008 I identified that OMG appeared to be in financial difficulty. I could see from the group's cash flows into their accounts held at the Bank (from monitoring those accounts), that during the autumn there was a material decrease in the monies being received into the accounts of OMG companies. I knew that OMG, on its face, was a diversified group, with timber, shipping, leasing, insurance and port services businesses and it seemed to me very odd that payments into all OMG's accounts that I had seen statements for had decreased. One company of OMG could suffer some cash flow difficulty, but for this to happen…across the group and at the same time was worrying."

260. Ms Mironova (after discussion with her immediate superior at the time, Mr Platonov, and Ms Volodina who was in charge of the Bank's Credit Risk Directorate) decided to escalate the concerns in relation to OMG to central office.

261. At that time, it seems from her evidence that there was no department dedicated to dealing with problem debts and so the natural reporting structure was to the senior bank management. Ms Mironova therefore contacted Mr Belykh, as a Director of the Corporate Clients and Branches Department. Ms Mironova knew Mr Belykh from their time working together in Moscow.

262. Mr Belykh confirmed that he had also become aware by now of the Tekno loan, and though he was not able to recollect when or how, and emphasised that he had no involvement in its arrangement, the fact that such a loan from a client of the Bank had

apparently been perceived (by Mr Prokhov) to be necessary further highlighted the growing urgency to find some solution for OMG's immediate needs.

263. Through the second half of November, Mr Belykh told me, he regularly spoke to Dr Arkhangelsky, both to try to monitor OMG's position and to understand the support that OMG would be likely to need.

264. The immediate risk to the Bank concerned OMG's repayments (both interest payment obligations and other debts) that fell due at or shortly after the end of November 2008. These were outlined by Ms Mironova in an email dated 24 November 2008 which she sent to Ms Volodina and also copied to Mr Belykh, as follows:

(1) An overdraft granted to LPK Scandinavia of RUB 145 million which had been extended to 10 December 2008 was due for payment but seemed unlikely to be repaid on the due date.

(2) Promissory notes from Scandinavia Insurance falling due for repayment had not been repaid, exposing the Bank to the requirement to form reserves of 21% of the total value of the notes, being no less than RUB 25.2 million.

(3) The interest on all OMG loans from the Bank for the month of November amounting to RUB 45 million, would not be repaid and there seemed to be equally little prospect of the interest payments for December (in the sum of RUB 55 million) being met either.

(4) Thus, there was currently due for payment some RUB 370 million, for which OMG appeared to have no funds to repay.

265. The last substantive paragraph of that email reads as follows:

> "The Borrower invokes the permission granted by the CAB [to] receive financing to an amount covering all their problems and declares the necessity of such refinancing."

266. Ms Mironova could say only this in that regard:

> "I did not have direct knowledge of any such permission, and I do not now recall the reason for including this statement in that email but suspect that it reflects something that Mr Arkhangelsky had said to one of my subordinates."

267. No different explanation was offered on behalf of Dr Arkhangelsky, but he relied on it as further demonstrating his openness with the Bank and his understanding that the Bank (including Mr Savelyev himself) had indicated support.

The Personal Loan

268. The Bank had calculated that OMG needed RUB 130 million by 28 November 2008 (the date the interest fell due) to avoid default. On 26 November 2008, Mr Belykh

reported that after discussions with Dr Arkhangelsky, OMG would not be making repayments before 1 December 2008.

269. The options for the Bank were either to defer the next interest payments, or to grant an emergency RUB 130 million loan before 28 November 2008 to cover the payments.

270. According to its case, the latter was perceived by the Bank to offer the easier and quicker holding solution. Ms Mironova explained:

> "The Bank was prepared to grant Mr Arkhangelsky an additional loan to cover OMG payments due at the end of November, and to do so by way of a personal loan. I do not remember who had initiated the idea of a personal loan, I only recall that at the end of November 2008 it was the loan structure which was being put in place to assist the OMG companies in avoiding default on their facilities. A personal loan would be much quicker and more straightforward for the Bank to process and approve than a corporate loan. If a loan had been made to an OMG entity for the purpose of enabling another OMG company to pay interest to the Bank, then the Bank would have had to create a considerable percentage of reserves in its accounts for this loan, as the Bank would be lending money to a member of the borrower group to enable a company in the group to meet its interest payments."

271. Mr Belykh explained further that it was far easier to arrange a personal rather than corporate loan, and this was important because of the pressures of time; he told me:

> "…as long as we were really pressed in time, as I've said, that was the last working day in terms of documentation for both sides, for Mr Arkhangelsky and for the Bank, it was easier to arrange as a personal loan. An application for a personal loan takes several pages, but not too many, two, three, four, depending on the borrower, while an application for a corporation demands an updated financial analysis to be included into that, and it was much easier, as long as we were pressed, just to find finalise that in this way. And also, as long as for Mr Arkhangelsky that was practically the same, which type of risk to accept, we would definitely request his personal guarantee anyway. So for him to have a personal guarantee on whatever cooperation he could provide to us, or to have a personal loan himself, was absolutely the same. So we just tried to save time and to resolve the problem of outstanding interest as soon as possible."

273. Mr Belykh's evidence was that the meeting at which (it is the Bank's case) the Personal Loan was agreed in principle took place on 28 November 2008. It appears from his witness statement that although he had no direct recollection of the meeting being on that date, it coincided with his receipt (under cover of an email from Mr Berezin) of an

unsigned letter from Dr Arkhangelsky, addressed to Mr Savelyev and dated 28 November 2008, receipt of which he told me he does recollect.

274. In that letter, Dr Arkhangelsky, having referred to "the financial crisis" and OMG's difficulties in "servicing its debt", asked Mr Savelyev:

> "for your endorsement of the refinancing of Oslo Marine Group companies' debt to the Bank…in full, including
>
> 1. Payment of monthly interest on loans of the Oslo Marine Group companies (LPK Scandinavia, LLC, Onega, LLC, Vyborg Shipping Company, LLC and Scandinavia Leasing Company, LLC). A 1 year concessionary period for interest payment (grace period);
>
> 2. Closure of the overdraft in the sum of 145 million roubles (LPK Scandinavia, LLC);
>
> 3. Closure of the promissory note program in the sum of 120 million roubles (SO Scandinavia, LLC)
>
> 4. Extending the existing loans of the Oslo Marine Group companies [as above] for a 3 year term.
>
> The collateral for the proposed measures will be subsequent pledge of the land parcel owned by Western Terminal, LLC located at 25 Doroga na Turukhtannye Ostrova Road. The market value of this asset is 4,402,280,000 roubles (Collateral value is 201,140,000 roubles). In addition, I offer as collateral 75% of the shares of Vyborg Shipping Company, LLC."

275. Mr Belykh's recollection (reinforced, as I took him to accept, by a process of reconstruction from the documentary record) was that Dr Arkhangelsky brought a signed top copy of that letter to the Bank for the purposes of a meeting he had asked for with Mr Savelyev to discuss OMG's difficulties and its need to reschedule its debts.

276. Mr Belykh, in addition, reasoned that the likelihood that there was a meeting on that day was that 28 November 2008 was a Friday, and thus the last day of the business month, when repayment of interest was due. He explained:

> "… if you look on the calendar, 28 November was the last day of the month, and the Bank needs to close its account of the month and, therefore, it was really necessary to do something on 28 November so that November reporting would be clear for the Bank and for the Central Bank, and that was the reason of the temporary solution which was supposed to be done. Because that was Friday, and because that explained certain things, that was necessary to go ahead really fast…"

277. Mr Savelyev, who told me that this was his first business meeting with Dr Arkhangelsky (contrary to Dr Arkhangelsky's insistence that they met regularly both before and after that date), likewise recalled its date as being 28 November 2008, and cited personal diary entries in support of this. Mr Savelyev could not, however, recall being referred to the letter referred to above at the meeting or indeed ever having received it.

278. Mr Savelyev's evidence was that discussion at the meeting (for which he was quickly briefed by Mr Belykh and which Mr Belykh attended for a short time before leaving to allow the two 'principals' to discuss matters) was of the possibility of the Bank granting as matter of urgency a short term personal loan to Dr Arkhangelsky for him to use to enable OMG to meet its immediate financial commitments and thus avoid default.

279. Mr Savelyev's evidence was that this was indeed the outcome of the meeting: according to him, the Personal Loan was agreed in principle and its processing as a matter of urgency to avoid OMG going into default at the end of the month was entrusted to Ms Mironova as the Deputy Director of Investrbank at the time.

280. Ms Mironova confirmed this account. She told me that she specifically made sure that the documents were taken to OMG to be signed in the presence of a Bank employee before being returned to the Bank. One of the credit department's employees, Ms Patrakova, told me that she took the documents relating to the Personal Loan to OMG's offices, and saw Dr Arkhangelsky sign all the documents.

281. Dr Arkhangelsky, however, denied that there was such a meeting at the end of November 2008. He insisted that while he had "a lot of meetings with Mr Savelyev", "there were no meetings at the end of November".

282. Further, he was, at least until trial, adamant in his denial of being a party to, or even being aware of, the Personal Loan. Like the disputed Personal Guarantees, he described the Personal Loan documentation as "bogus" and suggested it had been fabricated by the Bank as part of "the scheme to defraud [him]." Thus, in the BVI Proceedings he said:

> "I have no knowledge of any such loan and certainly did not sign any loan agreement or receive any draw down of this amount or any other sum."

283. Nevertheless, in the event, the Defendants/OMGP only weakly disputed the Personal Loan at trial: they did not, in cross-examination, challenge much of the Bank's witness evidence as to the Personal Loan, and in his witness statement for trial, Dr Arkhangelsky reluctantly accepted that he might have signed it (and see paragraph [709] below).

284. In the end, the Defendants' case became in effect that Dr Arkhangelsky might unwittingly have signed the Personal Loan, but was not conscious of having done so, and that it was probably something agreed by his subordinates and put before him without his attention being directed to it. In his oral closing, almost at the end of Day 45 of the trial, Mr Stroilov sought to put forward the suggestion in relation to the

Personal Loan that, although (he accepted) "it is clear on the evidence that it was not entirely an invention", it is a:

> "…different question whether, in fact, it was arranged with his knowledge, and one can easily see this being done between the Bank and Mr Berezin, who would be an obvious contact point who would be handling the question of outstanding interest payments at the end of each month…
>
> …
>
> …at the time Mr Arkhangelsky was approaching the Bank not with a request for a personal loan, as it was initially suggested on the Bank's side, but asking for a much more long term and comprehensive restructuring of the entire loan portfolio. It is not credible that in response to a letter where Mr Arkhangelsky asked Mr Savelyev for a one-year moratorium on all payments and a three-year extension on capital payments, that what he got in response was a loan of, I think, 130 million for one month…
>
> …
>
> So what we would invite your Lordship to find is that Mr Arkhangelsky was dealing with restructuring and was trying to negotiate a restructuring with the Bank, whereas these monthly payments were dealing with underlings, most likely by Mr Berezin, and in this way the personal loan was something that was arranged and, well, frankly, fabricated without Mr Arkhangelsky's knowledge in this way…"

These submissions were valiantly made; but did not appear to me to be sustainable.

285. For reasons which I elaborate later, I do not think there can be any real doubt that Dr Arkhangelsky did sign the Personal Loan agreement and did receive the sums expressed to be borrowed by him pursuant to it.

286. However, I would accept that the Personal Loan may well have been devised, as much in the Bank's interests as OMG's, to enable the Bank to avoid provisioning against the outstanding loans (Mr Platonov's estimate of the possible provision if Vyborg Shipping failed to pay its loan interest at the end of November 2008 being some RUB 1,031,300) and to repay Tekno. The reality is that the Bank needed to avoid provisions just as much as Dr Arkhangelsky wanted funds with which to repay.

287. Mr Platonov said as much in his Information Note, where he also explained that the amount borrowed (RUB 130 million) was used to cover (a) discounted bills of Scan carried to 'on demand' accounts in the amount of RUB 65 million, (b) partial repayment in the sum of RUB 2.3 million of a loan to Onega, and (c) loan interest payments for November, including RUB 29.4 million on account of Vyborg Shipping, RUB 5.7 million on account of PetroLes, RUB 7.2 million on account of LPK Scandinavia and

RUB 5.5 million on account of Onega. A further RUB 15 million was earmarked and paid to Tekno.

288. In its Closing Submissions, the Bank presented both the Tekno loan and the Personal Loan as demonstrating that the Bank was going out of its way to assist OMG in late 2008. As I have said, I think that there can be no real doubt that Dr Arkhangelsky did agree the short-term measures of the Tekno loan and the Personal Loan to avoid imminent default.

Context of discussions on rescheduling OMG debts: the Bank's wish to avoid reserves

289. Pausing there in the chronological sequence, it is convenient at this point to describe an important element in the context in which the subsequent discussions relating to re-scheduling OMG's debts took place: that is to say, the regulatory rules which required the Bank to make reserves against bad or doubtful debts. I take the following summary very largely from the Claimants' Closing Submissions.

290. The various regulations are usefully summarised in prospectus documents issued by or on behalf of the Bank. The Claimants' Closing Submissions quoted from the 2013 Prospectus which provided as follows:

> "Provisioning and Loss Allowances
>
> The CBR put in place certain rules concerning creation of provisions for loan losses in respect of loans extended by banks. The CBR's Regulation No. 254-P dated 26 March 2004 as amended ("Regulation No. 254-P") requires the banks to adopt procedures for calculation and posting of provisions for loan losses and continuously monitor the financial position of the banks' borrowers.
>
> Regulation No. 254-P is applied subject to the order of the CBR No. 2459-U "On Peculiarities of the Credit Risk Assessment in relation to Single Loans, Loan and Similar Indebtedness" dated 3 June 2010.
>
> Regulation No. 254-P requires credit organisations to rank their loans into five categories instead of four, as prescribed by the earlier regulation and the range of loans that must be provided for has been extended to include rights assigned under contracts, mortgages acquired in the secondary markets, claims relating to the purchase of financial assets with deferred payment, rights under repo contracts and some other operations. The five categories of loans are as follows: quality I category (standard loans) – no credit risk; quality II category (nonstandard loans) – moderate credit risk; quality III category (doubtful loans) – considerable credit risk; quality IV category (problem loans) – high credit risk; quality V category (bad loans) – no probability that the loan will be repaid. The allocation of the loan into a

> particular category is based on the "professional judgement", which is a special procedure set out in Regulation No. 254-P. Regulation No. 254-P established that credit organisations do not need to make provisions for category I loans (standard loans). Category II through V loans entail the following provisions, respectively: (i) 1 to 20 per cent.; (ii) 21 to 50 per cent.; (iii) 51 to 100 per cent.; and (iv) 100 per cent. Additionally, credit organisations will be required to classify their loan security into two groups on the basis of its quality. Finally, Regulation No. 254-P provides for a simplified procedure in respect of writing off bad debts, especially minor debts, as compared to former procedures.
>
> Provisions for loan losses are calculated at the end of each calendar month in roubles, and then adjusted each month. Such provisions are only used to cover losses relating to the principal amount of the loans and exclude interest and any discount. The CBR and its regional units have the right to audit the banks' compliance with the requirements relating to provisions for loan losses and check the correct calculation of such provisions in order to balance the need to create provisions on the one hand and ensure the correct preparation of the banks' financial statements for tax purposes on the other.
>
> Russian banks are required to make provisions for loans of the same kind granted to individuals depending on whether the loans are secured and in respect of the period of time the loans are in arrears. Banks are equally required to make provisioning for loans to individuals which are not overdue. These include 0.5 per cent. for portfolios of loans secured by mortgage and auto loans, 1 per cent. for portfolios of other loans to those individuals who maintain bank accounts with lending bank and 2 per cent. for portfolios of all other loans. Regulation No. 254-P also sets a maximum level for provisioning of loans granted to individuals which are overdue for more than 180 days but less than 360 days at a rate of 75 per cent and at a rate of 100 per cent. for loans granted to individuals which are overdue for more than 360 days. …"

291. Similar wording is found in the 2007 Prospectus, and the 2008 Prospectus.

292. As explained in the regulations, loans that fell into "Quality III category (doubtful loans) – considerable credit risk", (i.e. the category before "problem loans"), required the Bank to make provisions of between 21-50%.

293. The witness evidence was in line with the above. Much of Ms Volodina's evidence was concerned with explaining the position on reserves, and distinguishing the different categories. Mr Savelyev set out the stages by which the Bank made reserves when there was a default. There was no automatic provision of a full 100% of reserves in the event

of default. Instead, it was a graduated scheme in accordance with the Central Bank rules.

294. From the Bank's point of view, all that was required to meet its objective of preventing a default that would give rise to a reserving obligation at year-end 2008 was to extend the time for interest payments. Except in the case of the overdraft and the Personal Loan, no capital repayment was due under any of the relevant loans until 2009: for the purposes of any concern about reserves for the year-end capital repayment was, according to the Bank, therefore irrelevant. As Ms Volodina explained in her witness statement:

> "However, the Bank was not prepared in general to extend the time for capital repayments on loans beyond the maturity dates. As at December 2008, it would have been possible for the Bank to extend the existing maturity dates, but I was very much against this. This was not a prudent or sensible course for the Bank to take. Insofar as any loan maturity dates had not been reached, it was not necessary in late December to extend those capital repayment dates because there was no risk of imminent default. More particularly, my view was that the Bank needed to make sure that OMG still had milestones in place over the coming months. This was because I wanted to keep some earlier obligations to act as indicators to signal whether OMG's financial position was improving. If OMG's finances started to improve, and the companies started to perform any of their obligations then the position could be reconsidered in early 2009. If the causes of OMG's financial difficulties had been the short term cash flows which Mr Arkhangelsky represented to us, then OMG would have been expected to have been able to discharge those obligations by March 2009. However, my view in December 2008 was that we had already afforded Mr Arkhangelsky and OMG various allowances in the hope that time would allow the group to recover its financial state, and I did not trust by that time that Mr Arkhangelsky would be able to improve OMG's condition. I therefore considered that any extension of the loans beyond their existing maturity dates was not sensible from the Bank's perspective.
>
> I should add in this context that the Bank typically prefers to give loans of one year terms, and then at maturity to consider whether to agree an extension for another year (rather than granting loans for longer terms). The Bank prefers the "staging" of loans (where they are advanced for one year plus one year terms) for two main reasons. The applicable banking regulations provide that the Bank is not required to create reserves for loans of less than one year. It also allows the Bank to monitor on a shorter time frame the borrower's financial performance and ability to discharge their indebtedness."

295. The Bank's position, therefore, was that there was no incentive, let alone imperative, for it to agree to extend any date for capital repayment, and that all that was ever agreed was deferment of interest.

296. Dr Arkhangelsky, on the other hand, appears to have viewed the matter more generally. On his view of things, the Bank could not afford to take any risk of default, and needed to reschedule not only interest but capital repayments to remove it. His stated perception was that it was the Bank which needed a deal, and in particular a moratorium in respect of OMG's obligations, since:

> "if the loans were in default, the Bank would have to transfer a sum equivalent to the outstanding indebtedness to the Central Bank which would result in a reduction of its capital base and worsen its own financial position."

297. He elaborated on the dangers for the Bank, with some insistence in the course of his cross-examination:

> "So it was actually a two-sides problem. So for me, you know, non-payment of interest, yes, it might cause, later on, in three, four, five, six months, any court investigations and so -- court discussions, so that they could claim that I have to pay and repay, pay and repay loans and so on. But for them, it was immediate trouble with the Central Bank and their accountancy. So for them, it was much more stronger problem than with me. And the most important, that by that time the Bank of St Petersburg faced that bank had problems with all the clients, and my share in their portfolio was about 4 per cent of their whole loan portfolio. So for them, default on 4 per cent of their loans was nearly -- they could lose their licence, so they can cease their operations. So for me it was just technical non-payment, and its arbitration and so on. But for them it could cause immediate cease of the operation for them as a bank. So for them it was immediate trouble."

298. Thus, in the Bank's perception and presentation, the discussions with Dr Arkhangelsky in the last months of 2008 were for it an exercise in patient client handling and assistance, with Dr Arkhangelsky in effect as supplicant. Whereas in Dr Arkhangelsky's depiction, it was the Bank which most needed a deal before year-end: in his perception, in effect, his weakness was his strength, and the Bank's exposure.

Efforts to re-schedule debt in November through December 2008

299. That brings me to the chronology relating to Dr Arkhangelsky's efforts in late November and December 2008 to reschedule OMG's debts to the Bank, which by then exceeded RUB 3.7 billion (there being owed also some RUB 2 billion to V-Bank).

300. This chronology is in part disputed, as is the upshot of what was agreed. Whereas Dr Arkhangelsky's evidence depicts a collaborative style of engagement, with frequent

meetings between himself and Mr Belykh and others "from time to time" with both Mr Guz and Mr Savelyev to address a shared problem, Mr Savelyev and the Bank's witnesses depicted more formal meetings, with repeated assurances on the part of Dr Arkhangelsky that OMG's difficulties were the consequence of short-term cash flow problems, rather than systemic problems, and few incentives to the Bank to do more than the minimum necessary to help OMG to avoid immediate default.

301. The key dispute relates to whether there was a meeting between Dr Arkhangelsky and Mr Savelyev in December 2008, as alleged by Dr Arkhangelsky, at which (so he asserts) Mr Savelyev agreed to a moratorium for capital payments (which Mr Savelyev and the Bank deny).

302. Dr Arkhangelsky, though he denied any meeting in November, asserted that there was a meeting with Mr Savelyev in the Bank's offices in early or mid-December. In oral evidence he variously suggested "something around the middle of December" but later changed this to "around 10 December 2008".

303. The flavour of Dr Arkhangelsky's version of events appears from the following extract from his witness statement:

> "At this meeting, I informed Mr Savelyev that the Group needed to restructure its loans because it would struggle to make the interest payments for the month ended 31 December 2008 and through the winter months. I explained that the Group was having severe cash flow issues because the clients of the group had stopped making payments, then the freight market had totally crashed and that port dues were not being paid. I also explained that, anticipating the annual extreme weather conditions, I did not envisage the Group's situation improving until, at the earliest, spring 2009. It was for this reason that I explained that the Group needed to restructure its loans and have a moratorium on further monthly interest payments for a period of at least six months.
>
> A number of the outstanding loans fell due for repayment during the first six months of 2009. As the borrower companies were unable even to make periodic interest payments at that time, they obviously had little prospect of repaying these loans on their due dates. It was therefore necessary to extend the repayment dates. I did not expect this to be a problem, because it was very common in Russia for banks to grant short-term loans even when the purpose of the loans was clearly a long-term one. The banks would then repeatedly extend the loans as necessary, typically for six months at a time. This is what happened with Vozrozhdenie Bank [V-Bank]…
>
> I made it clear to Mr Savelyev that both elements of the proposed moratorium – a suspension of interest payments until the end of June 2009 and a restructuring of all debts which matured before

> that date – were equally important for the Group; and that I did not expect sufficient improvements of the Group's position much sooner than in six months. On the other hand, I felt that a suspension of payments for six months would enable the businesses either to recover sufficiently to resume paying interest to the Bank or, if that did not prove possible, to explore what refinancing options were available with other financial institutions. I remember at the time of the liquidity crisis President Putin had made a statement that the Russian Central Bank had to support strategic industries, so I was confident, given the strategic importance of the Group, that a refinancing package would be achieved either with the Bank or elsewhere.
>
> …
>
> At the meeting, it appeared to me that Mr Savelyev understood the position that the Group was facing as a result of the global liquidity crisis and was generally sympathetic to our position. His primary concern was to avoid the Bank encountering difficulties with the regulator, the Central Bank of Russia. He explained that if the loans were in default, the Bank would have to transfer a sum equivalent to the outstanding indebtedness to the Central Bank which would result in a reduction of the Bank's capital base and worsen its own financial position. It was therefore in the Bank's interest, as well as the Group's, for the loans not to go into default. Accordingly, Mr Savelyev indicated that he was in principle prepared to agree to a moratorium for six months to allow the Group companies' cash flow to improve to the point at which they could resume making interest payments. At the end of the meeting he indicated that he would discuss the matter internally within the Bank and come back to me."

304. Mr Savelyev, having asserted the fact of a meeting on 28 November (culminating according to his evidence in an agreement for the Personal Loan), in his witness statement for trial denied Dr Arkhangelsky's assertion that there was a meeting between them in early December. By the time of trial he was adamant that he only had two meetings with Dr Arkhangelsky in 2008, one in late November and the other in late December.

305. This was contrary to his evidence in the BVI Proceedings, but he sought to explain that "on reflection I now believe that to be incorrect". On that basis and in any event, Mr Savelyev also fulsomely rejected Dr Arkhangelsky's contention that at that December meeting they made an agreement in principle on a 6-month moratorium for capital repayments.

306. As to the disputed meeting, it was also the evidence in the BVI Proceedings of Ms Mironova, who Dr Arkhangelsky placed as having been present (together also with Mr Guz), that indeed there was a meeting in early December (as well as at the end of November), thus further corroborating to that extent Dr Arkhangelsky's version. But

she too, in her witness statement for trial, pronounced this "on reflection…to be incorrect" and sought to correct this to state that the only two meetings directly between Dr Arkhangelsky and Mr Savelyev were in late November 2008 (which she did not attend, but of which she was informed) and in late December 2008 (which she did attend). She confirmed her evidence that she also met Dr Arkhangelsky in early December (she stated the date as being 8 December 2008), which she describes as "an introductory meeting" for her to meet Dr Arkhangelsky in person, at which no substantive discussions took place. Ms Mironova thus sought to endorse Mr Savelyev's evidence that there was no discussion of a moratorium with Mr Savelyev nor any other restructuring until late December 2008.

307. It is odd that both Mr Savelyev and Ms Mironova should have had the same initial recollection and then both have had to correct it. One such mistake corrected on reflection might be understandable; two is more concerning, especially since it is to their advantage now (see paragraph [310] below). This was one of various instances when I formed the impression that, albeit in this instance in the heat of the BVI Proceedings, the Bank's witnesses signed what was put in front of them without sufficient carefulness as to the truth.

308. However, I have not been persuaded of the Defendants' submission that it was the BVI evidence as to the early December meeting with Mr Savelyev which constituted the truth, whereas the later correction was a contrivance crafted to give more veracity to the denial of any moratorium; and even if I had been so persuaded, I would not have found that it resulted in any agreement, whether in principle or otherwise, for a general moratorium as Dr Arkhangelsky has alleged.

309. In reaching that conclusion I have taken into account Mr Stroilov's fair points that (a) Mr Savelyev's memory was notably selective and remarkably frail on inconvenient issues, allowing him to be curiously categorical in his denials and yet notably, almost painstakingly, vague as to what did happen; and (b) Mr Savelyev's evidence as to having had only two business meetings with Dr Arkhangelsky seems inconsistent with his evidence that "he would be well acquainted at least with the biggest borrowers of the Bank." However, these points have seemed to me to be outweighed, as regards the point in issue, by the following:

(1) It is clear, as recorded in an email exchange, that the purpose of the meeting on 8 December 2008 was to introduce Dr Arkhangelsky to Ms Mironova as "our new Deputy Director on economic matters". There is no mention in the exchange of Mr Savelyev's attendance, nor any sign of circulation of the exchanges to him.

(2) As part of Ms Mironova's review of OMG's situation, Ms Blinova emailed Ms Mironova a list of all the various loans which the Bank had made to OMG. If a moratorium had been agreed 'in principle' with Mr Savelyev it seems likely that some record or note to that effect would surely have been made: but there is no mention of any such agreement in any of those contemporaneous documents in early December 2008.

(3) The contemporaneous documents and evidence of Dr Arkhangelsky's continuing discussions with Ms Mironova about OMG's difficulties in the period leading up to

the meeting on 25 December 2008 (see below) make no reference to and convey no sense of any agreement in principle: it seems unlikely that if Mr Savelyev had already indicated that there would be a moratorium Dr Arkhangelsky would not have referred to it at all.

(4) None of the available documentary evidence seems consistent with any prior agreement in principle for a moratorium. When, on 19 December 2008, Ms Blinova emailed OMG an update of its upcoming loan repayments at the end of the month, her email also included three draft letters from Dr Arkhangelsky to Mr Savelyev seeking loan extensions. I agree with the Claimants' contention that if there had been by this point any proposed moratorium in the terms alleged by Dr Arkhangelsky, even one in principle only, then OMG and/or Dr Arkhangelsky would surely have made some reference to it in the extension letters and/or would surely have queried their contents when Ms Blinova sent back the drafts in a form which did not take into account any such agreement by the head of the Bank.

(5) I did not find Dr Arkhangelsky's evidence persuasive, despite the detail he sought to paint in about the alleged meeting. It did not ring true to me. Further, Dr Arkhangelsky's convoluted attempts, when cross-examined on this point, to dismiss the correspondence as being between two "low level" employees ("two girls…Two young girls") and then to cast unspecified doubt on the authenticity of the exchanges was not at all impressive. Nor was his explanation as to the absence of any response referring to the agreement in principle now alleged, which amounted to saying that he felt no need to correct her because "Ms Blinova was the most lowest employee in the Bank…" and it was not for him to correct her.

310. As I explain at greater length later, the real relevance of this factual dispute is to the obviously important issue, which is central to both the Bank's claim and the Counterclaim, as to whether there was ever any finally agreed 6-month moratorium for OMG's indebtedness across the board (as Dr Arkhangelsky insists there was). If there had been an agreement in principle in early December, that might have added credence to Dr Arkhangelsky's version of events, which is that the meeting later in December 2008 was one at which a full agreement was made for a moratorium; whereas if there had not been, the Claimants' version, to the effect that no definitive agreement was achieved in December 2008 beyond one for some indefinite extension to be clarified later in formal documentation which the Bank agreed to prepare, is more plausible.

Crisis in December 2008

311. Returning then to the chronological sequence, it is clear that throughout December 2008 OMG's position continued to deteriorate substantially: indeed, receipts had all but dried up.

312. Dr Arkhangelsky continued to present the problem to his creditors as a short-term cash-flow difficulty, as a result of customers delaying payment due to their own economic difficulties. He sought to reassure the Bank, and especially Ms Mironova and the credit department at Investrbank, that this was a temporary problem; and, for example, he repeatedly expressed confidence that a large payment from certain Finnish customers

of timber deliveries would be made imminently. But none was; nor indeed was any proof put forward, then or ever, of any such receivable.

313. Ms Mironova's evidence was that as OMG's financial problems became increasingly apparent through December 2008, and some wider restructuring of OMG's debt appeared inevitably to be the only solution to avoid default, the Bank turned more attention to ways in which it might safeguard its existing security and, if possible, enhance it.

314. In particular, and not least because (a) according to the valuations (those by Lair) it was then relying on (see below) the value of the pledged assets comfortably exceeded its loans; and (b) OMG had few other assets to offer anyway, the Bank's focus appears to have been on devising ways of ensuring that its existing security would not be put at risk or devalued. A theme of the evidence on both sides is that it is a fact of commercial life in Russia that default usually leads to a hard-fought war between lender and defaulting borrower.

315. In that context, the Bank's case is that it began to look at ways of preventing steps being taken by Dr Arkhangelsky, if and when OMG went into default, to use his control of the legal entities holding the mortgaged assets to dissipate those assets or to take other steps (whether by frustrating legal action or otherwise) to defeat, delay or dilute the value of enforcement proceedings.

316. Possibly building on Dr Arkhangelsky's own suggestion in his letter of 28 November 2008 of a transfer of shares in Vyborg Shipping, it seems (especially from the evidence of Ms Mironova and Mr Belykh) that the Bank began to focus particularly on some form of "repo" transaction under which the Bank would acquire (for a nominal consideration) the shares in the relevant companies, subject to a provision for the shares to be repurchased (likewise for a nominal consideration) upon timely repayment of the debt. That would secure for the Bank control over the debtor companies (or the means of achieving it) so that it could more easily enforce its security without obstruction from the defaulting borrower or shareholders trying to block or impede the realisation of security. (It also, of course, gave the Bank potential access to the business value of the entire group; and a central issue between the parties is whether that was in truth its objective from inception.)

317. Ms Mironova turned, therefore, to consider which shares or companies might be the most useful and appropriate for these purposes; and her evidence was that she:

> "identified two companies which were potentially suitable for a repo arrangement: Western Terminal and Scandinavia Insurance. This is because these two companies had no loans from any other banks and nearly all their assets had already been pledged to the Bank."

318. According to her evidence, Ms Mironova discussed this possibility with both Dr Arkhangelsky and Mr Berezin on a number of times on the telephone in the period between 8 December and 25 December 2008. On 22 December 2008, she emailed Mr Berezin (copying Dr Arkhangelsky) a pro-forma 'Securities Purchase Agreement'

(which did not specify either the relevant shares or the parties), with a view to a discussion with them about this possible additional security.

319. Dr Arkhangelsky did not deny receipt of these pro forma documents, but sought to shrug this off as "one of the examples of the possible transactions", adding

> "I [can] clearly remember that she hasn't had anything in mind by that time. So she sent this securities sale and purchase agreement because I think it was on the files of the Bank, but there was not any suggestion what and how to be so – that was just one of the examples. And to be clear, in Oslo Marine Group we haven't any shares or anything which could be bought. We had a participation. So we haven't any securities. We had only limited liability companies, so for sure it was not relating to us in any respect. It was just as an example."

320. Pressed in cross-examination as to whether he accepted that at least there had been some discussion about some repo agreements prior to a meeting on 25 December 2008 (see below) he answered:

> "Not really. Not really. I don't think so…
>
> Maybe [Ms Mironova] discussed it with Berezin, but no any conference calls for sure, because in Russia at that time we haven't had such a technology…So I don't remember that I have ever been discussing it with her…
>
> And it would be really strange for me to discuss anything with her by telephone, because at least twice a day I've been passing her office and…if I want to speak to the Bank, or, especially, you know, quite an important issue for me, I would stop in on the way and meet her and discuss that because, you know, it's – any repo, whatever, transactions, consider that you have to make a picture as to whom and what and so on, so I don't think that's true."

321. Ms Mironova's evidence was that there was in fact just such a meeting on 24 December 2008 between Ms Mironova and Dr Arkhangelsky and Mr Berezin, as a precursor to a meeting arranged for and which it is common ground took place on the following day, 25 December 2008, between Mr Savelyev and Dr Arkhangelsky. She stated that at the meeting on 24 December, the discussions were specifically focused on repo arrangements identifying Western Terminal and Scandinavia Insurance as the subject entities. She said this:

> "I specifically recall that Mr Arkhangelsky asked about the risks that the OMG companies or he would face with such repo transactions. I replied that I was an economist and not a lawyer and he should ask his own lawyer this. I do not recall any other specific details about the discussions concerning the proposed

> repo. I certainly do not recall the conversations being difficult or Mr Arkhangelsky raising objections to the proposal.
>
> Mr Arkhangelsky also asked whether the repo would be enough to secure the restructuring of OMG's loans. I replied that this would be a matter for Mr Savelyev and the other members of the Management Board. I had no authority to agree anything on behalf of the Bank."

Meeting on 25 December 2008

322. It is common ground that there was a meeting between Dr Arkhangelsky and Mr Savelyev on the next day, 25 December 2008, at which Mr Guz, Ms Volodina and Ms Mironova (for the Bank) and Mr Berezin (for OMG) were also present.

323. However, there is (perhaps inevitably given the dispute as to whether there had been a meeting in early December at which matters of substance were agreed at least in principle) substantial disagreement as to the context, content and consequences of the 25 December meeting.

324. The Bank's case in relation to this meeting was summarised in its Closing Submissions as follows:

(1) Dr Arkhangelsky requested more time to pay back OMG's loans. Mr Savelyev asked Dr Arkhangelsky about the promises he had previously made which had not been kept. Ms Volodina recalled Dr Arkhangelsky referring to an expected payment of RUB 300 million for a timber contract (and see paragraph [312] above). Mr Savelyev's evidence was that Dr Arkhangelsky assured him that this outstanding timber payment was to be paid shortly.

(2) The Bank considered with Dr Arkhangelsky the possibility of restructuring OMG's loans. No specific details were discussed at the meeting. Instead, details of the specific extensions were left to be arranged between OMG's lawyers and the Bank after the meeting.

(3) The outcome of the meeting was that steps would be taken to ensure that there would be no OMG default in December 2008, and that the precise scope and terms of the future restructuring would be considered by the Bank and discussed and agreed with OMG.

325. The Bank also stressed that, as far as it was concerned, it was not legally required to do anything as at 25 December 2008. It maintained that it was under no obligation to extend any of OMG's loans and could have permitted OMG to go into default; and that under the reserves rules, if OMG had defaulted, the Bank would not have needed to create 100% reserves immediately, but a lesser amount to reflect the categorisation that there was 'considerable credit risk' for 'doubtful loans'.

326. Further, and of central importance, the Bank insisted that it did not agree to any six-month moratorium on all payments as alleged by Dr Arkhangelsky. While the Bank did

not dispute that Dr Arkhangelsky may have asked for such a 'moratorium' at the meeting, its case was that it did not agree to one.

327. The Bank's position was that it was prepared to assist OMG if it could. Mr Savelyev put it this way:

> "there was a request from Oslo Marine Group to avoid default, and we kindly accommodated him."

328. What, according to the Bank, it did make clear in that context was that it needed further protection in return. It was in that context (according to its case) that (as the Bank viewed the matter) the Bank took up Dr Arkhangelsky's offer of some sort of repo transaction, such as he had himself proposed in discussion with Ms Mironova earlier in the month, under which he would transfer shares in OMG companies to the Bank or its nominees, in effect as collateral for a longer term restructuring.

329. As to this, the only one of the Bank's witnesses to offer any detailed account was Ms Mironova. Ms Volodina says she was not present at the time; Mr Belykh offered nothing, and Messrs Savelyev and Guz were vague in their witness statements, although both confirmed that there were discussions in broad terms. Mr Savelyev stated the following under cross-examination:

> "He asked whether we can help him to avoid the default. We said: can you offer some additional security? Yes, and in that additional security Mr Arkhangelsky said: look, I do not have any other kinds of security to offer, all I can do is organise a repo transaction."

330. Ms Mironova's evidence, on which she was not specifically challenged, was as follows:

> "As to the discussions at the meeting regarding the repo, Mr Savelyev did not himself propose the repo arrangement. He asked Mr Arkhangelsky what he proposed in return for the restructuring. I believe that Mr Arkhangelsky was not expecting such a turn of events, he mumbled something like "Kristina [Mironova] and I agreed on two companies" and asked Mr Berezin to name the deal, as if he forgot their names. He told Mr Savelyev that the proposed transfer of shares in Western Terminal and Scandinavia Insurance showed how serious he was about ensuring the debt to the Bank was repaid, and I recall that he referred to the fact that he had already pledged his assets and had granted personal guarantees.
>
> I understand that Mr Savelyev said that he thought that the Bank would, in principle, consider restructuring of OMG's loans, in return for a repo arrangement as additional collateral. Mr Savelyev then asked me to take Mr Arkhangelsky to Mrs Irina Malysheva in order to prepare the relevant documents for the transfer of shares, after which Mr Arkhangelsky's request would

> be out to the Management Board for consideration. Mrs Malysheva was a member of the Management Board and was responsible for corporate finance. In her role she was an expert in corporate restructuring deal with clients."

331. As to the aftermath, she continued:

> "I understand that Mr Arkhangelsky has made a number of allegations about the meeting. I am told that he has accused the Bank and Mr Savelyev of threatening him at the meeting and forcing him to agree the repo arrangement. This is nonsense. Neither Mr Savelyev, nor anyone else, made any threats against Mr Arkhangelsky or his family at that meeting. The meeting took place in a friendly atmosphere, in keeping with the approaching New Year holiday period. I witnessed Mr Arkhangelsky voluntarily agreeing to the repo arrangement which he had indicated to me in advance of the meeting that he was prepared to do; in my view he did so because he realised that it was the only way to have the restructuring of OMG's loans and avoid an immediate default by OMG.
>
> I understand Mr Arkhangelsky has alleged that the Bank agreed at the meeting to give the OMG companies a six month moratorium on all payments that were due to the Bank. This is also wrong. There was no such discussion at the meeting.
>
> I recall that the precise details of the restructuring were not discussed at the meeting. This is customary of meetings with Mr Savelyev where agreements in principle are reached but he leaves his deputies to deal with the detail. The detail of the restructuring was worked out and agreed after the meeting and submitted to the Bank's Management Board for discussion and approval."

332. As may be inferred from Ms Mironova's account, Dr Arkhangelsky presented at trial a very different and more malign picture of the meeting, which he described under cross-examination as "a really terrible meeting". According to him, Mr Savelyev's attitude had by that time changed significantly: he was "now very aggressive" and informed Dr Arkhangelsky that the Bank would:

> "only allow the Group a moratorium on its payments if the shares in Western Terminal and Scan were transferred to the Bank. He made clear that this was non-negotiable."

333. Dr Arkhangelsky continued in his witness statement:

> "The demand for the transfer of the shares (and it was clearly a demand, not a request or proposal) came as a shock. It was a vastly different proposition to what had been discussed at our

> first meeting. It was in my view disproportionate and unacceptable and I explained this to Mr Savelyev. I emphasised that the Group's underlying assets covered the Bank's outstanding loans very comfortably and that there was no need for the Bank to take such an extreme position.
>
> Mr Savelyev quickly made it plain that this was not a commercial discussion. He began to make personal threats against me and my family. In particular he told me "you won't get out of here until you agree to sign the contracts", "think of your children's future" and "you want to celebrate New Year, don't you?"
>
> Until that point I had had faith in Mr Savelyev as a partner who would support my businesses. I was taken aback by this change of attitude and did not know what to make of it. I had no opportunity to reflect on the terms he was insisting on. I simply felt I had no choice but to comply with his demands, because I needed a moratorium on payments for the Group. I was well aware of Mr Savelyev's power in St Petersburg, and the control he could exercise over the police…Until this point I had not considered this power to pose a threat to me – if anything I thought the opposite – but now I had no doubt that he and his associates had the ability to cause serious problems for me and my family if I failed to do what was asked of me. Accordingly, I felt I had no choice other than to comply."

334. Dr Arkhangelsky was adamant under cross-examination that it was this threat to his life and family, and his appreciation of the forces that had been brought against others in similar positions and could be brought to bear against them, which had convinced him he had to agree to arrangements that he considered to be one-sided in the interests of the Bank. When it was suggested to him that the real pressure was simply that inherent in the predicament of his companies and the imminence of default Dr Arkhangelsky said this:

> "…in Russia…you cannot do any enforcement. So the first step for the Bank would be to go to the arbitration court. Normally, before you start this, I mean before the first court sitting, it would take minimum three months, minimum three months for the first sitting, and then the proceedings before any enforcement, I think would have taken between 6 and 12 months minimum. So theoretically speaking, for me it was much more interesting that I don't pay these loans at the end of the year, they go to the court, start the proceedings, and then I have one and a half years for the first stage of the court, and then I have a Court of Appeal, which is one more year. So theoretically for them, absolutely minimum is two years to get the court decision which would allow them for enforcement proceedings, and that would really help me, and I could get refinancing by that time, or find any other player. But I, instead of going in any litigations, I agreed that I open all my

> business, give them all my business, just to save their licence and save the Bank. Actually what I should say, that I saved the Bank of St Petersburg from ceasing their operation, because they have not had the resources to pay for their reserving. So that's what I am telling. So I've been open to the Bank not to create problems for them because the Bank was rather weak compared to -- whole portfolio was defaulting, and I thought that this, my behaviour, would only help to improve relations. And absolutely the same was the case with V-Bank, because everybody understood that it's -- the default at that time, it's not a problem for the client. It's major the problem for the Bank, because Russian banks are weak banks and they were not able to -- in case most of the loans are defaulting, they were not able to have all these reserves in place by the end of the year."

335. I address the allegations of intimidation and duress further below.

336. It will also be necessary to determine the circumstances in which Mrs Malysheva, (whom Dr Arkhangelsky said (without contradiction) he met for the first time after the meeting with Mr Savelyev on 25 December), came on the scene and took over personal and direct responsibility for the Bank's relationship with OMG. It was Dr Arkhangelsky's evidence and apparent conviction that the introduction of Mrs Malysheva, for no logical reason since she was at the time overseeing the Corporate Finance Department and would not ordinarily have been involved, marked and evidenced the commencement of the 'raid' on OMG assets which he alleges was orchestrated by Mr Savelyev and Mrs Malysheva and is the substance of the Counterclaim.

The Memorandum and paperwork post the 25 December 2008 meeting

337. Returning once more to the chronological sequence, it is common ground that it was agreed that the requisite paperwork to record formally the arrangements for OMG to have some time to meet its payment obligations should be drawn up and signed before the end of December, even if the effectuating documentation might well take longer to finalise. The documentation needed to be completed (to that extent at least) by the end of the month, because if it was not, and the interest instalment dates were not extended, OMG would go into default.

338. The resultant Memorandum, which was dated 30 December 2008, was prepared (after the meeting on 25 December) largely by Mrs Malysheva with the assistance of Ms Stalevskaya, the deputy director of the department of Corporate Finance, who could offer no explanation why either she, or for that matter Mrs Malysheva, was chosen to be involved.

339. Dr Arkhangelsky's evidence was that the content of the Memorandum was in effect dictated by the Bank, and that he had little or no input in the drafting process. He was at particular pains to emphasise his lack of involvement, and what he portrayed as the rush of it all in the context of the fact that the Memorandum refers to the Personal Loan,

of which, as explained previously, he has until recently disclaimed any cognizance. Further:

> "everything was done in a rush and I did not take legal advice on the Memorandum, nor can I even recall checking the terms of the document".

340. However, there is an email from Ms Stalevskaya to Mr Vasilev of OMG, circulated to Mr Berezin (also of OMG) and dated 29 December 2008 which specifically refers, amongst other documents (including "Sale and purchase agreements") to "Memorandum" and the gist of the email suggests that the document has been previously discussed and circulated, awaiting only signature. Although under cross-examination Dr Arkhangelsky sought to explain this away, his explanation appeared to me far-fetched: and see paragraphs [809] to [810] below.

341. As to the terms of the Memorandum, which it is the Bank's case was in the nature of a framework agreement or an agreement in principle, rather than a binding contract:

(1) Paragraph 1 set out a list of all the OMG loan contracts (as well as the Personal Loan) with the amounts advanced.

(2) Paragraph 2 referred to the repo arrangements contained in separate contracts and said that "After the complete fulfilment of the Group's obligations to the Bank", the shares in Western Terminal and Scan would be transferred back pursuant to repurchase contracts.

(3) Paragraph 3 provided that the purchasers of the shares under the repo agreements would not interfere in the companies (i.e. Western Terminal and Scan) "on condition that the Group fulfils its obligations to the Bank under the said [loan] contracts on time and entirely".

(4) Paragraph 4 provided that "The sellers and the management of the companies on sale" undertook, among other things, not to sell or transmit the companies' assets to anyone and "not to worsen in any other way the material and financial situation of the companies".

(5) In paragraph 5, the Bank undertook not to make demand for early repayment "on condition that the Group fulfils its obligations to the Bank under the said contracts on time and entirely".

342. I address Dr Arkhangelsky's evidence as to his understanding of the effect of the arrangements provided for by the Memorandum in paragraph [375] below.

343. There is no dispute that the Memorandum was signed in Mrs Malysheva's office by Dr Arkhangelsky on behalf of "the Group" and by Mr Savelyev on behalf of the Bank on 30 December 2008. There are no other signatures. According to Dr Arkhangelsky, Mr Savelyev:

> "was also effectively representing the purchaser companies, which seemed logical, because no distinction was drawn

> between the bank and the companies for these purposes. For the security to be effective the Bank would obviously need to control the companies and this is what I assumed the position to be. Mr Savelyev certainly never suggested that the companies would be owned by independent third parties…"

344. Dr Arkhangelsky's recollection was that the final version of the Memorandum, dated 30 December 2008, was provided to him in Mrs Malysheva's office, and that he was required to sign it then and there, just before being also required to sign the various repo agreements. Dr Arkhangelsky says that he did not take legal advice on the Memorandum nor did he check its terms. He says that he signed it "on behalf of 'the Group'". For the Bank, however, Ms Stalevskaya's evidence was that the final draft had been sent to OMG earlier and that Mr Vasiliev, OMG's lawyer, brought back the Memorandum signed by Dr Arkhangelsky on 30 December 2008.

345. There is some evidence in support of the Bank's version, in that there is a copy of the draft Memorandum which contains only Dr Arkhangelsky's signature and the GOM stamp. This suggests that the draft was taken to the Bank by Mr Vasiliev, which made this copy, following which the Bank (by Mr Savelyev) signed. If Dr Arkhangelsky had signed the Memorandum in Mrs Malysheva's office, then it is not clear why there would be a copy with only Dr Arkhangelsky's signature and the GOM stamp.

346. Further, Dr Arkhangelsky accepted that Mr Vasiliev did bring back to the Bank signed copies of the various agreements concerned with the repo arrangements, but not the Memorandum. In his witness statement, he suggested that Mr Vasiliev returned those "signed contracts" to Ms Stalevskaya on 31 December 2008. It seems unlikely that Mr Vasiliev would have brought to the Bank the repo agreements, which Dr Arkhangelsky says he himself signed on 30 December 2008, but not a copy of the Memorandum which was also signed by Dr Arkhangelsky on 30 December 2008. It seems more likely (and I find) that Mr Vasiliev returned all the documents to Ms Stalevskaya at one time, and that he did so on 30 December 2008.

The provisions and effect of the Memorandum; Dr Arkhangelsky's assertion of a collateral moratorium

347. It was common ground that the Memorandum records only part of the deal reached between the Bank and OMG/Dr Arkhangelsky at the meeting on 25 December (and, on the Defendants' case at the earlier meeting on about 10 December or thereabouts). Indeed, it was necessarily accepted that it makes no express reference to the restructuring of the loans; and there is no express provision for any specific extension of time for payment of interest, let alone principal, in respect of the debts listed in its clause 1.1.

348. The terms of the Memorandum were much explored and revisited in cross-examination, and there was some debate as to whether it was in a form intended to be given contractual effect; but the most basic dispute between the parties is not really as to its content, nor as to its contractual effectiveness, but as to what the parties had agreed as the *quid pro quo* for the repo arrangements which it envisaged and made provision for

in broad terms. In other words, the most important issue is what were the obligations of the Bank in relation to loan restructuring which underlay the Memorandum?

349. The Bank's answer to this is that what had been agreed emerged in the form of the detailed documentation which subsequently emerged. Its case is that it was always envisaged and accepted that detailed documentation would be needed in respect of each of the loans identified, that the extensions in each case would have to be considered carefully by the Bank, and that any formal agreement on this would be unachievable until after the new year (2009), so that it was not possible to make any express provision in that regard; but that all that was ever contemplated was deferral of interest repayment, and there was never any question of extending capital repayment obligations.

350. Dr Arkhangelsky, on the other hand, says that it was expressly agreed at the meeting that all payments due from the Group companies to the Bank, including interest payments and capital repayments, would be subject to a general six-month moratorium until the end of June 2009. On the Defendants' case, that was the only reason why Dr Arkhangelsky sought a meeting with Mr Savelyev in the first place; that the repo arrangement was only proposed as a condition of the moratorium; and that Mr Savelyev's promise of the moratorium was the reason why Dr Arkhangelsky agreed to transfer the shares. Dr Arkhangelsky was adamant that, even though the "Memorandum as drafted does not expressly record our agreement that there would be a moratorium on interest payments and a prolongation of the loans", nevertheless he and Mr Savelyev had a clear agreement to this effect.

351. His case was, in effect, that this stood to reason, and was the only realistic rationale for his agreement to the repo arrangements:

> "It would have made no sense for me to have entered into the December 2008 arrangements with the Bank if there had been no agreement for the moratorium. The Group would then have derived no benefit from the arrangements whatsoever: in effect, it would simply be handing over Western Terminal and Scan for the Bank's benefit without getting anything in return. Even faced with Mr Savelyev's threats, I do not think I would have agreed to a completely one-sided agreement of that kind. The whole point of the agreement from my perspective was to obtain a deferral of payments under the loans. Although the terms offered by Mr Savelyev were unattractive, in the difficult circumstances in which the Group found itself at that time they were clearly preferable to the alternative of default."

352. To my mind, the premise of this contention, which is that Dr Arkhangelsky would not have given up control and the value of his companies "without some significant *quid pro quo*" (to quote the Defendants' written Closing Submissions), is unimpeachable; and indeed I do not understand the premise to be contested. The real issue, however, is not whether Dr Arkhangelsky and OMG would always have wanted something in return, but what more specifically it was understood or agreed that they would get in return, and in particular whether what was envisaged was loan-by-loan extensions of varying lengths (as is the Bank's case), or a general extension or moratorium of six

months on all payments due to the Bank from OMG companies across the board (as Dr Arkhangelsky insists).

353. Given that the Memorandum is silent on this crucial point, the answers must depend on the documentation signed pursuant to it and any collateral evidence.

354. Whether or not determinative of the issue (as the Bank contends it is) the fact is that, rather than a single document or a standardised suite of documents providing for a moratorium across the board, the Bank prepared documents, which were agreed and signed on behalf of the various OMG companies concerned, providing for tailor-made extensions, not all to June 2009.

355. There is no dispute that the documents were (a) prepared by Ms Blinova (then chief specialist in the lending division of Investrbank) and Ms Yashkina (the "leading specialist" in that division) on the instructions of Ms Borisova (who was Head of the Credit Department at Investrbank) and Ms Mironova, (b) intended to reflect the outcome of the discussions on 25 December 2008, (c) not finalised until January or February 2009, and then (d) backdated to December 2008.

356. The purpose of backdating of the agreements concluded in January or February 2009 to 29 or 30 December 2008 was to be consistent with the Bank's decision not to permit a default of the OMG companies at the end of December 2008. In the meantime, the relevant internal approvals were drawn up, and the Bank made the relevant entries in its systems so as to avoid OMG going into default.

357. Ms Blinova explained:

> "Because there were so many additional agreements to all the OMG loans, I recall that I said that it was not possible to draft them all by the end of December. Ms Mironova told me that the Bank had agreed with Mr Arkhangelsky not to declare a default while documents were being prepared and that all the necessary documents could be prepared and signed in January 2009. I recall that Ms Yashkina and I made the required internal entries so as to avoid the borrower's default under the OMG loans and the Personal Loan.
>
> …
>
> I also prepared additional agreements to the guarantee contracts to reflect the changes, including the additional agreements to Mr Arkhangelsky's personal guarantees. I would have emailed these documents to Ms Krikova in the OMG financial department. I cannot recall from my discussions with OMG at the time it ever being suggested that Mr Arkhangelsky had not previously provided personal guarantees in relation to these loans.
>
> I recall that Mr Arkhangelsky did not visit the Bank's offices to sign the additional agreements. The signed documents were delivered to the Bank's offices by hand by an OMG driver…"

358. It seems likely that the same applied to revisions to the spousal consents.

359. Dr Arkhangelsky confirmed:

> "The Bank also put forward individual addenda to be signed in relation to each of the loans to implement the agreed moratorium. These were sent to the relevant Group companies and were signed by them without my involvement."

360. However, these addenda did not cover all the loans, and, even as regards the loans addressed, did not adopt a general 6-month moratorium. Dr Arkhangelsky could only say in this regard (and I take this from his witness statement) that in view of his agreement with Mr Savelyev he assumed that the other loans would be covered by "a similar procedure". He accepted that "this did not happen". He could not point to any contemporaneous complaint on the Defendants' behalf.

361. I return to the issues relating to the alleged moratorium in paragraphs [793] to [837] below.

The (backdated) repo documentation in the context of the Memorandum

362. Mrs Malysheva was in charge of the drafting and implementation of the repo arrangements. Ms Stalevskaya assisted in some of the drafting of the documents. Again, it is not obvious from their positions in the Bank why they were chosen for the task. It is common ground that the agreements were not 'off the peg': they had to be specially devised and drafted.

363. Ms Stalevskaya explained in her evidence that she prepared three sets of documents: (a) a share purchase agreement to transfer the shares; (b) a preliminary or provisional agreement for the future repurchase agreement; and (c) the repurchase agreements themselves.

364. Ms Stalevskaya's evidence is that she liaised with OMG, in particular its lawyer Mr Vasiliev and his junior Ms Vasilenko, in relation to the preparation of the documents. She recalls:

> "I should say that Mr Vasiliev and Ms Vasilenko did not make any complaint about the arrangements and they were not hostile at any stage. At least from their conduct, I had no reason to believe that Mr Arkhangelsky was unhappy with the arrangement."

365. That evidence was not contradicted, and I accept it. However, Dr Arkhangelsky suggested that he had little, if any, input to the draft repo documentation. That may be true as regards his personal involvement: but, as in the case of the Memorandum, contemporaneous email exchanges indicate that OMG, through Messrs Vasiliev and Berezin, and a lawyer, Ms Vasilenko, was kept fully involved. It seems clear, for example, that on 29 December 2008 Ms Stalevskaya emailed Mr Vasiliev the share purchase ('repo') agreements.

366. It is an important curiosity that the agreements provided not for the Bank, but for others (the "Original Purchasers") to be the counterparties and transferees of the shares which were the subject of the repo arrangements. However, the identities of the Original Purchasers of the shares in the repo transactions (named in the next paragraph), were not hidden from OMG: they were identified on the face of the share purchase and repurchase agreements.

367. These agreements, the authenticity and validity of which was not challenged, and which set out the particular obligations between OMGP or GOM and the particular share transferee, comprised the following:

(1) In respect of the shares in Western Terminal LLC, OMGP entered into a share purchase agreement to transfer 99% of the shares to Sevzapalians LLC ("Sevzapalians").

(2) In respect of the shares in Scan, GOM, the 100% owner of Scan, entered into six share purchase agreements to transfer the shares in Scan to the Original Purchasers as follows:

(a) Agenstvo Po Upravleniyu Aktivami LLC, for 18% of the shares in Scan;

(b) CJSC Akva-Ladoga ("Akva-Ladoga"), for 18% of the shares in Scan;

(c) Gelios LLC ("Gelios"), for 10% of the shares in Scan;

(d) Graham-Bell LLC ("Graham-Bell"), for 18% of the shares in Scan;

(e) Medinvest LLC ("Medinvest"), for 18% of the shares in Scan; and

(f) Severo-Zapadnaya Agrarnaya Kompaniya LLC, for 18% of the shares in Scan.

(3) Each share purchase agreement was accompanied by (i) a preliminary or provisional agreement for the parties to enter a future repurchase agreement which was to be concluded by no later than 1 January 2011 at the same price and on the same terms as the sale agreement; and (ii) the 'Master' repurchase agreement itself for the transfer back to the seller.

368. I address in more detail later (see paragraphs [924] to [960] below) the curiosities relating to these arrangements (and especially the apparently absolute nature of the sales, and the interpolation of the Original Purchasers in place of the Bank). Suffice it for the present to say that it is the Counterclaimants' case that they were devised by Mrs Malysheva, and always intended by her and Mr Savelyev, to be the means of wresting away control of OMG from Dr Arkhangelsky and obtaining access to the value of the underlying businesses as well as the pledged assets.

The Original Purchasers under the repo arrangements and the Renord-Invest Group

369. The Original Purchasers (see paragraph [367(2)] above as to their identity) were companies supposedly owned by Mr Mikhail Smirnov, the CEO of the Renord-Invest

Group, and another businessman, Mr Zelyenov. Agentstvo Po Upravleniyu Aktivami LLC and Gelios were the companies supposedly belonging to Mr Zelyenov. The other companies were in the Renord-Invest Group supposedly belonging to Mr Smirnov.

370. Mrs Malysheva had known Mr Smirnov and Mr Zelyenov for many years, and they were well-established clients of the Bank. It is not disputed that it was Mrs Malysheva who chose the Original Purchasers for the purposes of the Memorandum and repo arrangements.

371. It was her evidence in the BVI Proceedings (in a witness statement dated 30 December 2011 which was introduced into the evidence in these proceedings under a Hearsay Notice dated 28 August 2015) that:

> "The Bank holds no direct or indirect ownership interest in the Original Purchasers."

372. The Bank's case is that it was expedient for it to arrange for the Original Purchasers to act as transferees of the shares (which were not listed securities) for a number of accounting and commercial reasons, not least the fact that if the Bank held the shares itself then it would have needed to consolidate Western Terminal and Scan in the Bank's own financial statements. (I come back to this in paragraph [933] below.)

373. As previously noted, there was no written record of the relationship between the Bank and the Original Purchasers nor of the basis and terms on which they held the relevant shares. I think it fair to say that the Bank's presentation as to the legal nature and commercial rationale of the arrangements between the Bank and the Original Purchasers has varied over time, the Bank being consistent only in its reticence; and much focus was accorded to it at trial.

374. Mrs Yatvetsky (formerly Ms Goncharuk), the legal advisor to the Renord-Invest Group, who (it will be recalled) was called to give evidence when Mr Smirnov became indisposed, described the position of the Original Purchasers as, in effect, holding the ring between the Bank and OMG until OMG could pay back its debts. She said:

> "… if you are looking at the very start of this arrangement, Renord was a guarantor for the Bank, as it were, it was holding those shares, and it was a sort of security to make sure that the assets owned by those companies will not be lost, nothing will happen to the assets. On the other hand you can also say that they were holding those shares also on behalf or in the interests of Oslo Marine Ports until such time as the Morskoy Bank story began. After it began, what happened was that Mr Arkhangelsky was in breach of the terms and conditions of the memorandum. Had that not happened, had all the liabilities been extinguished, the shares would have been transferred to Mr Arkhangelsky."

375. Dr Arkhangelsky's evidence was that he did not know who owned or controlled the Original Purchasers, but that he "assumed that it was the Bank' because "the whole

purpose of the transaction as far as I understood was to ensure that the Bank's security was protected". His evidence was:

> "The effect of the transaction, as I understood it, was that the Bank would receive temporary ownership of the companies, but I and my directors would retain control of the companies in the interim and with ownership being returned either once the security had been enforced. (I am aware that the Memorandum refers to repayment of the loans being the trigger for the return of the shares, but I would not have regarded that as materially different, as there was no reason to believe that the security would not be sufficient to redeem the loans.) The purpose of the transfer of ownership, as Mr Savelyev represented it to me, was therefore simply in order to give the Bank temporary control over the companies and comfort that it would be able to enforce its existing security. I did not intend or understand that the Bank or anyone else would acquire full ownership of the companies if there was a default, although I understood clearly that by relinquishing the ownership of the shares I was exposing myself to the risk of a raid. That was precisely why I was so aggrieved at Mr Savelyev's demand for the shares to be transferred."

376. Dr Arkhangelsky's case is that he was misled as to the reasons for the introduction of the Original Purchasers, which he now believes was in reality part of the alleged 'raid' and indeed the first step in the appropriation by Renord-Invest and thus (amongst others) Mr Savelyev and Mrs Malysheva, of the assets of OMG.

377. The Subsequent Purchasers, who acquired the relevant shares from the Original Purchasers in late March/early April 2009, were also part of the Renord-Invest Group. I return to the dispute as to the ownership and role of the Original Purchasers and the Subsequent Purchasers later.

January and February 2009 and the restructuring documentation

378. Continuing the chronological sequence, Ms Blinova recorded that in January 2009 the OMG companies sent the Bank formal letters, signed by their general directors, and purportedly dated 18 December 2008, requesting amendments to the terms of the relevant loans.

379. The letters are of importance especially in that the extensions requested are not uniform: for example, the request on behalf of Onega was for an extension in the term for interest from 21 November 2008 until 20 June 2009, and for capital repayment on 27 June 2009 in place of December 2008; whereas the request on behalf of Vyborg Shipping was in one case for an extension of time for payment of interest from 21 November 2008 to 26 March 2009, in another case for such an extension from 21 November 2008 to 15 April 2009, in a third case, an extension from 21 November 2008 to 28 April 2009, and in a fourth case, an extension from 21 November 2008 to 28 June 2009.

380. I did not understand these letters to be denied, or Ms Blinova's account as above described to be contested. As the Claimants were quick to point out, the terms of the letters are difficult to square with a previous understanding of a uniform extension of repayment dates to June 2009, especially since Dr Arkhangelsky never objected to them.

381. As to the terms of the restructuring agreements as executed:

(1) LPK Scandinavia:

(a) Entered into an additional agreement (No. 2) dated 29 December 2008 with the Bank in respect of the 2007 LPK Scandinavia Loan. This additional agreement extended the date for monthly payments of interest until 28 June 2009. A previous additional agreement (No. 1) dated 28 November 2008 had extended the date for the repayment of the capital of the loan until 27 November 2009;

(b) Entered into (i) an additional agreement (No. 3) dated 30 December 2008 with the Bank in respect of the 2008 LPK Scandinavia Loan, and (ii) a new Loan Agreement no. 0035-08-01499 dated 30 December 2008, which replaced the 2008 LPK Scandinavia Loan. The new Loan Agreement extended the date for the repayment of the capital of the loan from 25 June 2009 until 29 December 2009, and the additional agreement (No. 3) and the new Loan Agreement extended the date for monthly payments of interest until 28 June 2009;

(Ms Tarasova, General Director of LPK Scandinavia, signed these agreements on behalf of LPK Scandinavia.)

(2) Vyborg Shipping:

(a) Entered into an additional agreement (No. 2) dated 29 December 2008 with the Bank in respect of the First Vyborg Loan. This additional agreement extended the date for monthly payments of interest until 26 March 2009, which was the date for the repayment of the capital of the loan;

(b) Entered into an additional agreement (No. 2) dated 29 December 2008 with the Bank in respect of the Second Vyborg Loan. This additional agreement extended the date for monthly payments of interest until 15 April 2009, which was the date for the repayment of the capital of the loan;

(c) Entered into an additional agreement (No. 2) dated 29 December 2008 with the Bank in respect of the Third Vyborg Loan. This additional agreement extended the date for monthly payments of interest until 28 April 2009, which was the date for the repayment of the capital of the loan;

(d) Entered into an additional agreement (No. 1) dated 29 December 2008 with the Bank in respect of the Fourth Vyborg Loan. This additional agreement extended the date for monthly payments of interest until 28 June 2009. The date for the repayment of the capital of the loan was 17 July 2009;

(Ms Krygina, General Director of Vyborg Shipping, signed these agreements on behalf of Vyborg Shipping.)

(3) Onega:

(a) Entered into an additional agreement (No. 4) dated 29 December 2008 with the Bank in respect of the First Onega Loan. This additional agreement extended the dates for (i) the schedule of monthly capital repayments and (ii) the monthly payments of interest until 27 June 2009, which was the date for repayment of the final capital instalment of the loan;

(b) Entered into an additional agreement (No. 3) dated 29 December 2008 with the Bank in respect of the Second Onega Loan. This additional agreement extended the date for monthly payments of interest until 28 June 2009. A previous additional agreement (No. 2) dated 24 December 2008 had extended the date for the repayment of the capital of the loan until 23 December 2009;

(Dr Arkhangelsky, General Director of Onega, signed these agreements on behalf of Onega.)

(4) PetroLes:

(a) Entered into an additional agreement (No. 3) dated 29 December 2008 with the Bank in respect of the First PetroLes Loan. This additional agreement extended the date for monthly payments of interest until 5 March 2009, which was the date for the repayment of the capital of the loan;

(b) Entered into an additional agreement (No. 2) dated 29 December 2008 with the Bank in respect of the Second PetroLes Loan. This additional agreement extended the date for monthly payments of interest until 26 March 2009, which was the date for the repayment of the capital of the loan;

(Mr Shevelev, General Director of PetroLes, signed these agreements on behalf of PetroLes.)

(5) The Bank's case is that Dr Arkhangelsky entered into an additional agreement (No. 1) with the Bank in respect of the Personal Loan. This additional agreement extended the date for the repayment of the capital of the loan until 31 December 2009 and extended the dates for the monthly payments of interest until 28 June 2009. The Bank also contends that Dr Arkhangelsky signed an additional agreement (No. 2) which provided for further security in respect of the Personal Loan, namely a subsequent pledge over certain of the Western Terminal Assets (i.e. those assets pledged under the Fourth Vyborg Loan), although the pledge was never executed.

(6) A Scan promissory note, due to expire on 15 January 2009, was extended by a year.

382. Thus, in broad terms, if the loan was due to be repaid in the first half of 2009, before June 2009, the Bank was prepared to defer interest payments until the date of maturity; if the loan was to be repaid in the second half of 2009, the Bank was prepared to defer

interest payments until June 2009. For the Personal Loan, which was due for repayment at the end of December 2008, the Bank was prepared to extend payment for a year. The Bank also agreed that the overdraft facility be converted into a standard term loan repayable at the end of 2009.

383. In short, as Ms Mironova said:

> "pursuant to different loan agreements, depending on their initial terms, different deferrals were agreed, both on interest and principal repayment."

384. The extensions provided for by these agreements, even though selective, provided a lifeline to OMG and Dr Arkhangelsky: default was otherwise inevitable. But it is worth remembering that they suited the Bank also. In that regard, there is no doubt that the Bank was keen, perhaps (as Dr Arkhangelsky maintained) desperate, to ensure that there was no OMG default to be reserved for at year-end (2008). The agreements, backdated as they were to the end of the year, were required and relied on by the Bank to avoid the need for such reserves.

385. The Defendants contend that this was the occasion also, not for the amendment, but for the introduction, of documentation for personal guarantees, prompted by a review of the existing documentation. The Defendants' contention is that it was only at the stage of this review that the Bank focused on the fact that no such guarantees were in place, and the Bank determined to rectify the position. It was put to Ms Blinova in cross-examination that the documents were "fabricated in January 2009 at the time there was restructuring of OMG indebtedness, and backdated", slipped into the loan records, but were never actually signed by Dr Arkhangelsky. Ms Blinova denied this and stuck by her written account.

386. To complete the repo arrangements, in early January 2009, stock transfer forms relating to the agreements described above, and providing for the legal transfer of the relevant shares to the Original Purchasers, were registered by the Bank with the Federal Tax Service, and only then (under the Russian law) was the transfer of the shares to the Original Purchasers legally effected.

Events immediately prior to the Bank calling OMG default

387. In his witness statement, Dr Arkhangelsky stated that during this time he "continued to look for additional funding" to make repayment of its loans to the Bank. He recounted, in notably general terms, the fact that his meetings with "a very large number of banks all of whom were interested in doing business with the Group" continued in the new year (2009).

388. More specifically, he referred to a meeting with BNP Paribas in Paris in January 2009 "to discuss technical aspects of the project", expressing also his belief that:

> "Had it not been for the Bank's actions…a mandate would have been signed shortly afterwards to enable BNP to start moving towards financial completion in or around the third quarter of 2009."

389. He acknowledged that OMG was even in some difficulty in finding the money to pay the monthly retainer fee of €25,000 which BNP proposed (see paragraphs [202] to [209] above), but his line was that he expected cash flow soon to improve. Further, he told me:

> "If it had been necessary to borrow the money to pay BNP's retainer and other fees then this is what I would have done…
>
> …
>
> …I have no doubt that I would have been able to raise short-term financing from one or more of these banks to enable us to engage BNP to get the financing of Western Terminal across the line."

Reality by the end of 2008 was that there was no prospect of replacement funds

390. It is worth pausing there to consider whether that was so: whether, in other words, Dr Arkhangelsky had any realistic prospect of short-term refinancing, or whether the reality was that he was entirely dependent on whatever time or funds he could get from the Bank. That obviously goes to the issue of whether he ever had any realistic prospect of avoiding default, and that in turn is clearly relevant both to whether the Bank engineered that default whereby to trigger the repo arrangements and to the whole case alleging an illicit 'raid'.

391. As to this, Dr Arkhangelsky also contended that even if "long-term financing" was not forthcoming, he "would have arranged replacement short-term funding" with V-Bank. In his witness statement for trial he went so far as to say:

> "I believe it is therefore virtually certain that Vozrozhdenie [V-Bank] would have provided funds to pay off the Bank's loans in mid-2009 pending the completion of the refinancing."

392. If this was Dr Arkhangelsky's belief, it was a triumph of hope over reality. The reality was that V-Bank, in the credit crisis, was simply not extending new funds in early to mid-2009, and there was never any prospect of it refinancing the loans from the Bank. Dr Arkhangelsky, under cross-examination, was constrained to admit as much:

> "… we have quite big limits with them already, and there were not a question at that time of substitution of Bank of St Petersburg loans by the loans from V-Bank. So we were speaking about comparatively big amounts, and in the situation of crisis, as I already just a few minutes ago told you, that none of the privately owned banks in the middle of the crisis didn't want to increase their exposure and the new loans -- new, big loans."

393. OMG already owed V-Bank at least RUB 2 billion at this time.

The accelerating deterioration in OMG's financial position

394. At the end of 2008 and beginning of 2009 OMG's financial position continued to deteriorate. According to Ms Mironova, by early 2009 no payments of any substance were being made into OMG bank accounts, which were monitored by the Bank.

395. More particularly:

(1) Only one of the OMG companies, Scandinavia Leasing, was receiving any funds (under certain leases it had granted) and so was able to pay the interest due to the Bank under the two loans advanced to it;

(2) OMG's timber business (carried on through both by LPK Scandinavia and PetroLes) seemed to have come to a complete stop. The late payment on the timber sale which Dr Arkhangelsky had mentioned never materialised, and indeed there was no documentation in the evidence to confirm the transaction. By February 2009 Mr Shevelev, the Director-General of PetroLes, was in the position of having to seek further deferral of interest and fees in anticipation of a further decrease in its income;

(3) No funds at all had been received into the accounts of Vyborg Shipping at the Bank. The Bank discovered from Vyborg Shipping internal accounts as provided to it that such limited income as Vyborg Shipping was receiving was being paid directly into accounts which it held with V-Bank. (This was in violation of the Bank's loan arrangements with Vyborg Shipping, which expressly required the borrower "to maintain 100% turnover on settlement and currency accounts of the borrower".)

Request and refusal to extend PetroLes loans

396. In this dire situation, in late February 2009, PetroLes sought to extend both the First and Second PetroLes Loans for a year from their expiry dates on 5 March 2009 and 26 March 2009 respectively and to defer interest payments until 28 June 2009. Interest under each loan had been deferred until maturity under the agreements made pursuant to the meeting of 25 December 2008.

397. Thus:

(1) On 24 February 2009, Mr Shevelev wrote on behalf of PetroLes seeking to extend the First PetroLes Loan by one year and defer interest payments until 28 June 2009. In his oral evidence (though not before) Dr Arkhangelsky appeared to dispute the authenticity of the document, but he provided no basis or evidence for doing so, and I take it to be authentic accordingly.

(2) On 19 March 2009, Ms Krygina wrote on behalf of Vyborg Shipping, seeking to extend the four Vyborg Shipping loans by one year and to defer interest payments until 29 June 2009. Again, in his oral evidence (but not before), Dr Arkhangelsky disputed the authenticity of the document, but again provided no basis or evidence for doing so. Indeed, his witness statement had actually specifically referred to Ms Krygina's request, and he appeared to acknowledge that he had been aware of it at the time. Again, I must take it to be authentic.

398. The Bank has pointed out that the fact that the requests were to extend interest payments for the extended loans from the old expiry dates until 28 June 2009 was not consistent with any alleged general six-month moratorium which had been agreed in late December 2008. On the contrary, the Bank contended, they were positively inconsistent with it because they amounted to a request (i) to extend the loans by a year (to March 2010); and (ii) to defer interest payments for three months on the new extended loans (until the end of June 2009). I return to this when discussing the issue as to the true nature of the moratorium.

399. As it is, the request was first considered within the Bank by the MKK. The MKK approved both requests and sought approval likewise by the BKK. The meeting of the BKK took place on 2 March 2009, presided over by Ms Volodina (with, amongst others, Mr Belykh also present).

400. The minutes of the meeting of the BKK meeting held on 2 March 2009 are not entirely clear, which has led to a dispute between the parties of detail but potentially some importance as to why the request was ultimately refused.

401. According to both Ms Volodina and Mr Belykh, the extensions of the repayment dates were both refused, save only that it was resolved to extend the First PetroLes Loan for a short period of days until it was coterminous with the Second PetroLes Loan on 26 March 2009. Ms Volodina explained short extension as being designed to enable the question of any further extension to:

> "be escalated to, and considered by, the Management Board as the most senior body within the Bank, as the appropriate body for a decision of this magnitude."

402. However (and as Mr Stroilov put to both Ms Volodina and Mr Belykh in cross-examination), the minutes themselves record an agreement to extend the deadline for the payment of interest to 20 June 2009, and to provide some extension beyond 26 March 2009 for the Second PetroLes Loan also.

403. Neither Ms Volodina nor Mr Belykh offered any explanation of the drafting, simply ascribing it (respectively) to a "technical mistake" and "clumsiness" for which Ms Volodina suggested the person concerned should be "punished" (a word which may indicate something lost or confused in translation, but may equally offer some insight into the way the Bank was managed).

404. Mr Stroilov, on the other hand, has submitted that there was no mistake in the drafting, only a misrepresentation afterwards concocted to disguise the truth that the BKK did approve the extension and that the intervention of the Management Board is suspicious. I return to this later: see paragraphs [1006] to [1009] below.

Management Board refuse to extend PetroLes loans

405. In any event, the issue as to the extension of the First PetroLes Loan was considered too significant to rest at Investrbank branch level or with the BKK, and it was referred on to the Management Board of the Bank for a final decision.

406. The Management Board met on 4 March 2009. Mr Savelyev presided. Ms Volodina was present (amongst 9 others). It appears that the meeting lasted some five hours, though Mr Savelyev suggested that this was because "the Bank had problems with many other borrowers" as well as OMG.

407. The Management Board's decision, which is recorded as having been unanimous, was to deny any further extension of the two PetroLes loans. As a result, unless there was in place the 6-month moratorium which the Defendants assert, the First PetroLes Loan fell due for repayment.

408. As further described below, PetroLes did not make repayment on the due date. The Bank sent a notice of default to PetroLes on 6 March 2009.

409. Although also careful to point out that it did not need any excuse or justification not to extend the loans, the Bank advanced a number of contextual reasons for the Management Board's decision, all undermining, in its view, the Defendants' reliability, and in particular the following.

410. First, it pointed out that Dr Arkhangelsky had previously given assurances that OMG was to receive a RUB 300 million timber payment in January/February 2009; but no such payments materialised.

411. Secondly, it suggested that it had further been influenced by its discovery of tax and criminal investigations into Dr Arkhangelsky, alleging tax evasion and sham transactions.

412. Thirdly, according to Ms Volodina, she had heard from her contacts at Rosselkhozbank and VTB Bank that they and other banks were experiencing problems and losing patience with Dr Arkhangelsky and his companies and that OMG was in default with V-Bank.

413. Fourthly, Mr Savelyev and Ms Mironova placed emphasis on the fact that at some point in February 2009, the Bank found out that Dr Arkhangelsky had failed to disclose that the vessel *'Tosno'*, which had been pledged as security for the Second Vyborg Loan, had been arrested in the port of Tallinn in December 2008 for non-payment of bunkering charges.

414. Ms Volodina (who was present at the relevant Management Board meeting) summarised the Bank's perspective on the position by this time in her oral evidence:

> "On 5 March, the PetroLes loan matured, therefore the client came to the branch and asked whether that loan could be further extended for a further period of time.
>
> Now, we looked into this and, based on the solvency position of the client and whether or not he was able to perform his obligations, unfortunately he was a male fide borrower, not only with respect to the Bank, but also with respect to his -- the crew, his seafarers on the vessel that had been pledged. Therefore I told the members of the board that I do not believe that we can extend

> this loan. We had tried to accommodate the client on a number of occasions, yet he had not fulfilled his obligations, not a single time.
>
> We worked with other clients, we restructured many, many of the loans for other clients. We restructured the interests. Many times we moved to accommodate our clients. He had given many promises with respect to the cash flows, to the proceeds, they were not realistic with respect to refinancing via other banks, and also by that point in time it became clear that he had problems with other lenders as well and, therefore, in terms of extensions of any loans, this was simply not viable. This was not something that could be done."

415. Dr Arkhangelsky rejected this account, both in general and by reference to the particular reasons advanced by the Bank for denying any extension of the PetroLes loans. He specifically denied that he had sought to hide the fact of the arrest of the *'Tosno'*. He claimed that, on the contrary, he had openly discussed the vessel's arrest with Ms Borisova, Ms Prokhor and Mr Platonov when it occurred, and he added that, in his belief, he had mentioned the matter when he met Mr Savelyev in December 2008.

416. As to the Bank's suggestion that it had relied on concerns about his tax affairs, he contended, as Mr Stroilov put to Mr Guz and Ms Volodina, that the relevant investigations had taken place in 2007, had been publicised at that time, and had not been proceeded with. Mr Guz was constrained to accept that the tax investigation was not at all a significant factor in the Management Board's decision and Ms Volodina retreated to the point of relying not so much on "a criminal investigation at some point in time" but rather on "the totality of all the factors."

Dr Arkhangelsky suspects an imminent 'raid'

417. In the submission of the Defendants, the events of March 2009 were neither random nor reactive; they were part of a concerted plan, whether (as is their primary case) it was hatched in December 2008 or at about this later time (March 2009).

418. In that connection, Dr Arkhangelsky recorded in his witness statement for trial the "ominous sign" (indicating, in his perception, a raid in preparation) that both Western Terminal and Scan had received a number of visits from the Original Purchasers asking for information including bank statements, accounts, tax returns and the like. He pointed to the fact that the extension of the PetroLes loan had been approved by the MKK, the BKK and the Committee for Management of Assets and Liabilities as demonstrating that the Management Board, in taking an opposite view, had some different agenda.

419. Mr Stroilov put to Ms Volodina in cross-examination that the "real reason" why the Bank decided not to extend the First PetroLes Loan was that by now (March 2009):

> "Mr Savelyev and Mrs Malysheva intended to appropriate OMG assets which had been transferred under the repo deal."

She answered:

> "I don't have information in this matter, and it's unlikely that Mr Savelyev could have made such a decision, as far as I know my boss."

420. Mr Stroilov repeated substantially the same question when cross-examining Mr Savelyev, who answered as follows:

> "No, this is not true. The Bank was never interested in toxic assets, and in various pledges, because I personally, and the Bank's management, always focused on the Bank itself. That is the main asset that we control all together, that we look after all together, that is the priority project and I have always criticised shareholders that work at the Bank and are involved in some construction projects or some side line businesses not related to the Bank….I never wanted to blur the focus. I never wanted to own the assets that Mr Stroilov had in mind. It's not interesting for me from the start.
>
> I confirm again before the court that we are only interested in one thing: to maximise the return of our funds from the sale of the pledged property. That is always legal when the Bank is selling its pledges and wants to get the maximum amount from their sale. This is exactly the only thing I meant."

421. The reference to "toxic assets" is intriguing in light of the Lair valuations indicating that the value of the pledged assets very considerably exceeded the amounts loaned; and it was the Bank's case that it was not until considerably later than this, in July 2009, that it received reports from another valuer, Agentsvo Delovyh Konsultantsy LLC ("ADK") which cast serious doubt as to the reliability of Lair's reports. To my mind, that reference smacks, at best, of hindsight, since at the time, the Bank's valuations of the assets very considerably exceeded the amounts loaned.

422. The Bank's pattern of seeking to embroider by reference to collateral factors its reasons for its decisions tended, to my mind, to detract, rather than fortify, what it had advanced as the true basis for the Management Board's decision, which was its doubt as to OMG's credit-worthiness.

423. Overall, I gained the impression that the Management Board did have a rather different perspective and agenda than had the MKK and the BKK: the one was looking for reasons to work a cross-default, the others did not wish to precipitate anything so major. But I do not consider that the difference is of itself sinister; and it can be explained, as indeed the Bank sought to explain it, as a decision which would trigger general default was one only the highest level of authority within the Bank could ultimately take.

424. That too, however, is for further discussion in the context of my determination both as to the Bank's general proposition that "any other bank would have acted in the same way" and as to the true purpose and the use ultimately made of the repo arrangements.

The development of the Bank's concerns as to the value of its security

425. There is considerable uncertainty as to what the real chronology is as regards the Bank's discovery that it was under-secured, just as there is dispute as to what its reaction was to that discovery.

426. According to the evidence of Mr Belykh, it was not until after OMG began to default on its loans in March 2009, bringing the imminent prospect for the Bank of having to rely on and enforce its security, that he focused on the valuation reports prepared by Lair on which the Bank had relied; and it was not until nearer July, when Ms Mironova circulated (by email attachment) ADK's reports to Mr Skatin and Mr Belykh, that the Bank's concerns as to the value of the underlying security crystallised.

427. Similarly, Ms Mironova indicated that it was not until, at earliest, some time after May 2009 that ADK was commissioned to review Lair's valuations; and it is the case that the emails by which she circulated the ADK reviews are dated early July 2009.

428. However, although, on the basis of this evidence, the Bank maintained that it was not until July or so, when Ms Mironova circulated (by email attachment) ADK's reports to Mr Skatin and Mr Belykh, that its concerns as to the value of the underlying security crystallised, the date on each of the ADK reports is stated to be 12 January 2009. No explanation for that was offered or was evident.

429. In all these reviews, ADK concluded that the valuation reports by Lair had significantly overvalued the relevant property, not only by reference to eroded values following the 2008 crisis, but also at the time.

430. Further, although neither of them felt able to say when it was, both Mrs Mironova and Mr Belykh confirmed that by that time they had together undertaken a site visit of Western Terminal which much discomforted them, since the site seemed barely to have been developed at all, and at that time the weather was wintry with snow on the ground. This suggests late winter or early, rather than late, Spring.

431. That site visit by Mr Belykh and Ms Mironova prompted considerable concern on their part. Mr Belykh described his impressions as follows:

> "I remember that the land in question was not at all what we had imagined based on the valuation reports. For example, there was a project for the development of a railway at the port and it had been described to us as if it was almost ready for use. What we saw on the actual land was an approximately several metre long railway that went from one small hut to nowhere."

432. A working group within the Bank then produced an internal report on the valuation of security that was provided for the Vyborg Shipping loans. The report outlined in detail deficiencies in the reports provided by Lair for the three vessels and for the land owned by Western Terminal and the land owned by Scandinavia Insurance. The working group concluded that the market value of the pledged property was materially overstated in all the valuation reports produced by Lair.

433. According to Mr Belykh (who had some valuation training and experience himself), when the general director of Lair (confusingly, a Mr Alexander Smirnov, unconnected with Mr Smirnov, the owner of Renord-Invest), and its head of immoveable property valuation, Ms Svetlana Chevdar, were summoned to the Bank to speak to the Lair reports (quite when is not clear, but sometime in the latter half of 2009):

> "they were vague in their responses and I had to interrupt them a few times in order to find out the truth. It transpired that Lair had valued the assets used by OM[G] as security on a future discounted cash flow basis, but the income projected was completely unrealistic".

434. Ms Mironova described in her witness statement the way she reported to Dr Arkhangelsky the Management Board's decision in March 2009 to refuse to extend the First PetroLes Loan as follows:

> "I called Mr Arkhangelsky on the same day at around 6pm or 7pm, during my drive home. I remember the conversation because it was quite emotional, with accusations and insults from him; I pulled over and stopped my car, and recall that it was a difficult discussion. He did not make personal accusations, but he was quite unhappy with the decision. In response, I asked him about the arrest of one of Vyborg Shipping's vessels and the failure to pay turnover into OMG's accounts with the Bank. He refused to discuss this."

435. Dr Arkhangelsky was dismissive of this account. His answers in cross-examination offer some insight into his attitude and, I would comment, his habit of either belittling or demonising those he perceives to be against him:

> "Q. Now, Ms Mironova is right, isn't she, in that paragraph, when she describes what --
>
> A. No, it's completely not true. I think the dates -- I think I was in Switzerland participating in the conference and I don't think that I would be even able to reply -- even if anybody called me, I would not be able to reply to that.
>
> Q. So is it your evidence that you did not speak to Ms Mironova on the telephone on or around 4 March 2009?
>
> A. Yes, absolutely.
>
> Q. Did she call you at any other time around that date to tell you the decision of the management board --
>
> A. No.
>
> Q. -- on 4 March –

> A. No. No. We hadn't had any personal contacts, good personal contact here, so when you see her you would understand that she is rather strange and ambitious person, young and ambitious person. So, you know, she's not my style of people I want to speak to, and not sympathetic to that type of people. And for me, her, she was a rather low level of people, so -- I mean in the Bank, so she was not even a head of the Investrbank department, but she was under that. So I assume that it had to be in case such a phone call could be -- it should be at least Mr Belykh who was participating in all this management board, or Mr Platonov, who was the head of Investrbank by that time. So I had a rather good relationship with Mr Platonov, I had been knowing him from different banks, we had a beer together from time to time. So I think in case such a big trouble occurred, he would be definitely telling me or Mr Belykh. So I don't think that Ms Mironova is really telling the truth, considering how active she was participating in BVI and these proceedings. I think she's really following her personal interests in this."

The Bank's decision to call in loans and post reserves

436. Be that as it may, and although Ms Mironova sought to paint a more regretful and measured stance, there is little doubt that the Management Board of the Bank had by now decided in principle to call in all its OMG loans across the board.

437. In accordance with the Bank's usual practice in relation to bad debts, Investrbank set up a working group to consider how best to recover sums owed to the Bank. Further, in the context of various impending defaults, and the prospect of bad debts, Investrbank had to prepare to post reserves, and accordingly Ms Blinova drew up a note setting out the possible levels of reserves required.

438. From March 2009 (and if there was no general or 6-month moratorium in place) OMG defaulted on each of its loans from the Bank as they fell due, as set out in more detail below.

439. The Bank's planning appears from an email exchange between Ms Mironova and Mr Guz on 11 March 2009:

> "Greetings Vladislav Stanislavovich,
>
> Analysis of Oslo Marine Group loan agreements evidences the following:
>
> As of now:
>
> - we can declare default under the second loan for Petroles Ltd. for the amount of RUR 80 million (the maturity date is 26.03.09)
>
> - also due to non-registration of the mortgage agreement for one of LC Scandinavia credits for the amount of RUR 145 million

> (the BKK decision to extend the mortgage agreement registration period should be cancelled) we can demand early repayment, and then on the next day declare default on one more of their loans for the amount of RUR 450 million
>
> - Furthermore, V.D. Arkhangelsky is the surety for all LC Scandinavia Ltd. loans, so we can put the claims forward to him as the surety, and if he fails to comply within 5 days we can declare default on his personal loan of RUR 130 million.
>
> - also there is a surety from SO Scandinavia for LC Scandinavia Ltd. loans, which we can also address the LC Scandinavia Ltd. loan repayment claims to. However SO Scandinavia do not have their own loans (except for the discounted bill for RUR 65 million, but we cannot call it for early repayment as it is subject to the law on bills of exchange instruments and it can only be paid on maturity date – January 2010). However we can still initiate legal collection from SO Scandinavia as they are a surety.
>
> - at the same time we can declare default on Onega Ltd. loans for amount of RUR 431.8 million (as the financial position of their sureties – SO Scandinavia and Arkhangelsky – have become worse)
>
> 26 March 2009:
>
> - The Vyborg Shipping Company Ltd. loan in the amount of RUR 310 million is approaching maturity. There is an option to extend it for 2 years. If we decline extension, then we will declare default on all VSC Ltd. loans for the total amount of RUR 2.1 billion.
>
> Thus we can put forward the claims for all Oslo Marine Group loans by the end of March.
>
> Please confirm the suggested model.
>
> Sincerely yours,
>
> Kristina Borisovna Mironova"

440. Mr Guz replied:

> "I agree. Please affirm this with the legal and credit directorates."

441. By letter dated 25 March 2009, the Bank wrote to Dr Arkhangelsky in relation to the default under the First PetroLes Loan, seeking to resolve any questions concerning enforcement against the pledged assets so as to avoid any court action. There was no response.

The Bank finds out about the arrest of Vyborg Shipping's vessels

442. According to the Bank, it was at about this time that the Bank received further information about the arrests of other OMG vessels pledged under the Vyborg loan agreements, for non-payment of bills and crew wages and salaries.

443. It is not quite clear when the Bank was informed of the arrests of '*Kolpino'* and *'Gatchina'*. Ms Volodina thought it was in "February to March" but could not be precise. However, she was more certain that:

> "…at the latest I would have heard about this issue when Ms Mironova forwarded an email to me from Bergen Bunkers relating to the arrest of *Kolpino* on 30 March 2009."

444. Dr Arkhangelsky claims to have told the Bank about the arrest of *'Tosno'* in December 2008. However, the first record of a communication from him about the arrests is a letter of 3 April 2009 to Mr Savelyev. The letter refers to the seizure as having taken place in Tallinn on 11 December 2008 despite "repeated offers to settle debt". It also refers to the seizure of *'Gatchina'* in La Pallice, France in "early March" (2009) before OMG had received "any prior warning…as to any existing debt" and to the seizure of '*Kolpino'* "under the very same maritime claim that had previously been used to seize the OMG *Tosno* vessel".

445. The way that letter is written suggests to me strongly, and I find, that Dr Arkhangelsky had not previously informed the Bank, and was not aware at the time that the Bank already knew of the arrests. Having depicted the arrests as having been without warning and in breach of the International Law of the Sea Conventions, Dr Arkhangelsky ended on a determinedly optimistic note in the last paragraph:

> "Taking into account the situation that has unfolded, the Company is taking all necessary measures of a financial and legal nature to overcome the difficulties that have arisen. Implementation of these measures will allow it to normalise the operation of its vessels by the end of June 2009, in particular, the satisfaction of accounts payable and collection on accounts receivable within the shortest period of time, as well as working with its customer base while taking into account the current economic environment on the sea shipping market (search for new customers, improvement of conditions stipulated by existing contracts, and costs optimisation)."

This optimism was, at best, blind: it was entirely detached from reality, as I think Dr Arkhangelsky must have appreciated.

446. Ms Mironova described her view of these events in her witness statement as follows:

> "On 4 April 2009 Mr Arkhangelsky sent me and Ms Borisova an email that attached a letter to Mr Savelyev dated 3 April 2009. He informed Mr Savelyev of the arrests of the three vessels and stated that everything would be resolved by June 2009. By this

> point I no longer had any trust in Mr Arkhangelsky, and I did not believe his statements about the prospects of OMG's financial recovery. He now admitted that Tosno had been arrested on 11 December 2008, which he should have notified to the Bank at the time. He also admitted that Gatchina and Kolpino had since been arrested. By this time I believed that there was no prospect of Mr Arkhangelsky or OMG repaying their debts."

447. Although the sequence of later events is not altogether clear and in important aspects disputed, the Bank's resolve to proceed to call a default and to insulate and then perfect its control over its security, and especially the assets of Scan (at Onega) and Western Terminal was by now fixed.

The Bank's review of its security and the introduction of Mrs Malysheva as manager

448. According to the Bank, it was its conclusion that default across the OMG was all but inevitable despite Dr Arkhangelsky's efforts to disguise the scale of the group's difficulties, that prompted a review of its security arrangements. This included, and indeed focused especially on, urgent consideration as to how the Bank's position might be strengthened if and when, after default, Dr Arkhangelsky sought to avoid enforcement, as the Bank anticipated he would.

449. The formulation and coordination of the Bank's response was entrusted, probably by Mr Savelyev (given his overall control, her position and their frequent collaboration), to Mrs Malysheva. In effect, she took over from Mr Guz and his subordinate, Mr Belykh, as the manager with responsibility and oversight of day-to-day relations with OMG.

450. It was in this context that Mrs Malysheva turned for advice and assistance to SKIF and Mr Sklyarevsky, and other associates from the past. Mrs Malysheva's introduction, and the central role she and her associates played, undoubtedly brought about what is said by the Counterclaimants to be a manifestation of, and an important milestone in, the conspiracy they allege: see further as to this paragraphs [961] to [969] below.

Long-standing associations and the AVK connection

451. There were strong antecedent connections between all the main actors brought in to act for the Bank in relation to OMG's default.

452. Mr Sklyarevsky was an ex-colleague of Mrs Malysheva from days when she worked at the AVK group of companies ("AVK"), once one of the Russian Federation's largest financial consultants and brokerage firms and the "number one fixed income instrument operation in Russia" (according to Mr Sklyarevsky). Mr Smirnov had worked for the AVK group of companies too. Mr Smirnov and Mr Sklyarevsky worked at AVK Securities LLC and Mrs Malysheva at the parent company CJSC AVK. They had known each other very well for years.

453. Mrs Yatvetsky also had worked at AVK. So too did a Mr Lestovkin, who it will be seen later became Director-General of an entity called 'Nevskaya Management Company Limited' ("Nevskaya Management Company"), which is based in Olymp. Even the

Bank's present press secretary was previously press secretary to AVK (Mrs Anna Barkhatova).

454. AVK's founder was a Mr Kostikov, who in 2000 had become chairman of the Federal Commission on Financial Markets, a state official equivalent to a cabinet minister.

455. Mr Stroilov, who focused considerable attention on the AVK connection, describing the AVK "veterans" as "a bit of a mafia", suggested that AVK was "simply a vehicle for Mr Kostikov's corruption". He referred (and put to Mr Sklyarevsky and Mrs Yatvetsky in particular) a newspaper article (in a publication named 'Finans') after Mr Kostikov had left office and AVK had collapsed which suggested that AVK's income had been derived, in effect, from extortion and that it collapsed when the means of extortion ceased in about 2006 on Mr Kostikov's removal from office.

456. In greater detail, it was said that Mr Kostikov and AVK operated a corrupt licencing scheme, using his quasi-governmental or regulatory powers, which in effect required market operators to pay high fees for licences as a condition of being permitted to operate, and that Mr Kostikov used these fees to fund AVK and other personal interests. Mr Stroilov suggested that "everyone on the market understood that you have to pay AVK in order to get speedy permissions from the government for various things". He went on to justify the line of argument and questioning on the basis that:

> "…what I suggest is that if you have a remarkable number of businessmen claiming to be independent from each other, all involved in this case…and there is a remarkable proportion of AVK veterans among them, then if I can show that they have got a common record of involvement in corruption, that increases the inherent probability of their involvement in a conspiracy of this kind now…"

457. Both Mr Sklyarevsky and Mrs Yatvetsky firmly denied any such involvement, and rejected the depiction of AVK as a vehicle for fraud and of those who had worked for it as a "mafia".

458. Although it relates more properly to the Counterclaim which I consider separately below, I should make clear immediately that neither the newspaper article nor any other material advanced as 'evidence' came close to justifying the description, still less a finding on the basis of something akin to guilt by association of some predisposition or tendency to corruption amongst the individuals concerned. However, I do accept (as indeed I understood both Mr Sklyarevsky and Mrs Yatvetsky to acknowledge) that the association between Mrs Malysheva, Mr Smirnov, Mr Sklyarevsky and Mrs Yatvetsky was and (it seems) remains exceptionally close, though Mr Sklyarevsky sought to emphasise that "business is business" and on business matters they did sometimes disagree.

459. These interests and association may not signify anything untoward either in the association or in the strategy; but they do seem to me to invite enquiry, not least because as matters developed conflict of interest opened up between the Bank as banker on the one hand and, on the other hand, Renord-Invest Group and those beneficially interested

in the companies within that group. Put another way, events as they developed demonstrate a community of interest between the old friends from their days at AVK separate from, and in the end inconsistent with, the interests of the Bank in its role as lender obliged to seek to recover as much as possible from pledged assets in order to apply as much as possible in diminution of loans it had made.

SKIF, Mr Sklyarevsky, Mr Smirnov and Renord-Invest: their connections with the Bank

460. What Mr Stroilov called "the AVK mafia" had other connections and business associations in relation to both SKIF and Renord-Invest, and thus the Original Purchasers and the Subsequent Purchasers.

461. In 2006-2008, Mr Sklyarevsky owned 50% of the shares in SKIF, with his co-shareholder being a Mr Alexander Ved ("Mr Ved"), yet another ex-colleague from AVK, holding the other 50%; but Mr Ved sold his shares to a Mr Evgeny Kalinin ("Mr Kalinin"), now finance director of Renord-Invest, in about September 2008.

462. Mr Kalinin was at that time a director of Renord-Invest, which it will be remembered was, supposedly at least, owned and controlled by Mr Smirnov. Mr Smirnov had been CEO of AVK between about 2000 and 2006. Mr Smirnov was until 2008 a manager at the Bank: Mrs Yatvetsky thought he was a corporate finance director.

463. As previously mentioned, it also appears that Mrs Malysheva's husband (Mr Vladimir Malyshev) was a co-founder (with Mr Smirnov) of and a 75% shareholder of record in Renord-Invest until March 2008. Mr Smirnov was a holder of record of the remaining 25%.

464. Mr Sklyarevsky acknowledged that SKIF and Renord-Invest "sometimes did business together" but rejected any suggestion of any closer relationship, still less joint control or ownership.

465. Similarly, both Mr Sklyarevsky and Mr Smirnov, and also Mr Savelyev and Mrs Malysheva, rejected any suggestion that SKIF, Renord-Invest and the Bank and its associated companies (see below) were in effect run together as constituent elements of a single business, ultimately beneficially owned by Mr Savelyev and his "loyal friends".

466. I did not find their denials persuasive. I return to the issue later.

Associations in other entities of relevance in the later events

467. These associations also spread into a number of entities involved later in the story. Thus, for example, whilst he was at the Bank, Mr Smirnov joined with Mrs Malysheva in setting up an investment business (according to Mrs Yatvetsky, in competition with the Bank) undertaken through Nevskaya Management Company, a company in which SKIF also was involved.

468. It seems likely that with Mrs Ivannikova, Mrs Malysheva and Mr Smirnov jointly owned (and may still own) a company called Linair, a principal shareholder in Nevskaya Management Company.

469. Mr Stroilov suggested that, in reality, Mr Vladimir Malyshev held as nominee for his wife: she described him in a press article as an "IT technician" and his only known connections with investment business are his marriage to Mrs Malysheva and his shareholding in Renord-Invest. Mr Stroilov also suggested that, given Mrs Malysheva's position as a top manager of the Bank at the time, and the practice of using Bank's managers as nominal shareholders of various companies, it is all the more likely that Mr Savelyev or the Bank were the beneficial owners.

470. Mrs Malysheva's husband 'sold' his shareholding at a nominal consideration in March 2008 to Trak LLC ("Trak") and Barrister LLC ("Barrister") which were, according to Mr Smirnov, both entities owned by him.

471. Further, Mrs Malysheva's son (Mr Igor Malyshev) was a substantial shareholder in Baltic Fuel Company, which ultimately became the owner of Western Terminal through Kontur LLC ("Kontur"), and Nefte Oil LLC ("Nefte Oil").

472. As indicated, the relevance of these entities and the associations behind them is principally to the later story: but it is also of relevance to date their emergence in the chronology.

Events of March to April 2009: overall view

473. Acknowledging that the chronology is "somewhat clouded and disputed", the Defendants' Closing Submissions identified the following events in the Spring and Summer of 2009 as demonstrating the pattern of conduct adopted by the Bank, which (it is their case) was enabled by calling a cross-default across the Group in breach of the alleged moratorium (as they perceived it) and was directed towards the appropriation of the assets and business of Scan and Western Terminal:

(1) After Mr Zelyenov became uncomfortable with, and unwilling to continue to participate in, the arrangements relating to the repo agreements, and withdrew, the Bank instructed the Original Purchasers of Scan to 'sell' the shareholding to six other companies (the Subsequent Purchasers, see below), for the same nominal price as in the original repo contract;

(2) SKIF and its director, Mr Sklyarevsky, became involved in "the project" as one of the Subsequent Purchasers but also in other roles;

(3) Mr Sklyarevsky claims that he unsuccessfully sought to negotiate with OMG, whilst Dr Arkhangelsky claims that he repeatedly and unsuccessfully sought to meet with Mr Savelyev;

(4) Western Terminal took out a loan from Morskoy Bank ("the Morskoy Bank loan") on 30 March 2009 at the instance of Dr Arkhangelsky (but without the sanction of Sevzapalians, purportedly then the 99% shareholder in Western Terminal, which the Bank allege was required);

(5) The Bank instructed the Original Purchasers to replace the management of Scan and Western Terminal, and then Dr Arkhangelsky and Mr Vinarsky were removed as directors-general of (respectively) Scan and Western Terminal.

474. Accepting that the chronological sequence may be imperfect, I address each such 'event' with small changes in the sequence to reflect my own view of the more likely chronology.

Transfers of shares in Scan from the Original Purchasers to the Subsequent Purchasers

475. At some time in the period from 20 March 2009 to 6 April 2009, the Original Purchasers transferred their respective Scan shares which were the subject of the repo arrangements to the Subsequent Purchasers for (in each case) a nominal consideration. Sevzapalians retained the Western Terminal shares.

476. The Subsequent Purchasers who acquired shares in Scan pursuant to such transfers from the Original Purchasers (see paragraph [367(2)] above) were:

(1) CJSC Aneks-Finance, which acquired shares from Akva- Ladoga, and then held 18% of the shares.

(2) Dom Na Maloy Moyke LLC, which acquired shares from Graham-Bell, and then held 18% of the shares.

(3) Khortitsa LLC ("Khortitsa"), which acquired shares from Medinvest, and then held 18% of the shares.

(4) CJSC Nazia, which acquired its shares from Gelios, and then held 10% of the shares.

(5) Sevzapalians, which acquired shares from Severo-Zapadnaya Agrarnaya Kompaniya LLC, and then held 18% of the shares.

(6) SKIF, which acquired the shares from Agentstvo Po Upravleniyu Aktivami LLC, and then held 18% of the shares.

477. I address later a dispute as to the true ownership and/or control of SKIF, the Subsequent Purchasers and the Renord-Invest Group.

478. It is common ground that there were never any formal contractual arrangements between any of the Subsequent Purchasers (including SKIF) and the Bank as to the terms on which they held such shares, just as there were none between the Bank and the Original Purchasers.

479. The timing of the decision to transfer Scan shares from the Original Purchasers to the Subsequent Purchasers is uncertain. This bears on the Bank's case that one of the justifications for the transfers to the Subsequent Purchasers related to its concerns about the Morskoy Bank loan mentioned in paragraph [473(4)] above, which on the Bank's case was improper: see paragraphs [502] to [516] below.

480. The transfer agreements appear to have been made (and the documents are dated) on various dates between 20 March and 6 April 2009. However, Mrs Yatvetsky's evidence under cross-examination was to the effect that the transfers were not registered until some time later, probably in May 2009. Thus, according to her, the Original Purchasers

were still the registered shareholders of Scan until then and thus at the meeting of shareholders of Scan for the removal of Dr Arkhangelsky as Director-General of Scan, purportedly at least on 7 April 2009.

Mr Sklyarevsky's participation and interests in the repo arrangements and transfers to Subsequent Purchasers

481. It is clear from Mr Sklyarevsky's evidence that, at least from mid to late March 2009, he and SKIF were directly and routinely involved in what he described as the "business restructuring" of OMG.

482. He presented his involvement in the sequence of steps in April to August 2009, which together with Mrs Malysheva he was principally responsible for orchestrating, as essentially defensive, with the aim of protecting the Bank's existing security. His line was that all that was done was made necessary by his and the Bank's perception that Dr Arkhangelsky had evinced, and occasionally expressed, his intention to resort to any available means of delaying, and if possible defeating, the Bank's recovery efforts.

483. According to Mr Sklyarevsky's witness statement, it was principally his work which unearthed (during a visit to Morskoy Bank) the "revelation that [Dr Arkhangelsky] had managed to obtain a loan on behalf of Western Terminal when he did not even own Western Terminal [which] caused me serious concerns about the way in which Mr Arkhangelsky was acting" (as to which see below); it was his report on this matter which prompted the decision at a meeting with Mrs Malysheva and Mr Smirnov that "Mr Arkhangelsky could no longer be trusted" and that to protect the assets of Scan and Western Terminal, the management of both should be changed to "protect the bank's security and…force Mr Arkhangelsky to the negotiating table."

484. In all this, Mr Sklyarevsky denied any personal interest or benefit. His evidence was that he agreed to his and SKIF's participation "to assist the Bank" without any formal agreement, either as regards the share transfers to SKIF (see below) or his own remuneration, relying only on what he described as their "good relationship."

485. Mr Sklyarevsky denied any material participation in the subsequent appropriation and realisation of OMG's assets and businesses, both pledged and unpledged, claiming that it was Renord-Invest that "led this process" and that he was "quite put out at the time because I considered I had more experience in this field." He acknowledged, however, that he was until April 2011 the sole owner of Mercury LLC ("Mercury"), which was much engaged in the asset disposal process, though he sought to make clear that its involvement was at the behest and on behalf of Renord-Invest (with, according to Mr Sklyarevsky, his consent as its owner) and that he had then sold it to Renord-Invest; and he rejected therefore any allegation of conspiracy or involvement in a fraudulent dissipation of OMG assets as "totally untrue."

486. Dr Arkhangelsky, on the other hand, viewed Mr Sklyarevsky's and SKIF's introduction as further evidence of the commencement in earnest of a classic "raid". He based this in part also on his perception of Mr Sklyarevsky as "a well-known Russian raider" who was "notorious for [his] role in unlawful takeovers of businesses and assets".

487. Turning more specifically to the details of Mr Sklyarevsky's involvement, Dr Arkhangelsky tended to associate (and blame) Mr Sklyarevsky for the repo arrangements as a whole; but Mr Sklyarevsky disclaimed knowledge of, or interest in, the original repo transactions with the Original Purchasers, though he said that he did recall that he "was aware (from Mrs Malysheva) that companies belonging to Mr Smirnov or Mr Zelyenov held the shares for the Bank."

488. However, Mr Sklyarevsky asserted familiarity with the concept of repo transactions as being a structure "used by Russian banks at the time was one way by which banks could make sure their security was effective." He explained:

> "If there was a "repo" arrangement and a temporary transfer of ownership, then this prevented a borrower from transferring the ownership of their assets or otherwise obstructing a lender, until the borrower's obligations were fulfilled. A "repo" prevented hostile shareholders from blocking the realisation of security in the event of default, which is quite easy to do in Russia.
>
> I also understood why the Bank used third parties to hold the shares on its behalf in the "repo" arrangements. Due to Russian banking controls that were in place at the time, if the Bank had purchased the shares in the relevant OMG companies and put them on its own books, then their value would have been deducted from the Bank's overall capital."

489. Mr Sklyarevsky acknowledged his considerably greater involvement in the transfers of Scan shares from the Original Purchasers to the Subsequent Purchasers in March/April 2009 (not least, since SKIF was directly involved as a Subsequent Purchaser). He stated in his witness statement that he understood "the key motivation" behind the transfers of Scan shares to the Subsequent Purchasers to have been to enable "the Bank's security to be further protected by making it more difficult for Mr Arkhangelsky to unwind the transfers."

490. As to the relationship between and involvement of SKIF and Renord-Invest, Mr Sklyarevsky told me that "Mr Smirnov and I agreed that SKIF would do the legal work, whilst Renord-Invest would provide the new management." It is clear from his witness statement that thereafter SKIF, Mr Sklyarevsky assumed responsibility for the control of those companies, though it took some time. His evidence was:

> "In June 2009, almost two months after the directors of Western Terminal and Scandinavia Insurance had been changed and almost a month after the directors had been registered we finally got operating control over Western Terminal and partially over Scandinavia Insurance." *[My emphasis]*

491. It is also clear that Mr Sklyarevsky was later directly involved in the Gunard Lease (see paragraphs [579] to [581]; and [1050] to [1066] below), which he described as a means of retaining control of the land even if they should lose control of the company (see paragraph [1057] below):

> "some form of an additional insurance mechanism in case we were to lose in court…"

Mr Sklyarevsky's claims that Dr Arkhangelsky was not open to negotiation

492. Mr Sklyarevsky sought to present himself also as wishing to be an intermediary or 'honest broker' between Dr Arkhangelsky and the Bank. He made some play in his evidence of his wish, once he became involved, to see how he could assist in resolving what appeared to him to be the communication breakdown between Dr Arkhangelsky and the Bank. He presented the need for this in cross-examination:

> "Problematic debt is very conflict-ridden, and it is very difficult to talk to one party only. It will lead to further conflict. My concern was that Mr Arkhangelsky was not engaging in such negotiations…"

493. As to what he wished to discuss he explained:

> "I believed that the parties should meet and keep on performing their obligations or reach another agreement. I would have initially focused on the options available, including who might be interested in purchasing OMG's assets or what investment could be made to increase their value; I wanted to meet with Mr Arkhangelsky to get his input. Despite numerous attempts I never managed to meet with Mr Arkhangelsky which in all my experience of working with banks in relation to distressed banks *[sic]* was unique."

494. Dr Arkhangelsky rejected this benign presentation of Mr Sklyarevsky's intentions and activities. As to Mr Sklyarevsky's purported efforts to build bridges, Dr Arkhangelsky stated in his 19th witness statement:

> "I do not recall any attempts by Mr Sklyarevsky to contact me. If there were such attempts which I subsequently forgot about, in any event I had no means of knowing that he sought to contact me on behalf of the Bank. As is usual for a business in trouble, OMG at that time was constantly contacted by all sorts of dubious characters offering to solve all our problems (including, but not limited to, police persecution and the Bank's hostile actions) for a very modest fee. Naturally, I would pay no attention to such offers."

495. Dr Arkhangelsky stressed that the Bank never informed him at any time that Mr Sklyarevsky was acting with its authority either in the steps to take over Western Terminal and Scan or in his alleged attempts to negotiate. On the contrary, the contact point given to Dr Arkhangelsky only two months before was Mr Savelyev.

No meetings with Mr Savelyev

496. The parties are similarly at odds as to why Dr Arkhangelsky and Mr Savelyev did not meet either. Each blames the other.

497. Dr Arkhangelsky pointed out that he continued to visit Investrbank's office every few days, as Ms Blinova confirmed: so the Bank had no difficulty in contacting him; and his evidence was that he repeatedly sought to contact Mr Savelyev to clarify what he perceived to be a misunderstanding or a fraud by a third party, but that Mr Savelyev evaded such contact, and did not reply to correspondence.

498. Under cross-examination, Mr Savelyev accepted that the correspondence did seem to confirm that Dr Arkhangelsky had indeed sought to meet him personally, without success. However, he said, he had tasked his deputies to meet him and, had Dr Arkhangelsky genuinely wanted to meet the Bank in order to find a solution to OMG's default, then he would have done so, but he did not. Mr Savelyev went on to suggest that Dr Arkhangelsky could have met any of his deputies, but chose not to do so.

499. Mr Sklyarevsky's oral evidence under cross-examination was as follows:

> "…the logic underlying what the Bank was doing was quite simple. The banks never chase up borrowers who are in a position of default. It's always a defaulting borrower who comes to the Bank and proposes solutions to the problem. It was not a problem that was created by the Bank, it was a problem that the borrower created for the Bank, therefore, I fully understood Malysheva's position. She said that: it's not me who owes money to Arkhangelsky, Arkhangelsky owes money to the Bank, so she expected him to take certain steps to settle the problem.
>
> Now, whom he met and whom he visited and how many times, I simply do not know, I am afraid. All I know is that the decision maker with the Bank on this particular matter was Mrs Malysheva, she was in contact with Mr Arkhangelsky, and there was a breakdown in communication for whatever reason.
>
> Moreover, what Mr Arkhangelsky has been doing is quite different from what other defaulting borrowers have been doing, because those people spend hours, they spend nights in the Bank, knocking on the Bank's door, trying to meet people, trying to find a solution to their issues. So, to be honest, the way Mr Arkhangelsky behaved was completely illogical."

500. Given the size of the debt and the shortfall, Mr Savelyev's apparent refusal to meet personally, and Mr Sklyarevsky's insistence that it was for Dr Arkhangelsky to be a supplicant to the Bank, did strike me as surprising; and in the case of Mr Sklyarevsky's evidence it chimed oddly with his protestations of the need to get together to talk.

501. The Bank eventually fell back onto claiming that the issue is not of much material relevance, save that it shows Dr Arkhangelsky's desire to do whatever he could to

impede the Bank, and not come forward with any sensible proposals. The Counterclaimants suggested that Mr Savelyev's refusal to meet is a litmus test: "the party who evades contact with the other is very likely to be the guilty party". This too is addressed further in the context of the conspiracy claim: see paragraphs [1036] to [1038] below.

Morskoy Bank loan

502. I have already touched on Mr Sklyarevsky's evidence as to his discovery of the Morskoy Bank loan of RUB 56.5 million which Dr Arkhangelsky had procured Western Terminal to take out at the end of March 2009 (see paragraph [483] above).

503. As to the nature of the loan, according to Morskoy Bank:

> "On 27 March 2009, taking into account the data on the business status of LLC "Western Terminal" provided by Berezin A. O. and intention to create the proper security of the obligations performance, including personal guarantee of Arkhangelsky V. D. it was resolved to grant to LLC "Western Terminal" a loan of RUR 56 500 000 for 12 months at the credit committee meeting of the Applicant.
>
> On 30 March 2009 a loan agreement No. 03-СП/09-КЮ was signed (the "Loan Agreement") between the Applicant as a Lender and LLC "Western Terminal" as a Borrower for the working capital financing, including conducting current production activity and berth repair works.
>
> …
>
> According to the Loan Agreement, the Lender provided to the Borrower a loan in the amount of RUR 56 500 000 (fifty six million and five hundred thousand) for the working capital financing. The Borrower obliged to repay the loan amount until 29 March 2010 and pay the interest thereon."

504. The Morskoy Bank loan agreement was signed on behalf of Western Terminal by its then Director-General, Mr Vinarsky, on the basis of an OMGP shareholder resolution which was signed by Dr Arkhangelsky.

505. As Dr Arkhangelsky acknowledged and accepted, such a loan required shareholder approval; but it was not approved by Sevzapalians, which had become a 99% shareholder of Western Terminal pursuant to the repo arrangements already described in early February 2009.

506. In his second witness statement for the trial, Dr Arkhangelsky stressed that Morskoy Bank had been lending to OMG for several years, "always in the form of letters of exchange". He sought to portray the Morskoy Bank loan not as an exceptional or objectionable event, but as an urgent and necessary expedient to replace existing loans necessary for the conduct of its business in its ordinary course, to prevent further harm

to OMG and to honour OMG's commitment under the Memorandum, not to worsen Western Terminal's financial position.

507. Dr Arkhangelsky elaborated on this as follows:

> "…In view of OMG's financial difficulties, I was able to negotiate a restructuring of that indebtedness, which would be replaced by one regular loan given to Western Terminal for a longer term. To do so was, amongst other things, OMG's obligation under its Memorandum with the Bank, where we undertook not to stop the commercial activities of Western Terminal and not to worsen its commercial position. A default on OMG's obligations to Morskoy Bank would obviously be a breach of that.
>
> It was, of course, also a term of the Memorandum that the Original Purchasers would not interfere in the day-to-day commercial activities of Western Terminal. They were not real shareholders but merely held the shares on trust, under the 'repo' arrangements as a form of additional security. Therefore, the agreement of Sevzapalians was not necessary for the loan agreement between Western Terminal and Morskoy Bank."

508. Dr Arkhangelsky also sought to clarify that the Morskoy Bank loan was secured on property belonging to his wife, a plot of land in the Gatchinsky area, which he stated was suitable for "elite hotel building and worth between 10 and 20 million US dollars."

509. Dr Arkhangelsky was less forthcoming about the actual use made of the moneys borrowed. Put shortly, the loan was advanced for Western Terminal's 'working capital' purposes, but it was not so applied: the loan was used for the benefit of another OMG company, LPK Scan. Dr Arkhangelsky in effect admitted it was not for the benefit of Western Terminal, but for the 'group'.

510. The circumstances surrounding the Morskoy Bank loan would subsequently lead to criminal proceedings being commenced against Dr Arkhangelsky and an Interpol notice (which in turn became the basis of an extradition request when, as described later, Dr Arkhangelsky fled to France). The complaints were based on the proposition that Dr Arkhangelsky had no right or authority to borrow on Scan's behalf since Sevzapalians, as 99% shareholder (further to its repo purchase), had not authorised the loan. I elaborate on this in paragraphs [592] to [596] below.

The Bank's reliance on Morskoy Bank loan to justify removing Dr Arkhangelsky

511. For present purposes, the relevance of the Morskoy Bank loan is that it was invoked by the Bank, not only as supporting its decision to call a default, and rely on its security, but also as the justification (on the Bank's case), or the contrived and *ex post facto* excuse (on the Defendants' case), for the steps taken in early April 2009 to remove Dr Arkhangelsky as Director-General of Scan and Mr Vinarsky as Director-General of Western Terminal and to effect transfers of the shares in Scan from the Original

Purchasers to other companies in the Record-Invest Group in order in both cases (Mr Sklyarevsky told me) "to protect the repo transaction".

512. In that regard, the essential dispute, which bears both on the credibility of the Bank's witnesses (and especially Mr Sklyarevsky), the reasons for the transfers to the Subsequent Purchasers, and the real objectives of changing the management of Scan and Western Terminal, is as to whether Mr Sklyarevsky's discovery and revelation to the Bank of the Morskoy Bank loan took place before the transfers and the resolutions to remove Dr Arkhangelsky and Mr Vinarsky, so as to explain those steps, or whether the Bank has simply been exploiting the issue as to the Morskoy Bank loan as an opportunistic excuse.

513. Whereas Mr Sklyarevsky's evidence was that both decisions were taken in early April in response to the Morskoy Bank loan, the Counterclaimants' case is that such decisions pre-dated the Morskoy Bank loan of 30 March 2009 and had nothing to do with it:

(1) Dr Arkhangelsky's evidence is that it was on 10 March 2009 that he was informed by Mr Vinarsky that he had received notification from Sevzapalians of its proposal to convene a shareholders' conference to replace the management of Western Terminal; and that since Sevzapalians was the registered owner of 99% of the shares in Western Terminal, Mr Vinarsky felt he had no choice but to convene a meeting; and he did so by notices to Sevzapalians and OMGP (the other shareholder) on 12 March 2009.

(2) Mr Sklyarevsky's evidence-in-chief was that the notices for the meeting were sent on 17 March 2009; but it became clear that he had no reliable recollection of the date, and 17 March was simply a date 20 days before the meeting, as required by the relevant Russian companies law.

(3) The actual transfers of shares to Subsequent Purchasers took place at various dates between 20 March and 6 April.

(4) It is common ground that the shareholders conferences took place on 7 April.

514. The date on which Sevzapalians first determined to set in motion the process for the removal of the then Directors-General in Western Terminal and Scan is of some importance. The point was disputed; but the evidence is really all one way, and the date revealed is 10 March 2009.

515. I say that because: (a) it was not suggested to Dr Arkhangelsky that he was wrong about this, (b) no witness for the Bank could substantiate any other date and the Bank resorted instead to denying its importance, and (c) it is to be noted that the only dispute really is as to the date on which the notices convening the meetings were sent out, not the date on which Sevzapalians' proposals were first made clear.

516. In these circumstances, it seems to me to be clear, and I find, that Sevzapalians put in motion the removal of Dr Arkhangelsky before the issue in respect of the Morskoy Bank loan became apparent; and that issue cannot, therefore, have prompted or justified those removals.

The decision to replace the management of Scan and Western Terminal and its aim

517. The removal of Dr Arkhangelsky and Mr Vinarsky was an obviously hostile act which signified a settled intent on the part of the Bank to deploy the control over OMG that it had obtained via the repo arrangements.

518. It is perhaps not surprising that Dr Arkhangelsky should have perceived and portrayed his and Mr Vinarsky's removal after the transfers to the Subsequent Purchasers and the introduction of Mr Sklyarevsky as being the first manifest step in a 'raid':

> "Starting in March 2009, the Bank suddenly began to pursue an extremely aggressive and intensive campaign against the Group, involving demands for payment, court proceedings, the seizure of Western Terminal and Scan, police raids, and the disposal of the Group's assets."

519. On Dr Arkhangelsky's analysis, the sales to the Subsequent Purchasers were part of the same 'raider' strategy. Far from being confined to steps which a bank could be expected to take, acting in its own interests, but legitimately as a responsible creditor, Dr Arkhangelsky painted a picture of the Bank as an aggressive and unscrupulous 'raider', stopping at nothing to secure its objectives. I accept that it was his perception that the steps taken to remove both him and Mr Vinarsky were all part, and lurid examples, of the same 'raiding' tactics.

520. Mr Sklyarevsky explained in his witness statement that it was Mrs Malysheva who at the end of March 2009 "instructed us to change the management of Scandinavia Insurance and Western Terminal" on the basis that, in "her opinion, this would protect the Bank's security and would force Dr Arkhangelsky to the negotiating table". Mr Sklyarevsky perceived her to be and describes her as "the decision maker on this particular matter". In his cross-examination Mr Savelyev's evidence was to like effect:

> "She was in charge of this borrower; she had oversight of that borrower, and she was dealing with this on her own."

521. It seems to me clear, and I find, that the decision to remove and replace Dr Arkhangelsky and Mr Vinarsky was made by Mrs Malysheva, as part of the overall strategy she, with those she had brought in and especially Mr Sklyarevsky and Mr Smirnov, had been developing to take control of all the OMG assets. As will already be apparent, I do not consider that it was the Morskoy Bank loan issue which promoted the decision: that issue was in reality more in the nature of an opportunistic basis of justification than a catalyst.

Mechanics of the removal of Dr Arkhangelsky and Mr Vinarsky as Directors-General

522. As to the mechanics, under Russian law, Dr Arkhangelsky and Mr Vinarsky could only be removed as (respectively) Director-Generals of Scan and Western Terminal at shareholders' meetings duly convened and held. The constitutional rules of each company required 20 days' notice for such a meeting, though Mrs Yatvetsky told me that under the Russian law, all the shareholders acting together may waive notice. (That would generally accord with English company law too.)

523. According to the evidence of Mr Sklyarevsky, such meetings were held on or around 7 April 2009; and this is not in dispute. Mr Sklyarevsky stated in his witness statement that he personally notified OMG's counsel, Mr Vasiliev, of the fact and business of the meeting, though he was not sure exactly when he had done so.

524. The Bank's evidence and submissions were notably (and intriguingly) reticent, if not completely silent, as to the identity of the appointees as Directors-General in place of Dr Arkhangelsky and Mr Vinarsky.

525. The only witness on the Bank's side (Mr Sklyarevsky) who addressed the changes made did not identify the replacements, though he did clarify that the new management was provided by Renord-Invest (which is itself of some interest, given that Renord-Invest (and Sevzapalians) had been presented as having purely nominal roles).

526. In fact, the replacement for Mr Vinarsky as Director-General for Western Terminal was Mr Andrey Sergeevich Maslennikov ("Mr Maslennikov"), then (as now) a Renord-Invest employee. It appears that Mr Igor Borrisovich Chernobrovkin ("Mr Chernobrovkin") was appointed as his deputy.

527. Mr Chernobrovkin was at the time also Director-General of Kontur, part of the Baltic Fuel Group supposedly (according to the Claimants) owned by Mr Smirnov, but said by the Counterclaimants to be in reality part of the Renord-Invest Group and/or ultimately controlled by Mr Savelyev. As will be seen in due course, Kontur, some three years later, successfully bid for the assets of Western Terminal: and (as also elaborated and tested later) the Defendants and OMGP alleged that it was from as early as March 2009 that Mr Smirnov was "already interested in using Western Terminal assets for his own projects".

528. In his witness statement, Dr Arkhangelsky identified (without elaboration) his purported replacement at Scan as being a Mr V.V. Kuvshinov ("Mr Kuvshinov"). Mr Kuvshinov was not mentioned by any of the Bank's witnesses, nor in any of the Bank's submissions (written and oral). I must assume (from Mr Sklyarevsky's evidence that management was to be provided by Renord-Invest) that he also was an employee of Renord-Invest.

April to July 2009: the Bank calls in its loans and takes control of Scan and Western Terminal; Mrs Arkhangelskaya challenges the repos; the Bank seeks to insulate its position from adverse judgments and encourages criminal proceedings; and Dr Arkhangelsky leaves Russia

529. The period between April and August 2009 was characterised by the following main strands of activity:

(1) From the end of March and early April 2009 onwards, the Bank proceeded systematically to call in its loans as they fell due, and to serve demands with a view to enforcing its security (see paragraphs [531] to [548D]);

(2) In April 2009, Mrs Arkhangelskaya brought proceedings in Russia to challenge the repo share transfers (see paragraphs [549] to [556]);

(3) In May 2009, Dr and Mrs Arkhangelsky entered into a marriage contract in respect of certain assets (see paragraphs [557] to [559]);

(4) Starting in May 2009, the Bank began the first tranche of many proceedings in Russia to enforce its pledges (see paragraphs [560] to [561]);

(5) In June 2009, after the sudden closure of criminal proceedings brought by Dr Arkhangelsky and Mr Vinarsky complaining that their removal was illegal, the Bank and SKIF/Sevzapalians, with the assistance of riot police, effected the seizure of Western Terminal (see paragraphs [569] to [574]);

(6) Thereafter, and into August 2009, the Bank and SKIF/Mr Sklyarevsky sought to insulate the Bank's security from any adverse findings in the proceedings brought by Mrs Arkhangelskaya (see paragraphs [562] to [568]; and [575] to [578]), including by subjecting Western Terminal to an onerous lease, "the Gunard Lease" (see paragraphs [579] to [581]);

(7) Dr Arkhangelsky left Russia, following his family to Bulgaria and then France, where he was given asylum (and remains to this day) (see paragraphs [582] to [589]); and

(8) In June and July 2009, the Bank and law enforcement authorities set in motion criminal proceedings against Dr Arkhangelsky and his companies, and effected a raid on OMG's headquarters (see paragraphs [590] to [591]).

530. As indicated by the paragraph references above, I elaborate briefly on these events in turn in the next paragraphs, but will need to return to expand on certain aspects of them in the context of the Counterclaim.

The Bank calls in its loans

531. After the refusal of an extension to the First PetroLes Loan and OMG's resulting default, the Bank proceeded with the cascade of demand and, in the absence of response, default notices.

532. There is a dispute as to whether the demands, and especially those relating to the disputed Personal Guarantees, were validly served or notified; Dr Arkhangelsky alleges that they were not. I address this dispute in paragraphs [547] to [548D] below. The references in the next following paragraphs reflect the Bank's case and must be read with the caveat that Dr Arkhangelsky has disputed service, as well (as previously indicated) as the authenticity of the guarantee documentation.

First to Fourth Vyborg Loan defaults

533. Leaving aside the alleged moratorium, the First Vyborg Loan came up for repayment on 26 March 2009. Vyborg Shipping requested an extension on the First, Second and Third Vyborg Loans until 28 June 2009. The request for an extension was refused. Accordingly, the Bank emailed Dr Arkhangelsky requesting repayment.

534. On 27 March 2009 the Bank drew up a notice of demand which was sent to Vyborg Shipping. It also drew up and sent a notice of demand in respect of Dr Arkhangelsky's (disputed) personal guarantee. Ms Blinova emailed him that demand on 1 April 2009.

535. The email also attached demand letters under the (alleged) Scan guarantee and personal guarantee, and asked for repayment. Ms Blinova's evidence was that she also did everything she could to contact Dr Arkhangelsky, but to no avail.

536. Leaving aside the alleged moratorium, the Second Vyborg Loan was due for repayment on 15 April 2009. No repayment was made. On 16 April 2009, the Bank drew up a notice of demand which was sent to Vyborg Shipping. It also drew up and sent a notice of demand in respect of Dr Arkhangelsky's (alleged) personal guarantee.

537. Likewise leaving aside the alleged moratorium, the Third Vyborg Loan was due for repayment on 28 April 2009. The agreement provided that the Bank was entitled to make a demand for repayment if the borrower was in default of its other lending obligations to the Bank. Accordingly, in view of its default under the First Vyborg Loan, Vyborg Shipping was also in default under the Third Vyborg Loan.

538. On 14 April 2009, the Bank drew up a notice of demand which was sent to Vyborg Shipping. No repayment was forthcoming. On 22 April 2009, the Bank drew up and sent a notice of demand in respect of Dr Arkhangelsky's (alleged) personal guarantee, which it followed up with a further notice on 29 April 2009.

539. The Fourth Vyborg Loan was not due for repayment on 17 July 2009. However, in view of the notice of default under the First and Second Vyborg Loans, on 20 April 2009 the Bank drew up a notice of demand which was sent to Vyborg Shipping. No repayment was forthcoming.

540. On 29 April 2009, the Bank drew up and (at least according to its case) sent a notice of demand in respect of Dr Arkhangelsky's (alleged) personal guarantee.

First Onega Loan

541. Leaving aside the alleged moratorium, the First Onega Loan was due for repayment on 27 June 2009. Under the agreement, the Bank was entitled to demand repayment if the financial position of Onega deteriorated and the sums entering the settlement account at the Bank fell below certain minimum levels. Onega's revenue did fall below the minimum level which it needed to maintain.

542. On 22 May 2009, the Bank drew up a notice of demand which was sent to Onega (and did the same in respect of the Second Onega Loan). No repayment was forthcoming. On 2 June 2009, the Bank drew up and sent a notice of demand in respect of Dr Arkhangelsky's (alleged) personal guarantee.

2008 LPK Scandinavia Loan

543. In respect of the additional agreements, the Bank had sought security from OMG, but experienced repeated difficulties in trying to register various mortgage agreements. In particular, LPK Scandinavia failed to register the mortgage agreement dated 26

February 2009 over the real estate it had pledged as security for the 2008 LPK Scandinavia Loan. As a result, LPK Scandinavia was in default of its obligations.

544. On 3 June 2009, the Bank drew up notices of demand both under the 2008 LPK Scandinavia Loan and Dr Arkhangelsky's (alleged) personal guarantee.

Demand in respect of Personal Loan

545. The (alleged) additional agreement for the Personal Loan had extended the date for payment of interest until 28 June 2009. Dr Arkhangelsky (who, it will be recalled, denied that any such loan had been extended to him personally) made no payment and was accordingly treated as being in default.

546. According to Ms Blinova, on 30 June 2009, the Bank's case is that it drew up and sent a notice of demand to him, which it followed up on 7 July 2009. Also according to Ms Blinova, the Bank drew up and (according to its evidence) sent a notice of demand to Scan, which it alleged was a guarantor of the Personal Loan on 6 August 2009.

Dispute as to service of demands

547. The Bank's case is that once OMG had defaulted it sent notices, not only to the relevant borrowers, but also the relevant guarantors (Scan and Dr Arkhangelsky). Ms Blinova's evidence in her witness statement, which was not challenged, was as follows:

> "I prepared all the notices of demand on the basis of information in the Bank's records, including information recording Mr Arkhangelsky's address, understand that Mr Arkhangelsky has alleged that the notices of demand were not sent, or were sent to the incorrect address. This is not right. The address for Mr Arkhangelsky that I typed on the demands under the Vyborg Loans corresponded to the address that appeared in the guarantee agreements. I remember that some of the demand letters in respect of the Vyborg Loans were returned to the Bank. When this happened, I checked the position and realised that there had been a typographical mistake in Mr Arkhangelsky's address, I checked the Bank's records, corrected the mistake, and resent the relevant notices.
>
> I clearly recall that all the notices of demand were sent by registered mail. I am sure of this. One of my functions was to deal with problem debts and so I tracked the relevant postal notices confirming that the letters had been delivered and I put them on the credit file. I made every effort to make sure Mr Arkhangelsky was aware of the demand notices, and sent them by email and fax, as well as by post."

548. In her oral evidence, Ms Blinova explained what she did:

> "…I was sending these letters, and subsequently I would either receive a notification that the letter was delivered safely, or the

> actual letter would come back if it didn't work out to deliver the letter, then I would send the letter again.
>
> So using all available methods, we endeavoured to notify a client, and all these matters, it's something I remember very well, because within the Russian proceedings the Bank's lawyers always asked me to provide a confirmation that I did my utmost to notify the client, and also we had to attach the postal slips."

548A. The Defendants and OMGP deny that the Bank made any repayment demands and say that it "dishonestly fabricated letters demanding repayment in order to create spurious grounds for a claim under the fabricated "personal guarantees"." In particular, although they did not press or even mention the point in their Closing Submissions, they alleged at trial that:

(1) Dr Arkhangelsky never received the letters of demand.

(2) Any letters of demand needed to be sent by recorded delivery to enable the Claimants to provide proof of compliance under Article 132 of the Civil Procedure Code.

(3) The Bank has not provided "any proof of postage or proof of delivery".

(4) The letters of demand were sent to the wrong address.

(5) The Bank made no attempt to contact Dr Arkhangelsky to demand repayment by email, telephone, fax or so on.

548B. Dr Arkhangelsky said that the following was "absolutely correct and true":

> "The Bank did not make any proper attempt to bring the claims on the guarantees to my notice either before or after it started proceedings in Russia in reliance on the guarantees. I never received any notices of demand under the guarantees. The notices of demand which the Bank claims to have sent went (if they were sent at all) to an address in Ulitsa Dobrolyubova (Dobrolyubov Street), as opposed to my actual address which was on Prospekt Dobrolyubova (Dobrolyubova Avenue). Ulitsa Dobrolyubova is a real street and it is therefore unlikely that I would have received anything sent to that address. Moreover, at the time when it commenced proceedings the Bank was aware that I had left Russia, and it knew my address and contact details, but it did not make any use of them and merely served the documents at my former Russian address instead. To my mind, this suggests a lack of good faith and possibly an awareness on the part of the Bank that its claims on the guarantees were not justified."

548C. I do not accept Dr Arkhangelsky's evidence in that regard. I accept Ms Blinova's ultimately unchallenged evidence that she prepared the relevant notices of demand;

caused them to be sent by registered mail; and re-sent any such notices which were returned to the Bank because of a typographical error in the address stated in its records. I think it more probable than not, and find, that Dr Arkhangelsky did receive all these notices, though he may not have focused on them.

548D. In any event, I accept the Claimants' contention that even if, for whatever reason, notice of demands were not served, or were not correctly served, on Dr Arkhangelsky, that would not absolve him, under the applicable Russian law, of liability under the Personal Guarantees and Personal Loan. I have considered carefully Dr Gladyshev's opinion as recorded in the Joint Memorandum of Experts on Russian Law that the Bank "was under an obligation to send a proper notice" and that failure to serve a notice of demand in accordance with "established practices…can be considered an abuse of right." However, I prefer the evidence of Professor Maggs that even if the Bank failed to effect notice as specified in the relevant guarantee agreement, that would not be a "substantial breach of contract", such as to dissolve Dr Arkhangelsky's obligations. There can be no doubt that Dr Arkhangelsky became aware that he had been called upon to meet those obligations years ago; and the notion that one (or more) incorrectly served, addressed or completed demand(s) forever preclude(s) recovery strikes me as most unlikely.

OMG's response: its and Mrs Arkhangelskaya's proceedings in Russia

549. The Defendants' initial approach was not to dispute their indebtedness, nor even initially to challenge the personal and Scan guarantees, or the Personal Loan; it was rather to dispute valid service of the Bank's proceedings, and to issue their own proceedings in the Russian courts to seek to regain or retain control of the OMG companies and their assets.

550. Thus, parallel to the Bank's proceedings for judgments and enforcement of its loans, from early April 2009, a series of proceedings were commenced in the name of Mrs Arkhangelskaya and OMG in the Russian courts, both civil and criminal, with the objective of reversing the repo arrangements, contesting the removal of Dr Arkhangelsky and Mr Vinarsky, and bringing criminal charges against individuals in Renord-Invest and SKIF.

551. The Defendants portrayed these proceedings as necessary, and forced upon them as the only means of vindicating their rights and interests. The Bank portrayed them as part of a 'war' commenced by Dr Arkhangelsky in fulfilment of his threat to stymie recovery, and in a classic attempt to frustrate the Bank's enforcement of its security rights, such as to justify the Bank's further efforts thereafter to insulate OMG's assets from what the Bank considered to be obvious stratagems.

552. Dr Arkhangelsky's first affidavit in the BVI Proceedings set out in considerable detail the various challenges launched by OMG at his behest:

(1) Mrs Arkhangelskaya, as a shareholder of OMGP, brought a claim against Sevzapalians and OMGP in respect of the transfer of 99% of the shares in Western Terminal to Sevzapalians;

(2) Bissonia, as a shareholder of OMGP, brought a claim against Sevzapalians and OMGP in respect of the 99% share transfer to Sevzapalians;

(3) Mrs Arkhangelskaya, as a shareholder of GOM, brought six actions against the Original Purchasers of the Scan shares; and

(4) GOM brought six actions against the Subsequent Purchasers of the Scan shares.

553. In her witness statement Mrs Arkhangelskaya described these proceedings compositely as follows:

> "34. On 8 April 2009 I, as shareholder of OMG Ports LLC, the Third Part 20 Claimant, filed a complaint with the Commercial Court of Saint Petersburg for the transfer of the shares of Western Terminal LLC to Sevzapalians LLC to be set aside (Claim No A56-18840/2009). I also filed a number of claims as shareholder of Group Oslo Marine LLC against the new shareholders of Scandinavia Insurance LLC at about the same time.
>
> 35. At that time I did not closely follow the details of the claims, since I was being advised by various lawyers (some of whom were also acting for my husband and/or his companies) principally Yaroslav Vasiliev, Nikolay Erokhin and Yuriy Filippov. I understood that the basis on which the transfer was disputed was that the price paid for the shares by Sevzapalians LLC and the new shareholders of Scandinavia Insurance LLC was nominal."

554. Focusing on the proceedings relating to the Western Terminal shares:

(1) In her claim of 8 April 2009, Mrs Arkhangelskaya, as a shareholder in OMGP, sought to declare as void the share purchase agreement and to restore to OMGP its 99% stake in Western Terminal. She argued that the sale price of RUB 9,900 was "knowingly" lower than the purchase price of the shares (which was said to be the RUB 1.065 billion in the May 2007 purchase contract with Premina) in order to conceal a "gift". Mrs Arkhangelskaya was represented by Mr Nikolai Erokhin ("Mr Erokhin"), OMGP was represented by Mrs Abarina, one of Dr Arkhangelsky's lawyers.

(2) On 25 June 2009, the first instance St Petersburg court upheld Mrs Arkhangelskaya's complaint. It did so in part because of the discrepancy between the sale price and the May 2007 acquisition price of RUB 1.069 billion. The court was not told about the repurchase agreement at the same price of RUB 9,900.

(3) Sevzapalians appealed, but its appeal failed in October 2009 before it failed a second time in the appellate court of the Arbitrazh court. (It did, however, succeed in the Federal Court in December 2009.)

555. For the present at least, it is not necessary beyond that to rehearse the course or content of these various proceedings; but the following peculiarities may be noted:

(1) As the Bank was acute to point out, the claims brought in Mrs Arkhangelskaya's name were to the effect (in summary) that the purchasing companies ought to have been aware that the repo transactions, being at nominal value, were so obviously contrary to the selling companies' interests that they should not have proceeded with them: yet the selling companies were controlled (at the time) by her husband; further, OMGP was a defendant being represented by Dr Arkhangelsky's lawyers, whilst it was he who was controlling the claimant in the proceedings.

(2) The presentation to the court of the purchase price as nominal was (to put it gently) incomplete, without recognition that the repurchase price (the 'repo' element) was also nominal. It would appear that the Russian courts, in finding for the Defendants, did not take that into account. Each side blamed the other as to the reasons for this. The Bank claimed that the Defendants simply did not tell the Russian courts about it. On behalf of the Defendants, Mr Stroilov was at pains (especially in his oral closing) to emphasise that one of the Bank's own witnesses, Mr Sklyarevsky, had accepted the fact that the draft repurchase agreements had been mentioned to the court, but that the court had refused to recognise their validity under the Russian law. Further, of course, there had been nothing to stop the Bank's representatives from referring the court to them.

(3) At no point in the various proceedings did the Defendants and OMG ever allege fraud or conspiracy; and though Dr Arkhangelsky sought to explain that on the basis that in Russia such allegations are ordinarily made in criminal rather than civil proceedings, the explanation does not carry conviction.

(4) The eventual reversal of the judgments once the proceedings went to the third level of appeal (in the Federal Arbitrazh Court of the North West Region) does not seem altogether surprising: and the fact of victory at two levels followed by the unsurprising nature of the reversal on final appeal tends to tell against suggestions made by the Defendants subsequently that the final decisions in favour of the Bank "resulted from political interference" (see further below).

556. Also of some importance, and in stark contrast to Dr Arkhangelsky's rather different presentation of the purchase price paid for Western Terminal in offer documentation when he was desperately seeking financial support from Western banks (see paragraph [171] above), is that in the relevant proceedings OMG relied before the Russian courts on a purchase contract showing the purchase price as RUB 1,069 million (approximately US$ 40 million).

Dr and Mrs Arkhangelsky's marriage contract in May 2009

557. At about the same time as the commencement of the 'war', on 5 May 2009, Dr Arkhangelsky and Mrs Arkhangelskaya entered into a marriage contract under which he transferred some of his assets to her. By a document entitled a "Deed of Donation", he made a further transfer to her in January 2010 of the shares in a Bulgarian entity called EOOD Petrograd ("the Petrograd shares"), which owned an apartment complex

in Bulgaria. Dr Arkhangelsky had married his wife in 2002. The timing of the agreements has perhaps understandably excited the Bank's suspicion.

558. Mrs Arkhangelskaya said that their purpose was to "safeguard my position and that of our children for the future". Inevitably, perhaps, the Bank contends that this hints at precisely the ring-fencing of some of Dr Arkhangelsky's assets so as to avoid them being used to satisfy his creditors and supports the Claimants' concern that Dr Arkhangelsky is prepared to take whatever steps are necessary to evade his creditors.

559. The validity of the arrangements is thus in issue. This is another matter to which I must in due course return: see paragraphs [838] to [853] below.

Bank's proceedings in Russia to obtain judgment against OMG

560. It is not suggested that the Bank knew of the Arkhangelskys' marriage contract until later; but on 8 May 2009, in parallel with OMG's proceedings, and further to its notices of demand and OMG's failure to pay (or even respond), the Bank commenced a series of proceedings in Russia (and in the case of the pledged vessels, in the court of the countries where they were found) to obtain judgment against the relevant OMG companies. Ms Mironova explained:

> "The goal was to obtain writs of execution for each of the loans."

561. The goal took time to achieve; and to maintain an albeit approximate or loose sense of chronology, I think it is more convenient to deal separately in a later section with a description of the proceedings brought (including for the arrest of vessels pledged as security) and their ultimate result: see paragraphs [604] to [636] below.

Transfers procured by the Bank and its further steps to 'protect' pledged assets

562. At about the same time, and in a curious reflection of the Arkhangelskys' steps to 'protect' their assets, the Bank itself took steps with a view to 'protecting' Scan assets from the threats which it apparently considered were posed by the possibility of court judgments against it, in the proceedings brought by the Defendants in respect of the Scan shares acquired by the Original Purchasers and then the Subsequent Purchasers. Those proceedings were being heard by the Russian courts in mid-June 2009.

563. Justifying this by reference to those proceedings, the Bank's Closing Submissions confirm that the Bank considered giving its consent to Scan to transfer its assets to CJSC Nazia (as indicated above, one of the Subsequent Purchasers and another Renord-Invest company), subject to the Bank's pledges over those assets.

564. These steps were, of course, premised on the legality and effectiveness of the repo arrangements with Sevzapalians (in the case of Western Terminal) and the Original and Subsequent Purchasers (in the case of Scan), and they depended on the effectiveness of the Bank's control over those parties (Sevzapalians and the other Subsequent Purchasers).

565. Although, in the event, no such transfer was effected, the Defendants portrayed these transactions, actual and proposed, as representing a blatant, concerted and reprehensible attempt to end-run the decisions of the Russian courts (which at the time were invariably going against the Bank in the proceedings brought by the Defendants) by insulating or putting beyond the reach of OMG the pledged and other assets of the OMG. I return to that too in the context of the conspiracy claim: see paragraphs [1045] to [1066] below.

566. The Bank contended that it was "in the context of OMG's proceedings in the Russian courts in the summer of 2009, in which for a time OMG appeared to be successful, that the Bank considered again how best to protect its security interests in the OMG assets." Mr Sklyarevsky recalled in his oral evidence that:

> "Mrs Malysheva was quite upset and frustrated; that we had lost in those two instances."

567. There seems to me to be no real doubt that, from the summer of 2009 onwards, Mrs Malysheva and the Bank, with Mr Sklyarevsky and Sevzapalians, were determined to take any steps available to them, deploying such state connections as they could call on, to make quite sure that Dr Arkhangelsky's exclusion from OMG and the Bank's means of appropriating its assets could not be undone.

568. Despite the Bank's protests that it acted only within the law, I am in equally little doubt that some of these steps included actions of an intimidating kind, especially when Dr Arkhangelsky and Mr Vinarsky dared question the legal propriety and effectiveness of their removals.

Physical seizure of Western Terminal premises with the help of riot police

569. Thus, on Saturday 20 June 2009 employees of Sevzapalians arrived at Western Terminal's premises at about 8.00am, accompanied by a strong contingent of St Petersburg riot police together with representatives of two security companies instructed by the Bank.

570. The video footage (apparently taken by a Western Terminal employee) left me in no doubt that the police and security people took control in a manner that brooked no opposition. There was no prospect of, and no safe sense in, opposing them. The Bank, through Sevzapalians, was thus enabled to take full control of the premises and operations of Western Terminal, excluding both Mr Vinarsky and Dr Arkhangelsky from any further direct involvement.

571. In their Closing Submissions, the Claimants sought to justify the operation as being necessary to enable access to corporate information and accounts to which Renord-Invest and SKIF were entitled but had been denied; and to dismiss the Counterclaimants' complaints as to the operation itself and the riot police presence as "melodramatic". Both justification and characterisation were glibly stated and I did not find them convincing.

572. Given the plain and obvious uncertainties as to the validity of the process of removal there is, at least in the perception of this Court, something unsettling both about the ability to call for the deployment and the actual use of such methods. That is especially

so since by the material time, and as further described below, the Russian courts were seized of proceedings brought by Mrs Arkhangelskaya which, although primarily focused on the (alleged) invalidity of the sales from OMGP to Sevzapalians under the sale side of the repo arrangements (which if established would likely remove control from Sevzapalians and restore it to OMGP) also called into question the validity of the removal process deployed.

573. There is also, again at least in the perception of this Court, something unsettling about the ease with which it seems that the Bank/Sevzapalians were able to commandeer such a force, to do their will in such a manner at the weekend, apparently without a warrant. At the least, as it seems to me, it encourages less sceptical review of the Defendants' contentions that the Bank, principally through Mr Savelyev, had official contacts in the police, whether through Gen. Piotrovsky and Lt. Col. Levitskaya or otherwise, and with Mrs Matvienko (who, as mayor of St Petersburg, controlled them): and see paragraphs [1067] to [1074] below.

574. Two further matters reinforce this. First, as previously mentioned, both Dr Arkhangelsky and Mr Vinarsky had filed criminal complaints with the Kirovsky police department alleging that their removal as Directors-General of Scan and Western Terminal were illegal, leading to the issue in May 2009 of orders initiating criminal proceedings and confirming their "victim status". During the pendency of such criminal proceedings it would have looked even stranger for Sevzapalians to seize Western Terminal. The way in which, without notice or explanation save that Sevzapalians had made representations, the criminal proceedings were suddenly closed days before the seizure by order of the Chief Investigator for St Petersburg and the St Petersburg region has added to the suspicion of coordination between the Bank, Sevzapalians/SKIF and the authorities. And secondly, that also chimes with the admittedly hearsay evidence given by Dr Arkhangelsky that he was told by the person with line responsibility for the proceedings that Gen. Piotrovsky had personally intervened to order to "kick the case into the long grass."

Other legal manoeuvres

575. In addition, Mrs Malysheva, Mr Sklyarevsky and the Bank turned their attention to other less physical options to make sure that their position could not be undone or circumvented, whatever might be the result of Mrs Arkhangelskaya's proceedings.

576. The first of the options described was either to consent to Western Terminal transferring its assets to SKIF, subject to the Bank's pledge over those assets, or to have some form of lease agreement with SKIF in respect of those assets. The submissions record that no such transfer or entry into any lease agreement happened (which is not in dispute).

577. Another potential option explored was for the Bank (as pledgee) to consent to a lease agreement over the Western Terminal assets between Western Terminal and another Renord-Invest company called 'Gunard Enterprises Ltd.' ("Gunard"). This was the option adopted, through the offices of Gunard's new Director-General.

578. The Bank's Closing Submissions record that for the Bank, the Gunard Lease proposal provided a further level of protection for the Western Terminal assets in the light of two principal concerns. These are described as having been as follows:

(1) Dr Arkhangelsky was by now seeking to disrupt any enforcement over the Western Terminal assets, as shown by the various OMG proceedings commenced by this time to recover the Western Terminal shares.

(2) In addition to the OMG threat, the Bank's case is that it also now had to take account of any potential claim by Morskoy Bank against Western Terminal. If Western Terminal could not repay that loan (which, in the Bank's perception, it evidently could not), then Morskoy Bank would have been entitled to proceed against Western Terminal's assets. No proceedings had yet been brought: but a potential claim by Morskoy Bank against Western Terminal could cause further risk to the Bank's security. According to the Bank, its perception, and a factor in its decision, was that a lease agreement could assist the Bank to protect its security in this regard.

The Gunard Lease

579. The Gunard Lease was signed on 20 August 2009. Its terms were plainly uncommercial: US$20,000 rent per month, with the entire rent payable at the end of the term (49 years, later reduced to 30 years on Renord-Invest's request when the Bank gave consent to the lease in November 2009). The time would begin to run after the state registration of the lease, which apparently never took place. Gunard was entitled to take control of the assets three days after the lease agreement was signed, i.e. on 23 August 2009.

580. The provisions of the Gunard Lease are, on any view, extraordinary. The efforts of the Bank's counsel to dismiss criticisms of it were not convincing. I elaborate on this later: see paragraph [1060] *et seq* below.

581. Whether or not the Gunard Lease was a stratagem to end-run any adverse judgment setting aside the repos, or to manipulate values, as the Counterclaimants allege, is part of the Counterclaim, and I return to it in that context: see paragraphs [1050] to [1066] below.

Dr Arkhangelsky's departure from Russia

582. Moving back in the chronology, in early June 2009, Dr Arkhangelsky had left Russia (although he subsequently returned for a short visit in July). His evidence was that he did so in fear, and to protect him and his family, even at the price of increasing the risk to any remaining OMG assets (since it would be all the more difficult to pursue protective proceedings from abroad).

583. According to Dr Arkhangelsky, he was prompted to leave by warnings from a friend of a friend, the tenor of which was that Gen. Piotrovsky was reported to have given an order to arrest him and put him in prison.

584. In Dr Arkhangelsky's own words (in his witness statement):

> "Confronted with this information and the growing appreciation that if I remained in Russia I would probably be imprisoned, I decided that I had to leave Russia. I therefore travelled to Bulgaria via Vienna the next day. Julia was in France at the time and flew briefly back to St Petersburg before joining me in Bulgaria. Needless to say, leaving Russia only compounded the difficulty of pursuing legal proceedings there and protecting the remaining Group assets, but by this point my priority was my and my family's safety.
>
> We remained in Bulgaria until September 2009 when we moved to Nice. We chose Nice because we already owned an apartment there, which we had bought in June 2008.
>
> Apart from a one-day trip to Moscow which I made on 20 July 2009, to meet with the chairman of Sberbank, German Gref, to discuss re-financing the Group, I have not returned to Russia. I have no doubt that if I were to travel there now I would be immediately imprisoned, or possibly even killed. Indeed, I was told by Mr Mikhail Nazarov, one of the lawyers representing me in Russia, that he met regularly with Lt Col Levitskaya who had advised him that if I dropped my complaints against the Bank and returned to Russia I would only serve a limited prison sentence of three to six months. However, if I did not return to Russia the Bank would arrange for me to be killed in France."

585. The Bank rejected this version of the reasons why Dr Arkhangelsky left Russia as "an invention to support the conspiracy case".

586. The Bank suggested a number of difficulties with Dr Arkhangelsky's version, including that: (a) he actually left Russia to go on a family holiday in Bulgaria, which was their usual holiday place, (b) he apparently saw no difficulty in returning to Russia for meetings in July 2009, (c) he continued to maintain links with the Russian state and speak at Russian conferences, and (d) he also continued to seek to control his businesses.

587. In the light of these points, Dr Arkhangelsky somewhat modified his version to maintain that his decision to leave was not final really until late 2009.

588. The impression Dr Arkhangelsky eventually sought to create was that, after leaving St Petersburg, and having hoped for some months to persuade the Russian state that he was being victimised by 'raiders', he eventually, and reluctantly, concluded that the St Petersburg authorities and the Russian state were in it together, and by the latter part of 2009 had concluded that he and his family were in real danger and that there would be no realistic hope of safe return.

589. These rival versions are addressed further in the context of the conspiracy case and the Counterclaimants' allegation as to official and state connivance in that conspiracy: see paragraphs [1075] to [1090] below.

Intensifying campaign of criminal investigations and proceedings

590. For the present, all I need add as to the events in the summer of 2009 is that at about the time or in the wake of Dr Arkhangelsky's departure from Russia, and in what, I have little doubt, he perceived to be confirmation of the warnings he had received, (a) Lt. Col. Levitskaya caused the opening (on 19 June 2009) of a criminal case in relation to LPK Scan in relation to alleged non-payment of VAT (a well-known tactic in cases such as this); (b) the Bank wrote to Gen. Piotrovsky on 15 July 2009 encouraging investigation of Dr Arkhangelsky for alleged fraud in connection with the Personal Loan; and (c) the very next day, there was a police raid at OMG's headquarters, which Dr Arkhangelsky described in his 16th witness statement on the basis of what he said was the eye witness account of Ms Lukina. On the basis of her account, he stated that the raid was personally attended by Lt. Col. Levitskaya with special forces claiming to be acting on the directions of Mrs Matvienko; and (so was his evidence):

> "Nearly all the documents, computers and servers were removed. The offices of the Group's lawyer, Mr Vasiliev, were also raided."

591. Further, according to Dr Arkhangelsky, the July 2009 raids were challenged in the courts and held to be illegal. However, according to him:

> "these decisions were ignored by the authorities and the majority of the documents, servers, computers and hard drives that were seized were never returned."

Western Terminal/Morskoy Bank criminal complaint: end of 2009 to 2010

592. It seems likely that another factor informing Dr Arkhangelsky's decision to move his home and family away from Russia was the commencement in September 2009 of criminal proceedings against Dr Arkhangelsky for alleged fraud in connection with the Morskoy Bank loan, which I have mentioned above (see especially paragraphs [502] to [510] above), and which had already provided the alleged justification for the Bank's active intervention in the affairs of Western Terminal, and (in part) the Gunard Lease (see paragraphs [577] to [581] above).

593. The basis of the complaint was an allegation of fraud. As previously indicated, the fraud alleged was that, when at the end of March 2009 Dr Arkhangelsky had procured the Morskoy Bank loan on the basis that he owned the company through OMGP, this was not the case because Sevzapalians, supposedly as 99% shareholder, had not authorised the loan. It apparently being a requirement of Russian corporate governance law that such consent be obtained, consent was obtained from OMGP, but not from the relevant Original Purchaser, Sevzapalians. It was alleged, on that basis, that Dr Arkhangelsky had sought to borrow on a knowingly false basis and on the basis of false or forged documents.

594. Dr Arkhangelsky's case is that Sevzapalians's consent was not required, as it was (as he perceived it) not a genuine shareholder but merely a 'special company' holding the

shares by way of security only and on trust, subject to the undertakings recorded in the Memorandum, including:

(1) The undertaking (as it was expressed to be) of the Original Purchasers not to interfere with the day-to-day commercial activities of the companies; and

(2) The undertaking (as so expressed) of OMGP and Western Terminal not to stop their commercial activities or otherwise worsen their economic position.

(3) Dr Arkhangelsky described his view of the matter in his BVI affidavit as follows:

> "Although the nature of the claim being made by the Russian authorities is far from clear, in essence the complaint relates to a loan which Western Terminal took out in March 2009 from the Morskoi Bank. The Russian authorities claim that I lied to Morskoi Bank in order to obtain the loan and that the money was then misappropriated, since it was paid to another company in the Group. To obtain the loan, Western Terminal had to show that it had shareholder approval. I signed this document giving this approval when I was not the sole or the majority shareholder at that time.
>
> I deny that I did anything wrong in relation to this loan transaction. The case against me is based on the contention, supported by evidence from the Bank, that the Group sold Western Terminal and my actions were then an attempt to take money from this business.
>
> However, as explained above, this is simply not true. We had not sold Western Terminal but entered into what we had been promised was a temporary security arrangement. Therefore, my understanding was that we were entitled to continue trading in the ordinary course of business. There was, therefore, nothing wrong or suspicious in the Group company obtaining a loan and then using those funds for an inter-group loan.
>
> I, therefore, consider this to be a charge trumped up by the Bank to put further pressure upon me and distract my attention from seeking to challenge the fraud."

595. There are very curious features about the Morskoy Bank proceedings, both civil and criminal, and even more so as regards the extraordinary nature of the evidence compiled with the assistance of the Bank or its employees in its support: I shall return to this in the context of the conspiracy claim: see paragraphs [1091] to [1115] below.

596. But the following features may be noted here, since they are of particular relevance to the Bank's position that it had nothing to do with the extradition request which was their ultimate result:

(1) The Morskoy Bank criminal complaint was instigated originally, not by Morskoy Bank, but by Western Terminal on 25 September 2009, once it had come under the control of the Bank/Sevzapalians/Renord-Invest. This followed the (purported) installation of new Director-General appointed by Renord-Invest, Mr Maslennikov (see paragraph [526] above).

(2) Western Terminal's criminal complaint was launched before any enforcement proceedings were brought by Morskoy Bank itself in respect of the Morskoy Bank loan. It was not until December 2009 that Morskoy Bank brought civil proceedings against Western Terminal to enforce the loan procured by Dr Arkhangelsky. The total debt owed by Western Terminal by then amounted to RUB 68,109,102.

(3) It was not until 31 March 2010 that Morskoy Bank itself applied to initiate criminal proceedings in respect of its loan to Western Terminal. Thereafter, the complaint proceeded in the name of Morskoy Bank, with Western Terminal's proceedings being folded or subsumed into that reformed complaint: the indictment in the composite criminal complaint being to the effect that Dr Arkhangelsky had: (a) used a knowingly false document which wrongly purported to be the consent of Western Terminal's shareholder to obtain money by way of loan from Morskoy Bank; and (b) then stolen that money (described as being *de facto* the property of Western Terminal), by transferring it to LPK Scan without any intention of paying the money back to Morskoy Bank or to Western Terminal.

(4) The reformed complaint was heard by a St Petersburg Court barely two months later, in May 2010. Dr Arkhangelsky, who was convicted on indictment in his absence, maintained that he was never notified of the proceedings and only became aware of them after the Russian authorities submitted a request for his extradition in November 2010.

International Arrest Warrant issued re Dr Arkhangelsky

597. An immediate consequence of that finding against him and the request for his extradition was that on 14 May 2010 an International Arrest Warrant or Interpol 'Red Notice' was issued, and Russia applied for Dr Arkhangelsky's extradition from France.

598. On 4 June 2010, Dr Arkhangelsky instructed French lawyers, and in particular Mr Ameli (see paragraph [92] above), to make a request for political asylum. This was submitted on 1 July 2010.

599. On 18 November 2010, Dr Arkhangelsky was initially arrested and imprisoned for two weeks until released on bail.

600. The extradition request was ultimately refused by the Investigation Chamber of the Court of Appeal in Aix-en-Provence on 10 November 2011. In its judgment, that court rejected Dr Arkhangelsky's claim that the indictment was brought for inadmissible political purposes, but it upheld the other objections to it.

601. The court concluded that: (1) there were serious doubts with regard to the fairness of the criminal proceedings in Russia, (2) the indictment documents lacked proper particularisation and credibility, (3) extradition would disproportionately infringe his

right to a private and family life, and (4) there was a risk that Dr Arkhangelsky would be subject to inhuman or degrading treatment if he were to be extradited. A second request for extradition made by Russia in November 2011 was also rejected for substantially the same reasons.

602. It is Dr Arkhangelsky's case that: (1) the Bank used its close connections to the political elite in Russia (especially through Mrs Matvienko) to manipulate the enforcement authorities to bring a fabricated case, (2) it was the Bank that thereby was the true instigator of the complaint, its adjudication and the extradition request which followed, and (3) it was and is the Bank that sought his extradition as part of the conspiracy he alleges: see further paragraphs [1075] to [1090] below.

603. The Bank entirely denies this. The issue is further addressed below in the context of the role of Mrs Matvienko and Mr Savelyev, and the conspiracy claim.

The Bank's enforcement proceedings and their result

604. Pausing the chronology there (at the date that Dr Arkhangelsky's exile was complete) I turn next to the various proceedings brought by the Bank to enforce their loans and their security (including for the arrest of vessels pledged). As foreshadowed in paragraphs [560] to [561] above, this was a long process, and so that I can also describe their result the next section spans a long period. Where judgment in the relevant proceedings was followed by recoupment out of cash funds, or where there was no extant security, I explain that in this section; but I think it is more convenient to deal in a further section with the intricate and even more protracted process of realization of pledged and other assets which later followed.

First to Fourth Vyborg Loan proceedings

605. As to the First Vyborg Loan:

(1) On 8 May 2009, the Bank issued proceedings in the Petrogradsky District Court against Vyborg Shipping, Scan, and Dr Arkhangelsky in respect of the First Vyborg Loan. On 24 August 2009, the Bank obtained judgment in the amount of RUB 335 million.

(2) Further, in proceedings in France, in December 2009 the French court (the Tribunal de Grande Instance (Superior Court) of La Rochelle) ordered the arrest and sale of the *'Gatchina'* (which had previously been arrested by another creditor as above described, and which was pledged as security to the Bank).

(3) On 8 September 2009, Dr Arkhangelsky, represented by Mr Vasiliev (OMG's in-house lawyer), filed a "cassation" complaint in the City Court of St Petersburg seeking to set aside the judgment of the Petrogradsky Court on the basis that he had not been validly served with the proceedings, and the case had been heard in his absence. This was dismissed on 19 November 2009 on the grounds that Mr Vasiliev had been present to represent the interests of Vyborg Shipping and had had power of attorney also on behalf of Dr Arkhangelsky.

(4) Subsequently, on 26 May 2010, Dr Arkhangelsky filed a "supervisory" appeal with the City Court of St Petersburg on the grounds that his signature had been forged on certain documents; but this was dismissed as having been filed out of time with no good reason for delay.

(5) Finally, on 16 March 2011, Dr Arkhangelsky filed with the Petrogradsky District Court an application for review of the original decision by the City Court on the basis of "newly discovered circumstances, and specifically that he had not signed a personal guarantee in respect of the First Vyborg Loan". On 19 May 2011, this was dismissed by the Petrogradsky District Court on the basis that Dr Arkhangelsky had failed to establish that he could not have been aware of the alleged forgery at the time of the original proceedings (as he was required by law to establish to succeed).

606. As to the Second Vyborg Loan:

(1) On 8 May 2009, the Bank issued proceedings in the Petrogradsky District Court against Vyborg Shipping, Scan, and Dr Arkhangelsky, in respect of the Second Vyborg Loan. On 24 August 2009, the Bank obtained judgment in the amount of RUB 368.9 million.

(2) Dr Arkhangelsky challenged the judgments in the same ways as he challenged the judgments in the First Vyborg Loan proceedings, and with the same results.

(3) In proceedings in the Marshall Islands, in October 2009 the Marshall Islands court ordered the arrest and sale of the *'Tosno'*. However, and as indicated above, the same vessel had already been arrested previously in Tallinn in Estonia. The vessel was later sold at public auction: see below.

(4) The Second Vyborg Loan was also guaranteed by Scan, and after judgment on that guarantee, Scan was eventually (in December 2011) declared insolvent and placed into administration.

(5) Through the administration of Vyborg Shipping (which had gone into insolvency proceedings in May 2009), the Bank recovered further sums of RUB 8 million.

(6) The realisations in Scan's administration, largely comprised of sales of six premises referred to as the "Pravdy Street Assets" (see paragraph [108(1)] above) realised some RUB 19.15 million of which the Bank received RUB 3.745 million which it applied to the Second Vyborg Loan.

(7) Further, the Petrogradsky District Court appointed the Federal Service of Bailiffs to enforce its judgment of 24 August 2009 against Dr Arkhangelsky's personal assets.

(8) It is alleged in the Counterclaim that all the assets (apart from the vessels) were sold at artificially reduced prices and that these enforcement processes were collusive and fraudulent: see paragraphs [1252] to [1525] below.

607. As to the Third Vyborg Loan:

(1) The Bank issued proceedings in the Petrogradsky District Court on 8 May 2009, against Vyborg Shipping, Scan, and Dr Arkhangelsky.

(2) On 24 August 2009, the Bank obtained judgment in the amount of RUB 387.6 million.

(3) Dr Arkhangelsky challenged the judgments in the same ways as he challenged the judgments in the First Vyborg Loan proceedings, and with the same results.

(4) In proceedings in England, the English Court ordered the sale of the '*Kolpino'* in May 2009, and it was later sold at public auction on 9 July 2009.

608. In respect of the Fourth Vyborg Loan:

(1) On 12 May 2009, the Bank brought proceedings in the Kirovsky District Court against Vyborg Shipping, Western Terminal, Scan, and Dr Arkhangelsky. The loan was secured principally by pledges over the majority part of the Western Terminal assets and the claim was brought in the Kirovsky District Court as the court with jurisdiction over those assets, given their location.

(2) On 24 May 2010, the Bank obtained judgment against Vyborg Shipping, Western Terminal, Scan, and Dr Arkhangelsky, in the amount of RUB 1.17 billion.

(3) In the proceedings, Dr Arkhangelsky contended that the personal guarantee he had originally given was no longer enforceable because of a material change in the principal loan agreement; he also argued that his signature on Additional Agreement No. 1 to the personal guarantee had been forged. Dr Arkhangelsky asked the court to appoint a forensic expert to examine the authenticity of that signature. Several forensic analyses were carried out: none was conclusive. The court adjudged that Dr Arkhangelsky had failed to discharge the burden of demonstrating that the signature he was disputing was not his own. In any event, the court held that he remained liable under the personal guarantee.

Onega Loans

609. As to the First Onega Loan:

(1) On 22 January 2010, in proceedings brought on 15 October 2009, the Bank obtained judgment from the Petrogradsky District Court against Onega, Scan, Scandinavia Leasing, and Dr Arkhangelsky in the sum of RUB 34.9 million.

(2) Dr Arkhangelsky defended the claim on the basis that the additional agreements between the Bank and Onega had materially increased the risk to the guarantors without their consent, and that the guarantors should be treated as having been released from further obligation. The argument was rejected: the court held that the amendment to the First Onega loan had not had any adverse effect on the guarantors and that, in any event, Dr Arkhangelsky had consented under the terms of the personal guarantee to the modification of the First Onega Loan.

(3) Scandinavia Leasing also filed a cassation complaint against the judgment on 5 February 2010 and two further applications, none of which succeeded. Onega filed for administration on around 12 March 2012.

(4) The court ordered the sale of the "Sestroretsk Assets" (see paragraph [118(1)] above) constituting the principal security for the First Onega Loan, but they had in fact already been realised to pay sums owed under another OMG loan, the 2007 LPK Scandinavia Loan (see below), and accordingly, were not available to satisfy the sums due under the First Onega Loan.

(5) The Bank recovered certain sums amounting to RUB 284,000 from the Onega bank account which it applied to the sums owed under the First Onega Loan.

610. As to the 2008 LPK Scandinavia Loan:

(1) On 1 February 2010, in proceedings commenced on 24 August 2009, the Bank obtained judgment of the Petrogradsky District Court against LPK Scandinavia and Dr Arkhangelsky in the sum of RUB 157.4 million.

(2) Dr Arkhangelsky defended the claim on the basis that the signature on an additional agreement dated 30 December 2008 to the personal guarantee was not his. This was not accepted by the Petrogradsky District Court.

(3) The Bank has not made any recoveries under the 2008 LPK Scandinavia Loan, and the full amount (plus interest) remains outstanding.

Personal Loan: Russian proceedings

611. As to the Personal Loan:

(1) On 1 February 2010, in proceedings commenced on 24 August 2009, the Bank obtained judgment from the Petrogradsky Court against Scan, Scandinavia Leasing and Dr Arkhangelsky in the sum of RUB 152.9 million.

(2) The court also ordered foreclosure on the vessel *'Pechora'* which was pledged in support of the loan. (Ms Mironova explained that *'Pechora'* was chosen as security because it was insured for RUB 450 million and was thought to be quick to register, which was important given the urgency relating to the Personal Loan.)

(3) Dr Arkhangelsky defended the claim and also brought a counterclaim, alleging that, whilst he had received the sum of RUB 130 million from the Bank under the terms of the Personal Loan, the Bank had removed this money from his account without his consent prior to the date of repayment.

(4) He also argued that the amendments made to the Personal Loan by the Personal Loan First Amendment Agreement rendered the pledge invalid. The Bank replied that the sums advanced under the Personal Loan had indeed been transferred out of Dr Arkhangelsky's account to Regata LLC ("Regata"): but on his own written request. Dr Arkhangelsky was, at that time, a shareholder of Regata.

(5) The Bank also argued that the conclusion of the Personal Loan Additional Agreement did not affect the validity of the pledge of the '*Pechora*'. The court accepted the Bank's arguments.

(6) A cassation complaint filed by Scandinavia Leasing on 10 February 2010 was rejected because of uncorrected procedural defects by order of the Petrogradsky District Court dated 5 April 2010.

(7) The Bank has not been able to realise any security in respect of the *'Pechora'* because the vessel was the subject of a finance lease between Scandinavia Leasing and Baltdraga CJSC ("Baltdraga") pursuant to which Scandinavia Leasing agreed to sell the vessel to Baltdraga in exchange for the provision of sums to the former.

Other OMG loans

612. In addition to the OMG loans in respect of which the Bank makes its claim, OMG owed the Bank a large number of other sums under other OMG loans. While these other OMG loans are not part of the Bank's claims in these proceedings, it is nevertheless necessary to consider them because: (i) the Defendants and OMGP accept that, to the extent their Counterclaim succeeds, they must give credit for OMG's indebtedness to the Bank ("the group's debts") as a whole; and (ii) some of these loans concern the realisation of security over real estate at Onega Terminal, in respect of which the Defendants and OMGP make their Counterclaim.

First and Second PetroLes Loans

613. The First and Second PetroLes Loans were secured by: (i) pledges over five lots of real estate at Onega Terminal owned by Scan; (ii) a Scan guarantee (in respect of the Second PetroLes Loan); and (iii) a personal guarantee from Dr Arkhangelsky (in respect of the First PetroLes Loan).

614. Five lots of real estate at the Onega Terminal were sold at public auction on 26 October 2009. The bidders were Russian bodies corporate called 'Solo LLC' ("Solo") and 'Kiperort LLC' ("Kiperort"), both said by the Counterclaimants to have been part of the Renord-Invest Group. Solo was the successful bidder and paid in total RUB 207.3 million (including VAT). The Bank applied this to the sums owed under the First and Second PetroLes Loans.

2007 LPK Scandinavia Loan

615. As to this:

(1) The 2007 LPK Scandinavia Loan was secured by (i) pledges over the Sestroretsk Assets owned by Scan; (ii) pledges over two lots of real estate (a 3.4 Ha plot) at Onega Terminal owned by LPK Scandinavia; (iii) a Scan guarantee; and (iv) a personal guarantee from Dr Arkhangelsky.

(2) The Sestroretsk Assets were sold at public auction on 26 October 2009. The two bidders were Solo and Kiperort. Solo was the successful bidder and paid RUB

106.656 million. In the Counterclaim the sale is alleged to have been collusive and fraudulent: see paragraphs [1484] to [1496] below.

(3) The Bank applied this to the sums owed under the 2007 LPK Scandinavia Loan. In June 2011, it assigned the remainder of its claim to Mercury for RUB 12.69 million. It is alleged in the Counterclaim that this sale too was collusive and at a fraudulent undervalue: see paragraphs [1412] to [1426] below.

Second Onega Loan

616. As to this:

(1) The Second Onega Loan was secured by pledges over the same assets as the 2007 LPK Scandinavia Loan, which when realised were applied to sums owed under the 2007 LPK Scandinavia Loan.

(2) In June 2011, the Bank assigned its claim under the Second Onega Loan to Mercury for RUB 14.3 million.

(3) Renord-Invest then sold Mercury to ROK No. 1 Prichaly, which (funded, the Counterclaimants contend, by the Bank) at around the same time had acquired from Solo the other half of Onega Terminal (see paragraph [368]).

(4) These transactions, and intermediate transactions which formed a part, are alleged in the Counterclaim to be collusive and fraudulent, and intended to benefit Mr Savelyev and/or the Bank as the true owners of Solo and the Renord-Invest Group: see paragraphs [1387] to [1419] below.

Scandinavia Leasing loans

617. The Bank also entered into three loans with Scandinavia Leasing, one of which was secured by a pledge over the *'Pechora'*. Certain sums are still owed.

618. On 1 February 2010, the Bank obtained judgment from the Petrogradsky Court against Scan, Scandinavia Leasing and Dr Arkhangelsky in the sum of RUB 152.9 million. The *'Pechora'* was the subject of a finance lease between Scandinavia Leasing and Baltdraga, pursuant to which Scandinavia Leasing agreed to sell the vessel to Baltdraga in exchange for the provision of sums to the former. The Bank has not been able to realise any security under the *'Pechora'* because of Baltdraga's interest in the vessel.

Enforcement of security

619. I turn to the long process of enforcement straddling the period from 2009 through 2012. The key procedures in relation to these enforcement proceedings brought by the Bank were (as summarised by Ms Mironova) as follows:

(1) Sale of and recovery from the three vessels, *'Gatchina', 'Tosno'* and *'Kolpino'*, pledged in respect of the Vyborg Loans;

(2) Participation in the insolvency of Vyborg Shipping, which did not itself own any assets (the vessels it operated being owned by SPVs), and which was thus the only step open to the Bank in respect of its borrowings;

(3) Participation in the administration of Scan, and the proceeds from the realisation of the Pravdy Street Assets; and

(4) Realisation of immoveable property, and in particular, the Onega Terminal, the Western Terminal, and some land at Sestroretsk, north of St Petersburg (owned by Scan).

There is attached to this judgment an Annex [2] which sets out: (i) the dates and amounts of the recoveries made in respect of each loan; and (ii) the outstanding sums owed to the Bank. The Defendants and OMGP did not challenge any of the figures in cross-examination.

Realisations of vessels

620. All three vessels pledged as security ('*Gatchina'* (which was security for the First Vyborg Loan), *'Tosno'* (which was security for the Second Vyborg Loan), and '*Kolpino'* (which was security for the Third Vyborg Loan)) were sold at auctions for very substantially less than their valuation by Lair at the time of the relevant Vyborg Loan. Thus:

(1) *'Gatchina'* was sold at public auction in France in April 2010 for €1.2 million. This sum was approximately RUB 47 million at the exchange rate at the time. For the purposes of security under the First Vyborg Loan, *'Gatchina'* had been given a market value of RUB 410 million, based on a Lair valuation. Thus, at least in terms of roubles and not making allowance for exchange rate fluctuations, the sale price was 11% of the value given as security.

(2) *'Tosno'*, which had been arrested first in Tallinn, Estonia and then (in October 2009) in the Marshall Islands, was sold at public auction in Estonia in April 2010 to a third party unconnected with the Bank for some €1.7 million. This sum was approximately RUB 66 million at the exchange rate at the time. For the purposes of security under the Second Vyborg Loan, *'Tosno'* had been given a market value of RUB 470 million, based on a Lair valuation. Thus, at least in terms of roubles, and not making allowance for exchange rate fluctuations, the sale price was 14% of the value given as security. Part of that went to the Bank, but a proportion was used to satisfy the claims of other creditors, including Bergen Bunkers AS which had caused the original arrest for unpaid bunker fuel and lubricants and the Tallinn Port authorities. The Bank recovered RUB 54.3 million.

(3) As previously mentioned, *'Kolpino'* was sold at public auction in England in July 2009 for US$ 3.3 million. This sum was approximately RUB 105 million at the exchange rate at the time. For the purposes of security under the Third Vyborg Loan, *'Kolpino'* had been given a market value of RUB 490 million, based on a Lair valuation. Thus, at least in terms of roubles and not making allowance for exchange rate fluctuations, the sale price was 21% of the value given a security.

Claims in bankruptcy of Vyborg Shipping

621. The sums recovered by the Bank in the insolvency process relating to Vyborg Shipping were very small.

Scan and the Pravdy Street Assets

622. Scan had a number of creditors. Scan filed for bankruptcy, and an administrator/receiver was appointed by the court in 2011. The Scan receiver arranged for Scan's real estate assets at Pravdy Street to be sold by public electronic auction in August 2012. The auction is reported in the receiver's report dated 24 October 2012.

623. As to the auction:

(1) The auction was advertised in Kommersant and took place on 30 August 2012. There were six lots which made up the Pravdy Street premises.

(2) The bidders were BarD LLC and Stimul LLC. BarD LLC was the successful bidder for some of the lots (Pravdy Street Assets 1-4); Stimul LLC was the successful bidder for the other lots (Pravdy Street Assets 5-6).

(3) The results (see paragraph [606(6)] above) were announced in Kommersant.

(4) In total, the auction realised RUB 19.15 million. That sum was distributed to the Bank and Scan's other creditors. The Bank received RUB 3.745 million, which it applied to the sums owed under the Second Vyborg Loan.

624. The auction was organised by the receiver appointed in respect of Scan. There is no allegation that the receiver was somehow involved in the alleged conspiracy. It was advertised and conducted electronically.

625. In cross-examination, the Defendants and OMGP appeared to challenge the auction on the sole basis that the Pravdy Street building should have been sold 'as a whole' rather than in six lots. This point has no substance: but I return to explain this in paragraph [1509] below.

Sales of Onega Terminal assets and Sestroretsk Assets

626. All the land sales were through public auction under Russian law, discussed at paragraphs [1277] to [1304] below.

Onega Terminal assets and Sestroretsk Assets

627. In summary, the process of realisation of five lots making up the Onega Terminal assets, and the Sestroretsk Assets, started in October 2009, was as follows:

(1) The auction was held by the Russian Auction House. The Russian Auction House was established only in 2009 by Sberbank, which is the Russian state savings bank and is one of the biggest in Eastern Europe. It was selected and engaged by the

Bank, pursuant to a formal agreement with Scan, which by then was controlled by Renord-Invest. However, Mr Savelyev denied any personal involvement.

(2) The Counterclaimants allege that the sale was orchestrated by a Mr Stepanenko on the direct orders of Mrs Matvienko. Mr Stroilov described the sale as "a historic event, in a sense": it was the "first ever sale of banking pledges through Russian Auction House".

(3) The Counterclaimants allege that the auction was part of the scam and was orchestrated by a Mr Andrei Stepanenko, an official in Mrs Matvienko's administration, directly following orders from Mrs Matvienko: I return to that allegation later.

(4) As to the Sestroretsk Assets, the starting price was RUB 105.6 million. As previously noted (see paragraph [615(2)] above) only two persons, namely a Kiperort and Solo, were admitted to participate as registered bidders. Solo was the successful bidder, with a bid of RUB 106.656 million.

(5) As to the Onega Terminal assets, which were partly owned by Scan, and partly by another OMG company, LPK Scandinavia, there were five lots of real estate up for auction by the Russian Auction House on 26 October 2009:

(a) Two lots (owned by Scan) were sold together with a starting price of RUB 162.948 million. Again, Kiperort and Solo were admitted to participate as, and were the only, registered bidders. Solo was the successful bidder, with a bid of RUB 164.578 million (exclusive of VAT).

(b) Three lots (owned by Scan) were sold together with a starting price of RUB 31.282 million. Kiperort and Solo were admitted to participate once more as the (in the event, only) registered bidders. Solo was the successful bidder, with a bid of RUB 31.595 million (exclusive of VAT).

628. Carrying forward in the history of the land at Onega Terminal, after its acquisition by Solo:

(1) Western Terminal brought a claim against LPK Scan to recover its loan of RUB 56.5 million (representing the on-lent funds from the Morskoy Bank loan).

(2) The Russian arbitrage court for St Petersburg by order dated 30 December 2009 ordered LPK Scan to repay the loan.

(3) LPK Scan had no funds out of which to make repayment, and by way of enforcement its land at Onega Terminal, which was subject to a number of pledges to the Bank, was put up for sale at public auction.

(4) In January 2011, the LPK land at Onega Terminal (a 3.4 Ha plot) was sold at auction but subject to the pledges in favour of the Bank for as yet undischarged debts, for RUB 99,000 to Mercury, again (see above) acting at the behest and on behalf of Renord-Invest in relation to the purchase (with, according to Mr Sklyarevsky, his consent as its owner).

(5) In April 2011, Mr Sklyarevsky 'sold' Mercury to Renord-Invest.

(6) Then on 17 June 2011, the Bank assigned its rights relating to (i) the 2007 LPK Scandinavia Loan and (ii) the Second Onega Loan (including a transfer of rights relating to the associated security agreements), in respect of which the LPK Scan land at Onega Terminal assets had been pledged, to Mercury for the sum of RUB 27 million.

(7) The Bank then applied the sum of RUB 27 million to the amounts outstanding under the 2007 LPK Scandinavia Loan and Second Onega Loan and otherwise wrote off the monies owed to it by LPK Scandinavia and Onega under those loan agreements.

(8) Once Mercury had acquired the LPK Scan land free from the Bank's pledges, Renord-Invest was in a position to sell the combined Onega Terminal land (both the land previously owned by Scan and the land previously owned by LPK Scan) to ROK No. 1 Prichaly.

(9) Renord-Invest sold the Onega Terminal land to ROK No. 1 Prichaly in 2011 for RUB 500 million.

(10) It was the Bank who lent ROK No. 1 Prichaly the money for the purchase.

629. This sequence of steps ultimately leading to the purchase by ROK No. 1 Prichaly of the combined Onega Terminal land mirrored a plan set out in a document entitled the 'stage plan' (the "Stage Plan"). There is a dispute between the parties as to the purpose of the Stage Plan, as implemented. I address the Stage Plan, which the Counterclaimants contend, taken together with inexplicable features of the auction sales, unmasks the conspiracy they have alleged, in paragraphs [1332] to [1338] below.

Real estate at Western Terminal

630. Under the Fourth Vyborg Loan, those parts of the Western Terminal assets comprising berth SV-15 and a 73,000m^2 land plot were pledged to the Bank. The mortgage agreement agreed the value of the real estate for the purposes of the pledge to be RUB 1.286 billion.

631. At one point in the course of the trial, Dr Arkhangelsky floated the suggestion (for the first time) that the "intention of the parties" had been that the Western Terminal land plot pledged to the Bank, which had been registered with one cadastral number, was to be "split" into two, supposedly because the land plot was "excessive" security for the Fourth Vyborg Loan. This suggestion had never appeared in any pleading or witness statement of Dr Arkhangelsky. It was not seriously pursued and seemed to me inconsistent with the documentation. I do not accept it, and have proceeded on the footing that all of the plots registered with one cadastral number were intended to pledged.

632. The processes adopted for the realisation of the Western Terminal assets pledged to the Bank were on any view convoluted, and were preceded by the Gunard Lease arrangements, themselves curious and which the Counterclaimants allege were intended artificially to lower the value of the land. Further, there is an interplay between

the Bank's own enforcement processes and the Morskoy Bank loan and civil proceedings, which has added a further twist to the convolution.

633. These enforcement processes can be summarised as follows:

(1) Judgment on its civil claim in respect of the Morskoy Bank loan was given in favour of Morskoy Bank on 3 December 2010. The total debt owed by Western Terminal by then amounted to RUB 68,109,102. Further to a process analogous to a writ of execution, following the judgment on 3 December 2010 the court bailiff commenced enforcement proceedings. Western Terminal appealed, but the appeal was dismissed on 30 March 2011.

(2) Western Terminal had no funds to discharge its liability to Morskoy Bank. In February 2011 Morskoy Bank assigned its unsatisfied claim to Sevzapalians.

(3) Sevzapalians then discharged Western Terminal's liability to Morskoy Bank, and as a result became itself entitled to recover RUB 68 million against Western Terminal in the enforcement proceedings.

(4) Also in February 2011, by agreement dated 9 February 2011, Sevzapalians transferred the Western Terminal shareholding to an offshore entity incorporated in Cyprus called 'Ultriva Limited' ("Ultriva") which Mr Sklyarevsky confirmed was also a Renord-Invest company.

(5) On 19 August 2011, as part of the enforcement proceedings against Western Terminal, the court bailiff sought the Bank's consent to enforce against the entirety of the Western Terminal assets (i.e. both the real estate pledged to the Bank and the residual assets which had not been pledged (berth SV-16 and the railway tracks), subject to the maintenance of the Bank's encumbrance.

(6) At the end of August 2011, the Bank gave its consent. Any auction of the entirety of the Western Terminal assets to realise sums in respect of the Morskoy Bank claim would, according to the Bank's witnesses, have left unaffected the Bank's security rights in respect of the Western Terminal assets.

(7) On 23 December 2011, there was a purported 'public auction' to enforce the writ of execution against Western Terminal. Nefte-Oil CJSC ("Nefte-Oil") was the winner of the auction for the two railway tracks located outside the Western Terminal area on adjacent land, and purchased them for RUB 5,646.740.

(8) At another such auction on 26 December 2011, Nefte-Oil acquired the Western Terminal land plot, SV-15, SV-16, and the railway track on the site, and purchased them for RUB 161,497, still preserving the pledge to the Bank.

(9) On 6 June 2012, Nefte-Oil 'sold' the pledged assets of Western Terminal (the land and berth SV-15, but not berth SV-16 or the railway tracks) to another Renord-Invest body corporate, Vektor-Invest LLC ("Vektor-Invest"), for RUB 2,300,000. Only pledged assets were sold, whereas the unpledged berth and railway tracks were kept by Nefte-Oil. The unpledged assets were useless in themselves, but added synergistic value to the pledged assets.

(10) On 20 August 2012, the Bank and Vektor-Invest purportedly entered into a settlement agreement in respect of those proceedings (commenced only a week earlier) whereby the Bank agreed to sell its right to enforce the pledge to Vektor-Invest for RUB 1,209,952.86 (being the value stated in the pledge itself, and which was stipulated by clause 5.4 of the Mortgage Agreement to be required to be "the initial selling price" in the requisite sale at open public auction).

(11) Under the Settlement, Vektor-Invest was to pay the Bank before 28 August 2012, failing which the Western Terminal assets pledged to the Bank would be auctioned, with an initial sale price of RUB 670 million (which the Claimants insist was by then, in difficult circumstances, the market value). This settlement agreement has the case name and the name of the judge in the top left corner and it (and thus the default price it records) appears to have been (and according to the evidence of Mrs Yatvetsky, was) approved by the Russian court.

(12) Predictably (and perhaps intentionally, as to which see later), Vektor-Invest apparently failed to pay the money by the agreed date 28 August 2012 (i.e. one week after the agreement), and the Bank terminated the agreement.

(13) On 29 September 2012, SV-15 et al was sold at a 'public auction' as realisation of the Bank's pledge. According to the documents initially disclosed by the Bank, the only bidder appeared to be Kontur; however, other documents subsequently disclosed by the Claimants suggest that there was another bidder, Globus-Invest LLC ("Globus-Invest"). At the auction, Kontur bid for and bought SV-15 et al for RUB 675,000,000.

(14) Kontur also acquired SV-16 and the track (which had no separate intrinsic value but did have considerable synergy value) for a nominal consideration, thereby reuniting the Western Terminal assets in one more coherent whole.

634. Not least since Kontur was the auction purchaser of Western Terminal and it and Baltic Fuel Group now control and operate its business and assets, the questions as to the ownership of Kontur and Baltic Fuel and the mode of their acquisition of the Western Terminal assets is of considerable interest: both are matters of substantial dispute especially in the context of the Counterclaim and I return to their peculiar features in greater detail in that context: see paragraphs [1226] to [1242] below.

The Arkhangelskys' personal assets

635. The Arkhangelskys' personal assets, namely an apartment, car parking space, and certain chattels comprising the contents of the apartment, were sold by the court bailiff. The chattels were transferred for sale on 20 October 2011.

636. The bailiff sold at public auction the following:

(1) An apartment at Kharkovskaya Street was sold for RUB 11.59 million, of which the Bank recovered RUB 10.66 million. The apartment was bought by a private individual.

(2) A parking space at Kharkovskaya Street was sold for RUB 1.826 million, of which the Bank recovered RUB 455,994.

(3) Certain personal chattels were sold on 21 December 2011 for RUB 51,950, of which the Bank recovered RUB 21,973 (less than £440 according to the then exchange rate, and less now, which appears extraordinarily little for the entire contents of a multi-millionaire's main residence).

The sums claimed by the Bank

637. The particulars of debt due to the Bank as at 7 September 2015 in respect of the underlying loans for which the Personal Guarantees were given or for the Personal Loan, are set out in Schedule A to the Re-Amended Particulars of Claim.

638. The Bank calculates that as at 7 September 2015, the sums owing to it in respect of the loans in issue and for which the Bank claims against Dr Arkhangelsky are:

(1)	First Vyborg Loan:	RUB 290,226,133.14
(2)	Second Vyborg Loan:	RUB 307,570,174.83
(3)	Third Vyborg Loan:	RUB 316,269,650.07
(4)	Fourth Vyborg Loan:	RUB 535,112,523.80
(5)	2008 LPK Scandinavia Loan:	RUB 159,874,575.44
(6)	First Onega Loan:	RUB 35,403,990.34
(7)	Personal Loan:	RUB 153,013,318.63
Total:		RUB 1,797,470,366.25

639. I turn to discuss in more detail the Bank's substantive claims and Dr Arkhangelsky's defence to them.

The Banks' claims: have the Defendants a good defence?

640. Leaving aside for the present the question of set-off if the Counterclaim is established, and despite the complexity and detail of the factual material as I have sought to summarise it above, the Bank's primary claim is a relatively straightforward one against Dr Arkhangelsky for payment under the Personal Guarantees and the Personal Loan.

641. The Bank has secondary claims, brought also by Mr Savelyev, for declarations that neither it nor Mr Savelyev was party to any such conspiracy as the Defendants have alleged by counterclaim. They accept that declaratory relief is discretionary: but the Bank and Mr Savelyev maintain that such relief is the only means of clearing their names and reputation.

642. The Bank also claims against Mrs Arkhangelskaya for relief requiring her to account and turn over to the Bank assets which they allege she received from her husband otherwise than for full consideration and to defeat or delay the Bank's claims.

643. The Bank's primary claims raise the following principal issues:

(1) Whether the Defendants can make good their allegation that Dr Arkhangelsky did not sign or authorise the signing of the Personal Guarantees and the Personal Loan, and that those documents are forgeries on which no claim may be brought.

(2) Further or alternatively, whether any legally binding agreement (what the Defendants describe as the 'Moratorium') was reached in December 2008 such that the Bank: (a) was in breach of it in calling defaults under the main borrowing agreements when it did, and (b) is thereby precluded from enforcing the guarantees or Personal Loan.

(3) Whether the transfers between Dr Arkhangelsky and his wife were intended to defeat or delay creditors or otherwise liable to be set aside.

(4) Whether the Bank can demonstrate that (a) neither it nor Mr Savelyev was party to any conspiracy such as is alleged, and that (b) it should be granted declarations to that effect (the jurisdiction of the court to grant a declaration always being discretionary, and one to be exercised with particular care and circumspection).

644. Plainly issue (4) is the other side of the coin of the Counterclaim, save for the discretionary aspect. I therefore discuss it in that context rather than in the context of the Defence. I shall deal in turn with each of the other three issues.

Issue 1: Dr Arkhangelsky's case in respect of the alleged Personal Guarantees and the Personal Loan

645. The dispute as to whether Dr Arkhangelsky was required by the Bank to, and did indeed, sign the Personal Guarantees is the centrepiece of the Claimants' principal claim.

646. The Bank makes its claims against Dr Arkhangelsky as guarantor under the following alleged agreements:

(1) Personal Guarantee (No. 3500-08-01203/П-2) for the First Vyborg Loan;

(2) Personal Guarantee (No. 3500-08-01279/П-2) for the Second Vyborg Loan;

(3) Personal Guarantee (No. 3500-08-01342/П-2) for the Third Vyborg Loan;

(4) Personal Guarantee (No. 0035-08-01538/П-2) for the Fourth Vyborg Loan;

(5) Personal Guarantee (No. 0035-08-01499/П) for the 2008 LPK Scandinavia Loan; and

(6) Personal Guarantee (No. 133/06-П-3) for the First Onega Loan.

647. In addition, the Bank claims that Dr Arkhangelsky signed Loan Agreement 0035-08-01759 (the Personal Loan).

648. As to the documents which Dr Arkhangelsky disputes:

(1) Appendix I to the Re-Amended Defence and Counterclaim sets out a 'Schedule of Disputed Documents' which lists 28 documents disputed by Dr Arkhangelsky. These consist of:

(a) The six Personal Guarantees.

(b) Mrs Arkhangelskaya's consents to the six Personal Guarantees.

(c) The agreements additional to the six Personal Guarantees, entered into as part of the restructuring in December 2008.

(d) The two additional agreements to the Personal Loan.

(e) The Scan guarantee to the Personal Loan and the additional agreement to the guarantee.

(f) The Personal Loan.

(g) The application for the transfer of funds to Regata.

(h) Two other documents relating to the transfer of funds between Dr and Mrs Arkhangelsky.

(2) In addition he disputes:

(a) The six guarantees given by Scan in respect of the six OMG loans which have Personal Guarantees.

(b) Four other Scan guarantees and a mortgage from Scan in respect of other OMG loans.

649. In addition to his claims that each of the above 28 documents were forged, Dr Arkhangelsky also appeared to dispute other documents (such as internal OMG authorisations), but his case in that regard was never definite or defined: and it was not pleaded.

Did Dr Arkhangelsky agree to provide and did he sign the Personal Guarantees?

650. There is no dispute that the Bank extended to Vyborg Shipping, Onega, and LPK Scandinavia the underlying loans in respect of which its case is that Dr Arkhangelsky gave the Personal Guarantees.

651. The terms of each of the Personal Guarantees provided for the obligations under it not to cease to be effective until "after the Principal Obligation has been discharged in full."

652. By Special Terms and Conditions (as so described) it was recorded and provided that the guarantor:

> "agrees with the following changes in the Principal Obligation secured by this guarantee:

> (a) Changes of the interest rate and interest payment period (increase or decrease;
>
> (b) Changes in penalty amounts for late discharge of the Debtor's loan repayment and interest payment obligations (increase or decrease);
>
> (c) Changes of the loan maturity period;
>
> (d) Changes of the Lender under the Principal Obligation."

653. Dr Arkhangelsky's pleaded case is that he did not sign the Personal Guarantees (or indeed the Personal Loan) and is not bound by any of them.

654. Until recently, he unequivocally denied that he had entered into such agreements and alleged that his apparent signatures had been forged by or at the instance of the Bank. This was his case also in the BVI Proceedings.

655. In his 16th witness statement for trial, however, Dr Arkhangelsky stated that he had "no memory whatsoever of entering into or signing any of these guarantees, or the personal loan agreement, or any of the other disputed documents that have been considered by the handwriting experts".

656. He set out the following reasons why "until recently" he was "sure that none of them could be genuine":

(1) He had no memory of signing documents which exposed him to significant liability.

(2) He never agreed to give the Bank any personal guarantees, and at "one of my early meetings with Mr Savelyev he specifically told me that the Bank would not insist on my personally guaranteeing the Group's liabilities."

(3) There were no formal 'signing ceremonies' for the guarantees, unlike for some of the loans.

(4) He was not in Russia on 21 July 2008 and so could not have signed the guarantee for the Fourth Vyborg Loan on that date, and his wife was in Bulgaria at the date of the consent for his guarantee in respect of the 2008 LPK Scandinavia Loan.

(5) The Bank did "not make any proper attempt to bring the claims on the guarantees to my notice either before or after it started proceedings in Russia in reliance on the guarantees." In particular, he says that notices were sent to Ulitsa Dobrolyubova (Dobrolyubov Street) when in fact his actual address was Prospekt Dobrolyubova (Dobrolyubova Avenue).

(6) He alleges the Bank was involved in forging documents in other proceedings. He refers to previous 'expert' evidence which he maintains support this allegation.

657. On such basis, Dr Arkhangelsky says that previously he was "confident" that he had not signed such agreements and that they were "in all probability forgeries".

658. However, in his 16th witness statement, made shortly before and for the purposes of the trial Dr Arkhangelsky modified his evidence as follows:

> "More recently, however, my attention has been drawn to a number of disclosed documents which refer to my having given or agreed to give guarantees to the Bank. I have no recollection of signing any of these documents either, but realistically, I recognise that the Bank is unlikely to have forged such a large number of documents merely in order to contextualise the original forged guarantees, and that it is possible that I did in fact sign the documents (albeit not at the signing ceremonies). Most of them belong to an extremely busy, difficult and stressful period of my life, when I would typically sign a large pile of documents every day that was simply given to me by a secretary. I was generally so busy that I would sign whatever documents my employees asked me to sign without reading them properly or even at all, on the assumption that documents would not have been prepared without my instructions or agreement.
>
> That being the case, I have reconsidered whether I might also have signed the guarantees and the personal loan agreement. While I still have great doubts on the matter I have to accept that it is possible that I may have done."

659. Notwithstanding the above, Dr Arkhangelsky says that he is:

> "still convinced that the signatures on the addenda to the personal guarantees are not mine, and that neither is the signature on the instruction dated 28 November 2008 to transfer RUB 130 million to the account of Regata LLC at Energomashbank."

660. Mr Stroilov, on behalf of Dr Arkhangelsky, his wife and OMG (whom I refer to in this part of this judgment as "the Defendants"), expressly acknowledged the hurdle they would need to overcome in terms of the inherent improbability that a lending bank would fabricate documents, and especially so many such documents. He further acknowledged that, as a matter of "common sense", a defence based on forgery of such documents in circumstances of massive default would almost inevitably be met with a substantial degree of scepticism.

661. However, Mr Stroilov submitted that what he termed "these stereotypical assumptions" could and should be displaced in the circumstances of this case, in which, so he submitted (and I quote from the Defendants' written opening argument):

(1) "This dispute takes place in the context of a much larger fraud committed by the Bank against Mr. Arkhangelsky, and an 'all-out war' waged by the Bank against him by dishonest and unlawful means".

(2) "Fabrication of documents is well within the Bank's arsenal of means used in its dispute with Mr. Arkhangelsky and the OMG".

(3) "What is inherently improbable is that a large bank would indulge in fabrication of documents at all. However, if it is proven to have fabricated various other documents, it should be regarded as a fairly trivial issue of fact whether certain alleged guarantees should be added to the list of its forgeries".

662. The Defendants thus relied principally on circumstantial evidence and inherent probabilities; they portrayed the handwriting expert evidence as mainly inconclusive, and as lending little support to either side's case.

The Claimants' case as to the authenticity of the documents

663. The Claimants contend that the evidence shows beyond any real doubt, and certainly on a balance of probabilities, that Dr Arkhangelsky did sign the Personal Guarantees and Personal Loan, and the relevant additional documents.

664. The Bank relied not only on the "common sense" of the matter and the inherent improbability of it having engaged in such wholesale forgery, but also on:

(1) Its typical practice of requiring personal guarantees;

(2) The large number of contemporaneous documents referring to the Personal Guarantees and Personal Loan;

(3) The existence of written 'Spousal Consent forms' apparently signed by Mrs Arkhangelskaya (though the Defendants denied the authenticity of these also);

(4) The fact that in the proceedings in Russia, Dr Arkhangelsky did not suggest that he had not signed the Personal Guarantees;

(5) The demonstrable falsity of Dr Arkhangelsky's more general assertion that it was his practice never to give personal guarantees to any bank; and

(6) The expert handwriting evidence, which it contends clearly supports its case.

The Bank's practice as to personal guarantees

665. The Bank maintained that its typical practice was to obtain personal guarantees from borrowers, especially in respect of large amounts, and that in this regard Dr Arkhangelsky was no different from any other borrower.

666. According to the Bank, while the 'primary' form of security for any loan was the pledged asset, the 'secondary' form of security would, though not invariably, typically consist of guarantees providing further security to the Bank: in particular, a personal guarantee was considered important and was ordinarily required because it showed the personal commitment of the individual behind the business to stand behind his business and repay any loan.

667. Ms Blinova, Ms Shabalina, Ms Kosova and Mr Belykh all testified that this was indeed the Bank's standard practice.

668. Ms Volodina stated that the Bank:

> "did not always require personal guarantees from the owners of corporate borrowers, but it was commonplace and not an unusual requirement, in particular when a customer asked for restructuring of facilities".

669. Mr Savelyev expressly rebutted Dr Arkhangelsky's allegation that Mr Savelyev told him the Bank would not insist on personal guarantees as untrue. Mr Savelyev's evidence was:

> "Mr Arkhangelsky says in paragraph 234(2) of his statement that at one of my 'early meetings' with him, I 'specifically told [him] that the Bank would not insist on [him] personally guaranteeing the Group's liabilities'. This is completely untrue. Not only were there no such meetings, but I never discussed with Mr Arkhangelsky the question whether he would have to give a personal guarantee. Mr Arkhangelsky's allegation otherwise is a total fabrication."

670. The Bank's case is that Dr Arkhangelsky's provision of personal guarantees for the loans which the Bank extended to OMG is not surprising, and that his contention that he would not have contemplated any such thing is contrived. Dr Arkhangelsky was the guarantor in other loan agreements with other banks.

Direct evidence of signatures

671. Ms Shabalina recalled that she had mentioned the requirement for personal guarantees to Dr Arkhangelsky and that there was never any suggestion that Dr Arkhangelsky objected to or had not signed personal guarantees. But she could "no longer now recall" whether she saw him signing any such documents.

672. Indeed, of the Bank's witnesses only Ms Blinova gave evidence of actually seeing Dr Arkhangelsky signing any personal guarantee.

673. Ms Blinova added to her evidence that it was standard practice for the Bank to require a borrower to give a personal guarantee for large loans: first, that she had prepared guarantee documents for the First, Second and Third Vyborg Loans; secondly, that she did not recall Dr Arkhangelsky or anyone else on behalf of OMG ever raising any issue as to the provision of such guarantees; and thirdly, that she recalled seeing Dr Arkhangelsky signing guarantees, although she could not now recall which particular guarantees. She explained that Dr Arkhangelsky would come to the Investrbank office to sign documents, but documents were also signed at the OMG offices and then returned quickly to the Bank. She added:

> "…although I cannot now recall Mr Arkhangelsky signing particular guarantees in my presence, since he did sign in my

> presence standard documents that were needed for loans, I am sure that that must have happened. I do recall him signing at least one personal guarantee and one guarantee from Scandinavia Insurance in my presence, although I could not now (given the passage of time) identify the particular document - at the time, I was far more focused on the details of the mortgages or pledges that were offered. This is because the mortgages and pledges required coordination between the Bank and OMG. By contrast, I do not recall any issues being raised by OMG in relation to the guarantee."

674. The impression I formed was that none of the witnesses, including Ms Blinova, had any clear and reliable memory of Dr Arkhangelsky having signed one or more particular guarantees; and that their evidence was more in the nature of assertion that as, to their knowledge, the Bank would have required a personal guarantee he must have done so.

675. This is in line with the evidence of Mr Belykh as follows:

> "…from my meetings (referred to above) and conversations with Mr Arkhangelsky where we discussed OMG's business plans and financing needs, it is clear to me that Mr Arkhangelsky was not only familiar with OMG's borrowings with the Bank but was ultimately responsible for any decision by OMG to obtain a loan from the Bank. It would be inconceivable in my view that any OMG company would enter into a loan without Mr Arkhangelsky's express approval of its terms, including the security to be provided. At no point in my discussions with him, or otherwise (as far as I know) when the OMG loans were agreed, advanced or renewed did Mr Arkhangelsky suggest that he had not provided the personal guarantees required under those loans that required them, in circumstances where he was aware of the terms of the loans. As such, the Bank had no doubt that Mr Arkhangelsky had provided the personal guarantees required."

676. This was echoed by Mr Guz:

> "I distinctly remember that in return for the loans OMG was seeking in 2007 and 2008, companies in the group were able to provide security and Mr Arkhangelsky was willing to provide personal guarantees. I cannot remember for sure whether this was discussed in any of my meetings with him, although I suspect it was probably mentioned in at least one of them, but the provision of such personal guarantees was entirely usual and I would certainly have been told (and would expect to have remembered) if there had been any problem with the provision of a personal guarantee by Mr Arkhangelsky."

677. Any finding as to whether Dr Arkhangelsky did sign the Personal Guarantees must thus predominantly be based on circumstantial and expert evidence. This to some extent is in contrast with the position relating to the Personal Loan, where Ms Patrakova also recalls taking the documents to Dr Arkhangelsky and him signing the contractual documents in front of her.

Contemporaneous documentation

678. The circumstantial evidence is substantial and includes a very large number of contemporaneous documents referring to the Personal Guarantees and Personal Loan. The evidential record includes many Bank resolutions from all levels (MKK, BKK, and Management Board), reports and OMG analyses, credit investigations and so forth, which expressly refer to Personal Guarantees and a Personal Loan.

679. The Claimants contend that, if Dr Arkhangelsky's pleaded defence were right, then all such documents must have been created or tampered with in some way so as to refer to agreements which were not entered, and that this is simply not credible. But they also contend that parts of the documentation, and in particular, internal OMG Debt Schedules, "conclusively dispose of the forgery allegations".

680. The internal OMG Debt Schedules, which were disclosed by the Defendants only in July 2015, appear to record the salient details of OMG's borrowings from various banks, including the Bank. More particularly:

(1) The "OMG Debt Portfolio" as at 25 September 2008 is a table which gives details of the loan agreements to OMG companies from various banks.

(a) There is a column for "collaterals" and a further column entitled "Guarantees" which lists guarantees provided for the various loans. They include guarantees from various OMG companies, including from Scan. The column also lists guarantees from Dr Arkhangelsky himself.

(b) In relation to the loans from the Bank, the table records personal guarantees from Dr Arkhangelsky for five out of the six Personal Guarantees which are in dispute, as well as guarantees from Scandinavia Insurance in relation to the relevant loans.

(c) The schedule also lists personal guarantees which Dr Arkhangelsky gave to a number of other banks.

(2) There are two previous versions of the Debt Schedule from 27 February 2008. They show the "OMG debt table" as at that date setting out the associated personal and Scan guarantees for OMG's loans. They do not include any of the loans to Vyborg Shipping or to LPK Scan in 2008, because they had yet to be advanced as at the end of February 2008.

(3) It may be that the "OMG Debt Portfolio" was updated on a regular basis as OMG took out further loans, but no other versions have been disclosed.

681. There is no doubt as to the authenticity of the OMG Debt Schedules; and there can be no real doubt that Dr Arkhangelsky was aware of them. For example, the September schedule was attached to an email dated 25 September 2008 from Mr Daniil Dubitskiy, OMG's business development manager, to Mr Keith Parker in the OMG 'London office'. Dr Arkhangelsky was copied into the email.

682. Under cross-examination, Dr Arkhangelsky acknowledged that he had seen at least the September schedule before, but he had no convincing explanation as to why the document recorded that he had given personal guarantees for OMG loans:

> "Q. So it suggests, doesn't it, from this schedule, that you have given a personal guarantee for that loan?
>
> A. No.
>
> Q. Why do you say that?
>
> A. Because as far as I understood, this table was done by employees, not by their own record, because we haven't had any such record, but from the information the banks produced. So nobody [had] really been taking care and checking documents."

683. I cannot accept this attempt at an explanation. I agree with the Bank that it is implausible because: (i) OMG itself drew up the schedule; (ii) OMG plainly had its own records of the details of the loans which it had received; (iii) Dr Arkhangelsky's explanation necessarily relies on the Bank having 'fabricated' its records to show personal guarantees before the date of any alleged conspiracy; (iv) other banks must also have fabricated their records; and (v) such fabricated bank records must have been provided to OMG, and yet no one at OMG noticed the fabricated references to guarantees.

684. Likewise, I cannot accept Dr Arkhangelsky's attempts to minimise the evidential significance of the documents by marginalising the status of those who had compiled it, suggesting that Mr Dubitskiy was not a "specialist in finance", but a "low level, low quality employee", and that he was "absolutely sure" that the "materials [were] being provided by the banks".

685. I agree with the Bank that these points do not assist Dr Arkhangelsky:

(1) Dr Arkhangelsky was himself copied into the email. The email and attachment were obviously important because the information was necessary for OMG's financing initiatives. Dr Arkhangelsky was well aware of the debt schedule at the time and did nothing to correct it; he surely would have done so if he had in fact not given the Personal Guarantees. If, as he said, he was "so busy" speaking to "many, many international banks" to raise finance, then the one thing he would have checked was the information about OMG's debts which was to be provided to Mr Bromley-Martin.

(2) Dr Arkhangelsky's reliance on the apparently junior status of Mr Dubitskiy cannot diminish the evidential significance of the information contained in the OMG debt schedule.

(a) Dr Arkhangelsky's excuse could not work for the author of the February OMG debt schedule, Mr Sazonov. Mr Sazonov was certainly not a junior OMG employee, but the deputy director of Oslo Marine Holding. Dr Arkhangelsky admitted that Mr Sazonov was a "specialist in financing", and that he was "considered to be one of the key persons for attracting financing…".

(b) On 22 September 2008, Ms Generalova, who was described as OMG's "Leading IFRS Specialist" sent the February debt schedule to Mr Parker, copying in Dr Arkhangelsky. Mr Parker forwarded the email and debt schedule to Mr Bromley-Martin. Mr Parker, who was head of the OMG London office and was coordinating matters with Mr Bromley-Martin, plainly had a senior role within OMG. Ms Generalova appears to have been in charge of organising OMG's accounts and/or financial information for auditing purposes. She could be expected to have had accurate information about OMG's financial status.

(3) Mr Bromley-Martin, to whom the September Debt Schedule was sent, was given and had no reason to believe that the guarantees listed in the document were not actual guarantees.

686. The documentation itself also refers to the fact of personal guarantees. Thus:

(1) Each of the Vyborg Loan agreements, none of which is disputed, refers in its own terms to the particular Personal Guarantee and Scan guarantee which were to be given. Dr Arkhangelsky, as President of GOM, Vyborg Shipping's founder, signed decisions authorising Vyborg Shipping to enter the loans, which provided that the "terms and conditions of the loan agreements are known; there are no objections".

(2) For each of the Vyborg Loans, in addition to the Personal Guarantees, Scan also gave guarantees, which Dr Arkhangelsky denies signing. GOM, as the 100% shareholder, authorised Scan to give such guarantees.

(3) Each of the guarantees has its own additional agreement from the end of December 2008, amending the guarantees.

(4) On 18 April 2008, Ms Blinova emailed OMG, copying in Dr Arkhangelsky, attaching drafts of the Personal Guarantee and Scan guarantee for the Second Vyborg Loan.

(5) The First Onega Loan agreement, which is not disputed, and which Dr Arkhangelsky accepts he signed, refers in its own terms to the provision of a Personal Guarantee and a Scan guarantee. In his oral evidence, Dr Arkhangelsky admitted that when he signed the loan agreement he saw reference to the Scan and personal guarantees.

(6) On 1 December 2008, Ms Blinova emailed OMG, copying in Dr Arkhangelsky, and referring to the direct debit agreements to be set up for the Scan guarantees. There are direct debit agreements between Scan and other banks in respect of the guarantees it gave.

(7) The Bank's accounting records register the various guarantees.

687. Further, there is a record of Dr Arkhangelsky, as Director-General of GOM, signing the decision authorising Scan to give the Scan guarantee for the amendment to the First Onega Loan. This authorisation is not disputed. If there were no Scan guarantee, Dr Arkhangelsky would never have signed such an authorisation.

688. The Defendants' last resort was to say that there are also Bank internal documents concerned with the underlying loans which do not refer to guarantees or are not otherwise consistent with the provision of the guarantees. They relied in particular on the fact that sometime in November/December 2008, Ms Mironova caused to be prepared a word document setting out calculations for the reserves and the security for the OMG debts, and an Excel spreadsheet listing the OMG debts, including the terms of the loans and the subject and value of various assets available as security. The spreadsheet does not list some of the Personal Guarantees. Ms Mironova said that this was a mistake: she was not cross-examined on this.

689. Mistakes or curiosities, the omissions do not seem to me to begin to outweigh the references above cited.

Evidence of direct debit agreements premised on Scan guarantee

690. In addition to all this, the Scan Guarantee was also supported by a number of direct debit agreements between Scan (signed by Dr Arkhangelsky), the Bank and third party banks, pursuant to which in respect of the Scan Guarantee the Bank could recover monies from Scan's account at those banks. In particular:

(1) There was a direct debit agreement between Scan, the Bank, and V-Bank. The agreement contains V-Bank's seal:

> "Q. You are not suggesting, are you, that Bank of St Petersburg has somehow forged the seal of the [V-] Bank, are you?
>
> A. I don't know. I cannot reply on that.
>
> Q. It's not very likely, is it?
>
> A. I don't know."

(2) There was a direct debit agreement between Scan, the Bank and Promsvyazbank. The agreement contains Promsvyazbank's seal:

> "Q. You are not suggesting, are you that Bank of St Petersburg forged or fabricated that seal on this document?
>
> A. I don't know."

(3) There was a direct debit agreement between Scan, the Bank, and City Invest Bank. The agreement contains City Invest Bank's seal:

> "Q. The same point, the corporate seal of City Invest Bank seems to have been attached to this document, doesn't it?
>
> A. Yes.
>
> Q. And you appear to have signed this document, don't you?
>
> A. Maybe.
>
> Q. So you accept that that may be your signature?
>
> A. It might be, yes, I don't know."

691. Dr Arkhangelsky struggled to find a plausible explanation under cross-examination; but notwithstanding Scan's entry into the direct debit agreements, Dr Arkhangelsky first sought to dispute that he signed the Scan guarantee agreement to which each direct debit agreement related:

> "A. I never signed guarantee documents. You are probably referring to these three-party agreements, or – these three-party agreements I could sign, yes, because I couldn't see any difficulties.
>
> Q. Even though they referred to a Scan guarantee?
>
> A. Yes, if they are referring to the documents which is not existing, what is the problem of signing that, if the Bank asks me to do so and if the Bank tells me that my loan would be cheaper for me?"

Thus, in relation to the Fourth Vyborg Scan direct debit agreement, his evidence was:

> "Q. But your evidence is that it wouldn't really matter, because you hadn't signed the guarantee agreement; is that right?
>
> A. Absolutely.
>
> Q. So you could deny subsequently that you had entered into the guarantee, although you had signed and sealed a direct debit agreement in relation --
>
> A. Absolutely. Absolutely. As I explained you before, I've been quite flexible to an enquiry of the Bank, and they were explaining me that it would be more comfortable and more easy for them to handle my file, I could sign the documents which I was not considered to be an important documents. Like, for example, this three-party agreement."

692. While Dr Arkhangelsky accepted that he did sign direct debit agreements for the guarantees as well as the GOM authorisations for the guarantees, he said he did so

because they did not have any 'legal consequences'. This is not easy to follow. He put Scan under a liability in respect of each Scan Guarantee.

693. Dr Arkhangelsky then fell back on an argument that he only signed the direct debit agreements to assist the Bank in establishing a documentary trail sufficient to justify it not making reserves, but that it was always understood that the documents were there for show and not for substance.

694. In his oral evidence, Dr Arkhangelsky referred to discussions with both Mr Savelyev and Mr Guz in which the Bank allegedly needed guarantees for the purposes of its reserves, as a result of which Dr Arkhangelsky said that he signed some agreements (such as direct debits), but not other agreements (such as the guarantees). The passages below illustrate the burden (and confusion) of his answers under cross-examination:

> "Q. I think you said you had discussions with Mr Savelyev and Mr Guz --
>
> A. Yes.
>
> Q. -- to do with reserves?
>
> A. Yes.
>
> Q. And they told you what: just sign them and we will never see [sue] you on them; or --
>
> A. No, no, no. What they'd been telling me, that there are standard sets of documents in the Bank, like the agreement you shown us today. That these documents, they done once by the Bank, by the legal department of the Bank, and all these contracts, loan agreements and so on, they should not be changed. So they do it on an automatic level, and then I don't need to sign guarantees as long as I am a big client, first of all; secondly, that most of the assets which belongs to me anyhow, or most of the assets are already mortgaged to the Bank, so everybody understood the lack of necessity. So what is the value to give a personal guarantee for billions if I don't have any assets -- personal assets, let's put it this way. So they said, okay, that I need to sign some strange documents like three-party agreements with the other banks, but as long as it's not having any consequences, any -- as long as it doesn't result in anything, so then it couldn't create a problem for anybody.
>
> Q. So Mr Savelyev and Mr Guz --
>
> A. Yes.
>
> Q. -- told you that you could just sign direct debit agreements?
>
> A. Yes.

> Q. And, what, that you didn't need to sign any of the guarantee agreements?
>
> A. Yes, absolutely, that was the agreement from the very beginning, from my first two meetings with Guz and Savelyev, that I would get loans without any personal or corporate guarantees."

Mr Arkhangelsky then added:

> "I am absolutely sure, and actually the Bank was quite clear on that, I mean that time, that we have our own files, our -- I mean OMG group had our own loan files and the Bank, they were manipulating the reserves in the Central Bank, and the Bank was producing their own in-house documents, and I've been told many times by Mrs Volodina, Savelyev, Guz, Belykh, Shabalina, and afterwards, Mironova, that I should not intervene in their in-house work because they were telling me many times that they are manipulating the reserves and the Central Bank supervision and Central Bank regulation, and if they do their in-house files the way they think it should be, then it would be less reserves, and loans to OMG group would be cheaper. So I've been quite reluctant to that, so I thought that they are big boys and they know if it's a bribe or if it's a corruption with Central Bank by the Bank of St Petersburg, or it's any other crime against shareholders, but it was not my case. My case was to develop my group of the companies and get loans at a comparatively cheap price. So that's why I was aware that they are fabricating documents for their own purposes. But as long as I was not a subject to -- and I was not involved any how in this, so I kept my eyes closed."

695. These allegations of manipulation of reserves and criminal breach of banking and accounting standards, none of which the Defendants had ever made before and which later were adapted by Dr Arkhangelsky into a wider allegation that the Bank had "always been quite proud that they play games with", and was able to and did 'bribe' the Russian Central Bank, were supported only by Dr Arkhangelsky's assertion of "Knowledge. Knowledge. My knowledge", and some suggestion that he had heard this from "Mrs Volodina, from Savelyev, from Guz and others…openly telling". The allegations were not pleaded, and (except for a further short reference in paragraph [706(1)] below) I do not think it necessary to say any more than that there was no sufficient basis for their assertion.

696. In the present context of assessing whether Dr Arkhangelsky has any real answer to the Bank's contention that the Direct Debit Agreements conclusively demonstrate that Dr Arkhangelsky agreed to and did commit Scan to the Scan guarantees, it may be noted further that:

(1) The allegation was internally inconsistent. Whereas in his witness statement Dr Arkhangelsky had alleged that Mr Savelyev had specifically told him that the Bank would not insist on personal guarantees, in his oral evidence he reversed his position saying that Mr Savelyev did need personal guarantees for "reserving purposes", but had allegedly agreed that Dr Arkhangelsky did not need to enter them. If the latter had any truth, then it would have featured in Dr Arkhangelsky's witness statement. His oral evidence was:

> "A. … So what I have been told by the Bank is that these, they require for the purpose of reserving, and if it's mentioned in one document, then they can make reserves in the volume they need and they want. And they have also always been telling me that these type of the contracts have been agreed by the board of the Bank and not any changes to be implemented. So either I sign this document and take it as it is, and then I don't need to sign any agreements which are mentioned here; or it would take a much longer time to renegotiate and so on, and as I have always been meeting Mr Savelyev, he's always been telling that he needs all of these for the reserving purposes, but our agreement that I don't issue the personal guarantees as well, it's forever.
>
> Q. You have not given that explanation before, have you, Dr Arkhangelsky, about reserves? About the Bank just putting in this provision to help it on its reserve calculation? It is the first time you have said that, isn't it?
>
> A. I don't remember, but it is like this.
>
> Q. Because in your witness statement, which I took you to this morning, where you said that you signed a large pile of documents every day, you didn't make any reference to this being a possible explanation, did you?
>
> A. I don't understand your question.
>
> Q. Well, it's the first time that you have suggested that the reference to guarantees is simply something that the Bank wanted for its own internal reserve purposes, as opposed to wanting you to enter into the guarantees themselves?
>
> A. I've never been entering into any guarantees. I know that they have been using this for the purposes of their reserving; they've been doing some artificial and whatever work they've done. I don't know details how they did it and what for and how and when, but I know that some contracts, agreements, they could produce internally for the purposes of reserves, and they've always been quite optimistic and they've always been quite proud that they play games with the Central Banks and reduce seriously reserves.

> Q. But they would need, wouldn't they, to have the guarantees in place for that purpose?
>
> A. I don't know if they do it artificially. It depends on their relations with the supervisory authorities. So I have not been deep in how they do it and it's not absolutely my case, so I am not really interested how they have been bribing Central Bank."

(2) Dr Arkhangelsky was unable to point to any document to support his allegation that what the Bank said to him about guarantees was just for its own reserve purposes.

697. A third tack taken by Dr Arkhangelsky was a suggestion that the agreements had no effect in any event because Scan's accounts at these third party banks were, apparently, empty:

> "A. I don't remember this particular document, but it might be the case that among thousands of documents which I signed for the Bank of St Petersburg, considering the necessity to have documents for the Central Bank regulation and the reserves, I could have signed that, considering the fact that it doesn't have any real obligations on me; it doesn't imply any obligations on myself or my companies.
>
> Q. But it does, doesn't it? You are signing on behalf of Scan Insurance. You are signing a right for various deductions to be made from a Scan Insurance bank account, aren't you?
>
> A. Yes, but I can't see any problems, because all these bank accounts, they've never been in operation, so it was empty accounts and I couldn't see any problems or difficulties. And I was absolutely aware that, even if I signed such document, it would not have been really working.
>
> Q. Each of these three documents refers to the Scan guarantee, doesn't it?
>
> A. Maybe, yes.
>
> Q. But when you signed these documents, were you not concerned that you appeared to be signing a document referring to a guarantee that, on your case, had never been entered into?
>
> A. No.
>
> Q. You were not concerned?
>
> A. No, because I've been asked by the Bank that they need such documents and they need such things to be formally done, even if the guarantee is not existing.

> Q. Why would the Bank need a direct debit agreement executed if, in fact, they were never going to --
>
> A. Because it's the easiest point to check for the Central Bank.
>
> Q. Is your evidence that you weren't concerned about signing these direct debit agreements?
>
> A. Direct debit agreements, no, because I was absolutely aware that it doesn't have any influences or any consequences afterwards. Especially on accounts which have never been in operation.
>
> Q. So you were comforted by the fact that there would never be any money in these accounts which could then be debited?
>
> A. No, theoretically they could be, but, you know, the rule, if they needed such agreements, formally it had to be done on all accounts the company has. So I couldn't see any difficulty to sign that, and that could be easily traced by the Central Bank, even if they can bribe -- if the Bank of St Petersburg can bribe Central Bank, but having any enquiries to these banks would create trouble for them. So I couldn't see any difficulties for myself to signing that, if the Bank of St Petersburg was asking me to do so."

698. For comprehensiveness I should mention briefly a yet further tack adopted by Dr Arkhangelsky during his cross-examination: this was to float the suggestion, again unheralded in the pleadings or his 19 witness statements, but given some apparent substance by a passage in Ms Volodina's witness statement (para. 63), that the Personal Guarantees were created as part of the restructuring of OMG's debts in December 2008 because the Bank discovered that none was in place, resolved to make good the deficiency and then backdated and executed the relevant documents with a forged signature.

699. As indicated, there is some support for the suggestion in Ms Volodina's witness statement, where she appears to place the identification of the need for guarantees in the context of the restructuring and states this:

> "I recall that, in the context of the restructuring, the Bank required personal guarantees from Mr Arkhangelsky to be in place. I believe that this was considered to be necessary to show that Mr Arkhangelsky was acting in good faith and would stand behind the obligations of his companies."

700. Mr Stroilov did not cross-examine Ms Volodina on this point, preferring presumably to rely on that evidence rather than query it. However, he did then cross-examine Ms Mironova on the relevant paragraph of Ms Volodina's witness statement, as follows:

> "Q. I'm not suggesting it is, but what Ms Volodina's evidence suggests to me is that as of December 2008, some or all of the personal guarantees were missing, and then the Bank required for them to be put in place: isn't that a fair reading of that evidence?
>
> A. My Lord, I cannot tell how to interpret this evidence. Mrs Volodina should be addressed about this. But as of December 2008, all the loans with respect to which we had sureties *[sic]* from Mr Arkhangelsky, they were issued as at the time when the loans were extended, but certainly not in December 2008…
>
> Q. Ms Mironova, isn't the truth that it was only at that point that you were told by your superiors that personal guarantees must be in place, and then you have arranged for them to be put in place and backdated, like a lot of other documents?
>
> A. This is absolutely out of line with what happened…and this is confirmed by the fact that every loan agreement dating back to 2007 and 2008 at the very beginning, personal guarantees by Mr Arkhangelsky were clearly stated.
>
> Q. And isn't it the case that in that period, as part of putting all the documents in place, you caused Mr Arkhangelsky's signatures on the alleged personal guarantees to be forged?
>
> A. My Lord, the Bank never engaged in any forgery of any signature of Mr Arkhangelsky or any other gentleman."

701. The propensity of the Bank to backdate documents in order, for regulatory and accounting purposes, to present as completed that which had been agreed in principle but not yet finalised, is apparent from the restructuring documentation itself. But for all the reasons previously identified, and despite some misgivings as to the reliability of the Bank's oral evidence in this regard, I do not think that either Ms Volodina's evidence or the other contextual matters are sufficient to establish the Defendants' serious allegation of forgery, which would involve a finding of complete fabrication of so many documents. That conclusion is supported by a number of further considerations.

No allegation of fabrication of the Personal Guarantees in the Russian proceedings

702. Though inconsistency is not of itself probative of either version, it is notable that in the various enforcement proceedings brought by the Bank against Dr Arkhangelsky and Scan in Russia in 2009 and 2010 (long before the proceedings in the BVI and then in this jurisdiction) Dr Arkhangelsky did not raise any issue as to the authenticity of the various Personal Guarantees, though he did contend (unsuccessfully in the event) that the signature on various of the Additional Agreements was not his.

703. Thus, for example, Dr Arkhangelsky defended the claims against him for repayment of the Fourth Vyborg Loan, the 2008 LPK Scandinavia Loan and the First Onega Loan not on the basis that he had not signed the original Personal Guarantee or that such a guarantee was fabricated, but on the basis that the original Personal Guarantee was void because of an alleged material change in the underlying loan obligation between the Bank and the primary borrower (for example, in respect of Vyborg Shipping, when the Bank increased the interest rate for the loan from 15.25% to 16.25% per annum).

704. The Claimants made the point (a fair one, as it seems to me) that if Dr Arkhangelsky had never signed any Personal Guarantee or Scan Guarantee, then once the Bank commenced proceedings in respect of such guarantees, it would be expected that his first reaction should have been one of shock, and his first objection should have been that he never signed any such documents. Dr Arkhangelsky never came up with a convincing explanation why that was not the initial reaction expressed by him or by his representatives on his behalf. In broad terms, he pleaded his absence from Russia and consequent loss of reliable contacts, faithless lawyers deaf to his instructions, pressure from "the Bank's policemen" and ultimately that the proceedings in Russia were "unimportant"; but, in my view, none of these explanations carried conviction.

Falsity of Dr Arkhangelsky's assertion that he never gave guarantees to any banks

705. Although it was part of Dr Arkhangelsky's case that he did not sign any of the relevant guarantees in this case that it was his practice never to give personal guarantees to any bank, there is evidence that he gave guarantees to a number of banks, including Svyaz Bank, Morskoy Bank and V-Bank.

706. In particular:

(1) The OMG Debt Schedules record not only personal guarantees given to the Bank, but personal guarantees given to a number of other banks. The September schedule lists personal guarantees given by Dr Arkhangelsky to Svyaz Bank and Morskoy Bank. To attempt to explain away these entries, Dr Arkhangelsky had to expand his story concerning the Bank's alleged manipulation of reserves to allege that "all the big banks, they are playing with reserves and that's their game". I cannot accept this as having been established.

(2) The OMG Debt Schedule did not list any personal guarantees given to V-Bank, and Dr Arkhangelsky was emboldened to say that V-Bank was "much more reliable and solid people…they have been more honest and they have not been playing dirty games like with the Central Bank…". However, there is in fact clear evidence that Dr Arkhangelsky did give a personal guarantee to V-Bank. The notes of Mr Ameli's meeting with Mr Novikov of V-Bank in late March/early April 2011, which were exhibited to Mr Ameli's statement, record:

> "The additional guarantees did not offer sufficient coverage in any case. The bank requested a personal guarantee from Mr Arkhangelsky and it obtained it. It is not normal practice but at that time, yes. We agreed not

> to use it as we were certain that he would do everything to achieve it."

There is no reason to doubt the accuracy of the note. Dr Arkhangelsky could provide no credible explanation why Mr Ameli would have written it unless it was true that he had given a personal guarantee to V-Bank.

(3) Third, there are a large number of other proceedings involving Dr Arkhangelsky and banks other than the Bank. The obvious explanation why other banks are pursing Dr Arkhangelsky is because he gave other personal guarantees: and, although he denied it, he offered no other reason why he would be pursued.

707. Thus, the available circumstantial evidence appears to me to be inconsistent with Dr Arkhangelsky's assertion that he never gave any bank any personal guarantees, which I reject accordingly. That further undermines his case that he did not sign the Personal Guarantees.

Specific points regarding the Personal Loan

708. Before turning to the expert handwriting evidence, I should note three short further specific points in relation to Dr Arkhangelsky's pleaded position that he did not sign the Personal Loan.

709. The first is to note that in his 16th witness statement for trial, he says:

> "I note that the Memorandum refers to a personal loan having been made to me on or about 28 November 2008 in an amount of RUB 130 million, apparently expiring on 31 December 2008 but extendable for one year. I did not notice the reference to a personal loan at the time of signing the Memorandum and I have no knowledge of any such loan agreement, although as I explain below I accept now, in the light of all the disclosure that has recently come to light, that it is possible that I did sign such a document."

710. Secondly, and as with the Personal Guarantees, a large number of documents, in addition to the Memorandum itself, refer to the Personal Loan. For example, on 19 December 2008 Ms Blinova emailed OMG, copying in Dr Arkhangelsky, referring to its upcoming repayments, and in particular specifying the Personal Loan. She reminded him on 26 March 2009 that a further mortgage over the Western Terminal assets, which had been proposed for the extension of the Personal Loan, had yet to be finalised. Other documents show the Bank arranging with OMG the security in respect of the Personal Loan.

711. Thirdly, it is of interest that in the Russian proceedings to enforce against the Personal Loan, Dr Arkhangelsky admitted he received the sum, but alleged that it had been removed from his account without his consent.

Handwriting evidence

712. I turn to the handwriting expert evidence, with the initial acknowledgment on my own part that what at the early interlocutory stages of the proceedings before trial I envisaged as being central in the disposition of the claim, and engendered a great deal of interlocutory heat and expenditure, was eventually revealed to be somewhat peripheral, and in the end, either undisputed or inconclusive.

713. Indeed, ultimately, Dr Arkhangelsky eventually appeared to concede that he could have signed the relevant documents, although he did not withdraw his pleaded case that they were forgeries, and in his oral evidence occasionally sought to resurrect that case.

714. I consider that I should nevertheless to describe the parameters of the dispute, and summarise the difficulties that have surrounded its exegesis.

The experts and the process

715. The Claimants instructed Dr Giles and the Defendants instructed Mr Radley as their respective experts on the examination of documents and handwriting. Each has more than 30 years' distinguished experience in the field and is well known to and highly regarded by the courts in that context.

716. Dr Giles provided three reports for trial dated 25 April 2012, 10 February 2014 and 22 July 2015 respectively. The elongated time frame reflects not only the tortuous process prior to trial, but also the delays on the part of the parties in reaching sufficient clarity as to what documents were in dispute and what comparators could be agreed.

717. Mr Radley provided one statement, dated 21 August 2015. However, the Defendants had previously instructed another expert, Mr David Browne ("Mr Browne"), another well-known expert, whose report dated 11 February 2014 was also in evidence. Mr Browne was replaced as the Defendants' expert by Mr Radley with my permission in 2015 in light of the Defendants' concerns that Mr Browne may have adopted a flawed methodology in selecting comparators.

718. Dr Giles and Mr Browne also produced a Joint Statement dated 28 March 2014 after a meeting between them on 12 March 2014. This too was in evidence.

719. There were originally 28 documents allegedly signed by Dr or Mrs Arkhangelsky which they denied signing and which thus were in dispute, to which were later added 11 Scan guarantees and other agreements which were disputed by the Defendants. These became known as the "'File A' documents".

720. To assess the issue of their authenticity a number of originally agreed 'comparators', known as the "'File B' documents" were provided and examined; but on 2 April 2015, the Defendants said that documents [B1]-[B8] should be excluded from the expert analysis because the Defendants no longer accepted them as genuine, and instructed their expert, Mr Radley, not to consider them.

721. A large number of other documents showing the Defendants' signatures were in "File C". File C contained 47 documents which the Defendants identified they could potentially have signed, but which they were not prepared to accept that they did sign.

722. On 2 April 2015, the Defendants produced a further set of documents, known as "File F". The Claimants were, in effect, prepared to include these documents as comparators.

723. At the height of this dispute as to the comparators, in early May 2015 the experts produced an agreed memorandum. It said:

> "Dr Giles understands that Mr Radley has been instructed by Messrs Withers to disregard the eight comparator documents [B1]-[B8] in his examinations as these are not accepted by his clients as genuine. The signatures on documents [B1]-[B6] are the only long form Arkhangelsky signatures which have been included as comparators. The removal of these particular signatures [B1-B6] means that there will be no signatures of this type available for comparison.
>
> The additional documents now produced in File F contain examples of the short form of signatures used by Mr Arkhangelsky (previously identified as not genuine by Mr Brown) and recent signatures. If the comparators are restricted to signatures [B9]-[B16] and [B21] along with File F documents this will mean that the only signatures available for comparison are either in the short form, in the Identity Card type form or recent signatures. The recent signatures of Mr Arkhangelsky do appear to be different from those from the relevant period in 2008 and 2009 and are, therefore, of no assistance to us.
>
> Dr Giles is not convinced that this restricted group of comparators [B9-B16, B21 and File F represents the true range of variation to be found in Mr Arkhangelsky's signature at the relevant time. We are both aware, having had forty years of experience in the forensic examination of signatures, that it is not uncommon for comparators to be manipulated in an attempt to mislead the expert either into reaching an incorrect conclusion or from being able to reach any conclusion at all. We emphasise that it is essential to this examination that a complete range of undisputed signatures of Mr Arkhangelsky covering all the forms of his signature from the relevant period should be available to both of us for comparison and these documents would have to be acceptable to both parties. In the absence of such an agreed set of undisputed comparators it will be impossible for us to try to reach any sensible conclusion regarding the questioned documents. Even with further known writings, a meaningful opinion on this type of very basic signature (which must be regarded as susceptible to simulation)

> cannot be guaranteed. The quality and quantity of appropriate comparison material will be of significance in this regard."

724. Both experts agreed, therefore, that the simplicity of Dr Arkhangelsky's admitted signatures made it at once easy to forge and yet difficult to establish whether it was forged, at least without admitted comparators of quality and in quantity.

725. On 24 June 2015, the Defendants' solicitors referred to 17 further documents from the Claimants' disclosure which were signed by Dr Arkhangelsky, but which they said they were considering with Dr Arkhangelsky to see "which additional documents may need to be added to the 'disputed' list".

726. Even at trial there remained an unresolved dispute between the parties as to the set of 'agreed' comparators.

727. I have rehearsed this tortuous ("chequered" as the Claimants put it) course of the disputes between the parties as to what should be taken as the comparators for the exercise concerned for two more substantial reasons than a recording of the unsatisfactory and ultimately inconclusive interlocutory battles. The first reason is that the consequence of the failure to bring finality to an approved list of comparators has inevitably reduced the reliability and value of the expert analyses and evidence. The second reason is to provide the context for the Claimants' allegation that Dr Arkhangelsky's prevarication in agreeing comparators has been deliberate and intended to frustrate the expert analysis, and the Defendants' counter-allegation that it was the Claimants who sought to tie the exercise to an inappropriate selection of comparators and then refused to engage in an effort to obtain more reliable comparators from independent third parties, and insisted on using documents held by the Bank. That second issue could be of material relevance both in the assessment of credibility, and in assessing the Counterclaimants' allegation that the Claimants fabricated the guarantees as part of the conspiracy against them: and see paragraphs [903] to [908] below.

Experts' findings as to authenticity

A *Dr Giles*

728. In her 2014 report, Dr Giles found "strong positive evidence" that Dr Arkhangelsky signed the following:

(1) First Vyborg Personal Guarantee.

(2) Second Vyborg Personal Guarantee.

(3) Additional Agreement to 2008 LPK Scandinavia Personal Guarantee.

(4) Additional Agreement to First Onega Personal Guarantee.

(5) Personal Loan.

(6) Additional Agreement No. 1 to Personal Loan Scan Guarantee.

(7) Application for transfer of funds to Regata (and see paragraphs [611(4)] and [659] above).

(8) Application for transfer of funds to Mrs Arkhangelskaya.

(9) Loan Agreement No. 1 between Dr and Mrs Arkhangelsky.

729. Dr Giles found "positive, albeit weak evidence" that Dr Arkhangelsky signed a previous (September 2008) Additional Agreement to the First Onega Personal Guarantee.

730. She noted that the Personal Loan contained a number of signatures, including those in the 'agreed comparators', but also a "simplified form" which appeared on other documents. Therefore, she found "positive, albeit weak evidence" that Dr Arkhangelsky also signed:

(1) Third Vyborg Personal Guarantee.

(2) Fourth Vyborg Personal Guarantee.

(3) 2008 LPK Scandinavia Personal Guarantee.

(4) First Onega Personal Guarantee.

(5) Additional Agreement No. 1 to First Onega Personal Guarantee.

(6) Additional Agreement No. 1 to Personal Loan.

731. Dr Giles considered that there was "only weak" evidence that Dr Arkhangelsky signed Additional Agreement No. 2 to the Personal Loan.

732. In respect of the four Additional Agreements to the Vyborg Personal Guarantees, she described her findings as "inconclusive".

733. Dr Giles's analysis of the Scan guarantees proceeded on a different set of 'agreed comparators' which removed documents [B1]-[B8]. Dr Giles found "positive, albeit weak" evidence that Dr Arkhangelsky signed the First Onega Scan guarantee. As to the signatures on the Vyborg Loan Scan guarantees, the evidence was "inconclusive".

734. In relation to other questioned documents, concerning Scan guarantees in respect of OMG loans not in issue in the proceedings, her findings were "inconclusive", save for the Scan guarantee to the 2007 LPK Scandinavia Loan where there was "positive albeit weak" evidence that the signature was genuine.

735. In her 2014 report, Dr Giles found that there is "strong positive evidence" that Mrs Arkhangelskaya signed:

(1) Consent to 2008 LPK Scandinavia Personal Guarantee.

(2) Consent to First Onega Personal Guarantee.

736. In respect of the Loan Agreement with Dr Arkhangelsky, she considered that the evidence is "inconclusive".

737. Dr Giles considered that there was "strong positive evidence" that Mrs Arkhangelskaya did not sign any of the four consents to the Vyborg Loan Personal Guarantees, or the consent to the Personal Loan. Dr Giles noted, however, that these signatures:

> "…take a form consistent with these being attempts by Vitaly Arkhangelsky to produce a simulation of the signature of Julia Arkhangelskaya."

738. Dr Giles commented on the change in comparators as follows:

> "The range of signatures now comprising the "agreed comparators" is more restricted than used in my previous examinations.
>
> The previous "agreed comparators" [B1] – [B6] are similar to the signatures on the questioned Suretyship Agreements dated 17th April 2008 [A36] and 28th March 2008 [A39] and on the Contracts of Guarantee [A32, A33 and A35]. I found strong positive evidence to support the view that these signatures [B1 – B6, A36, A39, A32, A33 and A35] were all written by a single individual.
>
> This group of signatures [B1 – B6, A36, A39, A32, A33 and A35] are similar to signatures on a number of other documents which I have examined in this matter, including a Loan Agreement dated 28th November 2008 [A21] which also bears signatures in a style similar to that of a number of the "agreed comparators" now provided."

739. Further, in relation to the Personal Loan, in addition to her comments in her 2014 report, Dr Giles made the following observations in respect of the change in 'comparators' which Dr Arkhangelsky had sought:

> "…the signatures on the Loan Agreement dated 28th November 2008 [A21] are of two types: signatures on the first page and on the signature page of this document [A21] are of the more complex form seen on the other documents listed above, but the remaining signatures are of the simple form seen on the File F documents.
>
> If all of the signatures on the Loan Agreement [A21] are simulations then the person producing the simulations has done so in two different forms on the same document. Further, the more complex of these forms is a form of signature which apparently is never used by Mr Arkhangelsky.

> The simple forms of signature on the Loan Agreement [A21] are consistent with being a genuine signature of Mr Arkhangelsky, albeit the possibility that these are simulations cannot be excluded. However, if these simple signatures [A21] are indeed simulations they would be derived from the simple style of Mr Arkhangelsky's signature as seen on the documents in File F. This begs the question as to how the more sophisticated signatures on the first page and the signature page of this document have come into being since it is difficult to explain these signatures by means of simulation and there is, based on the "agreed comparators", no feasible model for this signature.
>
> I have remarked in my report dated 10th February 201[4] that a more credible explanation of the form of signatures on this Loan Agreement [A21] is that the simple signatures are a form of initialling as compared to the more complex signatures applied to the first page and as the main signature on the signature page. This situation would be more likely to occur in a genuine document than in one which bore simulated signatures. If this explanation were to be accepted then it would follow that the "agreed comparators" now provided do not demonstrate the full range of variation in Mr Arkhangelsky's genuine signatures."

B *Mr Radley*

740. Mr Radley, who as explained above was instructed not to consider documents [B1]-[B8], identified five styles of Dr Arkhangelsky's signature. His view is that all the disputed signatures are of a "very basic nature", and due to their variability, "susceptible to being copied pictorially". He finds that one style, "Style 5", is different from the comparison materials.

741. On his analysis, as regards Dr Arkhangelsky:

(1) There is "weak evidence" that Dr Arkhangelsky signed the First Onega Loan Scan guarantee, although "the evidence is very far from conclusive and the possibility of these signatures being simulation has to be regarded as a distinct possibility".

(2) The signatures on all the other remaining documents "cannot be fully and reliably assessed", and so the evidence is "inconclusive" as to whether Dr Arkhangelsky signed the documents.

742. As to Mrs Arkhangelskaya, in his opinion:

(1) There is "very strong evidence" that Mrs Arkhangelskaya did write the signature on her consent to the First Onega Loan personal guarantee.

(2) There is "weak evidence" that Mrs Arkhangelskaya did not write the signatures on her consent to the LPK Scandinavia Loan personal guarantee and the loan agreement between her and her husband.

(3) There is "strong evidence" that the four signatures on Mrs Arkhangelskaya's consents to the four Vyborg Loan personal guarantees were written by someone other than Mrs Arkhangelskaya.

(4) There is "very strong evidence" that Mrs Arkhangelskaya did not write the signature on her consent to the Personal Loan.

(5) Further, the signatures on Mrs Arkhangelskaya's consents to the Vyborg Loan personal guarantees, the Loan Agreement with her husband, and the consent to the Personal Loan:

> "are in a very similar style to that used by Vitaly and not Julia Arkhangelsky. I cannot exclude the possibility that Mr Arkhangelsky was the writer of these signatures on behalf of his wife."

743. The expert evidence was thus, in broad terms, inconclusive and undoubtedly rendered less reliable by the lack of comparators of the longer form of Dr Arkhangelsky's signature.

My findings and my conclusion that Dr Arkhangelsky did sign and was bound by the relevant documents

744. I accept and find that it was the Bank's usual practice to require personal guarantees in the case of corporate borrowings, and I reject Dr Arkhangelsky's suggestion that the Bank through Mr Savelyev (or anyone else on its behalf) agreed to and did depart from that practice in this particular case.

745. I accept that there is every good reason for such a requirement to bring home and personalise the risk of borrowing large sums by bodies given the benefit of limited liability, and that the fact that Dr Arkhangelsky's wealth apparently lay in the companies themselves was no reason to depart from it. Indeed, the fact of personal liability may also be calculated to deter or discourage the controllers of companies from contriving to take moneys out of the borrowing companies whereby to diminish recourse.

746. I also accept the evidence of the Bank's witnesses as outlined above that the requirement for personal guarantees was made expressly clear to Dr Arkhangelsky, who cannot have been surprised given that, according to his own lawyer, Mr Ameli, his arrangements with other lenders also appeared to include them.

747. As to the Scan guarantees, intra-group, inter-company guarantees are common-place and have an obvious commercial rationale. Further, the fact that they were entered into by Dr Arkhangelsky on Scan's behalf is further and even more strongly supported by the arrangements made for direct debit arrangements which are premised on their existence and which Dr Arkhangelsky admits to having signed, and by the authorisation signed by Dr Arkhangelsky for the First Onega Loan.

748. In these circumstances, I consider that I should proceed on the basis that the burden is on Dr Arkhangelsky to demonstrate that the personal and corporate guarantees

apparently signed by him and *prima facie* authentic were not so. In my judgment, Dr Arkhangelsky has failed to discharge the burden of demonstrating that the signatures on the relevant personal and corporate guarantees are forgeries and not his own. Indeed, I consider it is plainly more likely than not that the signatures are his own.

749. This conclusion accords with my general impression of Dr Arkhangelsky as a buccaneer, "the "ultimate chancer" as the Claimants put it, whose confidence in his own abilities and determination to succeed caused him to take on risks that he did not contemplate would eventuate and which were the necessary price of raising the enormous sums that he borrowed from the Bank (and others also). Further, he is not a man for painstaking detail or care: it would be quite in character for him to have either signed the relevant documents without regard to their effect if the worst transpired, since he would have regarded that as remote, or even without regard to their content, so long as the immediate objective of bank lending was secured.

750. I also suspect that Dr Arkhangelsky persuaded himself early on that he had been wronged by the Bank and Mr Savelyev, and the other parties to what he perceived then to be a conspiracy to rob him of his corporate empire, and that he was justified in using any tactic or device to prevent them completing the robbery.

751. In the case of the Personal Loan, plainly on any footing Dr Arkhangelsky's signature was required. I am in no doubt that it was provided. I accept the Bank's evidence and find that Dr Arkhangelsky desperately needed the money to cover OMG payments due at the end of November, and a personal loan was recommended to him by the Bank as the quickest and most efficient way of achieving this: and see paragraph [288] above.

752. I am also satisfied and find that the contemporaneous evidence shows that Dr Arkhangelsky did sign, and was aware of, the Personal Loan:

(1) The Memorandum, which Dr Arkhangelsky acknowledges he signed, made express reference to the Personal Loan. Dr Arkhangelsky told me that he simply did not notice the reference; but especially in view of the catalogue of other documents also referring to the loan, I cannot accept this. If he had agreed to the Personal Loan, he might have skipped over the reference; but if he had not, I feel sure he would have spotted it or someone at OMG would have pointed it out, even allowing for his high-level and cavalier general approach to documentation.

(2) A number of documents relating to the Personal Loan are not challenged: the application for the Personal Loan, signed by Dr Arkhangelsky; and a Scan insurance policy dated 28 November 2008, signed by Dr Arkhangelsky, with the Bank as beneficiary, in respect of the '*Pechora*'. The '*Pechora*' was to constitute the security under the Personal Loan. The policy makes reference to the Personal Loan.

(3) Dr Arkhangelsky signed an application requesting the transfer of the Personal Loan monies to an account held by Regata. Dr Arkhangelsky disputed his signature, but there is no reason to find that he did not sign the document. The account at Regata was also used in October 2008 for payment of the Tekno loan, (the evidence as to which does not appear to be in dispute).

(4) On 8 December 2008, Ms Blinova emailed OMG in relation to the security given for the Personal Loan.

(5) On 19 December 2008, Ms Blinova emailed OMG, copying in Dr Arkhangelsky, in order to set out the upcoming payments under OMG's loans. The very first loan which was listed was Dr Arkhangelsky's own Personal Loan. Dr Arkhangelsky tried to suggest that he would not have read the email at the time, saying:

> "…it's quite normal that every month several different employees of the Bank were sending different letters to directors of each and every company, as well as to financial department, with their calculations of exact volume of interest and so on. So it was a kind of such type of e-mails we were receiving for each and every company and it was kind of standard spam sending by the Bank, and I think it's a more technical way, and I have never been inside these e-mails.
>
> Q. So you think that this e-mail probably went into your spam box, do you?
>
> A. No, no, I don't say this. I considered that I – there were some subjects which I definitely had to read, but not all of them, so I technically couldn't read hundreds of e-mails every day.
>
> Q. This e-mail purports to set out repayments due at the end of December 2008 by OMG, doesn't it?
>
> A. Yes, most probably.
>
> Q. And can you see the first of the entries under the heading, "Repayments"?
>
> A. Yes.
>
> Q. "The loan to Arkhangelsky VD --"
>
> A. Yes.
>
> Q. "-- 130 million roubles."
>
> A. Yes.
>
> Q. That would be the personal loan, wouldn't it?
>
> A. I think so, yes.
>
> Q. Did you, or anybody on your behalf, send back an e-mail challenging that and saying: what's that entry all about?
>
> A. I don't know, just see the disclosure."

It is highly likely that Dr Arkhangelsky did consider this email at the time. The one overriding matter with which he was concerned was the upcoming number of payments that fell due for OMG at the end of the month.

(6) Dr Arkhangelsky signed a letter dated 18 December 2008 seeking an extension of the Personal Loan. The authenticity of the document had not previously been disputed, but in his oral evidence Dr Arkhangelsky queried the document on the basis that it looked "very strange" and lacked any stamps from the Bank, but that appeared to me to be an opportunistic and wholly inadequate basis for disputing its authenticity.

(7) On 26 March 2009, Ms Blinova emailed Dr Arkhangelsky:

> "… I also inform you that the registration of the mortgage for the real estate of [Western Terminal] was a condition for the prolongation of your personal credit in the amount of 130 million roubles [and] information was received today that the General Director of [Western Terminal], D.V. Vinarsky refuses to sign the mortgage agreement."

This was a yet further reference to the Personal Loan, as Dr Arkhangelsky must have understood.

(8) These references, my findings as to the fact of there having been a meeting on 28 November 2008, as well as the evidence of the proceeds going to Regata at Dr Arkhangelsky's direction, appear also to be inconsistent with the last iteration of the Defendants' case to the effect that the Personal Loan was arranged by underlings (probably, it was suggested, Mr Berezin) and never focused on by Dr Arkhangelsky (and see paragraph [284] above).

753. Mr Stroilov, relying on Dr Arkhangelsky's oral evidence that any signatures were accidental, sought to persuade me that Dr Arkhangelsky, if he had signed any of the documents at all, had only done so "unintentionally as part of a large heap of documents he had to sign." I do not accept this. Not only did the suggestion seem empty, but it is also, to my mind, was contradicted by the contemporaneous documents referred to above, and especially by the OMG internal debt schedules prepared by OMG employees, of which I find Dr Arkhangelsky must have been aware.

754. The Claimants urged me in those circumstances to find further that Dr Arkhangelsky had always appreciated that he did sign the relevant documents, and his case to the contrary in all its guises and various jurisdictions was a contrivance, deploying a gambit oft-used by borrowers at the time. Professor Guriev agreed with the Bank's expert Mr Turetsky that:

> "…there was abundant practice during the financial crisis amongst security providers to challenge the provision of security, especially if such security was provided by entities other than the borrowers themselves. Grounds for challenging

> security included absence of corporate approvals, forgery, absence of corporate benefit, missing co-signatures from the chief accountant, third party rights to the property, absence of legal title to the property, and so on."

755. I suspect the truth to be that Dr Arkhangelsky, who (it is my impression) is not focused on details or paperwork, and whose general world view, with himself at its centre, does not focus on any peripheral detail, could not (at least initially) remember, and gradually convinced himself that he was being victimised and that it was fair for him to take the benefit of the documentary doubts.

756. In this and other contexts, I suspect that Dr Arkhangelsky convinced himself that in the 'war' a certain carelessness as to the true position was commonplace, justified and necessary to correct what he had convinced himself was an unfair and manipulated imbalance between borrower and lender, especially having regard to his perception that there were also malign and self-interested political influences in play against him.

757. In my assessment, that may explain why he did not originally deploy the forgery allegation in his case in the Russian courts, and why (as submitted by the Claimants) he appears to have manifested no shock or surprise when the Bank commenced proceedings to enforce the guarantees. The allegation was part of his armoury and he deployed it when it became necessary, without any real or careful deliberation as to its truth. That is not honest.

758. Not until the accumulation of evidence against him, and after extensive prevarication in the choice or acceptance of comparators, did he accept (though not unequivocally) that he might have signed the disputed documents, or some of them, mistakenly; and his efforts to resuscitate his case of forgery under cross-examination confirmed me in my feeling that by then it was an expedient adopted in the knowledge that it was without feet in fact, and dishonest accordingly.

759. I suspect that Dr Arkhangelsky did not want the matter to be put to unequivocal test and that this fuelled the dispute as to comparators, which ripened into a familiar interlocutory pattern of intransigence. However, I find it difficult and ultimately unnecessary to determine whether the drawn-out dispute as to the comparators was a deliberate tactic on the part of Dr Arkhangelsky, or when it became so. In view of the Claimants' own reluctance to permit further comparators in documents entered into with an independent third party, neither side comes out untarnished. I prefer to reach my decision on other grounds.

760. At trial, Dr Arkhangelsky's oral evidence in relation to the Personal Guarantees and the Personal Loan persuaded me only that Dr Arkhangelsky at one and the same time appreciated the danger, in terms of its potential impact on the court's assessment of his credibility, of abandoning his case on forgery, but also the weakness of his case in seeking to maintain it. He veered from absolute denial of signature to grudging acceptance that perhaps he might have signed accidentally, and back again. He was consistent in nothing but inconsistency.

761. His resort to unpleaded allegations, such as that the guarantees were contrivances to help the Bank manipulate its reserves, smacked of desperation and not conviction or substance; and his suggestion that the documentation was never intended to be given any legal effect and was signed for show did not impress me as even potentially plausible.

762. Similarly, his efforts to deny that the OMG debt schedules were reliable by depicting his own employee (Mr Dubitskiy, OMG's business development manager) as a "low level, low quality employee", confirmed the impression of someone prepared to throw in any accusation or excuse to deflect a straight question and avoid a straightforward admission, relying (in effect) on the proposition that, such is the scale and extent of corruption in Russia, and the participation or connivance of enforcement officers and others in it, anything is possible.

Spousal consents

763. It was clarified during the trial that the authenticity and validity of the spousal consents was not, under the relevant Russian law, a pre-condition of the enforceability of the Personal Guarantees or other arrangements to which they related. Rather, the importance to the Bank's case of the spousal consents was the submission that, if Mrs Arkhangelskaya signed the spousal consent to which a Personal Guarantee relates, then it must follow that Dr Arkhangelsky himself signed the Personal Guarantee for which it was given, there being no credible reason why Mrs Arkhangelskaya would have signed the spousal consent unless her husband had asked her to do so, which he only would have done had he signed.

764. The Bank relied on the documentation as it appeared to be, and on what it claimed to be its standard practice. This, as set out in its internal regulations, was to require a spouse to provide a spousal consent in relation to each personal guarantee (although, as referred to above, this was not a legal requirement).

765. Mrs Arkhangelskaya denied ever having signed any such document. As in the case of the evidence regarding the signing of the Personal Guarantees themselves, the direct evidence that Mrs Arkhangelskaya herself signed such spousal consents is weak.

766. For example, there is no documented record of signature separately from the documentation, such as might be expected in an orderly bank. Further, the Bank's witnesses were hesitant in claiming any real memory of Mrs Arkhangelskaya having signed. While such consents should strictly have been signed in the presence of a member of the Investrbank staff, the evidence was that in reality that did not always happen in the case of Mrs Arkhangelskaya. Ms Blinova explained:

> "I remember Mrs Arkhangelskaya coming to the Bank to sign documents but since she was the wife of one of Investrbank's most important customers and because we trusted Mr Arkhangelsky, Investrbank was sometimes willing to receive documents that were sent by her or on her behalf which contained her consent (so as to be helpful and for the Arkhangelskys' convenience). For the consents that I

> countersigned saying that the declaration was made in my presence, I cannot now be sure that Mrs Arkhangelskaya did sign each of the individual spousal consents in front of me. I am sure, however, that in respect of any personal guarantee, spousal consents were sent to Mr Arkhangelsky's office at OMG and even if Mrs Arkhangelskaya did not sign them personally at the Bank then the documents certainly came back signed in the name of Mrs Arkhangelskaya."

767. Against that, Mrs Arkhangelskaya was adamant that she had never, consciously at any rate, signed such a consent. Her presented demeanour was one of shock at the very thought. For example, in relation to the first Vyborg consent, she said:

> "For 310 million? You must be kidding, sir. That is a guarantee using my money. I did not have such funds at that point in time. How could you guarantee something with the funds you haven't got?"

Similarly as to the Third Vyborg consent:

> "Well, because this involves a large amount of money and it is generated by BSP and it is my personal guarantee, I think, so I do not know whether I signed this or not. I must have seen this some time in the past, but I do not recall signing this."

768. However, she also acknowledged that she sometimes felt she had to sign documents for the purpose of her husband's business or simply because her husband required her to do so. She accepted that she knew that the Bank was lending significant sums to OMG companies, and that she provided the Bank with her own details. Mrs Arkhangelskaya told me that she never really questioned her husband's business activities. She accepted that she sometimes had to sign documents at 3am:

> "Sometimes I simply have to trust him."

769. Once again, the disputed issue whether Mrs Arkhangelskaya did sign spousal consents depends for its resolution on her own evidence and circumstantial and expert evidence.

770. The assessment of Mrs Arkhangelskaya's own evidence is more than usually difficult because (as it seems to me) her shock and horror at her and her family's predicament is transparently genuine, and her belief that she simply cannot in all sense and reason have signed documents which appear to have increased their exposure is, by now, deeply ingrained.

771. I think this is why she demonstrated a certain truculence in the witness box, which may well also have been the product of depression and anxiety; and an evasiveness and refusal to commit to an answer which may simply reflect her fear that she is caught up in something she does not fully comprehend or accept, in which she is terrified of further prejudicing her young family, and from which she can find no safe exit.

772. I have considerable sympathy for Mrs Arkhangelskaya in her predicament and in her concerns for her young family. However, my assessment is that at the time of the relevant events in 2008 she neither knew nor wanted to know quite what her husband was up to; and she rather blindly deferred to his requirements. In reality, I do not think Mrs Arkhangelskaya has the faintest idea whether or not she signed these consents.

773. I think it more likely than not that she did; but if I am wrong about that, I consider it far more likely that Dr Arkhangelsky mimicked or simulated her signature than that the Bank did. That is indeed the possibility canvassed and to some extent supported in the expert evidence, at least as regards the four spousal consents relating to the Personal Guarantees for the four Vyborg Loans. In that regard:

(1) Mr Radley's opinion was:

> "The signatures on A7 to A10, A28 and A29 bear certain writing characteristics which are in a very similar style to that used by Vitaly and not Julia Arkhangelsky. I cannot exclude the possibility that Mr Arkhangelsky was the writer of these signatures on behalf of his wife."

(2) Dr Giles' view was:

> "Mr Radley and I have both noted that the signatures in the name Julia Arkhangelskaya on the Consents to Contract [A7] — [A10], [A28] and [A29] bear certain writing characteristics which are very similar in style to signatures of Vitaly Arkhangelsky. Mr Radley states that he cannot exclude the possibility that Mr Arkhangelsky was the writer of these signatures on behalf of his wife. I have noted that the form of these signatures [A7 — A10, A28 and A29] is consistent with these being attempts by Vitaly Arkhangelsky to produce a simulation of the signature of Julia Arkhangelskaya."

774. I find further that Dr Arkhangelsky's evidence that he had never seen any of the spousal consents was untrue, and calculated to seek to neutralise the obvious logic that if she or he had signed spousal consents to the guarantees he must also have agreed to the Personal Guarantees themselves. That finding further supports the conclusions I have reached above, both as to whether he signed the relevant documents and as to his true state of mind.

775. I accept that the Bank was lackadaisical in its approach in respect of the relevant documentation, probably because it too regarded the primary security for the borrowings as having a value well in excess of its exposure, and the guarantees as being more than a salutary reminder to the borrower rather than a reliable source of recourse. The lack of proper or comprehensive records, and the lack of direct evidence of actual signature, left it open to the hackneyed but reckless defence to which Dr Arkhangelsky resorted. This is particularly surprising given the sums involved and its own evidence to the effect that in Russia borrowers habitually do resort to any available tactics to defeat or delay claims for repayment.

776. However, even if the Bank may have contributed to its exposure by its own carelessness, that is ultimately beside the point: the documents were signed by Dr Arkhangelsky, for himself in the case of the Personal Guarantees and the Personal Loan and on behalf of Scan in the case of its guarantees, and he and Scan respectively became bound by them. I so find.

Additional agreements and amendments to the Personal Guarantees

777. The evidence in relation to the additional agreements apparently entered into (according to their date at least) in late December 2008 in order to reflect the restructuring of the principal sums is less strong circumstantially, and inconclusive according to the expert evidence. Dr Arkhangelsky denies that he entered any additional agreements in relation to any Personal Guarantee or the Personal Loan.

778. Although framed as a denial, the burden was on Dr Arkhangelsky to demonstrate that what appeared to be his signatures on the additional agreements were not placed there by him and are forgeries accordingly. I do not consider that Dr Arkhangelsky carried that burden. Indeed, in all the circumstances of denials in respect of the original agreements that I have concluded were plainly false, and having closely observed Dr Arkhangelsky under cross-examination, I consider that on the balance of probabilities Dr Arkhangelsky did sign the additional agreements, just as in my view he plainly signed the original guarantees.

779. Accordingly, I find that Dr Arkhangelsky remained bound as a guarantor in respect of the relevant loans, as did Scan, notwithstanding the alterations of the underlying indebtedness effected in late December 2008 and early 2009.

780. Further, I accept Professor Maggs's ultimately unchallenged evidence of Russian law to the effect that under that law, if the Personal Guarantees in their original form were binding on Dr Arkhangelsky, then they would remain binding on him even if an amendment was not signed by or on behalf of Dr Arkhangelsky.

781. If the underlying loan agreement was itself amended, which is the case here, then the guarantor's liability would depend on whether he had given the relevant consent to the change in the guaranteed obligation, which would be required if there was an increase in liability or other unfavourable consequence for the guarantor.

(1) In this respect, the Personal Guarantees each contained a clause whereby the guarantor gave advanced consent to changes in the underlying obligation, including the interest payment periods and maturity periods.

(2) Dr Gladyshev agrees that it is a question of the terms of the guarantee, but also says "and/or on posterior agreements between parties".

Issues if Dr Arkhangelsky did not sign Personal Guarantees or Personal Loan

782. On the basis of my conclusion that Dr Arkhangelsky signed and remained bound by the Personal Guarantees and the Personal Loan, it is strictly unnecessary to adjudicate the Russian law arguments which the Bank advanced with the objective of demonstrating

that even if he did not sign them he would be bound by and liable under them (save for the argument already dealt with in respect of the additional agreements).

783. Given that my conclusion is based on findings of primary fact after a detailed exegesis at trial, it might be hoped to be excessively cautious to address arguments which are only in point if such findings were to be reversed. In any event, having found as a fact that Dr Arkhangelsky did sign the disputed guarantees and the Personal Loan, I do not think it appropriate to enter into a discussion as to what would be the position under Russian law if the signatures were not his but the signatures of an attorney or other person authorised by him or whose act was subsequently ratified by him.

784. However, out of an abundance of caution and since it is an issue of fact, I shall briefly address what, in my view, would be the position under Russian law if (contrary to my findings) there was no binding agreement at all between the Bank and Dr Arkhangelsky in relation to the Personal Guarantees or the Personal Loan.

Claims in respect of the Personal Guarantees and the Personal Loan under Article 1064 RCC

785. In those circumstances, the Bank submits that it would have a claim against Dr Arkhangelsky under the general torts provision in Article 1064 of the Russian Civil Code ("Article 1064" and "RCC") for the loss it has suffered.

786. Article 1064 provides as follows:

> "*Article 1064. General Bases of Liability for the Causing of Harm*
>
> 1. Harm caused to the person or property of a citizen and also harm caused to the property of a legal person shall be subject of compensation in full by the person who has caused the harm. A statute may place a duty for compensation for harm on a person who is not the person that caused the harm. A statute or contract may establish a duty for the person who has caused the harm to pay the victim compensation in addition to compensation for the harm.
>
> 2. The person who has caused the harm is freed from compensation for the harm if he proves that the harm was caused not by his fault. A statute may provide for compensation for the harm even in the absence of fault of the person who caused the harm.
>
> 3. Harm caused by lawful actions shall be subject to compensation in the cases provided by statute."

787. The elements of a claim under Article 1064 were summarised as follows by Andrew Smith J in *Fiona Trust v. Privalov* [2010] EWHC 3199 (a case in which the Bank's expert in these proceedings, Professor Maggs, also gave evidence) at [94]-[95]:

> "[L]iability under article 1064 requires (i) harm, (ii) causation, (iii) fault and (iv) unlawfulness... There is no significant issue about what constitutes fault or unlawfulness for the purposes of article 1064. The defendants pointed out, and I accept, that, while intentional actions that cause harm are unlawful (unless permitted by a legal provision), payments made in legitimate business transactions are not unlawful, and a person cannot be said to be at fault on that account. However, it is not disputed that the requirements of fault and unlawfulness would be satisfied if the claimants succeeded in establishing dishonesty, the sole basis upon which they pursue the claims. The significant issues about article 1064, if Russian law applies, concern the requirements of harm and causation."

788. In my judgment, if (contrary to my findings) the Bank proceeded without obtaining signed personal guarantees, it has only itself to blame and no claim would lie under Article 1064 because nothing that Dr Arkhangelsky did was causative of loss, unless it was induced to believe that Dr Arkhangelsky had indeed signed such agreements though in fact he had not. In the latter case, a claim would lie under Article 1064.

Article 1102 of the RCC: unjust enrichment in the amount of the Personal Loan?

789. In respect of the Personal Loan, the Bank also makes a claim against Dr Arkhangelsky for unjust enrichment under Article 1102 of the RCC ("Article 1102").

790. This provides:

> "*Article 1102. The Duty to Return Unjust Enrichment*
>
> 1. A person who, without bases established by a statute, other legal acts, or a transaction, has acquired or economized property (the recipient) at the expense of another person (the victim) shall have the duty to return to the latter the unjustly acquired or economized property (unjust enrichment), with the exception of the cases, provided by Article 1109 of the present Code.
>
> 2. The rules provided by the present Chapter shall be applied regardless of whether the unjust enrichment was the result of the conduct of the acquirer of the property, the victim himself, third persons, or occurred against their will."

791. Insofar as the Bank paid sums to Dr Arkhangelsky in the mistaken belief that he had entered into the Personal Loan, and he has been unjustly enriched by receipt of RUB 130 million, then I accept that under the RCC he would be liable to return the proceeds to the Bank pursuant to Article 1102.

792. That disposes of the first element of the Bank's claim, in the Bank's favour.

Issue 2: Was a 6-month moratorium promised and agreed?

793. The question then is whether the Bank was entitled to enforce and call defaults when it did, or whether Dr Arkhangelsky can establish his case that Mr Savelyev promised, and the parties made, a legally binding agreement (what the Defendants describe as the "Moratorium") in December 2008 that the Bank would not require payment of capital or interest under any of the loans until (at the earliest) the end of June 2009. This issue as to whether or not any such Moratorium was promised and/or agreed is relevant in a number of contexts.

794. The first context in which the issue is relevant is whether the Bank was entitled to call a default when it did, or whether the Moratorium precluded and rendered ineffective its purported demands for payment and the events of default which it called in consequence of non-payment. Those issues principally relate to the Defence, including the Bank's computation of and claims for interest, and the Bank's further claims for declaratory relief.

795. Secondly, however, the issue as to whether the Moratorium was promised and agreed (and if so whether it was enforceable) is also relevant to the claims of conspiracy (and whether, as he claims, Dr Arkhangelsky was in effect tricked into the repo transactions) and for breach of contract and abuse of right in the Counterclaim.

796. Given its centrality in both contexts, I turn to address the issue in some detail.

Did Mr Savelyev promise a 6-month moratorium? Was that the basis of the repo arrangements?

797. The twin pillars of Dr Arkhangelsky's case that a six-month moratorium was promised by Mr Savelyev, and it was on the faith of that promise that Dr Arkhangelsky agreed to the repo arrangements for which the Memorandum provides, are that: (1) having in November sought a 3-year extension of capital repayments and a 1-year moratorium in interest payments, in December he asked for, and the Bank knew that the minimum he needed if his companies were to have any chance of restoring solvency was, a 6-month moratorium and the Bank either agreed to that or allowed him to proceed on the footing that it would agree to it; and (2) it would have made no sense for him to agree the repo arrangements (and, as he put it, "transfer all my shares") on any other basis. Dr Arkhangelsky ascribes to undue pressure of time (and indeed coercion), alternatively, oversight or the stupidity of his staff, that the Memorandum itself did not incorporate this crucial term, but he maintains that the unrecorded promise should be treated as nonetheless binding.

798. When cross-examined (albeit not in his witness statement), Mr Savelyev admitted that at their meeting on 25 December 2008, Dr Arkhangelsky had asked him for a 6-month moratorium. His oral evidence was as follows:

> "I do not deny, my Lordship, that Mr Arkhangelsky did request prolongation of all agreements for six months, but the Bank did not agree to do it for each loan and did not defer the payments for six months for all items.

> In particular…I'm not sure whether I stated all the agreements in the memorandum, but for example, the personal loan agreements, the PetroLes agreements, are different. The dates there are different. One could understand that, one could see that, that the PetroLes loan only was for March. Therefore, overall, there were no such understandings reached, but there was such a request on the part of Mr Arkhangelsky, and we did extend part of the loans for six months."

799. When questioned further his evidence was as follows:

> "MR JUSTICE HILDYARD: Who was to determine which of the loans were and which were not to be extended to the end of June? You explained that there was a request from Mr Arkhangelsky; who was to determine, if it wasn't agreed by you on 25 December, which ones were and which ones were not to be extended?
>
> A. My Lord, there should be a board decision, the board of the Bank. The collective intelligence should be at work here, and the board made a decision with regard to the maturity dates for these loan agreements with regard to time periods."

800. He had earlier explained:

> "Restructuring was with regard to each credit agreement separately. The Bank could not take all the credit agreements with different maturities, different amounts, and roll them all up into one moratorium of six months long. I also wanted to mention, with some specific loans we did not agree at all that we would provide any moratorium, for example, with regard to PetroLes."

801. The evidence of Mr Guz (who was of course present at the meeting on 25 December 2008) was to like effect. Mr Guz said:

> "…in this particular case, the major point was that the client wanted restructuring of his loans, but he didn't have any additional pledge of collateral, and what was being discussed whether the Bank would agree at all to make any restructuring, any prolongation, any rolling up and so on, or there was another opportunity to call a default right at the end of December. That was the major point.
>
> Q. So the broad terms of the deal, as far as you are concerned was: no default in the end of December, you transfer the shares and then we will see, is that --
>
> A. No, no, no. No default at the end of December, transfer of the shares in exchange of the restructuring agreed with the borrower.

> So this was the major point discussed as far as I can understand at the meeting.
>
> MR JUSTICE HILDYARD: Restructuring for all the loans?
>
> A. No. Some of the loans, because some of the loans were not mature at that date. So some of the loans were supposed to be restructured. Some of the interest payments were supposed to be rolled up, until the end of the maturity date, or some of them until the other date, and the other loans were not restructured, I mean, the repayment of the principal.
>
> So there were no specific details. The details were supposed to be agreed with the borrower after the meeting."

802. Although I remain unconvinced that Mr Savelyev had any reliable memory of what was said, and his reference to specific loans (the PetroLes loans) struck me as likely to be reconstruction after the event, the general thrust chimes with the lack of any reference to a general moratorium in the Memorandum, and also with what afterwards actually happened without objection on behalf of Dr Arkhangelsky (see below).

The lack of any reference to the moratorium in the Memorandum

803. The absence of any provision or reference to a general 6-month moratorium in the Memorandum signed by the parties, which was intended to capture the principal elements of their agreement, though not of course conclusive, clearly supports the Bank's case that none was agreed.

804. If there was, as Dr Arkhangelsky insists there was, a clear (in legal terms, collateral) oral agreement between him and Mr Savelyev for a 6-month moratorium which, in his perception at least, was the single most important aspect of the whole arrangement and the *sine qua non* of his agreement to enter into the repo transaction, it seems at least odd that it was not recorded in the document drafted in respect of the arrangements.

805. It is odder still that Dr Arkhangelsky did not immediately require amendment of the Memorandum or some further written accord to ensure that this vital matter, the centre-piece of the deal from his point of view, was defined and could not be disputed. On the Defendants' case, the Memorandum failed to reflect the most vital aspect, and the whole nature of the arrangements was fundamentally misstated. Yet there is no record of any complaint at the time.

806. Dr Arkhangelsky's response when this was put to him in cross-examination was that it was all a rush, he was given no opportunity to query still less amend the document, and in the end was effectively coerced into signing it without the benefit of legal advice or proper consideration of its terms.

807. Dr Arkhangelsky's oral evidence was:

> "… I've been under so huge pressure, so I haven't had any chance to go through the documents. So I [have not] had any chance

> under the personal threat by Mr Savelyev to argue about anything. So I was really afraid and I've been under huge personal pressure and family pressure, so I had to sign whatever I got." *[My interpolation]*

He continued:

> "I've been under so huge pressure and I've been under the threat, and the conditions were extraordinary, and I signed this document in the office of Mrs Malysheva, so I've been really afraid of me and myself and I haven't had any chance to get any advice from even in-house lawyers. So I had -- either I had to sign that or I would not survive during the Christmas holidays."

808. I accept that Dr Arkhangelsky was indeed under very considerable pressure to have an agreement signed which was effective before the end of the year. But I do not accept that he was coerced, nor that he had to sign the agreement in the form proposed without proper consideration of its terms and without legal advice. After all, his case is also that the Bank itself needed an agreement just as much, if not more, than he did, to ensure that it was not required to make reserves on the basis of default at the end of the year.

809. As to legal advice, contrary to Dr Arkhangelsky's oral evidence, it seems to me to be plain that OMG lawyers were closely involved in the preparation of the various documents. For example, on 29 December 2008, Ms Stalevskaya emailed Mr Vasiliev and Ms Vasilenko, OMG's lawyers, in respect of a number of matters including, specifically, the "Memorandum". In his oral evidence, Dr Arkhangelsky tried to suggest that this was reference to a different memorandum, but this appeared to me to be a panicked expedient:

> "… It says memorandum, but it doesn't specify which particular memorandum and which particular text, and as far as I understood, no attachments, and as Mrs Stalevskaya said to you under cross-examination, there were different versions of possible memorandum.
>
> Q. Yes, but the only document that was being considered at that time by the parties concerned, called "memorandum", was the 30 December memorandum, wasn't it?
>
> A. Yes. Yes.
>
> Q. And it looks, doesn't it, from this e-mail, as if there was some exchange between the Bank and your lawyers concerning the memorandum?
>
> A. I assume so, but we have not discussed the final version, because a final version of the memorandum I signed in the office of Malysheva, 30 December, and I signed the document she given to me. So not any looked on by the lawyers or anybody

> else, we haven't had a chance to do that, because I either had to sign or I had to create a problem to myself.
>
> Q. Dr Arkhangelsky, do you want to revise your evidence as to --
>
> A. No, I don't want."

810. I do not accept that evidence: in my view, it was contrived in a desperate but untruthful attempt to muddy the waters and obscure the fact (as I find it to be) that OMG's lawyers were given the opportunity to review the Memorandum, and did so.

Subsequent individual loan extensions not consistent with the general moratorium alleged

811. Further, even if the fact that no general six-month moratorium (which is what the Defendants maintain the 'Moratorium' comprised) is anywhere contemporaneously recorded and the fact that (in my assessment) Dr Arkhangelsky resorted to a false expedient to explain the omission of any reference to it in the Memorandum, are not conclusive, the further fact that, thereafter, the OMG companies individually entered into additional loan-specific agreements extending the payment dates for the loans in different terms according to the specific repayment dates (as summarised in paragraph [381] above) tilts the balance further, and to my mind conclusively, against the Defendants' case that a general, across-the-board, moratorium was established. The Bank submitted, and I accept, that the terms of these additional agreements are not consistent with any overall 6-month moratorium.

812. Although, when cross-examined, Dr Arkhangelsky sought to revive an argument that the additional agreements were not authentic, that argument had been formally withdrawn before trial and the relevant parts of the Re-Re-Amended Defence and Counterclaim disputing the additional agreements were struck through. Dr Arkhangelsky sought to contend that he did not understand the function of pleadings; and I have taken his status as a litigant in person into account. But the formal withdrawal of the allegation was clear, and even if (as Dr Arkhangelsky confirmed) the relevant correspondence was prepared by Mr Stroilov, I think I must take it as binding, especially given the arrangements between Mr Stroilov and the Defendants for him to represent them.

813. In any event, Dr Arkhangelsky struggled to find any coherent basis for any attack on the documents' authenticity. He was reduced to saying that his case on the moratorium "had to be like this", and confronted with the additional agreements said:

> "It's not possible…It's not possible this. It's not possible this."

But that is as it was.

814. Mr Stroilov submitted that the Defendants' and OMGP's case on the moratorium derived assistance from the fact that the interest payments were, as it happened, in some cases deferred until the end of June. However, the Bank countered that the deferral was not because there was any alleged six-month moratorium, but simply reflects the fact that 28 June was the date before the Bank's half-year financials and was thus a natural

and obvious choice if payment periods were to be extended. It is a long stretch to extrapolate from that any promise from Mr Savelyev that OMG would not need to make payment until then: too long, in my judgment.

815. Dr Arkhangelsky also sought to divert the questioning about the additional agreements by querying the internal Bank registration stamps, suggesting the OMG employees who signed the agreements were put under pressure by Lt. Col. Levitskaya or under the "control of the Bank", or saying that he was not party to the agreements. I do not accept any of this.

816. Then in the last resort he sought to put the blame on other people. Thus:

> "Definitely, agreement with the Bank was that all the loans are prolonged, so it would be completely stupid of me to make an agreement or memorandum unless I know that all the problems are solved, otherwise I cannot see any reasons for giving all my businesses to the Bank."

He continued:

> "My understanding, and strong belief, that the agreement was that all -- you know, it's the standard personal logic. If I given all my assets to the Bank in exchange to the prolongation of the loan, so each and every loan should be prolonged by the date agreed, and this manipulation and insinuation that if, whatever, from 25 loans, three were not prolonged, or two were not prolonged, where is the logic? I cannot understand that.
>
> So I may assume that some of my employees were not good enough, so maybe they were misled…at that time, or they were simply stupid. But I absolutely believe that the moratorium been existing, otherwise I would not sign -- I would not sell to the Bank my companies for zero value."

817. This was not accurate. Dr Arkhangelsky did receive extensions for interest payments and principal payments, and they were not of "zero value". Such extensions, in accordance with the terms of the additional agreements, gave OMG a valuable breathing space or lifeline without which default before the end of the year was inevitable.

818. As to blaming his subordinates, that was not out of character: but I have not been persuaded of any fair basis for it. There is also an inconsistency in him seeking to blame his employees for something which on his own case he agreed personally with Mr Savelyev and which was not otherwise recorded. On a matter so important it was surely for Dr Arkhangelsky personally to ensure that he got what had been agreed.

819. During his cross-examination of the Claimants' witnesses, Mr Stroilov, on behalf of the Defendants and OMGP, floated a number of new suggestions of factual contexts, put

forward for the first time and without any evidential basis, to fit their 'Moratorium' case (or some variant of it) with the contemporaneous agreements. Thus:

(1) In relation to the PetroLes and Vyborg loans, Mr Stroilov suggested to Mr Guz that it was "intended", presumably at the end of December 2008, that these loans would be "further extended" from their maturity dates. Any such new "agreement" or "intention": (i) is not pleaded; (ii) has no basis in the evidence of the Defendants and OMGP; and (iii) is inconsistent with and undermines the contention that there was any agreement for a six-month moratorium. Mr Guz denied any such intention. I can see no basis for inferring it.

(2) As a variant on the above, Mr Stroilov also suggested to Ms Volodina that:

> "… it was intended that the restructuring would take place in two stages: one by way of various additional agreements dated December 2008, and then in January or February or March, there would be further additional agreements to various loan agreements, which would avoid the need to form results and to reflect them in 2008 reporting to the Central Bank."

Again, this was not pleaded, nor was there any evidential basis for it. Ms Volodina rejected the suggestion, explaining that instead, the Bank was to reassess the position in March:

> "In January and February the Bank hoped to receive a financial recovery plan from the client until the PetroLes maturity on 5 March, a decision was expected to be made as to what we do going forward. But the client did not provide that plan, nor did we receive any proceeds with respect to the timber shipment."

(3) Mr Stroilov further suggested that the loan extension for Vyborg Shipping must have been agreed for longer than that set out in the additional agreements because the Bank could never have expected Vyborg Shipping to meet its payment obligations by March/April 2009, since the shipping business in St Petersburg was frozen from December to March. However, though that appeared telling at first blush, the point assumed that the vessels were operating into and out of St Petersburg. This does not appear to have been the case. As far as the Bank understood, and as Vyborg Shipping presented the position without contradiction, its vessels were operating abroad away from St Petersburg. The places at which the three vessels were arrested seem also to support this.

820. In summary, in my judgment, the available evidence does not support the Defendants' case that an across-the-board 6-month moratorium was promised by Mr Savelyev and agreed by the Bank in return for Dr Arkhangelsky's commitment to the repo arrangements in December 2008. The lack of any reference in the Memorandum to such an important element of the overall deal, and the fact that Dr Arkhangelsky made no objection either to that omission or to subsequent written agreements inconsistent with an overall 6-month moratorium are, in my judgment, fatal to the allegation.

821. In reaching that conclusion I have had much in mind Dr Arkhangelsky's main point that, without the alleged 'Moratorium', the repo arrangements exposed OMG to a 'raid' without any sufficient *quid pro quo,* and that it stands to reason that he would never have agreed such terms. But in my judgment, the truth is that Dr Arkhangelsky, by December 2008, was desperate. Unlike the Bank, he knew how serious the position had become (illustrated by the arrest of the *'Tosno'*, the deficits across the companies' accounts, and his inability to fund the retainer proposed by BNP); and the repo was all he had left to offer to keep the Bank at bay.

822. My assessment is that Dr Arkhangelsky is a chancer with a belief that something will turn up in the end, so long as he can keep kicking the can down the road; and that he is capable of convincing himself in retrospect of things which have not in fact happened, and of denying any possibility that he personally may have made a mistake.

823. It may well be, in my view, that he has gradually persuaded himself that a general moratorium must have been finalised or treated as having been so. Alternatively, it may be that matters were left so fluid at the 25 December meeting and thereafter that the two sides had different views as to what had been agreed. Mr Savelyev struck me as someone adept at leaving an interlocutor feeling that he had agreed something without in fact committing himself.

824. Whatever may be the explanation, in my judgment, there is no sufficient evidence that Mr Savelyev committed the Bank to a general 6-month moratorium; and the documentation is flatly against Dr Arkhangelsky's case. In all the circumstances, I find that no such moratorium was agreed.

Relevance and effect of Russian law if (contrary to my primary conclusion) there was some form of agreement for the across-the-board moratorium alleged

825. In the light of that conclusion it is not strictly necessary for me to consider the Bank's alternative case that even if the factual evidence could support some form of 'agreement' for a 6-month moratorium in the terms alleged, the 'agreement' would be flawed and ineffective as a matter of Russian law.

826. For comprehensiveness, however, I should summarise as shortly as possible what I consider to be the scope of the issues and my views and conclusions in that regard.

827. The Bank, relying also on the label "Memorandum", as distinct from "Agreement" or "Contract", submitted that the relevant document:

(1) Was informal, and plainly no more than a declaration of intent which looked forward to some far greater and particular drafting of commitments which by the Memorandum were only intended to be adumbrated and not legally defined or legally binding;

(2) Was not signed by any legal OMG entity, the stated party being "Group Oslo Marine Holding", defined as "the 'Group'", which is not a legal entity, but a collective expression, and the only parties to the Memorandum being the Bank and GOM, and not OMGP or Dr Arkhangelsky;

(3) Was at most an aide-memoire recording the discussions between the Bank and OMG companies: the only binding agreements being: (i) the individual agreements between the Bank and the OMG borrowing companies; and (ii) the repo arrangements. The formality of those agreements is to be contrasted with the Memorandum, and the necessity for them speaks for itself;

(4) If sought to be re-characterised as in the nature of a "preliminary contract" or agreement to agree, the Memorandum did not fulfil the conditions of Article 429 RCC in any event, and even if intended to be binding, lacked the "essential terms" required by Article 432 RCC to establish an enforceable "preliminary contract" for a contract to be made in the future under Article 429 RCC; and, furthermore

(5) Would be of no ultimate legal utility to the Defendants, since to establish an agreed moratorium it was necessary for them to establish the interpolation or collateral effect of oral terms (there being no written reference to a 6-month moratorium) in contravention of Article 162(2), which precludes the addition of terms "not in simple written form" and invalidates any oral element.

828. The Defendants submitted that none of these contentions is well-founded. In particular, it was submitted on their behalf that:

(1) The very fact that the parties sought to record the "agreement" in writing indicates that they intended it to be binding: they would not have gone to the trouble of creating the Memorandum otherwise; further, the agreement helps to make sense of the peculiar tripartite arrangements between the Bank, the OMG companies and the purchasers, which are otherwise not fully or adequately documented. There is no reason why the parties should be taken not to have intended those arrangements to be given contractual effect.

(2) The identity of the parties is a question of construction. The fact that the seal imposed was that of GOM is not definitive, and it cannot have been intended to make GOM the only party, not least because it makes no sense for GOM to be committed to transfer shares in Western Terminal: the only logical and sensible interpretation is that the agreement was made by Dr Arkhangelsky on behalf of both GOM and OMGP, which respectively agreed to transfer their shares in Western Terminal and Scan.

(3) The importance of the "agreement", the fact that it was immediately acted upon, and the important commitments, described as undertakings, expressed within it, all bely any attempt to treat it merely as an aide-memoire: the fact that there were subsequent contracts does not detract from its own status as such.

(4) Articles 161 and 162 of the RCC are, quite simply, irrelevant since the admissibility of evidence to prove the existence and content of an agreement, and the weight to be accorded to that evidence, are questions of procedure governed by English law as the *lex fori*. Mr Stroilov cited the long-standing position at common law that "Questions as to the admissibility of evidence are decided in accordance with the *lex fori*. Thus a document may be received as evidence by the English court although it is inadmissible by the *lex causae*" (Dicey, Morris and Collins at [7-

017]). See also *Bain v. Whitehaven Railway Co* (1850) 3 HL Cas 1, 19 per Lord Brougham:

> "Whether a certain matter requires to be proved by writing or not, whether certain evidence proves a certain fact or not, that is to be determined by the law of the country where the question arises."

829. It seems to me to be plain that:

(1) The Memorandum listed the loans for which the repo arrangements proposed would provide further security without any provision for their extension: its provisions (and the undertakings recorded) related only to the proposed repo arrangements.

(2) In that regard, it paved the way for but did not itself comprise the terms of the repurchase agreements, and in particular did not specify the price or any other details necessary for a concluded share purchase agreement.

(3) However, the undertakings given were intended to be legally binding if and when the repo arrangements were agreed.

(4) The failure to identify the correct parties does not signify anything more than that the draft was hurried, insufficiently thought out and defective, it being implicitly recognised that it would to all intents and purposes (save possibly in relation to the undertakings) be overtaken by or merge into the repo arrangements when finalised and agreed.

(5) To that extent, it was no more than an aide-memoire or statement of intent, which contemplated further more definite contractual documentation to regulate as a matter of law the arrangements between the relevant parties.

(6) The laxness as to the stated parties is consistent with that; and in any event, I do not think it is right to substitute a raft of parties for the only named party by a purported process of construction. I accept Professor Maggs's evidence that a Russian court simply would not entertain such a process or result. The cases he cited seemed to support his observation that:

> "…Russian courts are highly formalistic and they are not going to put someone in as a party when it is signed in the name of someone else."

(7) The Memorandum was in the nature of an agreement to agree. In English law an agreement to agree is unenforceable: *Walford v Miles* [1992] 2 AC 128. The special provision in Russian law for a preliminary contract must be subject to the rules under and conditions under and by which it is given effect. I accept that under the applicable Russian law:

(a) Such a contract to make a contract must meet the requirements of Article 429 RCC and contain the essential terms as set out in Article 432 RCC;

(b) Failure to observe the simple written form and/or the purported interpolation of an oral element is fatal to validity; and

(c) The Memorandum cannot be given effect as a preliminary contract since the above requirements were not fulfilled.

(8) Furthermore, the Memorandum does not itself provide for or refer to the 'Moratorium' asserted by the Defendants, whose case relied on the interpolation of oral terms, or establishing a self-standing oral agreement. Even if Russian law does permit oral terms or agreements to be established by witness testimony unless the parties have stipulated or the general law provides otherwise, Dr Gladyshev appeared to have no answer to Professor Maggs's evidence that Article 161(2) RCC applies to provide otherwise in the case of a term or contract such as the Defendants assert, save to argue that this was a procedural and not substantive provision of Russian law. This argument does not seem to me to be substantiated by the cases cited.

(9) More generally, the rules of evidence of the *lex fori* cited by Mr Stroilov are not applicable in the particular context: the formation, validity and interpretation of a contract (including what evidence is admissible in that context) are matters of substance for the putative applicable law, in this case, Russian law. The question is not a procedural one going to the mode of proof of a fact in contention or mode of trial: it is a substantive one of the essential qualities and requirements to establish a legal relationship and define the rights and obligations incidental to it (in this case, in contract).

830. In all the circumstances, I would accept the Bank's alternative case that even if the factual evidence could support some form of "agreement" for a 6-month moratorium in the terms alleged, the "agreement" would be flawed and ineffective as a matter of Russian law.

Consequences of these findings for the Defence: there being no agreed or promised general moratorium as alleged, the Bank was entitled to call in its loans as and when it did and to enforce the repo arrangements

831. Dr Arkhangelsky's contention that the Bank was "clearly in breach of the December 2008 Agreement" in refusing formal extensions of loans to PetroLes and Vyborg Shipping in March 2009 and then in calling in the loans as it did falls in light of my conclusion that no general 6-month moratorium such as he alleges was ever promised or agreed. The denial in the Amended Defence (at paragraph 21) that Vyborg Shipping, LPK Scandinavia and/or Onega defaulted in their debts and the plea that "the companies did not default as pleaded by the Claimants" was based on the alleged moratorium and falls away accordingly.

832. Similarly, the plea in paragraph 25 of the Amended Defence that the defaults were called "to create spurious grounds for claim under the fabricated 'personal guarantees'" fails, both because (as previously held) the Personal Guarantees were not fabricated, and also because the Bank was entitled to call the defaults and was relying on its

contractual rights and not spurious grounds in doing so: and likewise, in the case of the Personal Loan.

833. More generally, Dr Arkhangelsky's contention that "he" (by which I take him to mean the relevant companies) are not "defaulting debtors" cannot be sustained.

834. Just as, if not even more, important from the Defendants' and Counterclaimants' point of view is the further consequence that the Defendants' contention that the Bank tricked Dr Arkhangelsky into the repo arrangements and was not entitled to implement the repo transactions in reliance on contrived defaults it then called must fail also (unless, of course the repo arrangements are invalidated on some other ground, as to which see below).

835. Even if it could be established that the Bank had ulterior and self-interested motives in putting in place and implementing those arrangements, the fact remains that it flows from my findings that Dr Arkhangelsky agreed to them as the price of the Memorandum and the agreements that followed, without insisting on any general moratorium, and the Bank was contractually entitled to act as it did in implementing the repo agreements upon default.

836. Any claim in respect of the repo arrangements and their implementation can in such circumstances only be based on the theory that the repo arrangements were invalid or entered into pursuant to a conspiracy that renders them void or voidable; or that the repo shares were misused, in effect to steal Dr Arkhangelsky's companies, in such a way as to confer a right of action on the Counterclaimants.

837. Those arguments, though relevant also to the Defence, are more conveniently dealt with in the context of the Counterclaim; and indeed, except for the claim relating to the Defendants' marriage contract, all the remaining issues in the Defence seem to be addressed more conveniently in that context too. Those issues are:

(1) The issue as to whether the Bank's security over the pledged assets was in reality sufficient to cover the indebtedness, and if so, whether there was any proper warrant or justification for any claim under the guarantees, and further whether the Bank has been in continuing breach of its duty properly to account; and

(2) Whether the claim is an abuse of this court as being "in aid of the unlawful persecution of the Defendants by the Russian regime" (as pleaded in paragraph 79 of the Re-Amended Defence under the heading 'Public Policy Considerations') or on some other ground than "misleading the Court by producing forged documents" (pleaded in that same paragraph 79, but in my view unsustainable in light of my previous findings as to the disputed documentation).

Issue 3: Claim to set aside the Defendants' Marriage Contract

838. Before turning to the Counterclaim, therefore, the remaining issue relevant to the Defence which I should deal with now is the Claimants' claims to set aside transfers of assets from Dr Arkhangelsky to his wife under a marriage contract dated 5 May 2009 ("the Marriage Contract"). I have described the Marriage Contract and the Deed of Donation which followed it in paragraphs [557] to [559] above.

839. The Claimants allege that the purpose of the Marriage Contract and the Deed of Donation was to protect some of Dr Arkhangelsky's assets from his creditors. They say that the agreement was designed to defeat the claims of Dr Arkhangelsky's creditors, and the transfers were in effect shams. They claim that the transactions should be set aside under section 423 of the Insolvency Act 1986 ("Section 423"), on the basis that this provision may be given extra-territorial effect where there is sufficient connection with this jurisdiction, and/or Article 170 RCC. It is on this basis and by reference to these claims (as well as the more general declaratory relief that was sought against both Dr and Mrs Arkhangelsky) that the Bank joined Mrs Arkhangelskaya as a party.

840. It is clear that Section 423 may be given extra-territorial effect: see *re Paramount Airways Limited (No. 2)* [1993] Ch 223 and more lately, *Erste Group Bank v. JSC VMZ Red October* [2015] EWCA Civ. 379 at [116]-[119].

841. However, it is equally clear that for this purpose a sufficient connection with this jurisdiction must be shown. As Sir Donald Nichols V-C (as he then was) put it in the *Paramount Airways* case (endorsed in *Erste Group* by the Court of Appeal), the court has to be satisfied that, in respect of the claimed relief, the defendant is sufficiently connected with England for it to be just and proper to make the order against him despite the foreign element. The question is not strictly one of jurisdiction but of the discretion to exercise it or not.

842. Even taking into account the agreement for matters to be adjudicated in this jurisdiction, I do not consider that there is such a sufficient connection in this case. The alleged wrong was not committed here; and none of the relevant property is here or governed by or connected with this jurisdiction (and nor now are the Defendants except by this litigation). Further and in any event, I note especially from paragraph 80 of the Particulars of Claim that the Claimants disavow any claim to the Petrograd shares and the French properties, since those are the subject of proceedings elsewhere. This confirms the tenuous connection with this jurisdiction, and reinforces my conclusion that the plea is not one which it is just and proper should be adjudicated here.

843. But even if that were not so, I would not be minded to grant relief.

844. The relevant state of mind is that of the debtor/transferor (here, Dr Arkhangelsky) rather than the recipient (see *Moon v Franklin* [1996] BPIR 196), and what has to be demonstrated is that a material part of the purpose of the transferor in making the transaction was to defeat or delay his creditors (see Section 423(3)): it is not necessary to show that such was the dominant purpose, but purpose must be distinguished from effect or consequence, and the latter will not suffice: see *IRC v Hashmi* [2002] 2 BCLC 489, especially *per* Arden LJ at pp504-505. The focus (albeit not exclusive) on Mrs Arkhangelskaya's state of mind was misplaced.

845. Her evidence, however, did corroborate her husband's to the effect that the purpose was not to put property which belonged to him beyond the reach of creditors but to safeguard her pre-existing interest in certain assets acquired in her or joint names (including a flat that she told me she had owned since before their marriage). According to their evidence, in other words, it was in effect in the nature of a 'post-nup', the purpose of

which was to protect Mrs Arkhangelskaya's pre-existing rights, and, for the future, to insulate and safeguard any assets she might herself acquire.

846. The timing of the Marriage Contract invites concern, and suggests that at least part of its purpose might have been to ensure that creditors would be delayed or defeated in enforcing against the assets to which it related. But it has not been demonstrated to my satisfaction that those assets were Dr Arkhangelsky's or that the purpose was to put *his* assets beyond their reasonably straightforward reach.

847. I therefore decline to make any order under Section 423 in respect of this claim.

848. That leaves, in respect of the Marriage Contract, the claim under Article 170 RCC. Professor Maggs (the Claimants' expert on Russian law) referred in his Consolidated Report to "several differing legal regimes for setting aside transfers made to avoid payment of creditors including: (1) the special provisions of the Russian Law on Insolvency (Bankruptcy); (2) certain provisions of company law; and (3) general provisions of the Civil Code applicable where the obligor is not in bankruptcy proceedings." He addressed only the latter, being the only one of those provisions prayed in aid by the Claimants.

849. Professor Maggs described the scope and effect of Article 170 RCC as follows:

> "If the transfer is fictitious and exists only on paper and not in reality, such as a "sale" to evade creditors in which the owner never gave up possession of the property and never collected the price, the transfer arrangements can be undone on the basis of Paragraph 1 of Article 170 of the Civil Code. It provided:
>
> 1. A mock transaction, i.e. a transaction made only for appearances without an intent to create the legal consequences corresponding to it, is void."

850. Sham is asserted in paragraph 79 of the Re-Amended Particulars of Claim, but only on the alleged basis of a plea that the transfers were to defeat creditors and that "in the absence of full consideration being provided, all such transactions were shams and liable to be set aside…".

851. That is not, in my judgment, on the basis of the approach of English law, a proper plea of sham; nor was the evidence such as or sufficient to support one. In the context of an allegation of sham (unlike Section 423) it is the collusive and dishonest intention of the parties to enter into documents which are not intended to be given their stated effect which is the gist. There is no proper or sufficient plea that Dr and Mrs Arkhangelsky shared the requisite collusive and dishonest intention to create a 'mock' or sham transaction; and the particular proof required of such intention was not established (and see *Snook v London & West Riding Investments Ltd* [1967] 2 QB 786 and *ISIS Investments Ltd v Oscatello Ltd* [2012] EWHC 745 as to the plea and proof required in English law). No different approach under Russian law has been asserted.

852. I dismiss the Marriage Contract claim, and with it the proceedings against Mrs Arkhangelskaya.

853. I have been left with the impression, reinforced by the somewhat incidental way in which the claim was advanced and the overlap with other pre-existing proceedings it involved, that the plea was introduced as the means of bringing Mrs Arkhangelskaya into the fray. This may be relevant to the question of costs, but also may provide an insight into the relentless nature of the Bank's pursuit of the Arkhangelsky family.

854. I turn to the Counterclaim and the matters which I have previously indicated I determined would be more conveniently addressed in that context, including, I should add, the claims in the Re-Amended Particulars of Claim seeking declarations which to a large extent are in form the obverse mirror-images of the allegations in the Counterclaim.

Counterclaim

Summary of claims and defences to counterclaim

The claims

855. The conspiracy giving rise to the 'claim for causing harm' is described in the Counterclaim as 'The Scheme', and alleged in the round as follows:

> "…the seizure of ownership and control of Western Terminal and Scandinavia Insurance took place pursuant to an agreement or combination between the parties involved to seize those businesses by unlawful acts and/or means (the "conspiracy")."

856. Dr and Mrs Arkhangelsky, as ultimate owners of Western Terminal and Scan through OMGP and GOM, together with OMGP itself as the 100% shareholder of Western Terminal (together "the Counterclaimants") bring their counterclaim as the victims of the harm alleged.

857. Although that is, if established, and subject to the application of the 'reflective loss principle' discussed further below, a recognisable form of action also under the English law of torts, the Counterclaimants seek to establish liability 'for causing harm' under Article 1064 of the RCC, as to which see paragraphs [785] to [788] above.

858. It is common ground that under the Russian law, the intentional causing of harm satisfies the requirement of fault. This includes a situation where the defendant knows that his actions will inevitably cause harm, whether or not he specifically desires the harm that his actions result in. Indeed, it also includes a situation where the defendant should have known it would cause harm and went ahead nevertheless.

859. If there are a number of causes leading to harm, the Court's task is to identify which is the predominant one, "the main decisive basic circumstances which is a cause" (as described in a leading textbook). Or, as Andrew Smith J put it in *Fiona Trust v Privalov* [2010] EWHC 3199 (Comm.):

> "The defendant's action must be a direct or immediate cause of the harm."

860. It is also common ground that once harm is established, it is presumed to have been caused unlawfully unless specifically justified in law by the person who caused the harm.

861. For the avoidance of doubt, it would not be a lawful justification for the Claimants to say that they or any third parties acted in accordance with contractual arrangements that they had entered into with OMG companies or others, in circumstances where they had acted dishonestly. As Professor Maggs confirmed, only the good faith enforcement of rights is sufficient to negate fault for the purposes of Article 1064:

> "Q. And you give some examples in your consolidated report of lawful justifications for harm. At paragraph 147 you say that a lawful justification might be self-defence, fair competition or the good faith enforcement of property rights.
>
> […]
>
> [W]here you refer to the good faith enforcement of rights, you would agree that it is not open to a defendant to plead a lack of fault if he has enforced his rights in bad faith?
>
> A. It is unlawful under Article 10 of the Code to enforce your rights in bad faith.
>
> Q. So if you enforce rights but in bad faith or dishonestly, that wouldn't amount to lawful causing of harm for these purposes; is that right?
>
> A. That's correct."

862. It is, in these circumstances, common ground between the Russian law experts that if the Counterclaimants succeed in proving their factual case as to the dishonest conspiracy to steal their assets, liability under Article 1064 is established.

863. In addition, Professor Maggs appeared to agree under cross-examination that steps taken intentionally to subject a pledged asset to some form of encumbrance to make it less attractive to potential buyers and/or reduce the pool of potential buyers and thus its realisable value would, if proven to be causative of harm, be wrongful, and actionable accordingly.

864. In my view, and although this was not expressly put, the same analysis may apply where the value of pledged assets under the same pledge is reduced by the way in which they are presented for sale: for example, if two assets in the same ownership, pledged under the same agreement in respect of the same debt and having together a marriage value in excess of their individual value are sold in separate sales for no good or sufficient reason. However, by the same token, assets which are subject to separate pledges in respect of different indebtedness may lawfully be sold separately, even if combining the assets in the separate pledges might yield a higher aggregate amount.

865. Similarly, there was no suggestion, and I would not consider it to be the case, that a pledgee is obliged to sell pledged assets together with other non-pledged assets in its possession or control under some different arrangement, even if the combined package might yield a higher aggregate amount.

Outline of findings sought by Counterclaimants

866. In paragraph 9 of their written Closing Submissions, the Counterclaimants set out what they described as the outline of key findings which they submit should be made and establish their claim.

867. I set out below the findings sought, elaborated by reference to, and culled from, other parts of their Submissions:

(1) As regards the "December 2008 Agreement":

(a) The Bank and Mr Savelyev promised Dr Arkhangelsky that, in consideration of the transfer of shares under the repo arrangements, the Bank would restructure the Group's loans so as to implement a 6-month moratorium on all payments (the alleged Moratorium).

(b) When Dr Arkhangelsky prevaricated, Mr Savelyev made threats to Dr Arkhangelsky and his family.

(c) Dr Arkhangelsky was induced to enter the repo arrangements by (i) the promise of the Moratorium; and (ii) the threats made by Mr Savelyev.

(d) The agreement was a legally binding contract under the Russian law, and was partly written and partly oral.

(e) The 6-month general moratorium as alleged was a material term of the agreement, or a term collateral to it.

(f) The repo arrangements were highly unusual and in a form and on terms calculated to enable the fulfilment of the objectives of the conspiracy.

(g) The Bank entered the Memorandum and the repo arrangements in bad faith, with the dishonest intention to use the repo arrangements to establish control over Western Terminal and Scan, so as to appropriate their respective assets and businesses for the Bank and/or Mr Savelyev and his associates, and fraudulently.

(2) The Original Purchasers and the Subsequent Purchasers, Sevzapalians and the Renord-Invest Group, Baltic Fuel Group, Kontur and SKIF are all beneficially owned by Mr Savelyev and/or the Bank.

(3) In any event, all the above entities and groups, whether or not beneficially owned by the Claimants, acted pursuant to the Bank's instructions as given by or at the instance of Mr Savelyev and/or Mrs Malysheva (who took over control of the Bank's relationship with OMG in order to coordinate and pursue the objectives of

the conspiracy) and those reporting to them in all matters pertaining to OMG assets, and at all stages; they were vehicles for the commission and concealment by the Bank and/or Mr Savelyev of their frauds on the Counterclaimants.

(4) The transfer, pursuant to the repo arrangements, of the shares in Western Terminal and Scan to Sevzapalians (in the case of Western Terminal) and the Original Purchasers (in the case of Scan), both Sevzapalians and the Original Purchasers being entities ultimately owned and/or controlled by the Bank and/or Mr Savelyev "or those connected with them" was part of the conspiracy: those entities were "vehicles for the commission and concealment by the Bank and/or Mr Savelyev of their frauds on the Counterclaimants".

(5) Also in order to further the conspiracy and to put irresistible pressure on Dr Arkhangelsky, the Bank fabricated the Personal Guarantees and Personal Loan (and the additional documents relating to them) and procured the forgery of Dr Arkhangelsky's signature on them.

(6) As regards the events of March to April 2009:

(a) In March 2009, the Bank resolved to refuse formal extension of loans to PetroLes and Vyborg Shipping. That was a breach of the Moratorium promised to Dr Arkhangelsky, and/or pursuant to the Bank's plan to appropriate the assets of Scan and Western Terminal (which required a cross-default of the Group). The intention was to contrive a premature event of default before Dr Arkhangelsky had had the time for repayment that he understood had been agreed.

(b) The Bank knew that its actions were unlawful, and therefore anticipated that OMG would take successful legal actions in Russia. To pre-empt and defeat the potential judgements against it, the Bank caused the transfer of Scan shares from the Original Purchasers to the Subsequent Purchasers for a nominal consideration and as a cloak for and in continuing furtherance of the Bank's and/or Mr Savelyev's fraud.

(c) The decision to replace the management of Scan and Western Terminal was taken by the Bank at around the same time as the decision was taken to transfer the shares, in close connection with it, and for the same purpose. The intention was to enable the new management to transfer both companies' assets to other affiliated companies, who would pose as *bona fide* purchasers. That decision was taken before the Morskoy Bank's loan to Western Terminal, and therefore was not a reaction to it (contrary to the Bank's case).

(d) Dr Arkhangelsky repeatedly sought to contact Mr Savelyev to clear what he perceived to be a misunderstanding or a fraud by a third party. Mr Savelyev evaded such contact, which is to be explained on the basis that he and the Bank were the initiators of that fraud.

(e) The Bank made significant efforts to encourage criminal investigations and prosecutions against Dr Arkhangelsky by the Russian authorities. The Bank did so because it was concerned about Dr Arkhangelsky's lawful resistance to its fraud, e.g. by taking legal action or complaining to the police.

(7) As regards events from May 2009 onwards:

(a) The Bank procured the wrongful institution of enforcement proceedings in the Russian courts against (i) Scan and Western Terminal, which were not contested by either because by now they were under the control of the Bank and/or Mr Savelyev, and (ii) Dr Arkhangelsky, on the Personal Guarantees which he says were forged.

(b) At least in some cases (e.g. the Morskoy Bank loan case), the Bank knew that it was making false allegations against Dr Arkhangelsky; in particular, the claim that the Morskoy Bank loan was improper and "behind the Bank's back" was contrived, first to justify removing Dr Arkhangelsky and Mr Vinarsky as Directors-General of Scan and Western Terminal, respectively, and subsequently (in March 2010) to prompt and procure the institution of criminal proceedings against Dr Arkhangelsky, based on false evidence by multiple individuals in order to: (i) put further pressure on him and his wife, (ii) distract them from seeking to challenge the fraud, and (iii) provide the basis for an extradition request after they had fled to France.

(c) Using its contacts with the police (in particular, Gen. Piotrovsky and Lt. Col. Levitskaya) and benefitting from friends in high places (in particular, Mrs Matvienko and Mr Sergei Serdyukov ("Mr Serdyukov"), the son of a former Russian defence minister), the Bank procured the forcible taking of physical control on behalf of Sevzapalians of Western Terminal's premises on 20 June 2009, "with the assistance of St Petersburg police and OMON (riot police)".

(8) As regards the latter half of 2009, and through to 2012 and the enforcement of the judgments obtained:

(a) From an early stage (probably even before December 2008), the Bank and/or Renord-Invest were interested in Western and Onega Terminals as complex income-generating assets with synergistic value, not as a collection of different "land plots". Their strategy was (as described by Ms Mironova) to "unify to maximise", by bringing together and parcelling assets for ultimate sale to pre-arranged purchasers: this was aimed at maximising the value of the appropriated assets only once brought together for the benefit of the ultimate purchasers, and not in order to maximise the amounts to be applied towards the OMG indebtedness, but rather to benefit Mr Savelyev, Mrs Malysheva and others within the Bank, and parties connected with them.

(b) The Bank procured through Renord-Invest and SKIF the packaging and subsequent sale of substantially all of the assets of Scan and Western

Terminal (and of the individual Counterclaimants) in collusive sales at a 'fraudulent undervalue' to entities owned and/or controlled by the Bank and/or Mr Savelyev or persons connected with them.

(9) The long series of transactions whereby Western Terminal and Onega Terminal assets were repeatedly transferred or 'sold' between different Renord-Invest and SKIF companies (including the purported realisation of pledges, at purported 'public auctions' or otherwise), were collusive, dishonest, and had the following objectives:

(a) To enable the 'buyers' to pose as bona fide purchasers.

(b) To ensure that the entirety of Western Terminal would end up in the hands of Baltic Fuel Company and the entirety of Onega Terminal would end up in the hands of ROK No. 1 Prichaly.

(c) To maximise the synergistic value of each terminal and income generated by it.

(d) To reduce artificially the value of assets in the initial sales out of Western Terminal and Scan by creating various encumbrances calculated to (i) prevent any genuine bids by third parties at the 'public auctions', (ii) facilitate sales to connected parties at fraudulent undervalue and (iii) minimise the credit against sums outstanding which would be given by the Bank to OMG borrowers.

(10) Damages should be awarded in respect of the harm caused by the conspiracy as alleged. Ms Simonova's evidence on the market value of OMG assets is to be accepted: that evidence demonstrates a huge discrepancy between the sums achieved for application in diminution of the loans and the true value of the relevant assets evidences or confirms the fraudulent conspiracy alleged.

868. The findings are sought by the Counterclaimants in order to establish from them an inference of fraudulent conspiracy as being their only reasonably likely explanation. The Counterclaimants accept that they have no evidence of an actual agreement amounting to a conspiracy. They say, in effect, that the findings of fact which they seek, if made, make good the gap. As to the origin of the conspiracy, the Counterclaimants put forward various case theories.

869. Further to a series of amendments in February 2016, the Counterclaimants' final version of their claim as to the genesis, formation of, and persons involved in, the alleged conspiracy was put as follows:

(1) They allege a "Conspiracy […] formed mainly in or around December 2008". This is the primary case. This alleged conspiracy asserts at least eight separate agreements over seven months involving numerous individuals (including Mrs Matvienko, Gen. Piotrovsky, and other unidentified "corrupt officials in Russian law enforcements agencies in St Petersburg" and/or companies).

(2) Alternatively, they allege a "Conspiracy […] mainly formed in or around February-March 2009". This claim of conspiracy asserted at least seven separate agreements over four months involving numerous individuals (including Mrs Matvienko, Gen. Piotrovsky, and other unidentified "corrupt officials in Russian law enforcements agencies in St Petersburg" and/or companies).

(3) In the further alternative, in the final iteration of their claim which they introduced by amendment in February 2016 (just after commencement of the trial), the Counterclaimants have invited the Court to infer that, if not established in December 2008 or February-March 2009, the conspiracy must have been established some (unspecified) time after the Bank sought repayment in March 2009 but "prior to the fraudulent transactions aimed at dissipation of assets". On this third iteration of a conspiracy claim, the inference is said to arise from the fact that the events of June 2009 (and especially the transactions between connected persons) cannot be explained except by reference to some form of dishonest agreement allegedly between the Bank (acting principally by Mrs Malysheva and/or by Mr Savelyev as the Chairman of its Management Board) and Renord-Invest (acting by Mr Smirnov) resulting in collusive sales at undervalues inconsistent with honesty.

870. This third iteration or alternative plea (introduced into the Counterclaim by a new paragraph 179A), is premised on the Counterclaimants having failed to prove any dishonest collusion before June 2009, and it focuses on the nature of the transactions undertaken thereafter, and especially the connections between the parties to them and their common ingredient or characteristic of (as the Counterclaimants would have it) gross undervalues.

871. In this last iteration, it is the Counterclaimants' case that the transactions were contrivances of which the object was to establish the appearance of open market sales, and the differentials between the true values and the values struck were so extreme as to be inexplicable except by reference to, and thus themselves (especially given the connections between the parties) demonstrative of, fraudulent intent.

872. It should be noted, however, that although the third iteration of the conspiracy case is most reliant on it, the issue of value has been and remains at the heart of the Counterclaim in all its iterations. Indeed, as I see it, the various iterations differ materially only in the alternatives they offer as to the date when the same conspiracy to 'raid' the assets of the OMG companies was hatched, and in what events along the continuum after December 2008 may be relied on as demonstrating it.

873. Put another way, although the alternative claims as to the timing and constitution of conspiracy in either December 2008 or February to March 2009 are based on alleged agreements, in the end the Counterclaimants' case in all its iterations was primarily based not on proving the fact and content of particular meetings, exchanges or correspondence, but on the inference of collusion and dishonest purpose as the only plausible explanation of the conduct of the Bank and its connected parties, and the transactions and events which occurred, at and after the relevant times (December 2008 in the case of the first iteration, February to March 2009 in the case of the second, and June 2009 in the case of the third).

874. The Counterclaimants thus ultimately base their case on inferring fraudulent conspiracy from all these factors in the round, and most especially the huge disparities between the sums realised in respect of the assets and their alleged true value, as being the only logical and plausible explanation for the fact patterns which the evidence discloses. This has always been an inherently difficult case to establish.

875. As to harm and loss, it is the Counterclaimants' case that, whenever established (that is, whichever of the three iterations of their case is established), the conspiracy alleged has resulted in them losing assets having a value of some US$467 million.

876. This sum is calculated by reference to the value which the shares in Western Terminal and Scan would have had at the date of judgment plus the distributable income which the Counterclaimants would have received (or which the Claimants have or should have received) by virtue of their ownership and control of the shares between 31 December 2008 and the date of judgment: paragraph 181B of the Re-Re-Amended Defence and Counterclaim.

The Claimants' basis for rejecting these claims

877. The Claimants reject every aspect of these claims, and seek to dismiss the Counterclaim as a fabrication of the Arkhangelskys. They submit that the wide-ranging allegations are as extravagant as they are false, and that there is no evidence at all to support any of the 'conspiracy' cases alleged. They somewhat exuberantly describe the claim as "one of the most remarkable fictions to come before the English Court".

878. The Claimants contend that the measure of Dr Arkhangelsky and the merits of his case is that on his own evidence, the potential development of at least one asset (and perhaps others) was dependent on the payment of huge bribes, and that in respect of that asset (Western Terminal) he sought to raise finance on the basis of a monumental and shameless deceit of potential lenders.

879. They contend that he has contrived and advanced a fanciful case to obscure the truth as to why OMG could not meet its payment obligations in late December 2008 or thereafter: this (according to them) is that the OMG businesses were a mirage.

880. According to the Claimants, Dr Arkhangelsky ran, or at least presided over, a business which had no real business: a shipping fleet whose only ships were arrested for non-payment of their bunkering charges, an insurance firm without any genuine clients, a 'port' at Onega Terminal which did not have its own berth, and a container port at Western Terminal which was in a state of such dilapidation that it required vast expenditure to enable it to function at all, which it never received.

881. The Claimants' case is that Dr Arkhangelsky was in fact running a fraudulent 'Ponzi'-type scheme: he pledged all of OMG's material assets to raise funds which the lenders thought were being invested in the OMG businesses but which instead (for the greater or most part) he funnelled to offshore entities for his own ultimate benefit, necessitating increasingly frantic efforts on the part of OMG to delay repayment and borrow more money to pay the interests charges which the businesses could not service.

882. It is the Claimants' case that:

(1) The forgery allegations were trumped up by Dr Arkhangelsky not only to deny personal liability but to substantiate a claim of conspiracy; and their revelation as false infects, and indeed negates, the Counterclaimants' case.

(2) Similarly, the Counterclaimants' failure to substantiate any part of their claims in relation to the events of December 2008, and in particular their failure to establish either (a) that there were any threats or intimidation against them or (b) that they were induced to enter into the repo arrangements on a false basis of the promise of a general moratorium, fatally undermines the Counterclaimants' case that the repo arrangements were the means by which Western Terminal and Scan were 'stolen'. They submit that unless there was an agreed moratorium, so that the calling of defaults from March 2009 onwards was in breach of it and enabled the Bank to open the trap-door of default and foreclose any repurchase of the shares, the Counterclaimants have no basis for claim.

883. The Claimants accept that the repo arrangements were novel but contend that these were put in place as a necessary expedient to seek to give the Bank the means of control in the event of default and to enable the Bank to defeat Dr Arkhangelsky's avowed aim of delaying the Bank's recovery by any means available to him. Likewise, they say, the introduction of the Original Purchasers was necessary because the Bank could not take the repo shares onto its own books, but for no improper purpose.

884. The Claimants contend that Mrs Malysheva and Mr Sklyarevsky were introduced only when the Bank's relationship with OMG was plainly foundering and likely to lead to default. They contend that the Bank had no real option but to refuse extensions of the PetroLes loans and that the various steps they took after the resulting cross-default, including the transfers from the Original Purchasers to the Subsequent Purchasers, the removal of Dr Arkhangelsky and Mr Vinarsky as Directors-General, and the imposition of encumbrances over OMG assets (such as the Gunard Lease) were similarly intended to insulate the Bank's security and the repo arrangements from the Arkhangelsky's efforts to undermine or invalidate them. They deny bringing improper pressure to bear with state assistance, as they deny any other impropriety.

885. The Claimants submit that the Counterclaimants "have not come even close to adducing the necessary evidential foundation for their allegations, or to proving each of the numerous agreements involving numerous parties, which are necessary for any part of the 'conspiracy' to get off the ground." As they have put it in their Closing Submissions:

> "On whichever version of the 'conspiracy' case they pursue, to succeed the Defendants and OMGP must show the agreement and involvement of a very large number of people, not only a large number of employees in the Bank, but also employees of Renord-Invest and of SKIF, St Petersburg law enforcement officers, Mrs Matvienko, Mr Piotrovsky, Russian judges, court bailiffs, employees of the Russian Auction House and other auctioneers. The list is implausibly long."

886. The Claimants further submit that the fact that the conspiracy case in each of its iterations is a fabrication (on any of its alternate bases) is revealed by the lack of any

substance, fatal they say to the claim, in what they depict as two of its key components: (a) the allegation of forgery; and (b) the allegation that Dr Arkhangelsky was somehow tricked or coerced into agreeing the repo arrangements made in December 2008 and the transfer of the Western Terminal and Scan shares as there provided.

887. As to the Counterclaimants' alternative pleas of conspiracy at various dates along the timeline:

(1) On the Counterclaimants' alternative case that if there was no conspiracy in December 2008 there was one in February or March 2009, any allegations of a 'corporate raid' on Western Terminal and Scan make no sense. Such a conspiracy would post-date the relevant event, that is, the transfer of the Western Terminal and Scan shares under the repo arrangements in late December 2008.

(2) On the further alternative case of a 'conspiracy' after March 2009, which commenced at the earliest in June 2009, then (as mentioned above) it necessarily follows that all facts before June are consistent with innocent explanation. Again, in such circumstances, again any allegations of a 'corporate raid' on Western Terminal and Scan are incoherent.

(3) Furthermore, the Claimants contend that the underlying suggestion that at some time prior to June 2009 they and others must have developed a plan or scheme to arrange a series of sales so as to ensure that all (or materially all) Western Terminal's and Scan's assets ended up in the hands of Renord-Invest or its partners or connected parties supposes a far-sightedness and ability not only to predict but also control random events, such as the intervention of Morskoy Bank in relation to the assets of Western Terminal (see above), which is entirely fanciful. As Mr Sklyarevsky put it when cross-examined:

> "…This was not a plan; in other words, there was no original plan of conducting affairs or working with OMG group. SKIF, the Bank, or Renord did not have a plan. All decisions were made based on the information that was -- and, as and when it was becoming available. Had there been a plan and a distribution of roles, everything would have happened differently. All those things, Berezin, criminal cases, obtaining control over the companies, bankrupting Scandinavia, this is a chain of events that could not have been planned one step ahead: this was something that was happening opportunistically, as it were. As information became available, it was being analysed and decisions were made.
>
> Now, what you are trying to say now, you are trying to present this as a plan, but if you look at this from the point of view of the theory of probability, this is not something that could have been planned in January 2009 or in March 2009, because the theory of probability works against you, sir. I'm sorry about it, this is not something that can be prognosticated. This

> cannot be forecast. One could not forecast that he would get a loan from Morskoy Bank and would not let BSP know.
>
> Not only did he raise a debt from Morskoy, he siphoned the money off out of the company in an unknown direction. No one could have forecast that, or one day Mr Arkhangelsky was going to have a criminal case opened. No one could have prognosticated that the insurance company would stop performing its obligations in January 2009.
>
> Now, if you are looking at this from the point of view of a pre-existing plan, this means, this presupposes that we had known that this was going to happen, but we're not gods; we could not in any way forecast this. Everything happened opportunistically if and when the information became available, while Mr Arkhangelsky is trying to portray this in a way that this was a pre-existing plan. How on earth can I remote-control Mr Arkhangelsky?"

888. As to the Counterclaimants' contention that conspiracy may be inferred in all the circumstances if the asset sales are shown to be at gross undervalues, the Claimants reject the reasoning entirely. They contend that it is not only based on a false factual premise (gross undervalue sales) but also circular. In paragraph 634 of their Closing Submissions they put their point in this way:

> "…none of the assets was sold fraudulently at a gross undervalue. In any event, the reasoning is circular: the Defendants and OMGP allege the assets were sold at a gross undervalue; that 'fact' is alleged to ground the inference for the 'conspiracy'; the conspiracy is alleged to be the sale of the assets at gross undervalue. Such a case is hopeless. Unless the Defendants and OMGP can (separately, without reliance on the inference from alleged 'undervalue') prove the 'conspiracy', there is no reason to doubt that the sale of the assets at auction achieved market value at that point in time for those assets.
>
> There is no basis for the Court to draw any 'inference' against the Claimants, let alone any inference to support the fraudulent 'conspiracy' as alleged."

889. Further, the Claimants reject the suggestion that the ultimate purchasers of the Onega Terminal and Western Terminal assets and businesses, ROK No. 1 Prichaly and Baltic Fuel respectively, were owned or controlled by the Bank and/or Mr Savelyev or their "loyal friends" and associates, and they reject any suggestion that there was all along, or indeed ever, a conspiracy to ensure that those ultimate purchasers should be enabled to acquire the assets and businesses at a knock-down price.

Limitation defence to 'new' conspiracy claim

890. Before addressing the disputed elements of the Counterclaim (some of which I have already adjudicated in the context of the Defence), it is convenient to deal with a limitation point raised by the Claimants in respect of the third iteration of the Counterclaim as introduced by paragraph 179A of the Re-Re-Amended Defence and Counterclaim.

891. As a procedural matter, I permitted the introduction of the amendment introducing this third iteration of the claims in the Counterclaim on the basis that the Claimants should be permitted to contend at a convenient moment later that this aspect of the claim amounted to a new claim and (having been raised some seven years after the alleged conspiracy) was time-barred. The Claimants included in their written closing a short recitation of this background and an assertion of the alleged time-bar; but they did not elaborate on this initially, and it was not until their oral reply that (in response to Mr Milner's argument that under English law and the concept of 'relation back' the 'new' claim was not barred) Mr Birt contended to the contrary. By then, Mr Milner was no longer available. Argument has thus not been as full as might have been useful, but its ambit was as follows.

892. The Claimants submitted that the relevant paragraph 179A constitutes a new claim and/or new claims (whether under Articles 1064 RCC and/or 1080 RCC) on the basis (they submit) that by definition the claim does not (indeed it positively cannot) rely on the same facts and matters as the Counterclaimants' primary formulation of the 'conspiracy' claim.

893. The Counterclaimants submitted that, to the contrary, the claim was not 'new' but rather the assertion of an alternative date for the same basic conspiracy (to 'raid' OMG and steal its assets further to the steps and stratagems identified above).

894. This is a notoriously difficult area. The cases demonstrate how fine may be the distinction between an amendment which merely adds a detail or particular to an existing cause of action, or prays in aid a different legal inference from the same facts, and an amendment which seeks to add a distinct cause of action. In this case, the difficulty is the more acute, since the inference invited is of collusive agreement at some different dates to the existing plea.

895. However, I have concluded that the new plea does not constitute a new claim or cause of action for the purposes of the Limitation Acts. I accept the submissions of the Counterclaimants that the cause of action has always been of conspiracy to 'raid' the assets of the OMG; and that the amendment at heart simply offers an alternative date at which the conspiracy was hatched between the same primary actors with (substantially) the same objectives.

896. I am happy to reach that conclusion for other reasons also. First, it would be bizarre and unjust if the Counterclaimants were precluded from asserting the plea, given that the Claimants seek declaratory relief that there was no conspiracy at all: and the composite form of the relief sought seems to me may also support my conclusion that the plea does not introduce a new cause of action. Secondly, the conclusion avoids further

debate on the proper construction of my Order of 23 March 2016 which on one view (though by consent) might be said to foreclose my discretion under *CPR* 17.4(2), which would be inadvertence on my part and contrary to my intention as expressed in the hearing. Thirdly, for the avoidance of doubt, I confirm that I would have exercised my discretion under that Rule in favour of the amendment, and would have been inclined if necessary (and subject to any argument as to jurisdiction) to vary the Order under *CPR* 3.1(7) for that purpose.

My approach to the various iterations of the conspiracy claims

897. The fact that, as noted above, the Counterclaimants' case, though it does identify a number of meetings and their alleged participants, is ultimately based on inferences from the fact patterns and the alleged gross undervalues achieved for OMG's assets, requires careful analysis of each element alleged to give rise to the inference in respect of each of the three alternative dates proposed as being the date of first dishonest collusion.

898. In point of approach, Mr Stroilov made the valid point that "the very nature of fraud is that it should look all right from the start" and he urged me to analyse the events:

> "in reverse chronological order, to look at the end result, and then the final stages of it, and then to go backwards to see whether it's still consistent with innocence, and then go backwards in time to try and understand when it may have gone wrong, at what stage it went wrong, or whether it was all wrong from the beginning. So I would suggest starting from the so-called public auctions, then looking into the wider context of various transfers between Renord companies which led to those public auctions and into the transfers of both shares and assets, as they are all interrelated. And then we effectively arrive to the repo arrangement, and I will submit that the trial has shown that the agreement was intended by the Bank to be the means of appropriating OMG assets from the start."

899. This is understandable; but there are considerable dangers in making assumptions as to the past from observations about the present; and even more dangers in using hindsight to assume from what in fact occurred a plan that they should so occur, whereas events are often not pre-planned and are more random: in days gone by known as the fallacy of *post hoc ergo propter hoc.*

900. Although mindful of Mr Stroilov's point that seemingly benign events may be given malign colour by their context, and by the sequence of events that follow from them, and that a chronological progression through facts may disguise a malign objective, I nevertheless do not consider it right to start, as it were, at the end, and move backwards in time. Before determining in the round whether there is substance in the Counterclaimants' allegation of conspiracy in any of its iterations, I propose to address in roughly chronological sequence the findings they invite.

Primary facts relied on by the Counterclaimants as demonstrating conspiracy and collusion

901. Accordingly, I turn to deal with the Counterclaimants' contentions as to the factual elements of their claim as summarised in paragraph [867] above, but in the following slightly adjusted sequence:

(1) The forgery allegations and the ramifications and consequences for the Counterclaim of my earlier rejection of them in the context of the Defence;

(2) The events of December 2008 and the consequences in the context of the Counterclaim of my findings in the context of the Defence that there was no agreed general moratorium and none was promised;

(3) The allegedly "unusual features" of the repo arrangements (including the fact of the Original Purchasers having been introduced as counterparties) which are said of themselves, and in context, to suggest dishonest collusion and 'raiding';

(4) The introduction of Mrs Malysheva to control and direct implementation of the Bank's strategy in all matters concerning OMG, subject to the direction of Mr Savelyev and the Management Board;

(5) The refusal in March 2009 of extensions to the PetroLes and Vyborg Shipping loans and the allegation that the Bank and/or Mr Savelyev wilfully contrived to ensure an event of default before Dr Arkhangelsky and his companies had had the time to arrange repayment they had been promised (which is naturally linked with the issue as to the alleged moratorium, see (2) above);

(6) The rationale and true objectives of the transfers of shares in Scan from the Original Purchasers to the Subsequent Purchasers in late March/early April 2009;

(7) The allegation that the Bank procured the removal of Dr Arkhangelsky and Mr Vinarsky as Directors-General of Scan and Western Terminal respectively on a trumped-up basis and in furtherance of the alleged conspiracy;

(8) The wars in the Russian courts, the curious stances in them of the protagonists and their ultimate resolution in favour of the Claimants;

(9) Mrs Malysheva's (in each case aborted) efforts to put transactions in place in relation to the assets of Western Terminal and Scan, such as the Gunard Lease, which could have no legitimate justification;

(10) The allegations as to the unlawful seizure of control of Scan and Western Terminal, and as to the use of political and police connections in order to deploy police-assisted force to take physical possession of Western Terminal;

(11) The allegation that the Bank waged a relentless campaign against Dr Arkhangelsky causing him to flee to France with his family in June 2009 and thereafter to seek asylum and abandon any prospect of safe return;

(12) The allegation that criminal charges brought against Dr Arkhangelsky (and Mr Vinarsky) in respect of the Morskoy Bank loan were concocted and coordinated by the Bank with the assistance of the state and subsequently deployed in extradition proceedings;

(13) The submission that the events in the round display tell-tale signs of a classic 'raid';

(14) The allegations as to the true nature and purposes of the long series of transactions relating to the assets of OMG and the allegations that the sellers and purchasers at each of the auction sales at which the pledged assets were 'sold', and the ultimate purchasers thereafter of the assets and businesses, were in fact also connected parties owned or controlled by the Bank and/or Mr Savelyev;

(15) The allegation that at an early stage (probably even before December 2008), the Bank and/or Renord-Invest were interested in Western and Onega Terminals as complex income-generating assets with synergistic value which could be enhanced by acquiring control of all their assets, including unpledged assets; and

(16) The disputed valuation evidence and any conclusions or inferences to be drawn from it.

902. Much of the factual material has already been traversed, and where I have made findings already in the context of the Defence I include references back to avoid undue repetition.

Forgery allegations and the Counterclaim

903. By the end of the trial, and despite Dr Arkhangelsky's unimpressive attempts to revive the issue of forgery during his cross-examination (see paragraph [758] above), Dr Arkhangelsky's attempt to turn the tables and claim that the Bank had fabricated documents and that each such fabrication was an overt act demonstrative of the alleged conspiracy had become largely a source of embarrassment for the Counterclaimants. Ultimately it was the Claimants who prayed in aid the issue as confirming the contrived character of the Counterclaim as a whole.

904. The alleged forgeries were not mentioned at all in the Counterclaimants' written closing submissions; and in oral closing, Mr Stroilov on their behalf kept open the possibility that documentation was only put in place and then backdated when in about December 2008 the Bank realised that guarantees were not in place, but otherwise (and primarily) sought to marginalise the issue as going at most to credibility.

905. In their Closing Submissions, Counsel for the Claimants submitted that the attempts on the part of the Counterclaimants "to downplay the centrality of the forgery case to the conspiracy" reflect their "realisation that the conspiracy case is dealt a decisive and fatal blow if the forgery case were to collapse". They went on to suggest that:

> "It will be appreciated immediately that since, for the reasons given above, the forgery allegations are false, the 'conspiracy' loses one of its key components. Just as Mr Arkhangelsky has

> dishonestly alleged forgery, so he dishonestly alleges a 'conspiracy' against him."

906. Of course, if forgery by or at the instance of the Bank had been established, that would have told heavily against the Claimants; conversely, the abandonment or collapse of the plea knocks out a pillar of the structure of the Counterclaimants' case, and further undermines Dr Arkhangelsky's reliability and credibility. That is so especially in any context where his word is essentially the only evidence (such as in the context of his claims of coercion) or where his reliability and credibility is crucial (such as in the context of the claim that he was promised a general 6-month moratorium at the December meeting). Put another way, it reinforces my conclusion that Dr Arkhangelsky is an unreliable, sometimes dishonest, and often reckless witness, whose evidence I would not accept without undisputed documentary corroboration.

907. However, the reality in this case is that the conspiracy claim will stand or fall, not on Dr Arkhangelsky's credibility in asserting it, but on the consistency and credibility of the Claimants and their witnesses in defending it. The abandonment or collapse of the forgery allegation does not, in my view, inevitably cause the collapse of the conspiracy case in all its iterations. It removes a brick, but not any corner-stone. I do not agree with the Claimants' suggestion that it constitutes a "fatal blow".

908. The fact that Dr Arkhangelsky contrived one allegation does not of itself mean that there was no such conspiracy as is alleged. The guarantees were not a pre-requisite or necessary ingredient of the conspiracy alleged (in any of its iterations). It is not as if either the Personal Loan or the guarantees was the cause of default and of the Counterclaimants losing the repurchase option and thus all control of or entitlement to the shares. Subject to the alleged moratorium, it was the fact that the Bank became entitled to call in the loans themselves and to deploy or realise their securities, including the repo shares, that was crucial.

Effect of my findings that there was no agreed general moratorium in December 2008

909. My findings as regards the alleged Moratorium, however, are more problematic for the Counterclaim. It may assist to recall the basis of the Counterclaimants' case in this regard.

910. In summary, the Counterclaim asserts claims in respect of the Moratorium and the Memorandum as follows:

(1) That Dr Arkhangelsky would never have agreed to even the temporary transfer of shares under the December 2008 repo agreements if he had not believed that a 6-month moratorium had also been promised and would bind the Bank: that should stand to reason, since he was thereby handing to the Bank the keys to the Group's entire assets, pledged or unpledged, which would have been nonsensical unless he had been given enough time to restore financial stability and thereby the prospect of repaying the debts and unwinding the repo;

(2) That he only entered into the repo arrangements in December 2008 before the documentation for (as he understood it) a general 6-month moratorium had been

formally documented because of threats made by Mr Savelyev which put him in fear of his and his family's lives, and because Mr Savelyev represented and he believed that a 6-month moratorium had been agreed and the documentation would formally so provide;

(3) That if the December 2008 agreements did contain, or should be read as being subject to, a binding agreement for a 6-month moratorium, the Bank was in breach of it by (a) procuring or permitting the onward transfers of shares in Western Terminal and Scan; (b) committing, permitting or procuring interferences in the businesses of those companies; and (c) demanding repayment of the loans within the moratorium period;

(4) That, alternatively, without the general moratorium the agreement in December 2008 was a *'kabalnaya sdelka'* ('one-sided transaction'); and

(5) That on the basis of either threats or deceit, or its one-sided nature, the 2008 repo agreement was liable to be set aside.

911. Thus, the Counterclaimants maintain that the promise of the moratorium was the carrot to add to Mr Savelyev's stick and that its denial and/or breach not only subverted the basis of the repo arrangements but also, taken together with the implementation of those arrangements, demonstrate the 'trick' deployed to sneak in and snaffle the underlying businesses before the Counterclaimants had the chance they thought they had bargained for to save them.

912. The Counterclaimants' principal case has always been that those constitute overt acts from which a conspiracy in December 2008 and its true objectives can and should be inferred. Consistently with the logic of that case, that it was the control conferred by the shares which were transferred under the repo arrangements which enabled the alleged theft of the Group's assets by the Bank, the Counterclaimants' contention (for many years) was that the alleged conspiracy "must have been before the conclusion of the Memorandum".

913. Their most recent pleading deletes that sentence, but they have not withdrawn any of Dr Arkhangelsky's evidence that it was at the "end of 2008" that the "Claimants, together with other connected parties, effectively stole many of the Group's most valuable assets".

914. Had I found that Dr Arkhangelsky was threatened by Mr Savelyev or deceived into the Memorandum and repo arrangements before obtaining written agreement of the alleged 6-month moratorium that would have been a powerful point in favour of the Counterclaimants' conspiracy theory: but I have not done so. On the contrary, I have earlier found against Dr Arkhangelsky's claim that Mr Savelyev promised him a general 6-month moratorium and he would otherwise never have agreed the repo arrangements and parted with his shares, although I have accepted that this may be what Dr Arkhangelsky convinced himself thereafter to have been the upshot of their December 2008 discussions.

915. In point of credit, these findings cast yet further doubt on Dr Arkhangelsky's reliability as a witness, and reinforce the conclusion that he has indeed been prepared to concoct any claim that appears to him, from time to time, to support his general case that he has been deprived of ownership of valuable businesses.

916. In point of substance, these findings at the very least narrow the range of overt acts on which the Counterclaimants can rely as evidence of a conspiracy in December 2008. Indeed, in my view, my findings that no general moratorium as alleged by the Counterclaimants was promised or agreed by the Bank is undoubtedly destructive of two important elements of the Counterclaimants' case.

917. First, the corollary of the findings is that (subject to the claim that though Dr Arkhangelsky did not understand this at the time, their form, content and effect were so unusual as to demonstrate fraud or conspiracy and betray the true intentions of the Bank) the repo arrangements were consensual, and not induced by or premised on or subject to the alleged moratorium. That negates the claim that Dr Arkhangelsky was tricked into agreeing them, and leaves his only basis for complaint that he misunderstood their true effect and intended use (and/or that they were put to improper use).

918. Secondly, those finding negate the claim that the Bank acted wrongfully in refusing to extend the PetroLes and Vyborg Shipping loans and in demanding repayment before June 2009: there being no agreed moratorium in the form alleged, that was the Bank's contractual entitlement.

919. However, though seriously damaging, I do not consider that my findings that Dr Arkhangelsky was not coerced by threats or intimidation, nor induced by a false promise of a general moratorium, into agreeing the Memorandum and the repo arrangements are necessarily fatal to the Counterclaimants' allegation that the Memorandum and the repo arrangements were the origin and engine of the conspiracy.

920. Neither the fact that Dr Arkhangelsky is not to be believed in this important context, nor the fact that he must be taken to have agreed to the repo arrangements without a 6-month general moratorium, necessarily means that the repo arrangements were benign. Neither demonstrates that the Bank's purposes were to try "to assist their client in difficult times" (as its Counsel submitted in closing), or negates the Counterclaimants' case that the Claimants intended to and did deploy the repo arrangements and the likelihood of default as the means of taking his companies and their enterprise value for nothing and pocketing as proceeds all but the (allegedly) derisory sums achieved on the sale of assets and applied in diminution of the loans.

921. I do not consider that the fact that Dr Arkhangelsky did, under financial pressure, but without improper threats or coercion, agree to the repo arrangements without securing the moratorium he wanted, is definitive about the objectives of the Bank and "connected parties". Further, I think it entirely possible that by the end of December 2008 the Bank had measured Dr Arkhangelsky to be a character who was unfocused on detail and who could be strung along by vague but unenforceable assurances.

922. The question remains of whether the repo arrangements were put in place purely to fortify the existing security; or whether, even at this early stage, the Claimants had their sights on a 'raid' and extracting the assets of Dr Arkhangelsky's companies and realising their enterprise value, not with a view to recovering as much as possible of the debts, but with a view to substantial benefit and profit for themselves and their associates.

923. I turn then to the indications relied on by the Counterclaimants as suggesting that, by December 2008 and in formulating and insisting on the repo arrangements in unusual form and with the Original Purchasers in place of the Bank as repo counterparties, the Claimants did have in mind a classic 'raid'.

Unusual features of the repo arrangements: the competing views

924. The Counterclaimants, supported by their banking expert, Professor Guriev, condemned the repo arrangements as "not only irregular, but clearly improper".

925. They especially emphasised the following features of the form and provisions of the repo arrangements (in addition to the omission from the Memorandum of any reference to a moratorium) which in their perception have fed the notion that in insisting on the repo arrangements the Claimants had their eyes, not simply on enhanced security for their loans, but on seizing the surplus value of the assets and the enterprise value of the companies to which the arrangements related:

(1) First, the Bank already had pledges over the real estate interests of both Western Terminal and Scan: the Bank's insistence on the repo arrangements in such circumstances was (it was argued) indicative that the repo arrangements were intended, not for the purposes of security, but to establish the mechanism for snatching control of the underlying companies and their enterprise value.

(2) Secondly, although sought to be justified by the Claimants as being intended simply to enhance the Bank's existing security, the Bank was not itself named as a party to any of the repo arrangements (except the Memorandum which paved the way for them): the buyers were not the Bank but the Original Purchasers; and on the Bank's own evidence, its arrangements with the Original Purchasers were made by a purely oral agreement between Mrs Malysheva, Mr Smirnov and Mr Zelyenov. Nothing whatsoever was recorded in writing.

(3) Thirdly, the Share Purchase Agreements for the 'sale' of shares by OMG to the Original Purchasers made no mention on their face of any repurchase right or agreement. The sales were on the face of things absolute, it being provided in clause 5.1 that:

> "Upon transfer to the Buyer of the title to the Share, the Buyer shall acquire and incur all rights and obligations associated with the aforesaid Share as contemplated by the Company's Articles of Association and the current laws of the Russian Federation."

(4) Fourthly, there is no provision in any of the repo arrangements regulating whether the control afforded by the shares should (a) entitle the holder to income generated by Western Terminal and Scan during the period of the legal ownership of those companies pending repurchase (or whether such income should be applied in reduction of the indebtedness for which the repo arrangements were presented as providing further security); (b) restrict the holder (beyond a broadly stated obligation of good faith) in the exercise of rights attached to the shares; or (c) require the holder of the shares to account (or procure the company to account) for any surplus value received on sale of assets in excess of the amount repayable under the loans intended to be further secured by the arrangements.

926. That last omission may be especially notable in circumstances where (as I understood to be agreed, but in any event, I find) the Bank, at the relevant time, supposed (on the basis of the Lair valuations) that the value of the assets considerably exceeded the amounts outstanding.

927. The Counterclaimants contrasted these features with standard repo arrangements, suggesting that:

(1) At least in legitimate banking practices (in contrast to what the Counterclaimants asserted to be the known patterns of fraudulent raiding – see further below), a repo arrangement, used as a form of additional security, usually involves a temporary transfer to the bank or its fully owned subsidiary. It is unusual for a transfer to be made to third parties.

(2) In each case the repo sale in this case was for a purely nominal consideration, rather than the usual repo sale for the market price with an agreed haircut.

(3) One might expect both sides (the purchase and repurchase sides) of the transaction to be provided for or at least recorded in an agreement between the bank and the borrower (a) in full in a single document and (b) in a formal contract. The Counterclaimants contend that in each case its informality was contrived (in that, according to Mr Savelyev's evidence in the BVI Proceedings, there had been detailed discussions within the Bank prior to the 25 December meeting and it was not, to use Mr Sklyarevsky's phrase, a repo contract written on the back of the envelope) and "intentional" (in order to allow the maximum flexibility for the facilitation of the 'raid'). Both it is said are indicative of fraud because (so Mr Stroilov submitted) "they didn't want to leave unnecessary records of that".

(4) Repo agreements are typically used by Russian banks as a form of additional security where a loan is only secured by a pledge of shares, so there is a risk of 'asset tunnelling', which would reduce the value of the shares. In such cases, a repo sale of the real estate may be used as security in addition to the pledge of shares. In the present case, the usual arrangement was turned 'upside down': in addition to the registered pledges of real estate (which are considered the most reliable form of loan security), the Bank required a repo of the shareholding of the companies which held that real estate. That too, it was contended, revealed the true 'raiding' purpose of the arrangements.

928. Professor Guriev described the repo arrangements, and the Memorandum, as "very informal and intentionally confusing". He considered that the use of third parties, in the person of the Original Purchasers, for the purposes (according to Mr Sklyarevsky and others) of reducing the impact of the transactions on the Bank's capital, constituted a knowing attempt "to deceive Russian prudential regulators" and to "mislead the market". He was not able to say how unusual the structure was: he accepted it might be quite common-place, but said that in which case he would characterise it as "common malpractice".

929. He rejected Mr Turetsky's attempt to equate the position with a good bank/bad bank model under which the bad bank does no lending but is a repository for bad loans and non-performing assets ('toxic assets'), with the sole job of restructuring and/or enforcing them, which he accepted as "transparent and regular".

930. He also instanced as particularly objectionable the lack of any provisions clearly covering issues that would inevitably arise. In particular, he said in his report that a:

> "conventional arrangement of a similar kind, e.g. a 'repo' sale to a 'bad bank', would normally be recorded in a formal, carefully drafted contract, clearly setting out the material terms. In particular:
>
> (1) If the borrower transferred the assets in exchange for a restructuring of its debt, that would normally be clearly recorded in the contract. Moreover, the exact terms of that restructuring would also be recorded in the contract…
>
> (2) I would expect the contract to specify who was entitled to any income generated by Western Terminal and Scan during the period while the two companies remained under the control of the Bank (or third parties nominated by the Bank). If the Bank (or nominated third party) was entitled to derive that income, the contract would also specify whether it should be applied to reduce the debt.
>
> (3) I would expect the contract to address the possibility of the collateral being sold off at public auction, and whether the surplus value recovered at such auction should be returned to the OMG."

931. Professor Guriev noted, I accept correctly, that the absence of such provisions was exceptional and of far-reaching effect. Whether inadvertent or intentional (a question of fundamental importance to the Counterclaim, to which I shall return), the lack of any stipulation as to the exact terms of restructuring had given the occasion for the entire dispute; and which could only be challenged by uncertain legal action, and opened the door to income generated enuring solely to the benefit of the purchasers by way of pure gain and not by way of security.

932. The Claimants, on the other hand, submitted with the support of their banking expert, Mr Turetsky, that none of these features is such as to cause concern let alone such as to constitute evidence of bad faith or collusion in a 'raid'.

933. In turn, it was Mr Turetsky's opinion:

(1) As to the rationale of the repo arrangements in the particular circumstances, the Bank was concerned to protect its existing security in the form of the pledge of assets by obtaining the ability in the event of default to control the companies which had pledged those assets and thereby prevent them engaging in spoiling tactics which had become a common expedient amongst distressed borrowers in Russia at about that time. To quote the Claimants' Closing Submissions:

> "…the Bank wanted to avoid having to face an unscrupulous borrower and minimise problems of enforcement in the event that became necessary because the ability of the borrower to engage in spoiling tactics would have been curtailed. In any enforcement process, it wanted to face a friendly counterparty rather than a borrower who had declared war on the bank."

Mr Turetsky elaborated on this as follows:

> "…if there is a mortgage registered, then the borrower would not be able to sell it without the Bank's consent. So it is a very good negative protection. However, with respect to positive protection, ability for the Bank to take over that asset, my conclusion and that of my colleagues was not as robust, because in the end the Bank would probably be able to enforce, to foreclose, but there would be so many hurdles along the way, and the legislation, which dates back to the early 1990s and is somewhat inconsistent, is such that you really rely in many instances on cooperation from the borrower, so that the law says that in certain instances the borrower has to agree valuation, the borrower has to agree certain types of enforcement, and if you are in court then the borrower may raise all sorts of objections in court some of them may even be frivolous and they could still defer the time when enforcement comes. So it wouldn't be an unrealistic estimate that the Bank may spend two or three years trying to enforce. Probably they would enforce at the end, but they would lose so much time, and value may have been reduced over time, and certainly they need money now as opposed to money in three years…"

(2) There was nothing covert or improper about the Western Terminal and Scan shares being acquired by the Original Purchasers rather than the Bank. As noted previously, OMG was well aware of the identities of the Original Purchasers. They were custodians not thieves. The Original Purchasers agreed not to interfere with

the business or assets of the underlying companies unless and until default and entered into written agreements obliging them to return the shares upon repayment of the loans, and assumed an express obligation towards OMGP and GOM to act in good faith in and about the holding of the shares. The Bank enrolled the Original Purchasers for legitimate and not nefarious reasons: whereas much larger banks, such as Sberbank or VTB, had their own investment houses, such as Sberbank Capital or VTB Capital, that was not the case for the Bank, which did not have the capital resources to establish subsidiaries to acquire toxic assets onto its balance sheet but could not in regulatory capital terms take them onto its own books. Mr Turetsky did not consider the arrangements to be particularly unusual, and to be a practical necessity in the context of the shares not being listed securities. As to the latter, he explained that under Russian Central Bank rules, the bank could not take unlisted shares onto its books as being held under a repo, since there was no market for them and no ability to 'mark to market'. The Bank would have had to take in the shares as its own absolute property: but would have then to make provision accordingly. Mr Turetsky explained that this was common-place and unobjectionable:

> "…assuming that the OMG companies (of which Scandinavia Insurance and Western Terminal were a part) [were] in a dire financial position, like many companies in Russia during the global financial crisis, then I am not surprised that the Bank structured the repo transaction with the assistance of third parties. I am familiar with the practice of Russian banks of not consolidating any distressed companies acquired in enforcement scenarios due to negative consequences for the bank's financial results and pressure on regulatory capital requirements."

(3) As to the lack of any written record or definition of the Bank's relationship with the Original Purchasers, the Claimants maintained simply that they trusted the Original Purchasers in respect of the repo transaction. According to the Claimants, the Bank (and more particularly Mrs Malysheva) asked for a favour from long-standing clients; Mrs Malysheva knew and trusted Mr Smirnov, Mr Zelyenov, and (later) Mr Sklyarevsky; because of such trust and confidence, a written record was not a priority. While it might have been sensible to have recorded the arrangement between the Original Purchasers and the Bank, the fact that it was not is if anything inconsistent with any pre-arranged plan to deprive OMG of its Scan and Western Terminal assets.

(4) It is not unusual, nor should it be thought suspicious or troubling, that the transfers were at nominal value. Dr Arkhangelsky accepts that his companies entered into the sale and repurchase agreements, and that "it was the plan that we get it back". The price for the retransfer of shares back to the relevant OMG company under the repurchase agreement was the same 'nominal' price as the price for the transfer of shares to the Original Purchasers: as Dr Arkhangelsky said, "it was the same price".

(5) The Counterclaimants (and their expert, Professor Guriev) had overstated the informality of the arrangements: they were set out in documented sale and

repurchase agreements, together with documented restructuring agreements. Professor Guriev acknowledged that the Western Terminal sale agreement, which (astonishingly) he had not seen before the trial, was "a formal agreement", and that the accompanying repurchase agreements were also "contracts…formal documents". He agreed that the annex which set out the form of the repurchase agreement (which before his cross-examination he had not seen either) was "an important part of that main contract".

(6) As to any inadequacies, and the failures to make express provision for matters such as who, pending repurchase, should be entitled to income and how it should be applied, and who, on default, should be entitled to any surplus (whether of asset values realised or share values), Mr Turetsky suggested this:

> "… you saw the witnesses: some of them are, I guess, still quite young, and eight years ago they were even younger, so this was the first crisis they encountered in their lifetimes. They were faced with the extreme pressure of having to decide what to do with all these borrowers defaulting, and they were trying to find a solution, and they haven't had the precedence [precedents], they haven't had the legal document they could use, someone mentioned the repo, they tried to work out how to do that, they've done it.
>
> I mean, obviously they might have not done it as properly as it could have been done had they had the benefit of time or involvement of an experienced law firm, but what else were they supposed to do; they had to save the Bank.
>
> So I do appreciate that there are some differences into how different banks reacted, and some banks did this, some banks did that, but you could just understand why this was, just because they didn't study in the university what to do when your borrower defaults and threatens not to pay."

(7) Further, the Claimants submitted, the terms of the Provisional Share Purchase Agreements (the 'repurchase' side of the repo arrangements) imposed on the Original Purchasers (by clause 6.1) a duty to act "reasonably and in good faith during performance of their obligations under this Agreement", and (by clause 5.2) an obligation to arrange for the re-transfer of the shares by January 2011.

934. Thus, in effect, the Bank prayed in aid the need to finesse the regulatory restraints and accounting difficulties as the justification for warehousing the shares with third parties with which it had an undefined but nevertheless trusting relationship. As Mr Savelyev put it:

> "We draw in the companies that we understand and trust, and trust them to work with the Bank, and we ask them to operate together on commercial terms with regard to toxic or problem assets."

My assessment as to whether the form of the repo arrangements itself demonstrates or supports an inference that the Bank was planning a 'raid'

935. There can be no doubt that the repo arrangements presented the Bank with the keys to Dr Arkhangelsky's empire. The combination of the peculiar features and the eventual implementation of the repo arrangements upon default conferred on (in the event) the Subsequent Purchasers (see later) full control over the assets of OMG, whether pledged or not, and enabled the ultimate sale of those assets without affording the Counterclaimants any recourse to, or share in, any surplus or enterprise value. The arrangements were capable of being used to achieve a result which was to the same effect as a 'raid'.

936. However, that is not to say that the arrangements, with their curiosities, were contrived or calculated for that purpose when the arrangements were drafted, agreed and put in place. The question is whether these curiosities demonstrate a hard bargain which the Bank was in a position to and did drive in order to enhance its security and the prospect of full recovery; or whether, even at this early stage, the Claimants had their eyes not on repayment of the loans but on seizing the businesses. For the purpose of analysis, I turn to assess each curiosity in turn and then at the end seek to assess the arrangements in the round.

937. I do not accept that the fact that the Bank already had pledges over most of the real estate owned by Western Terminal and by Scan removes any benign rationale for the repo arrangements. The evidence that enforcement, even of such pledges, may be a long-protracted business if the pledger is minded to 'play the system' was not contradicted; and Dr Arkhangelsky made no secret of his intention to use the full armoury of tactics available to borrowers in Russia to delay or even defeat a lender. Control of the borrower achieved though implementation of repo arrangements would circumvent all this, and, as Mr Turetsky pointed out, would be of particular interest and potential utility in the context of fast-deteriorating asset values where, in his phrase, "the land was burning under their feet".

938. It may be that in 2008/2009 the use of repo arrangements to enhance such security was unusual. But it was not entirely novel. Mr Stroilov put it to Mr Turetsky that, even so, it would surely be rare to insist on both a pledge of a company's real estate and a repo arrangement in respect of its shares. Mr Turetsky admitted that he had no personal involvement in such a case; but he instanced at least one other case in which it had been done, and another three where it probably was done, and commended the "logic" of having both forms of security, especially in the crisis conditions at the end of 2008. Professor Guriev considered that "a further registered pledge of real estate would be a more reliable form of additional security"; but he did not contradict the logic of ensuring the means of securing control of the company providing that security. Nor did he contend that combining a repo arrangement with an existing mortgage of real property was inherently wrongful or necessarily sinister, even if it was unusual.

939. Furthermore, in this case there were assets of the underlying companies which remained unpledged: so that the repo arrangements did in fact enhance the extent as well as (indirectly) the quality of the security available to the Bank. Indeed, it became clear from the evidence of the Bank's witnesses at trial that at least part of the purpose of the

repo arrangements was to enable the Bank, by the exercise of the control conferred by the shares under those repo arrangements, to enable unpledged assets to be made available with pledged assets if that would provide synergy value. As Ms Mironova put it in the course of her cross-examination:

> "So in 2008, when the repo deal was being set up, the only purpose of that was to have an opportunity to realise, to get the asset in its entirety, which is obviously going to get the highest price when sold to any final buyer…"

940. Thus, in this case, the repo arrangements did in fact extend and enhance the Bank's security. Although it seems to me clear that the arrangements were capable of being implemented and utilized in a way that went beyond the Bank's avowed intention of providing itself with an effective means of realizing the assets pledged even if Dr Arkhangelsky were later to determine to stymie enforcement proceedings, that possibility of misuse does not of itself indicate that such was the intention.

941. The question then is whether the Bank's nomination and use of the Original Purchasers as the holders of the repo shares, and the lack of documentation to establish their true relationship and the Bank's consistent equivocation in that regard, signifies and evidences or suggests an inference of an intended 'raid'. (In answering that question, I leave out of account for the present, but return later to, the fact of the later transfer by the Original Purchasers to the Subsequent Purchasers.)

942. It is not easy for an English judge to determine on the basis of this opposing and somewhat general evidence whether the arrangements were in compliance with Central Bank requirements and accounting fairness; and I am relieved that it is not necessary for me to attempt to do so, since that is not properly an issue in the case. What is necessary for me to decide is whether the justification offered is a plausible one. In my view, the rationale that the Bank simply could not take the shares into its own books, and that there would be regulatory difficulties if it tried, seems to me plausible, even if it may not provide the whole story; and the explanation that the Original Purchasers provided a solution similarly so.

943. The Claimants' reticence in explaining their true relationship with the Original Purchasers has excited further suspicion. So too (and the points are of course related) has the complete absence of any formal record of the arrangements and obligations between the Bank and the Original Purchasers, purportedly (or rather, according to the Claimants) because of the "trust" between them.

944. However, the fact that the Original Purchasers, rather than the Bank itself, were to be the counterparties to the repo arrangements was plain to see on the face of the Memorandum and the repo documentation which followed: it was not dissembled or disguised; and Dr Arkhangelsky did not object at the time.

945. I have concluded, and find, that the interpolation of the Original Purchasers was not, when the repo arrangements were incepted, contrived or intended to pave the way for a 'raid'. I accept the Claimants' case that it was intended to enable the Bank to have the

enhanced security offered by the repo arrangements without taking the shares onto its own books.

946. The separation of the two 'sides' of the repo arrangements into two documents with no cross-referencing between them, resulting in the transactions appearing to be absolute sales, does seem to me to be odd and a departure from the norm: it was confusing and remains substantively unexplained. It has caused me concern.

947. However, it is to be remembered that the parties agreed to these documents; and it is not as if there were no arrangements for repurchase and re-transfer of the shares back to OMGP and GOM. As to the express provisions:

(1) Clause 5.2 of the Provisional Share Purchase Agreement required the parties to conclude a 'Master Agreement' for the retransfer of the shares in the form of Annex 1 on or before 1 January 2011. Accordingly, OMGP and GOM had the right to buy back the shares at a nominal price by that date and could have commenced a claim to do so. Professor Maggs noted that the preliminary agreement was "very simple to enforce": "you merely need to get a court declaration saying that the agreement you promised to make should be considered made".

(2) Clause 5.3 of the Provisional Share Purchase Agreement provided further that:

> "should any party evade conclusion of the Master Agreement, the other party shall have the right to file a lawsuit to the Arbitration Court of St Petersburg and Leningrad Region seeking the enforcement of the Agreement conclusion."

(3) Clause 6.1 of the provisional share purchase agreements, provided:

> "The Parties undertake to act reasonably and in good faith during performance of obligations under this Agreement."

948. The Master Agreement required to be concluded was to contain a provision for the sale back at the same price as that paid for the shares under the original Share Purchase Agreement. I consider Mr Turetsky's summary of the intent and effect of the arrangements in this regard to be broadly accurate:

> "So I think what they were trying to do was they were trying to come up with a bespoke document which would achieve the same objective, and I reviewed this repurchase agreement and it seemed to me that someone has put some thought into it, because the way they have done it is if they just wanted -- for the sake of argument if they just wanted to get the shares and dispense with Dr Arkhangelsky, they would just have an agreement and some vague obligation to sell it back. What they have in reality come up with is an elaborate document which contains three parts, which is the original sale agreement, then the preliminary agreement to agree on a reverse sale, and then they attach to it the actual instrument of transfer for the eventual sale back.

> So I wouldn't say that this is a perfect structure, and I agree that I haven't seen it done this way precisely, but it kind of suggests to me that they have put some thought into how they would enable Mr Arkhangelsky to buy the shares back at the time."

949. In the event, the failure to cross-refer to the repurchase arrangements resulted in Dr and Mrs Arkhangelsky succeeding at first instance in the Russian proceedings in presenting the purchase arrangements as being for no consideration and invalid. That unforeseen and unintended consequence does not establish that the Claimants had no ulterior purpose in structuring the two sides of the arrangements as separate contracts; but it does suggest that error or unfamiliarity with the novel arrangements rather than malign intent is more likely as an explanation. It may seem a strange omission; but I have to bear in mind that the arrangements were novel, so far as the Bank was concerned; and their drafting was entrusted to people who were largely 'flying blind' and without the benefit of precedent or (as far as I can tell) established practice.

950. On the whole, I accept that the failure to match up the two sides of the repo arrangements by express cross-references was not intended to prevent or impede Dr Arkhangelsky in exercising his right to repurchase if the conditions under which the right arose were satisfied in time.

951. Of greater concern, to my mind, are the obvious and material omissions from the repo arrangements in terms of defining the rights of the vendors (OMGP and GOM). Most glaringly, as it seems to me, is that none of the forms of agreement specify what was to happen to any right to repurchase the shares in the event of default.

952. Another puzzling and concerning feature of the Claimants' case in defence of the repo arrangements was their inconsistency in explaining whether the right to repurchase the repo shares would ever be exercisable after default in the event of there being a surplus after repayment of the Bank's loans, or whether in the event of such a surplus it would enure to the benefit of the Original Purchasers (or, later, the Subsequent Purchasers).

953. I raised a question in this regard in the course of Mr Birt QC's oral submissions in reply for the Claimants:

> "MR JUSTICE HILDYARD…on the Bank's case, pursuant to these [interesting] but undocumented arrangements, the excess in value of the pledged assets over the loan inured not to the Bank but to the Subsequent Purchasers, is that right?"

954. After a period for further thought, the answer given on behalf of the Claimants can be summarised as follows:

(1) "…there's no evidence that they were really thinking about that at all. There's nothing in the documents which suggests that specific thought was given to it, or specific appreciation was given to it."

(2) The "general market understanding of a repo transaction was that rights expire upon default" (as indeed both Mr Turetsky and Professor Guriev had opined would be the case here).

(3) Nevertheless, Mr Birt suggested, the position here was, or at least might be, different:

> "My point is when one looks at the terms of the repo arrangements, that's not a term of it…And the position we are positing which is that Western Terminal has in fact ended up with a surplus amount, there's no reason to think that it wouldn't be reasonable and in good faith for Dr Arkhangelsky to ask for the shares back. Or indeed, it may be unreasonable for the original purchaser in that circumstance not to allow them to be retransferred back. So that would be, we say, on analysis, possibly a machinery by which that would be solved."

(4) Mr Birt then added:

> "Of course, as we say, in the reality, nobody, when they were entering into these arrangements, envisaged that there would be such a surplus. That's why I say nobody thought about it…"

955. I have found this difficult to accept; and the inconsistency and equivocation in the explanations offered reinforced rather than mitigated my concerns. Even if (and the evidence was scant) the Bank had little or no expectation of surplus, notwithstanding the considerable margin of pledged assets over indebtedness according to the Lair valuations, I find it difficult to accept that the Bank simply gave no thought as to where any surplus would go: there is no suggestion in the evidence that as at December 2008 or until mid-2009 it had serious doubts about the Lair valuations, although it is fair to suppose that the general economic conditions would have justified the supposition of material erosion. I suppose it is possible (as Mr Birt seemed to me to be suggesting) that its focus on stymieing manoeuvring by the borrower blinded it to the true effect of the arrangements: but that seems to me as a general matter unlikely, and the more so on my particular view of the Bank and its personnel.

956. Further, it is difficult to see any basis in the evidence before me for the possibility, floated by Mr Birt in this connection for the first time in his oral reply in closing, to the effect that the Original Purchasers would have been bound to account for any surplus, or at least to deliver back the shares and thus the keys to any such surplus. This suggestion was not supported by any evidence of usual practice; and it was contrary to the Bank's own witness Mr Turetsky's evidence, who was quoted in paragraph 412(4) of the Claimants' written Closing Submissions as stating that "in any repo transaction if a borrower were to default on payment when due, then he lost the rights to buy back the shares."

957. On that basis, it was an egregious feature of the repo arrangements that upon default and the exclusion of the repurchase right, the value of the businesses would enure to the purchasers, subject only to an obligation to apply sums realised for pledged assets in repayment or reduction of indebtedness. A further consequence is that any income generated by Western Terminal and Scan, so far as not applied in reduction of the

interest and capital outstanding on the relevant loans, would also accrue to the purchasers as holder of the shares free, in effect, of anything like an equity of redemption.

958. That undoubtedly served to increase the leverage over Dr Arkhangelsky and his companies enjoyed by the Bank. However, I do not think it necessarily connotes that the repo arrangements were being put in place and given effect with a view to 'raiding'. Seeking to have the 'whip-hand' on a recalcitrant borrower is one thing; expropriation is another. The more benign interpretation can only be dislodged by evidence of sufficient strength to oust it in favour of a more malign one.

959. I have taken carefully into account that the curiosities of the original *ad hoc* drafting did favour the Claimants. I have also borne in mind the use ultimately made of the curiosities. But I do not consider any of these justify a finding that the repo arrangements were contrived *ab initio* to implement a 'raid'. In my judgment, none of that is enough, of itself or in combination, to warrant an inference that when the Bank initially agreed the repo arrangements with Dr Arkhangelsky and put them in place it did so with the intention of later stealing the Group's assets. The arrangements were harsh; and they did confer the keys to Dr Arkhangelsky's companies on default. But the Bank was entitled to drive a hard bargain; and the arrangements are consistent with the Bank wanting to avoid facing the delaying tactics of a recalcitrant borrower. The Counterclaimants' expert, Professor Guriev, acknowledged that the value of collateral is in substantial part a function of the ability to control its disposition, and that upon default a creditor bank's main job is to "assure the control over the collateral" (as he put it in his report). Indeed, although he avoided giving a direct answer, when it was put to him that it was plainly a legitimate aim and advantage for a creditor bank to seek ways of vesting control of collateral in the event of default in friendly hands, Professor Guriev offered no cogent basis for denying it.

960. In other words, there is in my judgment, nothing sufficient to contradict the more benign view of the facts that (as it was put in the Claimants' written closing submissions) "the Bank wanted to avoid having to face an unscrupulous borrower and minimise problems of enforcement in the event that became necessary because the ability of the borrower to engage in spoiling tactics would have been curtailed. In any enforcement process, it wanted to face a friendly counterparty rather than a borrower who had declared war on the bank."

Significance of the introduction of Mrs Malysheva in place of Messrs Guz and Belykh

961. As previously mentioned (see paragraph [449] above), prior to December 2008, Mr Guz and his subordinate Mr Belykh were the top managers in charge of day-to-day relations with OMG. They ceased to be so some time in late December 2008, or possibly right at the beginning of January 2009, when Mrs Malysheva (Deputy Chairman of the Bank) became involved.

962. The Counterclaimants submit that that the introduction of Mrs Malysheva in place of Mr Guz and Mr Belykh, and in combination with Mr Savelyev, as the persons in charge for the Bank of its relationship with OMG, is further evidence of the commencement of a conspiracy to 'raid' the assets of OMG. The Counterclaimants emphasised not only

her introduction and key role but also her personal and family interests, direct and indirect, including in the Renord-Invest Group, and the (they would say) curious transactions she promoted.

963. Mr Guz (who, interestingly, makes no mention at all of Mrs Malysheva in his witness statement) told me during his cross-examination that his involvement stopped in late December 2008. He sought to explain the involvement of Mrs Malysheva as part of a process of problem borrowers being allocated between top managers of the Bank. This did not really explain his replacement: he was a Deputy Chairman of the Management Board at the time.

964. Mr Belykh does not mention Mrs Malysheva in his witness statement either. He confirmed that he was not involved himself after December until March 2009, and then only when the BKK was asked to consider extension of the First PetroLes Loan due to be repaid on 5 March 2009. He presented Ms Mironova as the person primarily involved in the restructuring.

965. Mr Savelyev refers to Mrs Malysheva only fleetingly in his witness statement, but it became obvious as the trial developed, and in particular, during his cross-examination, that they worked very closely together. In cross-examination, he referred to her as having been "instructed to look into the OMG toxic assets" (presumably by him, given her status as Vice-President of the Bank). As an indication of her supporting role, Ms Stalevskaya said that it was Mrs Malysheva who "must have organised" for Mr Savelyev to sign the Memorandum.

966. Mrs Malysheva's central role from 2009 onwards is clearly apparent from Mr Smirnov's witness statement, where he described her as a personal friend of some 20 years' standing, whom he trusted and respected "as a key figure in the banking industry" and also from the evidence of Mr Sklyarevsky.

967. Mr Sklyarevsky explained that it was Mrs Malysheva who contacted him in late December 2008 "to ask if Renord-Invest would assist the Bank in relation to some problems it was having with OMG" by holding the repo shares "on behalf of the Bank" because the "Bank did not itself want to hold the shares – it was not the Bank's core business."

968. He related her continuing involvement, and in particular that it was Mrs Malysheva who (a) informed him in March 2009 that it had been determined that OMG would default, (b) caused Mr Sklyarevsky to be involved, and (c) procured the transfer of the repo shares from the Original Purchasers to the Subsequent Purchasers.

969. As will appear later, I have considerable concerns about the later role of Mrs Malysheva, especially in orchestrating the replacement of the directors of Scan and Western Terminal and the auction sales which followed. These concerns have not been dispelled by the evidence available, and could not be dispelled by Mrs Malysheva herself since she apparently declined to give evidence and attend to be cross-examined. However, I have not been persuaded that either her introduction in place of Mr Guz and Mr Belykh or her engagement of Mr Sklyarevsky, of itself indicates anything more

sinister than that the Bank regarded default as all but inevitable, and was bringing in persons with particular experience of handling such an event.

Did the Bank wilfully contrive to ensure an event of default?

970. An event of default in effect foreclosed the repurchase side of the repo arrangements, and cleared the way for the transferees (by now, the Subsequent Purchasers) on behalf of the Bank to use the keys of Dr Arkhangelsky's kingdom.

971. The Counterclaimants' case is that (a) the promise of a moratorium lulled them (and was intended to lull them) into an expectation that no payments would be due or demanded until at the earliest June 2009 and (b) the Bank set about engineering the conditions for, and to justify, an event of default which would (c) trigger cross-default across all the companies in the group and liability under any guarantees. I have previously addressed (a); and I now discuss (b) and (c).

972. The Counterclaimants put forward a number of supposed machinations or contrivances of which the purpose was suggested to be to put the Counterclaimants into default and justify calling cross-default.

973. First and foremost, of course, the Counterclaimants depicted the Bank's refusal to extend the First PetroLes and Vyborg Shipping loans and defer capital repayment from March 2009 until at least June 2009 (as had been the other loans) as being the springing of a trap set when the Bank had treated the PetroLes and Vyborg loans differently from the other loans and extended them only to March 2009 and not June 2009. That, they contend, was a breach of the moratorium, and part of a pre-calculated scheme intended to enable the Bank to use almost inevitable default on the PetroLes and Vyborg loans to undo all its other commitments to extend the other loans by working a cross-default.

974. I have already explained why I consider that the Bank did not in fact make any commitment in December 2008 to extend the PetroLes and Vyborg Shipping loans beyond early March 2009, even if Dr Arkhangelsky chose to believe that this is what was the effect of what he had been promised. I have also explained why I do not accept Dr Arkhangelsky's various contentions as to why the Additional Agreements for the PetroLes and Vyborg Shipping loans should be treated as invalid or signed in error.

975. That does not, however, answer the question why the Bank chose to treat, and felt justified in treating, the PetroLes and Vyborg Shipping loans differently from the other loans. Nor does it answer the question whether in doing so the Bank was intentionally laying a trap for the Counterclaimants knowing that they would be unable to make any repayments by March 2009 and arming itself in effect to negate the rest of the agreed extensions by calling a cross-default once it had (a) got round having to make provisions at 2008 year-end to satisfy regulatory conditions without making further reserves and (b) put in place the repo arrangements.

976. It is, at first sight at the least, a curiosity that the PetroLes loans and Vyborg Shipping loans were treated differently from the rest. Its potential to undermine all the other arrangements, as ultimately it in fact did, seems obvious. Default in one loan could trigger cross-default in all the others, and bring the newly reconstructed house down.

977. For the Counterclaimants, and in the alternative (presumably) to the primary case that in providing for more restricted extensions the relevant additional agreements were misleading or defective, Mr Stroilov submitted that, so far as Dr Arkhangelsky was concerned, the intention was always that these loans would be extended, but at a later stage than the others, at a second stage.

978. This suggestion that the Bank was committed to a second round of restructuring was not pleaded, but in the unusual circumstances of the case I permitted Mr Stroilov to put it to Ms Volodina, so as not to interrupt the flow of his prepared cross-examination and to allow flexibility for a later amendment, if justified.

979. As it was, Ms Volodina agreed that there was to be a second review in about February, but asserted that this was premised on Dr Arkhangelsky delivering on various commitments (including a promise of a RUB 300 million to PetroLes for timber), and denied any commitment to further extension on the part of the Bank. The following exchange from Ms Volodina's cross-examination illustrates the position:

> "Q Now, Ms Volodina, I put it to you that…it was intended that the restructuring would take place in two stages: one by way of various additional agreements dated December 2008, and then in January or February or March, there would be further additional agreements to various loan agreements, which would avoid the need to form results [sic] and to reflect them in 2008 reporting to the Central bank. I hope it is not too complex a question.
>
> A. No, no, no, this is not too complex. No, this is not what was intended. No additional restructuring was intended. In January and February the Bank hoped to receive a financial recovery plan from the client until the PetroLes maturity on 5 March, a decision was expected to be made as to what we do going forward. But the client did not provide that plan, nor did we receive any proceeds with respect to the timber shipment…in other words, the client did not perform under any of the obligations that he had assumed."

980. I accept Ms Volodina's explanation, which also seems to me to provide a not implausible answer to the question as to why the PetroLes and Vyborg Shipping loans were differently treated. It seems to me not implausible that the Bank should have (as Ms Volodina put it in her witness statement) wanted to "keep these payment obligations as indicators of OMG's financial position" and to review matters without commitment, and according to whether or not Dr Arkhangelsky made good on his assurances, which I accept he gave, and on which the Bank was entitled to rely.

981. Of course, with the benefit of hindsight, default in March unless an extension was granted, and the refusal of the Bank to agree to one on the basis of the financial position as it transpired to be, seems always to have been inevitable. But that does not mean that it appeared to be so at the time. As I have said before, Dr Arkhangelsky is a chancer, prone to Micawberism: I think it more likely than not that he trusted to being able to convince the Bank when the time came. As it seems to me, that explanation is likelier

than the Counterclaimants' somewhat contorted, and at least in part unpleaded, explanation that the Bank, on some regulatory pretext, gulled Dr Arkhangelsky into relying on a second stage reconstruction on terms it knew would not be satisfied and which it calculated would prove his undoing.

982. An alternative contention advanced on the part of the Counterclaimants in support of their case that the Bank was working from the end of 2008 and throughout early 2009, not to assist the Counterclaimants, but to call in the loans, was that the Bank machinated to ensure that Vyborg Shipping would be unable to ensure payments to avoid default. It is suggested also that the Bank knew well in the case of Vyborg Shipping that the winter months would be likely to be difficult, not least because of the likelihood that St Petersburg port might be closed by ice.

983. In particular, Mr Stroilov put to Ms Mironova that the Bank persuaded the Russian Federal Tax Service to make an order dated 26 January 2009 freezing the bank account of Vyborg Shipping at the Bank's Investrbank branch further to the alleged failure to pay tax in the derisory sum of RUB 99.63 (about £2.50), and that the purpose of this was "to assist the Bank to paralyse the operations of Vyborg Shipping and to create the conditions for a default".

984. Ms Mironova rejected this as not having "anything to do with reality", asking Mr Stroilov whether the question was a "sort of way of being funny?" In other words, the suggestion was dismissed as fanciful.

985. But on any view, the fact of such a freezing order is remarkable, even if it is the case (as Ms Mironova emphasised) that it was the tiny amount rather than the account itself that was frozen: it seems almost inconceivable that a tax authority would consider it appropriate and proportionate to issue a freezing order on the basis of non-payment of such a "laughable" sum (to quote Ms Mironova), not least in that payment of the amount would undo the freeze.

986. But, though remarkable, it is not, without more, evidence of collusion; and I note that the point was not pressed by the Counterclaimants in their closing submissions, written and oral. Failure to pay a small sum may well be more revealing than failure to pay a larger one; and the authorities may have been acting with the future in mind. And as the Claimants submitted, the fact appears to be that Vyborg Shipping was already paralysed by this stage: it had no money left, not even the £2.50 or so it needed to avoid default, and none was coming in to it.

987. The Counterclaimants also suggested that the Claimants simply had no proper justification for declining to extend the PetroLes and Vyborg Shipping loans, and had sought falsely to contrive one and to present the decision as based on changed circumstances to disguise the fact that they were acting out of improper self-interest, and in defiance and negation of the logic which underpinned the extensions of the other loans.

988. Thus, it was suggested that the Claimants' resort to an attempt to justify refusing an extension, on the basis that Dr Arkhangelsky proved himself in the couple of months

following December 2008 to be what Ms Volodina described as a "mala fide borrower" in whom the Bank had for good reason lost all trust, was a contrivance.

989. In particular, the Counterclaimants rejected as a pretence the Bank's claim that they had not been informed of or heard about, and that Dr Arkhangelsky had concealed from the Bank, for a month or more, the fact of the arrest of the *'Tosno'* in Tallinn, Estonia in December 2008. The Bank's suggestion was that he did this lest revelation of the arrest, and the dire financial position it signified, precluded the debt restructuring he desperately needed.

990. Dr Arkhangelsky, in his witness statement for trial, maintained that the Bank had been well aware of the '*Tosno's'* arrest since shortly after it was made (which was in December 2008); he said he had discussed it with Ms Borisova, Ms Prokhor and Mr Platonov as persons in the know within the Bank, and so he believed, with Mr Savelyev when they met. On this basis, he contended that the Claimants had falsely alleged concealment as a pretext for denying any further funding or leeway notwithstanding the agreements reached in December 2008. Under cross-examination, however, he accepted that he could not in fact remember informing Mr Savelyev, and his evidence became that he:

> "assumed that people in the Bank been well informed, considering that we were normally fulfilling all the obligations, and especially Mrs Krygina, who was directly communicating with the Bank and knowing quite a lot of the people there."

991. Dr Arkhangelsky has a propensity to re-write history; and I do not accept that he informed Mr Savelyev or anyone else at the Bank of the arrest of the '*Tosno'* in December 2008 as soon as it had happened. I accept Ms Mironova's evidence that the Bank first heard of the arrest from the representative of the creditor which had procured it (Bergen Bunkers AS) in February 2009 or perhaps early March 2009, and that, after delaying for as long as he felt he could, it was not until some time in April 2009 that Dr Arkhangelsky told the Bank.

992. That is also supported by the following:

(1) On 24 March 2009, Ms Krygina emailed Dr Arkhangelsky to explain that Vyborg Shipping was obliged to tell the Bank about the arrests, not least since the vessel was just about to be put up for auction – which suggests that it had not previously done so.

(2) The only written record of a communication from OMG to the Bank about the arrests was in Dr Arkhangelsky's letter of 3 April 2009 to Mr Savelyev. It is likely to be the first communication from OMG to the Bank on the point.

993. It is hardly surprising that upon its revelation, the decision on the part of Dr Arkhangelsky (as I find it to have been) to keep quiet about the arrest of '*Tosno'* so as not to upset the reconstruction negotiations, caused the Bank to doubt its borrower. When added to that (a) the fact that the promised RUB 300 million proceeds from timber sales showed no signs of materialising, (b) Dr Arkhangelsky's failure to provide

the financial information he has also promised Ms Volodina, (c) rumours in banking circles which Ms Volodina considered reliable that OMG was in real trouble and even that turnover had been fabricated from sham transactions and (d) the conclusive signs from the fact that there were no remittances into Vyborg Shipping's bank accounts that the business was either in catastrophic difficulty or amounts were being diverted elsewhere, both the collapse of trust in Dr Arkhangelsky and the decision not to extend the PetroLes and Vyborg loans, in the absence of any commitment to do so, seem to me to be readily understandable.

994. It is no answer for Dr Arkhangelsky to complain that the Bank was acting in its own self-interest; that is what commercial enterprises, including banks, sometimes have, and are entitled, to do. Only if some breach of previous commitment, or some overriding or paramount illegitimate reason for the decision, is demonstrated is that pursuit of self-interest improper.

995. The last question becomes whether there is anything else in the wider circumstances of the refusal to extend the PetroLes and Vyborg Shipping loans which casts such a different light on the decision as to demonstrate that in truth the Bank made its decision predominantly for reasons different from the normal commercial criteria above identified (for example, as the Counterclaimants would have it, a plan to raid the two companies under the repo agreement).

996. The circumstances principally prayed in aid on behalf of the Counterclaimants (in addition to those I have addressed above) are (a) the Bank's alleged failure to consider attempts to refinance; (b) the reversal of earlier recommendations in favour of extending the relevant loans when the matter was referred up to Mr Savelyev, Mrs Malysheva and the Managing Board, (c) the apparent availability of collateral well in excess in value to the amount of the loans outstanding and (d) the immediate aftermath of the refusal to extend, all of which are alleged to show the impropriety of the Bank's decision and its true and improper motivation.

997. As to (a) (in paragraph [996] immediately above), the Counterclaimants maintain that the Bank's true intention of procuring a default in order to further its 'raid' is exemplified by its failure to explore or take any account of Dr Arkhangelsky's efforts to obtain refinancing at the end of 2008 and in early 2009. They say that Dr Arkhangelsky "had a lot to show to reassure his creditors…" and that the Bank was provided with details of his refinancing projects, including the Western Terminal IM, but apparently chose to ignore or attach no importance to them, even to the point of being unable, at least in the case of Mr Guz for example, to remember being aware that Dr Arkhangelsky had been trying to negotiate such projects.

998. In assessing this point it is not easy to put out of mind the fact that the IM was, to put it lightly, flawed and misleading, and that such refinancing interest as there was is likely to have been based on misleading, indeed fundamentally false information. Nor is it easy to exclude from consideration that fact that the refinancing efforts came to nothing (see paragraphs [390] to [393] above). But I accept that strictly neither has any more than limited relevance to the issue under immediate consideration, which is not whether refinancing might have been available, but whether the Bank's lack of any interest in

the possibility betrays that it was not by now acting as a banker interested in OMG refinancing its debts, but as a 'raider' interested in extracting its assets.

999. The premise of the point is that the Bank was provided with, or at least had available to it, documentation and information that it chose to ignore. That premise was disputed; and I have earlier rejected (see paragraph [224] above) Dr Arkhangelsky's suggestion that he had kept the Bank informed about his negotiations with prospective lenders, and he "kept the Bank appraised in relation to the development plans partly to demonstrate that the Group had a bright future and that its debts would be repaid". The Claimants insisted that Dr Arkhangelsky did not inform the Bank in any detail of any refinancing negotiations: and I accept that.

1000. It seems to me to be most likely that Dr Arkhangelsky, who is not a person shy of trumpeting his contacts and successes in broad sweeps generous to himself, would have talked in general terms of refinancing projects, and the interest being shown by large European institutions, but that the Bank was apt to discount all this, and in any event by February/March 2008 to regard it as 'pie in the sky'. Mr Guz's answer to Mr Stroilov's question about refinancing seems to me to capture the sceptical outlook of the Bank:

> "Q. What about Mr Arkhangelsky's refinancing negotiations?
>
> A. I don't remember anything about refinancing. I was not discussing this with Mr Arkhangelsky, and I was not reported [to] about that. And even if I would, I wouldn't believe that, because of their situation. I wouldn't believe that Mr Arkhangelsky could get any refinancing from anywhere at that particular stage and at that particular situation."

1001. That appreciation of the matter seems to me to be understandable; and it is not to my mind indicative of a decision to turn a blind eye to achieve a different victory. In my assessment, it does not show any lack of interest in OMG refinancing; it simply betrays a recognition that it was a false hope. I accept Ms Mironova's evidence that:

> "… had such refinancing been provided I would have been joyous at it, and if the Bank of St Petersburg had to assist Oslo Marine Group to obtain such refinancing, I am positive we would have rendered comprehensive assistance".

1002. As to (b) in paragraph [996] above, the Counterclaimants rely on the rejection by the Management Board of lower level (MKK and BKK) recommendations in favour of extending the PetroLes and Vyborg Shipping loans, and its consequent decision to refuse extensions to either, as illustrating that whereas at the pure banking level the extension was considered logical, once it was referred upward to the strategic level the banking outlook no longer held sway. The issue is as to the real reasons for the matter being referred on to the Management Board.

1003. The Counterclaimants depict the decision to refer the matter to the Management Board, despite what they contend were clear decisions of both the MKK and the BKK to

approve extensions, as being intended to ensure that the matter should not be decided as a banking issue in the ordinary way but that it instead be determined as part of the Bank's overall strategy by Mr Savelyev and Mrs Malysheva, with the assistance of Mr Sklyarevsky, they being the principal 'raiders' and intent on using the crisis to their own advantage. Mr Stroilov went further, and put to Ms Mironova in cross examination that the votes in favour of the extension at the MKK and the BKK were intended to keep the 'raiding plan' which had been devised secret from members of those committees who were not in the know and disguise the true ultimate strategy.

1004. The Claimants reject all this. Their position, as indicated in paragraphs [399] to [405] above, is that in fact both the BKK and MKK declined to make a final decision except to extend by a few days (to 26 March 2009) the repayment date for the First PetroLes Loan, both so as to correlate it to the repayment date for the Second PetroLes Loan and to permit further consideration by the Management Board, and that it was entirely appropriate that a decision of such import should be referred to the Management Board. They contend that all the outcome shows is a considered and readily justifiable view as to the unlikelihood of an extension of the loan leading to recovery. They reject any suggestion of secrecy or contrivance.

1005. The assessment of these competing presentations is complicated by the opaqueness of the documentary record and some apparent inconsistencies, both in the documents themselves and between them and the uniform explanation offered by all the Bank's witnesses who gave evidence on the issue.

1006. As I have outlined in paragraphs [399] to [404] above, the minutes of the BKK meeting are less than clear. However, the Bank's witnesses who were questioned on the point (namely, Mr Guz, Mr Belykh, Ms Volodina and Ms Mironova) were adamant that although the wording used appeared to suggest an extension of the date for capital and for interest payments to be rolled up and deferred to 28 June 2009 (consistently with the alleged moratorium) that was not in fact the decision. According to all of them, the decision of the BKK at least was only (a) to extend the First PetroLes Loan from 5 March to 26 March to coincide with the repayment date of the Second PetroLes Loan, and (b) to enable the request to extend both loans to be referred to the Management Board and for it to have time to consider the position. They all ascribed the inconsistency between the wording and their evidence as to the true decisions as being down to "typos", a "sort of misunderstanding" (according to Mr Belykh) or (according to both Mr Guz and Ms Volodina) a "technical mistake, most likely". They uniformly emphasised that the intention of the MKK and the BKK was to leave the final decision to the Management Board. Ms Mironova (who voted at the MKK in favour of recommending an extension) put it this way when cross-examined:

> "As far as my voting is concerned, and the voting of the rest of the members of the minor credit committee [MKK], to prolong or extend the credit committee I explained to you twice…We were not ready at the level of the branch to assume this huge responsibility for the actions of the Bank. Yes, we shifted it on the back of the top managers, of the management of the Bank. Maybe it was very small-minded of us, but that is true."

1007. Mr Guz's evidence as to the similar decision of the BKK (as he portrayed it) was to like effect:

> "..the big credit committee [BKK] understood that this particular question would be transferred to the decision of the management board. This was the first reason. The other reason was that the big credit committee agreed for a short prolongation only for less than a month. So in this case anyway, the decision was to be made by the board, and the big credit committee just didn't want to make this decision, let's say…"

1008. The uniform nature of this evidence caused me some unease. So too did the disparity between that evidence and the documentation. I have been in some doubt whether the BKK decided on the matter or simply referred the substantive issue (apart from a short extension for the reasons stated) to the Management Board. In the end, however, I have concluded that there is no sufficient reason for departing from the Bank's oral evidence as to the intended effect of the decisions made at the MKK and BKK.

1009. Further and in any event, my conclusions as to the broader and more central points which Mr Stroilov submitted were supported by the documentary evidence of the meetings and its inconsistencies with the oral evidence tend to diminish the importance of the dispute as to what truly happened at each level of credit committee. Those conclusions are that:

(1) I do not accept Mr Stroilov's principal submission that the decisions of the MKK and the BKK as recorded in writing give away that all concerned had in mind and considered the Bank to be bound by the alleged moratorium. I need not add further to my earlier assessment that no general moratorium was ever agreed, even if Dr Arkhangelsky subsequently persuaded himself that it had been. (For the avoidance of doubt, I confirm that I have had well in mind Mr Stroilov's submission in reaching that assessment, which I have reconsidered in the light of it.)

(2) I do not accept Mr Stroilov's submission that the decisions as recorded in writing in favour of extensions were a pretence to disguise and keep secret a settled plan to engineer a default on the PetroLes and Vyborg Shipping loans and then a cross-default across all the other loans also. In this regard, Mr Stroilov relied heavily on an internal Bank email dated 11 March 2009 discussing a proposal to declare a cross-default upon default on the PetroLes loans. The gist of the parties' respective positions appears from the following exchange during the cross-examination of Ms Mironova:

> "Q. Isn't the real explanation, Ms Mironova, that your plan, which you were asked to put together, the plan for cross-default was treated as quite secret at that stage. So you wouldn't want other members of the small credit committee [MKK] to know about it, and that's why you voted unanimously to extend the loan, whereas you knew that the decision was not to extend it?

> A. Mr Stroilov, my letter, dated 11 March, as we can see from the chronology of the events, I was copying even to the regular employees Ms Yashkina, Ms Blinova. What secrecy, what conspiracy are you talking about in relation to the members of the minor credit committee if I copied the ordinary members of staff with it?"

1010. As to (c) in paragraph [996] above, there is no evidence that the Bank doubted the Lair valuations prior to the summer of 2009. It is urged on behalf of the Counterclaimants that the apparent availability to the Bank of collateral well in excess in value of the amount of the loans outstanding is a further reason to suppose that the Bank, in calling default precipitately, had objectives well beyond or distinct from those of a banker simply concerned to take such steps as necessary to ensure repayment of debt. Put another way, they question why at a time of financial crisis post-2008 and severely reduced asset values, a bank would, if truly acting as a lender seeking full recovery and with no other perspective or ulterior objective, press so hard and move so quickly to cross-default and the negation of arrangements justified as being to enhance further its security made a mere few months before.

1011. Mr Stroilov put questions to this effect to Mr Savelyev. Mr Savelyev's answers were an unsettling mixture of condescension and evasiveness. His main theme, so far as discernible, appeared to me to be that although the Bank did indeed have no reason to doubt the Lair valuations, either at the dates of loans, or at the date of the repo arrangements, or at the date of the refusal to extend the PetroLes and Vyborg Shipping loans, since those valuations subsequently turned out to be wrong (on the Bank's case) the Bank had been justified in taking the steps it did.

1012. This will not do. As Mr Stroilov submitted, the Bank's actions before the revaluations have to be explained on the basis that it perceived the value of the pledges to be well in excess of the indebtedness (the loans in respect of Western Terminal, for example, being only some 38% of its valuation). Mr Savelyev's repeated evasion, and attempts to throw Mr Stroilov off course by seeking, more often than not without good cause, to criticise the questions, fuelled Mr Stroilov's supposition that Mr Savelyev had something to hide.

1013. Coupling this evasiveness to the virtually complete absence of any documentary evidence to explain the Bank's thought process in calling a default in March 2009, Mr Stroilov suggested that what Mr Savelyev was concerned to hide was that the Bank wanted to grab the assets or their surplus value for itself or those associated with it. Inevitably, when Mr Stroilov put this to Mr Savelyev, the latter (now forthrightly) disclaimed any such intention, referring, as quoted in paragraph [420] above, to the Bank's lack of interest in "toxic assets" and reiterating that he:

> "never wanted to own the assets that Mr Stroilov has in mind. It's just not interesting to me from the start. I confirm again before this court that we are only interested in one thing: to maximise the return of our funds from the sale of the pledged property…"

1014. I take that to mean, as I think Mr Savelyev did mean, that his and the Bank's only objective was to reduce the indebtedness to the maximum extent possible pursuant to the sale of assets. As previously noted (see paragraph [421] above) the reference to 'toxic' assets is an interesting anachronism (since they were not considered 'toxic' at the relevant time prior to default). That too might invite scepticism and some suspicion that Mr Savelyev might have been protesting too much and seeking to shift the focus of enquiry.

1015. But there is a real difference between, on the one hand, a detectable shiftiness as to whether the Bank ever really had the borrower's interests in mind or simply had lost confidence and wanted out, without regard to the consequences for the borrower, or even other potential strategies, and on the other hand, proof of a dishonest intention to effect a 'raid'.

1016. In my judgment, there is every sign that by March 2009 the Claimants had determined to act in their own interests, without any real consideration as to the possibility of being able to assist the OMG companies to trade through and overcome their difficulties, and safe in the knowledge (as it then seemed) of well-adequate security. Indeed, I suspect that all the Bank had by then set its sights on was realization of its security in an auction process beyond challenge by Dr Arkhangelsky, abiding by the letter of the process required by law, but not taking any steps to seek to further the interests of OMG and the Arkhangelskys. However that may be, it does not seem to me that there is any sufficient basis for inferring from that commercially self-centred and ruthless approach an intention to 'raid'.

1017. To my mind, Mr Stroilov's submissions that the inference from the fact that the Bank set its face so precipitately against refinancing despite having (so it appeared) more than adequate cover is that "by that time the Bank was already determined…to seize the assets" in a 'raid' is based upon a false premise that, even if there was no moratorium, the Bank was obliged to refinance unless it had good reason not to do so. In my judgment, the Bank had no such obligation. Upon default, which it had no duty to assist the borrower to avoid, it was entitled to act exclusively in its own interests subject to realising the security in a manner consistent with the law and its duties under relevant law to the borrower.

1018. That brings me to (d) in paragraph [996] above, and the immediate aftermath of the Bank's refusal to extend the PetroLes loans, with the resulting series of defaults. The salient features were: (a) the withdrawal of Mr Zelyenov, and the introduction of SKIF into the repo arrangements further to the transfers of the repo shares to the Subsequent Purchasers; (b) the removal of Dr Arkhangelsky and Mr Vinarsky as Directors-General of Scan and Western Terminal (respectively); (c) proceedings brought first by OMG and Mrs Arkhangelskaya and then the Claimants in the Russian courts; and (d) the extraordinary series of steps orchestrated by Mrs Malysheva to ensure that the assets of Scan and Western Terminal were beyond recovery by the Arkhangelskys: see paragraph [901(6)], [(7)], [(8)] and [(9)] above. I turn to each in turn.

The transfers to the Subsequent Purchasers

1019. The details of the transfers from the Original Purchasers to the Subsequent Purchasers of their respective Scan shares which were the subject of the repo arrangements, and the identities of the Subsequent Purchasers, are set out in paragraph [476] above. The precise date of the transfers is unclear, but it was in the period from 20 March 2009 to 6 April 2009, by which time Mrs Malysheva had assumed day to day control of the Bank's relationship with OMG (though reporting to Mr Savelyev) and Mr Sklyarevsky was working with her. As previously explained, the shares in Western Terminal the subject of the repo arrangements continued to be held by Sevzapalians.

1020. Except that there is a dispute as to the true ultimate ownership and/or control of SKIF, it is common ground that all the Subsequent Purchasers were in the Renord-Invest Group.

1021. The Claimants openly acknowledged that the transfers were directed by Mrs Malysheva and (as Mr Sklyarevsky put it in his witness statement):

> "the transfer of the shares to the Subsequent Purchasers was an attempt to make it more difficult for Mr Arkhangelsky to unwind the transfers."

1022. The Claimants suggested as a further reason for the transfers that Mr Zelyenov, who was a record owner of two of the Original Purchasers (namely, Agentstvo Po Upravleniyu Aktivami LLC and Gelios LLC) and a trusted customer of the Bank whom Mrs Malysheva had known for many years, wanted to withdraw "his" companies from the arrangements.

1023. According to Mr Smirnov's evidence on behalf of the Bank, this was because Mr Zelyenov "did not want to get into any fight with OMG". However, the Counterclaimants allege that there is a more sinister explanation for Mr Zelyenov's withdrawal: Mr Stroilov put it to Mr Sklyarevsky that "the reason why Mr Zelyenov withdrew from the arrangement…[is]…that he was afraid of getting involved in a fraud." Mr Stroilov put this to Mr Sklyarevsky (Mr Zelyenov was not a witness):

> "Q. Isn't the reason why Mr Zelyenov withdrew from the arrangement, isn't the reason that he was afraid of getting involved in a fraud?
>
> A. No. Of course not. Mr Zelyenov, as far as I recall, the conversation with Mr Zelyenov at that point in time, it was based around the fact that I think his asset management company had some project. Now, I don't recall at all what the project was about, but basically he didn't want the project very much, and he either wanted to sell the company or to raise some finance against it. It probably would be best to ask Mr Zelyenov about that, and he was not interested in some additional court proceedings. So he took the position that he needed to free the company of risks."

1024. Whilst the explanation is neither very clear nor entirely compelling, I take from it that Mr Zelyenov anticipated becoming enmeshed in battles between the Bank and Dr Arkhangelsky unless he got out: and he wanted out. But I do not think that necessarily indicates any appreciation or even private suspicion of fraud on the part of the Bank.

1025. But what the transfers to the Subsequent Purchasers do show is the influence of Mrs Malysheva and Mr Sklyarevsky and their determination to bring all the Bank's planning under their control. The transfers directed by them also confirm the direct control of the Bank over the Renord companies concerned.

Removal of Dr Arkhangelsky and Mr Vinarsky

1026. The removal of Dr Arkhangelsky as Director-General of Scan and Mr Vinarsky as Director-General of Western Terminal at the instance of Sevzapalians and the Subsequent Purchasers by the (subsequently challenged) exercise of the votes attached to the repo shares was an event of obvious significance. It deprived (to the extent effective) Dr Arkhangelsky of the control of his companies.

1027. It seems clear that the decision to remove was made by Mrs Malysheva (reporting, presumably, to Mr Savelyev): see also paragraph [520] above. Mr Sklyarevsky more than once indicated to me that he was uncomfortable with the decision, and what he portrayed as Mrs Malysheva's emotional insistence on immediate action: he thought it was bound to exacerbate the situation. But, he told me, he had to accept that Mrs Malysheva was in effect "a client, a customer" and she was in control and had the final say.

1028. Mr Sklyarevsky sought to illustrate his misgivings and desire for a less confrontational approach by emphasising his avowed efforts to secure a meeting with Dr Arkhangelsky before the resolutions took effect on registration (it being the Russian law that they could have no effect unless and until registered). Dr Arkhangelsky for his part contends that he would have welcomed a meeting, but his efforts to arrange one were evaded (and see also paragraph [1036] below). I doubt that a meeting would have resulted in a change of course; but the question of whether it was Dr Arkhangelsky or Mr Savelyev and/or the Bank which sought to avoid one is of relevance: see paragraphs [1036] to [1038] below.

1029. Mrs Malysheva had no doubts. The Counterclaimants contend that this was not an "emotional" response, but was part of a careful raid, with this step being one of many pre-choreographed. The Claimants are adamant that this was not the case, and that it was only to preserve the assets and prevent Dr Arkhangelsky (and Mr Vinarsky, who it was not disputed would act in accordance with Dr Arkhangelsky's wishes) entering into transactions outside the ordinary course of business and (it appeared) for his own personal advantage.

1030. In his oral evidence, when questioned as to the purpose and the correlation between the transfer and the replacement of Dr Arkhangelsky and Mr Vinarsky as directors (see above), Mr Sklyarevsky elaborated as follows:

> "Q.…the decision to replace the management in the two companies [Western Terminal and Scan] and the decision to transfer the shares of Scan from the original purchasers to subsequent purchasers, including SKIF, these two decisions and these two steps are part of the same plan, isn't that a fair inference?
>
> A. Possibly so. That was a decision to protect the repo.
>
> Q. Quite. So really, the main purpose of both these steps…well, it's a series of steps, but both these sequences, was to protect the assets of both companies from a potential lawsuit from Oslo Marine Group's side; is that your understanding?
>
> A. There were two main messages and two main things that Mrs Malysheva mentioned. The first one was to gain control for the directors so that Mr Arkhangelsky would not take out loans in other banks and not burden the collaterals under other loans, and, secondly, indeed we expected that Mr Arkhangelsky will dispute the transactions under the repo transaction, and the Renord part and the side of the Bank were getting ready for the claims and getting ready for lengthy court proceedings, and part of the companies that were the original purchasers didn't feel comfortable to be part of that.
>
> So SKIF came in, and in that project started – SKIF started playing some role in the project and we bought 18 per cent of Scan.
>
> But at that point in time, as far as I understand from Mrs Malysheva, the main objective was to protect the Bank's interests and to stay in the repo transaction, and she thought that Mr Arkhangelsky would try to exit the repo transaction, plus, encumbering the Western Terminal assets and the Scan assets with other loans, and that's what happened with Morskoy Bank. That was the main logic behind it. We never had an issue about how we're going to manage Western Terminal or how we're going to manage an insurance company. We didn't even discuss that. There was an issue of controlling the signature. And if you mean this as part of a plan, then this is what I'm trying to elucidate here."

1031. As already explained, the Claimants sought to justify the step on the basis that Dr Arkhangelsky had forfeited all trust especially in light of what Mrs Malysheva claimed was his impropriety in taking out a loan from Morskoy Bank without authority and in alleged fraud of Sevzapalians, and had declared war by issuing proceedings (in the name of his wife).

1032. Mr Sklyarevsky's evidence as the purported justification for their removals was as follows in his Witness Statement:

> "Following the meeting with Morskoy Bank, I had an urgent meeting with Mrs Malysheva and Mr Smirnov to brief them on the situation. I recall that Mrs Malysheva was very angry to learn of the situation. She informed me that OMG was continuing to fail to perform its obligations to the Bank, Mr Arkhangelsky could no longer be trusted, and the assets of Scandinavia Insurance and Western Terminal which formed the Bank's security, needed to be protected. As a first step Mrs Malysheva instructed us to change the management of Scandinavia Insurance and Western Terminal. In her opinion, this would protect the Bank's security and would force Mr Arkhangelsky to the negotiating table."

1033. I have earlier concluded and held (again see paragraphs [511] to [516] above) that actually the revelation of the Morskoy loan post-dated the removal resolutions and thus could not justify them.

1034. The Counterclaimants' case is that this "diplomatic" description of an attempt to protect assets is built on an inaccurate chronology and gives a false impression. In particular, they contend that given that the decisions to effect the transfers and replace the directors were taken before the Bank became aware of the Morskoy loan, and before OMG had issued proceedings and accordingly was not in response to either, the real reason and the true purpose was (a) to put the shares beyond risk of their recovery by OMG, in circumstances when (it is said) they knew the repo arrangements to be indefensible and fraudulent and (b) to secure control of both companies and their assets so as to be able to mandate without fear of opposition or interruption transfers of their assets to associated companies posing as *bona fide* purchasers.

1035. But however that may be, the parties are in effect agreed that the purpose of changing the management was for the Bank and/or Renord-Invest to secure control of the assets and prevent Dr Arkhangelsky having any access to them: the real point between the parties is as to whether the Bank had the far-sighted objective of exercising its control to pass the assets out to Renord-Invest or SKIF (as subsequently did, in fact, occur).

1036. In this regard, the Counterclaimants pray in aid also, in support of their contention that the removals of the Directors-General constituted the first step in a pre-planned and fraudulent 'raid', that Dr Arkhangelsky repeatedly sought to contact Mr Savelyev to explain the situation and clear the air, but Mr Savelyev conspicuously evaded such contact (and see paragraphs [496] to [501] above). When Mr Savelyev initially denied this, Mr Stroilov put to him in cross-examination numerous letters from Dr Arkhangelsky to Mr Savelyev which the latter was constrained to accept did appear to make clear that Dr Arkhangelsky had repeatedly sought a meeting. Mr Savelyev's later evidence that he had not seen the letters and would have left such matters to deputies did not carry conviction, in my view. Mr Stroilov submitted that Mr Savelyev's evasion at the time, and false misrepresentations now gave rise to an inference of dishonesty:

> "Q. So, Mr Savelyev, you knew that you were in the process of committing a fraud against him, did you not?
>
> A. No, this is not true. My Lord, since when disposition of collateral in order to maximise recovery for the Bank, since when does this qualify as fraud? We were lawfully using our rights…"

1037. In my judgment, the evidence is, as I see it, that Mr Savelyev and his managers did avoid having a meeting; and it is clear that the Bank (through Mrs Malysheva, her team and Mr Savelyev) had no wish to negotiate with Dr Arkhangelsky.

1038. But the question is whether that, combined with the precipitate decisions to remove the Directors-General, is evidence of a 'raid', as distinct from a determination to wrest control from Dr Arkhangelsky as a means of securing the assets. Put shortly, I do not think the inference sought by Mr Stroilov can fairly be drawn from those facts, especially given the nature of the inference sought to be drawn. If an inference is to be drawn it must be by reference to other facts which combine to show unequivocal intention to 'raid'.

The wars in the Russian courts

1039. I have already described the series of proceedings brought by Mrs Arkhangelskaya and Bissonia each as a shareholder of OMGP, by Mrs Arkhangelskaya as a shareholder of GOM, and by GOM itself in order to seek to set aside the repo arrangements and invalidate the removal resolutions: see paragraphs [552] to [556] above.

1040. Not only did OMG commence civil proceedings in April 2009, but in early May 2009 OMG also made criminal complaints in respect of the replacements of the Directors General. Mr Sklyarevsky, in particular, said that these (unlike, by inference, the civil claims) came as a surprise and he expressed concern in this context that at least part of the rationale was to put pressure on Mr Sklyarevsky and Mr Smirnov personally. He told me (with complete disregard apparently for the fact that what he expressed to fear on his and his family's account was with his concurrence being visited on Dr Arkhangelsky and his family):

> "…with regard to Mrs Arkhangelskaya's claim, the transactions could have been declared null and void, therefore the consequences of the transactions, there would have been none. In the case of us losing the claims, the criminal proceedings [brought at the instance of Dr Arkhangelsky and Mr Vinarsky] would have been initiated lawfully, and I personally would have suffered, and Mr Smirnov would have suffered. So that was an issue of my personal safety, my personal reputation…"

1041. I do not think it necessary or helpful to elaborate the details of the various claims. Their relevance is really as to (a) the lengths to which the Counterclaimants were prepared to go to seek to negate the effect of the repo arrangements, and (b) an understanding of the Bank's reaction to the full-scale war which ensued.

Counterclaimants' civil and criminal proceedings

1042. Although Dr Arkhangelsky's determination to protect what he saw as his assets and his companies from the effect of what, in retrospect, he recognised had been a disastrous deal is understandable, the basis on which proceedings were brought on his behalf, and indeed were initially successful in the Russian courts, was thoroughly curious. Mr Sklyarevsky described them as having been an "elegant solution" designed by Dr Arkhangelsky's lawyers to "trick" the Russian courts. But even more extraordinarily, it was a trick in which Mrs Malysheva played along: see below.

1043. The following features of the claims against the Claimant to set aside the repo arrangements have particularly struck me:

(1) First, Mrs Arkhangelskaya's claims relied on the proposition that Dr Arkhangelsky had acted without her knowledge and in bad faith against the interests of OMGP and herself in executing the sale and purchase agreement (being in fact just one side of the repo arrangements) at a price (RUB 9,900) "knowingly" lower than the purchase price of the shares (stated in the proceedings to be RUB 1.069 million) in order to conceal a 'gift'. The artificiality is obvious, and brought home by the fact that Dr and Mrs Arkhangelsky had the same lawyer (Mr Erokhin) and OMGP was represented by a Mrs Abarina, also one of Dr Arkhangelsky's lawyers. Dr Arkhangelsky, in the course of his cross-examination, told me that this had given rise to rumours of their impending divorce, which he affected to find "quite a funny development"; but this struck a rather discordant note.

(2) Secondly, and just as extraordinarily, neither side appears (at any point, including appeals) to have relied on the repurchase side of the arrangements, and none of the court decisions appear to have considered the repurchase obligation to be relevant or perhaps even admissible. Although Mr Sklyarevsky told me in the course of his cross-examination that Mr Erokhin did in fact refer the judge to the repurchase documents, his understanding was that they "are not legal documents under Russian law, and they were not accepted by the court." This apparent exclusion of the repurchase side of the repo arrangements to some extent suited Mrs Arkhangelskaya, whose case on 'gift' was assisted if there was no right of repurchase; but it is remarkable that the Bank based its defence, not on the fact of the repurchase agreement and the alleged fairness of the arrangements when viewed as a whole, but on the contention (apparently dictated by Mrs Malysheva) that the transaction was purely one of absolute sale and that the price of just under RUB 10,000 was itself fair.

(3) Having lost at first instance and on appeal, the Claimants did eventually succeed on final appeal; but the grounds are notable: being (a) that as there was no clause in the repo arrangements which conveyed the "obvious intention to give property as a gift" it could not be construed as a gift of a "fictitious deal" even if the price was hopelessly inadequate; and further (b) that "underestimation of the price" "was wrongly judged by the courts as abuse of right".

(4) Further, whilst Counsel for the Claimants remonstrated in their Closing Submissions that the "…entire OMG presentation of the transfer to the Russian

courts appears deliberately to have ignored telling the courts about the mirror repurchase arrangements", that is one-sided (since the Claimants conspicuously avoided referring to the repurchase side) and probably inaccurate, being directly contrary to the evidence of Mr Sklyarevsky as above rehearsed.

1044. What inferences or conclusions may be drawn from these curiosities? In my view:

(1) The propensity of both sides to press the bounds of propriety and to contrive the basis for legal claims against each other in an attempt to achieve or restore control is evident.

(2) However, the suggestion that the Counterclaimants determined deliberately not to disclose the repurchase side of the repo arrangements to improve their case on 'gift', which was much emphasised on behalf of the Bank, ignores the Bank's own presentation and Mr Sklyarevsky's evidence on behalf of the Bank that Mr Erokhin on behalf of Mrs Arkhangelskaya did show the court the repurchase side but the court ruled it irrelevant.

(3) By contrast, the determination of the Bank to demonstrate that the nominal purchase price that had been ascribed to the shares on the basis of the repurchase side was in fact the full market price in an absolute sale which Dr Arkhangelsky had decided upon is open to various interpretations. It might be explicable most straightforwardly on the basis that the apparent ruling of the Russian courts that the repurchase side of the arrangements was excluded from consideration left the Bank with no choice but to uphold the sale side. A more Machiavellian explanation would be that (a) the Bank was uneasy about the repo arrangements as a whole; and/or (b) the Bank had other objectives in seeking to establish the nominal price as the real price and the sale as an absolute one (with there being nothing equivalent or analogous to an equity of redemption or right of repurchase).

(4) The general picture which emerges once again is that the Bank, by the end of March 2009, was intent on removing from the Counterclaimants any control over the assets of the OMG companies by any means available to it, without regard to the interests of the borrower or even the constraints of the legal arrangements that had given it legal power over the shares which enabled such control.

(5) But though consistent with, that does not, in my view, necessarily mandate, the inference that the Bank was seeking to 'raid' the assets and parcel them out to its associated companies without accounting for their true value and intending to snaffle the surplus for its or their benefit free of any claims by OMG.

(6) It is, as it seems to me, consistent with a shorter term and less complex objective of protecting and ensuring efficient realization of its security by making sure that Dr Arkhangelsky had no legal right or means of practical access to the assets or control of the companies by which they were held.

(7) Being a matter of Russian law, it is difficult and sensitive, and requires careful and cogent evidence, for an English court to doubt the reasoning of the Supreme Court in Russia which ultimately upheld the Bank's appeals: but to an English eye, the

reasoning appears frail to the point of inviting enquiry, given the now accepted view that the Russian judicial system can be susceptible to other pressures, especially political pressure: see *JSC Mezhdunarodniy Promyshlenniy Bank v. Pugachev* [2014] EWHC 4336 (Ch) at [110] and *Cherney v Deripaska* [2008] EWHC 1530 (Comm) especially at [218] and [248].

Mrs Malysheva's extraordinary proposals in relation to Western Terminal and Scan assets

1045. There seems to me to be no doubt that the Arkhangelskys' initial successes in the Russian courts prompted Mrs Malysheva and those working with her (and especially Mr Smirnov and Mr Sklyarevsky) into devising further and better ways of finessing any adverse orders and ensuring that the arrangements they had put in place (the pledges and the repo arrangements) were not undone.

1046. These devices included (a) a proposal in June 2009, which was approved by the Management Board but apparently never actioned to transfer, subject to the Bank's pledge, the pledged assets of Western Terminal to SKIF; (b) a proposal at the same time which was also approved by the Management Board but again never actioned to transfer, subject to the Bank's pledge, a large part of Onega Terminal (a Scan asset) to a company called 'CJSC Nazia' or 'Naziya'; and (c) the "dodgy" Gunard Lease (see paragraph [562] to [568]; and [575] to [581] above).

1047. The Counterclaimants submitted that while the transfers of assets mentioned in (a) and (b) above did not in fact go ahead in June 2009, "it has to be inferred that at that time, the Bank had the intention to facilitate such transfers, for the fraudulent purpose of defeating the potential judgements in favour of OMG".

1048. They also sought to rely on the fact that the relevant Management Board resolutions were not disclosed until an order for specific disclosure was made in September 2015; and that the record of the decision relating to the transfer of Western Terminal assets to SKIF was sought to be deleted by the substitution by Ms Blinova of many dozens of documents – the entire sequence of Investrbank's weekly 'bad debt reports' – solely to delete the one entry referring to that transfer.

1049. As to the role of Mrs Malysheva in each of these transactions, her intent in promoting them and the collaboration they assumed and required, it was confirmed by Ms Volodina under cross-examination that the proposals in each case were put forward by her. Ms Volodina told me that Mrs Malysheva's stated rationale in each case was "to protect the assets", which accords with Mr Sklyarevsky's description of the rationale. When pressed as to what Ms Volodina understood by this in the context of the proposed transfers, she said:

> "I did not discuss this with her because she was responsible for the strategy of working with the company, and since I headed the BKK, and in order to include this into the agenda she called me and explained that this operation is done to protect the assets."

The Gunard Lease again

1050. Perhaps the most unusual of the transactions was the Gunard Lease, to which I have previously referred. There is no doubt that the terms of the Gunard Lease (relating to all the real estate at Western Terminal) (see paragraphs [579] to [581] above) were quite extraordinarily disadvantageous to Western Terminal.

1051. The most comprehensive description of its rationale and objectives was given by Mrs Yatvetsky:

> "One of the options being considered in 2009 by the Bank and Renord-lnvest was to let the Western Terminal premises in the short-term whilst a purchaser was sought. This would have provided Renord-lnvest with an income stream to cover the expenses of maintaining Western Terminal, such as utilities, salaries and other sundry items. Renord-lnvest was otherwise covering these expenses from its own account and making a loss. The Bank's approval would have been required for any lease that Western Terminal gave of the pledged property, which was anticipated might be a lengthy process. As a result, in order to put Western Terminal in a position where it could enter into such a short-term lease at short notice, it put in place a mechanism effectively to get a general approval from the Bank in advance - that mechanism was the granting of a long-term head-lease by Western Terminal to Gunard (to which the Bank would give its approval), with the intention being that Gunard could then sub-let on short notice and for short periods if any sub-lessee could be found (without having to go back to the bank for further approvals). If any purchaser was found for the assets, the Gunard lease would have been immediately terminated by consent (as Renord-lnvest was effectively the party on both sides of the lease) and under Russian law this would also have automatically led to the termination of the sub-lease, so the term of the lease was not important."

1052. And in her oral evidence, she suggested a further explanation:

> "…we were looking for any sub tenants. One of the conditions was that a sub tenant would be forced to terminate the agreement the moment Gunard would tell them that. That was one of the terms of the lease. We could only look for sub lessees on these conditions because this lease agreement was a forced measure. We needed to earn [enough] of [*sic*] cash to cover the expenses of the Western Terminal. This was not a commercial purpose for us to earn money using Western Terminal."

1053. Mr Guz suggested two possible explanations:

> "Q. Well, but wouldn't you be concerned that the value of the pledge encumbered by such an agreement would be reduced dramatically?
>
> A. It depends upon what it was done for. There could be two reasons: one of them, if Gunard, for example, was a potential buyer, this lease agreement could be the part of the deal, but if you say that the Gunard company was the company of the Renord group, and in this case I think it could be done only in order to protect the asset, that's what exactly the repo transaction was done for: to protect the asset.
>
> Q. So that was for the further protection of the pledge --
>
> A. Yes.
>
> Q. -- from any possible action taken by OMG or Mr Arkhangelsky in Russian courts; is that what you are saying?
>
> A. By them or by other creditors, because Bank of St Petersburg was not the only one creditor of Mr Arkhangelsky."

1054. Other witnesses on behalf of the Claimants offered varying explanations. Ms Volodina gave evidence as follows:

> "Q. Now, Mrs Volodina, weren't you concerned at the time that the terms were uncommercial?
>
> A. Yes, the terms were uncommercial. I was concerned about that prior to the BKK meeting. I called Mrs Malysheva and discussed with her this very matter, and she explained to me that this transaction is carried out in order to protect the asset, and she also said that this agreement, due to the fact that Gunard is an entity which is part of the Renord Group, this lease agreement can be terminated at any time and, moreover, the encumbrance is deemed legal only when the lease agreement is registered…and this lease agreement was not registered, and accordingly it did not come into force, i.e. there was no encumbrance.
>
> Q. Now, but obviously the plan was to create an encumbrance, wasn't it?
>
> A. As Mrs Malysheva explained to me, yes.
>
> Q. And wouldn't you agree that this encumbrance would dramatically reduce the market value of the pledge?

> A. I agree with you. Considering if the object is sold, if the object were to be sold, it would reduce its market value, in the event if the lease were to be registered."

1055. Questioned further as to the arrangements, Ms Volodina made clear that she was instructed by Mrs Malysheva that the agreement could be terminated at any time, and said:

> "It was enough for me that Mrs Malysheva told me. I trusted her. I cannot not trust her."

1056. Mr Sklyarevsky supported the explanation that the transactions were all intended to "protect the assets" from a possible court decision which would set aside the repo arrangements. He emphasised the growing intransigence of Dr Arkhangelsky and his declared intention of waging 'war' as reasons for the need to take steps, even such unusual steps, to seek to insulate the assets from Dr Arkhangelsky and even the court (which initially seemed to support Dr Arkhangelsky, as earlier described). He told me in cross-examination:

> "Malysheva's task was to freeze, to fix, with the pledges of the Bank and the possibility of sale, because Arkhangelsky was on the attack, not the Bank, not the SKIF, not Renord. So I suppose that she, inside the Bank, was working on various scenarios of how the events will unravel, because if she were confident that the cases in court will be won, then we were not."

1057. As to the Gunard Lease in particular, Mr Sklyarevsky sought to explain the rationale as follows:

> "Q. Will you agree that the terms of that contract are uncommercial?
>
> A. More so, more likely, but I wanted to stress that the logic of Malysheva and the Bank presupposed no conditions at all. For her, the conditions for the lease were not important in the contract. The main task of Malysheva, as I said before, was the control. To her, it was important to control this plot of land, and at the start of June, we lost the first instance to Mr Arkhangelsky in the courts in relation to the Julia Arkhangelskaya claim, and the Bank was very sceptical about our chances of winning, you see.
>
> At the same time, the main problem which existed was that the Western Terminal was not the direct borrower of the Bank; it was the pledger only, and the position of Mrs Malysheva was that since the courts would be lost and then Arkhangelsky will change the directors, then the Bank must have additional instrument or leverage in the form of the control over the land of the Western Terminal, because the Western Terminal was not

> the borrower, and the bankruptcy of the shipping company in which pledged the landlord was only started in this bankruptcy, and there was going to elapse a lot time between the bankruptcy of the company before claims to the Western Terminal. Therefore, the lease agreement was discussed as an additional -- some form of an additional insurance mechanism in case we were to lose in courts in interest.
>
> Q. Thank you. And I understand that the rationale behind the proposal to possibly transfer the assets to SKIF was the same, wasn't it?
>
> A. Well, again, I didn't discuss the terms. Malysheva asked me whether I would mind if such a similar agreement would be made to SKIF, and at the time I wasn't against it because I was absorbed in these court proceedings and I thought that I was doing a very bad job, because we were losing."

1058. Ms Mironova said the purpose was to protect the assets from a possible claim by Morskoy Bank; but agreed that Mr Sklyarevsky's explanation might be another reason.

1059. However, in my view, none of this can either excuse or disguise the extraordinarily disadvantageous nature of the Gunard Lease from Western Terminal's point of view, nor its obvious adaptability and effect in terms of reducing the value of Western Terminal's real estate assets for anyone except a person able to control Gunard.

1060. As I have previously indicated (see paragraph [580] above), the Claimants sought to dismiss the Counterclaimants' concerns, and especially the depiction of the Gunard Lease as a "dodgy contract", as "rhetoric" and "hyperbole". They denied any substantive tension in the evidence of their witnesses.

1061. However, in my view, the basic facts about the Gunard Lease invite a dark interpretation. The terms are quite extraordinary: they are not only quite obviously uncommercial, but I agree with the Counterclaimants that they are so extreme as to be likely entirely to destroy the value of the pledged asset to third parties for so long as they were in place and enforceable. Only to those with the ability to discharge or dissolve the terms of the lease or the lease itself would the pledged asset realistically have any value.

1062. Indeed, ultimately, the Bank resorted to the defence that (a) the terms of the lease are not relevant because any agreement was (i) between two Renord-Invest companies, and (ii) the terms could be easily varied once a sub-tenant had been found, (and in this respect, Renord-Invest would not need to go back to the Bank for approval); and (b) in any case, since the lease was never registered with the relevant state body, it never became legally effective. Renord-Invest could find no tenants and so the lease agreement went no further. Gunard did not take possession of the property.

1063. The Counterclaimants invite a finding that its true intentions were one or more of the following:

(1) To defeat any potential judgment of the Russian courts setting aside the repo;

(2) To derive income from the operations of Western Terminal without having to reflect it in the company accounts, or to give credit for it to OMG borrowers; and/or

(3) To reduce artificially the value of the underlying asset and pledge.

1064. I consider that it is clear that the Gunard Lease and the other aborted transactions above cited demonstrate a pattern of setting up transactions that could be implemented or cancelled or wound down at will, according to their developing requirements, and using Renord-Invest Group companies (which Mrs Yatvetsky conceded were under central control) to that end.

1065. Furthermore, there seems to be little doubt that Mrs Malysheva (subject to the direction of Mr Savelyev and the Management Board which he controlled), in combination with Mr Smirnov (and those subject to his direction and control in the Renord-Invest Group) and Mr Sklyarevsky (and SKIF), were concerned and took all necessary steps to ensure that the assets within Western Terminal and Scan, whether pledged or not, should be insulated or put beyond the reach not only of Dr Arkhangelsky and OMGP but also of any creditors (Morskoy Bank was one) which might seek to enforce against them.

1066. Whether the Gunard Lease was also intended to and did have the effect of making Western Terminal an asset with an actual or potential encumbrance or flaw which very greatly reduced or substantially eradicated its attractiveness from the point of view of outside purchasers relates more directly to a later part of this judgment when I consider whether the auctions were contrived: and see paragraphs [1316] to [1326] below.

Police raids and the deployment of state power

1067. I have described in paragraphs [569] to [574] above the events of Saturday 20 June 2009 and the seizure or take-over, at the instance of the Bank, of the premises at Western Terminal, with the aid of riot police and two security companies.

1068. I have explained my unease in those paragraphs, especially about (a) the timing of the operation during the pendency of proceedings that would determine whether Sevzapalians should have control or any right to access (and indeed a couple of days before the public announcement of Mrs Arkhangelskaya's perhaps unexpected victory in setting aside the sale side of the repo arrangements and the relevant share transfers); and (b) the apparent ease with which the Bank and/or Renord-Invest and/or SKIF seemed able to engage the assistance of law enforcement officers to enforce its will, in circumstances still unclear and *sub judice.*

1069. I have also referred (in paragraphs [590] to [591] above) to the fact that, according to Dr Arkhangelsky's evidence (which was not contradicted on this point) this discomforting episode was followed by a further police raid on the Group's headquarters (again with riot police) on 16 July 2009, in which all the Group's documents, computers and servers were removed; and the offices of OMG's lawyer, Mr Vasiliev, were also raided.

1070. Dr Arkhangelsky's unchallenged evidence was that this "July raid" followed the next day after the Bank wrote to Gen. Piotrovsky (who now works for Kontur) encouraging him to investigate Dr Arkhangelsky for fraud in connection with the Personal Loan, the allegation being that he had misled the Bank into granting the loan with the intention of embezzling the proceeds.

1071. I was shown a newspaper article recording the fact of the July raid and its result, and quoting Mr Erokhin (the Arkhangelskys' lawyer, see paragraphs [554]; and [1043] to [1044] above) as saying (the English translation is rudimentary) that it was "an unthinkable situation which has nothing general *[sic]* with the standards [of a] rule of law state". The same newspaper article reported that Lt. Col. Levitskaya was conducting the operation and that in response to questioning she had said that the raid was "the performance of the will of the governor of Saint Petersburg, Valentina Matvienko".

1072. They sought to justify the July raid, unlike the earlier one in June at Western Terminal, by reference to proceedings relating to alleged VAT fraud: of course, by July 2009 the Arbitrazh court had found in favour of Mrs Arkhangelskaya's claim to set aside the sale of shares to Sevzapalians, and the raid could not therefore be justified by reference to the latter's ownership or control.

1073. Dr Arkhangelsky recounted that Ms Lukina (then Director-General of Vyborg Port) had told him that Lt. Col. Levitskaya had personally attended and claimed to be acting on the direct instructions of Mrs Matvienko. Ms Lukina was not called as a witness by the Counterclaimants, though she had given evidence at an interlocutory stage, and it is not right to ascribe any substantial independent weight to that hearsay evidence accordingly. However, the July raids were challenged successfully in the Kirovsky District Court of St Petersburg. In that court's judgment of 30 September 2009 it is recorded that Lt. Col. Levitskaya did indeed direct the raid, purportedly on the basis of investigations necessary in connection with alleged VAT fraud; and it was held that the raid had been unlawfully undertaken without regard to due process. The decision was upheld on appeal.

1074. In addition to these raids and the VAT fraud allegations, Lt. Col. Levitskaya was responsible for a welter of further criminal proceedings or investigations against Dr Arkhangelsky at "around this time" (to quote Dr Arkhangelsky's witness statement, at paragraph 193), culminating in September 2009 in the Morskoy Bank criminal proceedings (see below). There is a dispute as to the dates of these various proceedings: the Claimants seek to place them after Dr Arkhangelsky had fled Russia and thus no part of the reason for his departure, but relied exclusively on the date of the Morskoy Bank criminal claim itself. I see no reason not to accept Dr Arkhangelsky's evidence that a variety of proceedings did indeed follow in the weeks and months after June 2009, even though the Morskoy Bank criminal claim came later.

Did the state cause Dr Arkhangelsky to leave Russia and harry him in exile to assist the conspiracy?

1075. I have described the sequence and circumstances of Dr Arkhangelsky's flight to France in paragraphs [582] to [589] above. As indicated in paragraph [588], Dr Arkhangelsky

depicts the events that led to his departure as being part of the same conspiracy, assisted by the Russian state, to 'raid' his companies and deprive him of any practical means of redress. That allegation, which is premised on Dr Arkhangelsky having been forced to leave Russia in fear for his own and his family's safety if he remained, faces some factual difficulties.

1076. First, the Bank contended that Dr Arkhangelsky did not in fact flee Russia for fear of the authorities and out of concern for his and his family's safety: rather, the purpose for which he left was a holiday to Bulgaria, where he and his wife had become accustomed to going and which they knew well. The Bank contended that it was only after that holiday, and in view of financial and business problems of his own making in Russia, that they both decided to move to France because he wanted to start a new life in Europe and avoid his business problems in Russia. The Bank drew attention to the following in particular:

(1) From spring 2007, the Arkhangelskys acquired a number of properties in Bulgaria. As early as 2007, they had made plans for a base in Europe if they decided to leave Russia.

(2) In June/July 2008, they had bought a property in Nice.

(3) In June 2009, Dr Arkhangelsky's holiday to Bulgaria had already been planned.

(4) It was in that context that in September 2009, after his summer holiday came to an end, Dr Arkhangelsky moved from Bulgaria to the property in France.

1077. A second difficulty the Bank relied on is that Dr Arkhangelsky actually returned to Russia in July 2009 quite voluntarily and openly. He met important and influential individuals in Moscow as a result of which (according to Dr Arkhangelsky) OMG's projects were to be discussed with President Putin. The Bank's point was that Dr Arkhangelsky would never have returned to Russia, still less arranged such meetings, if he was genuinely in fear of his safety.

1078. In more detail, on 21 July 2009, Dr Arkhangelsky went to Moscow to meet Mr Gref, the Chairman of Sberbank, to "discuss re-financing the Group". After the meeting, Dr Arkhangelsky reported back to OMG staff in an email in the evening. His email records that he first met V-Bank and Mr Novikov, and V-Bank later met VTB to discuss funding of Vyborg Port. The question of state support for OMG was raised:

> "The question of a discussion with state bodies was posed (by Litvina and I) about the possibility of working up OMG projects with possible compensatory percentage stakes on credit (for the infrastructure of the project)."

As to the meeting with Mr Gref:

> "In the course of the meeting discussion of continuing financing by Sberbank of the development and financing of the OMG Group port project took place. Sberbank's participation in the financing of OMG was also discussed, as part of a program of

> state support, depending on a discussion with the President - Gref promised to air this question with him personally.
>
> It is important the tomorrow morning (Wednesday) Putin will be at Sberbank. In this connection [it is notable] that Gref had all of his other meetings cancelled, but met with me. Very upset was the Governor of the Krasnoyarsk Territory, Tkachev - he was forced to wait wait while Gref negotiated with me! Our project will be discussed with Putin- as a large-scale infrastructural regional project."

1079. The Bank further suggested that if Mr Gref was going to discuss OMG's projects with President Putin, then it is the more difficult to see how Dr Arkhangelsky could also be the victim of persecution by the Russian state – at any level. In his oral evidence, Dr Arkhangelsky suggested that he had been misled by what Mr Gref had told him:

> "Q. It looks, doesn't it, as if your business projects were going to be discussed with the President of Russia?
>
> A. That's what I've been told by Mr Gref.
>
> Q. And --
>
> A. I think that Mr Gref is very much dependent from Ilya Traber, and for Gref enquiry to meet me and try to solve the question was quite important. So that's why he promised maybe too much, which was not realistic, I think.
>
> Q. And there was a discussion with state bodies?
>
> A. Yes, we sent a lot of letters to different -- all the possible different state organisations to support the project -- my projects.
>
> Q. So do you agree that your claim that you were the victim of Russian State persecution sits uneasily with the contents of this e-mail, which suggest that your affairs were going to be positively discussed by the President of the Russian Federation?
>
> A. No, I don't think it's ever been discussed, so it's probably my naive dreams by that time.
>
> Q. So you don't believe that Mr Gref, who was head of Sberbank, you don't believe he was genuine when he said he would raise your --
>
> A. Yes, absolutely. He had --
>
> Q. Sorry, what's "absolutely"? Do you agree? Are you doubting what Mr Gref had led you to believe he would raise with the President?

A. Yes. I think so, yes.

Q. You doubt Mr --

A. Yes.

Q. So you think he was misleading you, do you?

A. Absolutely, yes, because I think he also was unfair of Mr Traber, a well known criminal, so I think he had to meet me just to make a favour for Mr Traber, but he was not planning to do anything for me.

Q. So you don't see anything -- you don't see anything inconsistent between --

A. No.

Q. -- the contents of this e-mail and the reference to state bodies and the President of the Soviet Union -- sorry, the President of Russia --

A. No.

Q. -- looking into your affairs --

A. No.

Q. -- and possibly helping you on the one hand --

A. No, no, no.

Q. -- and your allegation that you are a victim --

A. Yes, I'm a victim, yes.

Q. -- of Russian State --

A. Absolutely, yes."

1080. Dr Arkhangelsky suggested that his meeting with Mr Gref had been organised by Mr Traber, and that he had returned to Moscow in July 2009 because:

> "I'd been told by Mr Traber that it's a real opportunity; I have been prepared to risk my life; I have not been properly warned that I should not do this…"

1081. Dr Arkhangelsky told me that he was aware that his return to Moscow was "absolutely, very risky", but that he had felt he had to run it, since he believed that it "could change all the situation". He acknowledged that he still had protection and bodyguards at the time.

1082. Thirdly, the Bank noted that Dr Arkhangelsky maintained his connections with the Russian state even when, on his account, it was on account of the Russian state that he was in fear of his and his family's life. Thus:

(1) From 18 to 20 November 2009, Dr Arkhangelsky participated in the official Russian delegation at the 'Russian National Exhibition' in Chicago, at which OMG made a presentation:

> "…it was a Russian National Exhibition in Chicago, and I came there and it was a kind of Russian national presentation. It was a minister of industries of the Russian Federation, and it was a big presentation of Russian businesses, yes."

(2) The exhibition was organised by the Ministry of Industry and Trade of the Russian Federation. Dr Arkhangelsky spoke on a panel which included a representative from the Russian government. Dr Arkhangelsky said:

> "I've been sitting next to [the panel moderator], I had a coffee with him and even a glass of champagne, and discussed what's happened to me. And I've also been speaking to the first person, Ivan Materov, I changed -- I missed the name, the deputy minister of industry, and I even exchanged letters with them. My idea was to meet some, let's say, decision-makers, and tell my story that these feudal people in St Petersburg just taking over very good and successful businesses. So my idea was I was stupidly naive just to tell them that it was a mistake and I have to -- they have to rethink about that, so I done that.
>
> And, as I said, I went to Singapore in April …"

(3) It was not only in Chicago that Dr Arkhangelsky took part in the official Russian delegation. According to him:

> "And I also made a similar presentation in Singapore on the visit of Russian delegation in September, and I think in October I went to Beijing while it was a Putin visit there and I wanted also to make a presentation. So I made a presentation there also, yes. So it was at least three big major international Russian events in Chicago, Beijing and Singapore, where I came from Nice that time."

1083. Thus, Dr Arkhangelsky says that he was the target of Russian state-sponsored persecution, and yet at the same time not only was he welcome at a trade exhibition sponsored by the Russian Federation, but he even spoke on the same panel as a representative of the Russian Federation. He even spoke to the Deputy Minister of Industry and Trade of the Russian Federation, Mr Materov. The Bank submitted that the idea that he would have done so at the same time as when he was the alleged victim of a state-sponsored persecution is implausible.

1084. Fourthly, not only did Dr Arkhangelsky maintain his connections with the Russian authorities after his alleged flight, but he also continued to maintain his control over OMG businesses. Thus:

(1) In 2010, Dr Arkhangelsky was still trying to exploit business opportunities and do so using his contacts within the St Petersburg government. In January 2010, OMG made a presentation on the development of a wood and chipboard complex at Shaglino in the Leningrad region. It referred to the local government approvals which had been obtained and included a picture of Dr Arkhangelsky with Mr Materov at the Chicago exhibition. Dr Arkhangelsky must have been confident that he would be able to develop the project in early 2010 and he could do so with official support.

(2) In particular, according to the Bank, it is also clear that Dr Arkhangelsky was able to continue OMG business notwithstanding the fact that by this stage he was living in Nice. Dr Arkhangelsky said:

> "… what I should say that, while living in Nice, I was still able to continue several construction projects which were financed by V-Bank, like a project called Solnechnoye, which is Novy Gorod project called Rusiv, the construction of the business centre. So it was, indeed, the final stages in respect to the paperwork and so on. And for Shaglino, my target was just to secure, let's say, the funds been paid and the project created would be, you know -- would survive and maybe could be used at some further stage…"

(3) Vyborg Port was, of course, financed by V-Bank, and Dr Arkhangelsky appears to have tried to 'sell' Vyborg Port in 2013, notwithstanding that he was in Nice.

1085. Fifthly, the Bank pointed out that each time Dr Arkhangelsky was confronted in cross-examination with a fact inconsistent with the idea that he was a victim of state-sponsored persecution, he sought to shift the date from when such alleged persecution began. Thus:

(1) When questioned about his meetings in Moscow in July 2009, he said that the Russian state had been involved only since August 2009.

(2) When asked about his attendance at the Russian National Exhibition in November 2009, he said "The major, major state-owned persecution, by the way, started by the beginning or middle of December 2009".

(3) At other points he suggested that his persecution started after he had written a message on President Medvedev's blog in June 2009, "something like last days of June 2009 or first days of July".

1086. These points on behalf of the Bank plainly carry force. Dr Arkhangelsky, confronted with them under cross-examination, mounted an effort to address them by seeking to

draw a distinction between his perception of the authorities in St Petersburg and his perception of the Russian federal government. For example:

(1) He described Russia as "a feudal state" governed on a city or regional basis by individuals with great personal power: it was his avowed perception when he returned (only then, he said, for a single day) that he would be safe in Moscow under the protection of a "big name" that is, Mr Gref and Mr Traber, and that the "one big name to another big name…can solve all my problems". In retrospect, he ascribed this perception to youth and naivety:

> "… I was, you know, I was 34 years old, so I was stupid and young and naive, and I had a strong belief that there are good people in the Federal Government and just gangsters on the level of St Petersburg, corrupted gangsters on the level of St Petersburg. But now, what I see now and all the developments during all these years, I see that I was absolutely naive. Absolutely naive."

(2) Whereas he perceived that the Bank and what he called "the St Petersburg mafia" were after him from June 2009, he continued to think that "there were good people in the Russian government who can help me…" and in his perception the "full State machine" was not really engaged until later, at the end of 2009, when Lt. Col. Levitskaya put him on "the federal search database" and thereafter he became "completely under the full operation of the State machine."

(3) As to his attendance in Chicago and other international Russian events, he dismissed any suggestion that it was odd that he should be given a platform by his persecutors on the same basis of the distinction he perceived at the time between the St Petersburg 'mafia' and the Russian state, maintaining that although he now accepts it was "stupidly naïve", at the time his idea was:

> "to meet some, let's say, decision-makers, and tell my story that these feudal people in St Petersburg just taking over very good and successful business…
>
> …
>
> [and to meet] Russian decision-makers from the top of the government to tell that it was an enormous raiders attack and local mafia in St Petersburg who was violating national rules and national legislation".

(4) In that context, he hoped that court successes would give credence to his story:

> "So I had a belief that there is a rule of law in Russia and so – and if you remember, by that time I was winning in the courts, before Matvienko made intervention in the third level of the court…I thought that if I win the courts and prove to the

> government representatives that it was a mafia attack, a raid, then it can change the situation."

1087. However, these efforts on Dr Arkhangelsky's part have to be set against the following:

(1) No such distinction was relied on until his cross-examination, and it is difficult to square with the Counterclaimants' pleaded case.

(2) Dr Arkhangelsky's allegation was that from early 2009 he had "faced systematic harassment by the police and Interior Ministry officials". He suggested that he had been talking about St Petersburg, rather than the federal Interior Ministry, but then said:

> "Does it make any difference? I don't think so."

(3) The pleaded case is clear – the alleged persecution was state-sponsored and the extradition request is from the Russian state. As the Counterclaimants plead:

> "the link between the Claimants and the Russian state is to be inferred from the close collaboration between the Claimants and the Russian authorities in persecution of the Defendants and the unlawful takeover of their businesses."

(emphasis added)

(4) The crux of Dr Arkhangelsky's case rests upon victimisation by Mrs Matvienko, who is said to be one of most powerful individuals in Russia and as chair of the Russian Federation Council to hold the "third highest constitutional position in Russia".

1088. Pressed in his cross-examination as to when he considered that the Russian state itself had joined the St Petersburg authorities in his persecution, Dr Arkhangelsky was inconsistent in his answers:

(1) When questioned about his meetings in Moscow in July 2009, he said that the Russian state had been involved since August 2009.

(2) When asked about his attendance at the Russian National Exhibition in November 2009, he said "The major, major state-owned persecution, by the way, started by the beginning or middle of December 2009".

(3) At other points he suggested that his persecution started after he had written a message on President Medvedev's blog in June 2009, "something like last days of June 2009 or first days of July".

(4) When I questioned him at the conclusion of his cross-examination he settled on December 2009, when he was included in the federal search lists.

1089. In my view, the likelihood is that when Dr Arkhangelsky first left Russia he did so in the expectation that, one way or another, something would turn up and he would find some sufficient solution to return and carry on his businesses, even if in altered scale and form. But things did not work out that way; and his return became both dangerous and (once his early victories in court were reversed and the Claimants secured their control) practically futile. I do not find that he was forced to flee; but I would accept that it became both senseless and dangerous to return to Russia.

1090. In answer to my questions at the end of his oral evidence, Dr Arkhangelsky told me this, which seems to me to chime with my finding that his exile was not pre-determined but became a fact of life:

> "You know, whole summer, we were staying in Bulgaria and not understanding what is going on, and we were thinking that, okay, initially we thought ten days and then maybe one month, then two months, three months, then we understood that kids should go to the school, life is going on, and we have to make some more important strategic decisions."

False evidence and the object of the criminal proceedings in respect of Morskoy Bank loan

1091. I have described the dispute in relation to the corporate authority for and propriety of the Morskoy Bank loan and the civil and criminal proceedings which they resulted in paragraphs [502] to [516] above (as to the civil claims) and paragraphs [592] to [596] above (as to the criminal complaint).

1092. The Morskoy Bank loan to which those proceedings related was relatively small (RUB 56.5 million). Its importance derives, not so much from its substance (which ultimately concerned whether in taking out the Morskoy Bank loan Dr Arkhangelsky had been fraudulent in representing that he had shareholder consent to do so, given that by then the shares were in the hands of Sevzapalians which had not given, or even been asked for, its approval), but in the way it was put forward, the orchestration of the evidence in its purported support, and the inferences of fraudulent conspiracy which the Counterclaimants maintain should be drawn from that.

1093. I need to consider in this context (1) whether the allegation that the Bank's six witnesses all gave false evidence in support of the criminal proceedings is well founded; (2) whether there is evidence of collusion between them and, if so, by whom it was coordinated; and (3) whether the inference of a conspiracy involving "at least" the Bank, Renord-Invest and the six witnesses is, as the Counterclaimants insist it, "by far, the most probable explanation".

1094. More specifically, to make good and buttress the premise of the complaint, which was that the transfer of the shares in Western Terminal was absolute, all the witnesses from the Bank provided statements. They sang in unison the same song: but the song was untrue. Their evidence was both orchestrated and fundamentally false.

1095. The evidence (not gathered it should be noted, until March to May 2010) consisted of written statements, all recorded by Lt. Col. Levitskaya and taken subject to criminal

liability for the Russian offence analogous to perjury, from *inter alios* six witnesses, namely:

(1) Mr Savelyev;

(2) Mrs Malysheva;

(3) Ms Stalevskaya;

(4) Mr Gavrilov, a Renord-Invest employee and the director-general of Sevzapalians;

(5) Mr Maslennikov, a Renord-Invest employee and the new Director-General of Western Terminal (who had replaced Mr Vinarsky); and

(6) Mr Chernobrovkin, a Renord-Invest employee appointed as the new deputy Director-General of Western Terminal.

1096. As noted in the Counterclaimants' written opening, all six testimonies perfectly corroborated each other and gave substantively the same version of events, being in summary, as follows:

(1) In December 2008, Dr Arkhangelsky decided to sell Western Terminal and approached the Bank asking for help in finding a buyer.

(2) Mrs Malysheva, as a favour to him, put him in touch with Mr Gavrilov.

(3) There followed a genuine and absolute sale from OMGP to Sevzapalians at the fair market price of RUB 9,900.

(4) Other than that, the Bank had no involvement in the deal. It had no interest in the sale other than helping its borrower.

1097. The 'evidence' thus provided was fundamental to the Morskoy complaint, for it was on the basis of those statements that it was contended that there was evidential basis for an allegation of dishonest and criminal conduct. The presentation of Sevzapalians as having obtained its interest by absolute purchase and that its status as a shareholder was permanent and absolute was plainly intended to contradict Dr Arkhangelsky's position that the repo sale was always subject to the repurchase rights and to good faith commitments not to interfere in the underlying business in the meantime, and to support the allegation that Dr Arkhangelsky cannot have thought that OMGP had any interest such as he maintained.

1098. The falsity of the evidence in depicting the sale as being further to a wish on Dr Arkhangelsky's part to sell Western Terminal, and as being absolute, without mention of the repo arrangements, and also in asserting that the Bank had no involvement in the sale, is no longer disputed by the Claimants.

1099. When it came to this trial, both of those who had given witness statements addressing the issue sought to correct these falsities, offering explanations which were similarly uniform and were in summary as follows:

(1) Mr Savelyev acknowledged that he had signed the statement, but he said in his witness statement that he "could not have read it very carefully at the time" and had not given the interview "his full attention". Under cross-examination he said this:

> "I was not involved in the sale…I would like to confirm…that simply that was criminal case to do with different legal entities that were not related to the Bank, and I was asked to give evidence, actually, they were of no interest to me, so I didn't focus on the evidence, I didn't focus on the conversation with the investigator, because it had nothing to do with the Bank of St Petersburg or me personally…As you know, I did proffer my apologies to the court for the confusion…"

(2) Ms Stalevskaya likewise said in her witness statement that she did "not know now why I made reference in this interview to selling shares since this did not reflect the complete nature of the transaction…" but surmised (like Mr Savelyev) that she had not been "properly paying attention at the time and wanted to get through the interview quickly…". Under cross-examination she suggested that she did tell Lt. Col. Levitskaya about the repo arrangements but in her rush "did not insist on having everything that I had said properly recorded in the note of the interview". When asked why she had not sought, when the omission became clear to her later, to do anything to inform Lt. Col. Levitskaya of that, she answered:

> "No, because I have given the evidence and I tried to forget about giving it because, for me, it wasn't important."

1100. In its written closing submissions, the Bank claimed that "the Claimant witnesses have explained the position" and sought to dismiss the interviews and the shared errors in them as being "of no relevance to the matters in issue." I do not accept this. Whilst I do agree that it is not for this Court to determine the viability of the Morskoy criminal complaint, the interviews (and the surprising evidence recorded from them) seem to me to bear on (1) the role and objectives of Mrs Malysheva and of Lt. Col. Levitskaya, (2) the true relationship of the Bank, Sevzapalians and the Renord-Invest Group, (3) the true purpose of the criminal complaint, (4) the Counterclaimants' case that there was a conspiracy against them, and (5) the reliability of key Bank witnesses, including in particular, Mr Savelyev.

1101. To take up that last point first, Mr Savelyev's evidence was entirely unconvincing. His protestations that the statement was simply prepared for him and put in front of him for signature, and he had signed, as it were, on the dotted line without focusing on its content, struck me as hollow and unworthy. His suggestion that because the legal entities concerned were "of no interest" he considered that he could be careless to the point of giving a version of events in a sworn statement in support of a criminal prosecution that either he did not believe to be true, or had no basis for thinking it was true, is unacceptable, and the more so given that in fact he knew all about the entities concerned. His apology for his "confusion" suggested to me that he had still not faced up to the seriousness of giving false evidence on the basis of which another person might be convicted of a crime.

1102. The only other witness for the Claimants on this point, Ms Stalevskaya, appeared to me to be nervous throughout this period of her cross-examination, easily startled and plainly upset. She denied having been instructed to lie by her superiors. Counsel for the Bank were very quick to interrupt and depict Mr Stroilov's questioning as an attempt to bully her. When it was put to her that her evidence was concocted on the say-so of her superiors, she cried. Although the experience was no doubt distressing for her, and the later mockery of it (and her) by Dr Arkhangelsky in habitually and sarcastically referring to Ms Stalevskaya as the "funny crying witness" was inappropriate and regrettable, I formed the clear impression that Ms Stalevskaya knew that she had towed a party line which she knew at the time to be false, and was remorseful.

1103. The concocted and false party line, it seems to me much more likely than not, was crafted and dictated by Mrs Malysheva. Although Mrs Malysheva declined to be a witness, the evidence included a record (again made by Lt. Col. Levitskaya) of her evidence as the lead singer in the curious and concocted chorus. The gist of her evidence is as I have described it; but it is difficult not to be taken aback by the brazenness of the misrepresentations Mrs Malysheva knowingly made, including that (quoting from the record of her interview):

(1) Dr Arkhangelsky had told her in December 2008 that "the group's debts to the bank exceeded the total value of [Western Terminal's] assets" and that in the circumstances "he envisaged the only solution consisting of looking for a possibility of more efficient management of [Western Terminal's] assets in order to fully develop the business potential invested in this company when it had been founded".

(2) Dr Arkhangelsky "thought that the most appropriate way to achieve the above goal would be the sale of the company to specialists".

(3) "He clearly realized that the market price of [Western Terminal], which was encumbered with the pledge for the loan, was quite low."

(4) "I proposed Sevzapalians…as a purchaser…I know Sevzapalians manager [Mr] Gavrilov personally and I think that he matches the goals defined by Dr Arkhangelsky, i.e. driving the [Western Terminal] out of the financial and managerial crisis in order to safeguard the company's assets to insure the reimbursement of the [Bank's] loan…".

(5) "…I negotiated the transaction proposed by Dr Arkhangelsky with Mr Gavrilov [who] did not refuse the purchase…but proposed to proceed to an independent evaluation of the market value of 100% share in [Western Terminal]…in order to determine a fair purchase price."

(6) "I considered this proposal as reasonable and forwarded it to Dr Arkhangelsky. The latter had no objections and provided necessary documents for the evaluation…".

(7) "At the request of Mr Gavrilov, on the basis of the documents provided by Dr Arkhangelsky an independent evaluation of 100% share in [Western Terminal's] share capital was performed. According to the expert evaluation, this value amounted to about Twelve Thousand roubles."

(8) "At the end of December 2008, Vasiliev Yaroslav transmitted a set of documents for the sale and purchase of the share…".

(9) "Later, I leant from Mr Gavrilov that Dr Arkhangelsky decided to sell 99% of [Western Terminal's] share capital for nine thousand nine hundred roubles. This price suited Mr Gavrilov".

(10) "I do not know why Dr Arkhangelsky decided to sell just 99% of [Western Terminal's] share capital."

(11) "I know very little about the future fate of [Western Terminal] and it is difficult for me to say anything substantial about this issue."

1104. This was a pack of lies, as in effect Ms Stalevskaya, to whom Mr Stroilov put the question, rather forlornly agreed under cross-examination. Of course, since Mrs Malysheva herself chose not to give evidence, I cannot know what she would have said to get round this: but in default of her own explanation, I can think of none: the lies are fundamental and inexcusable, and raise the obvious question: why were they told?

1105. Lt. Col. Levitskaya was not called either: and I was unable to form an impression of her personally. But the mendacious uniformity achieved in the statements she assembled is very striking. Further, it seems almost impossible that she was not aware from the outset of the repurchase side of the repo arrangements, which fundamentally undermined the song sung in unison.

1106. Most arrestingly, Ms Stalevskaya told me that she recalls actually telling Lt. Col. Levitskaya that there was a repo deal. The following exchange in the course of her cross-examination is of interest:

> "Q. But did you explain that this was a repo deal?
>
> A. So far as I can recall, I did. I did explain to Col Levitskaya that there was a repurchase transaction, a mirror transaction, for the assets to go back.
>
> Q. So is it your evidence that you made it clear that the purpose of the deal was not to sell the company, but to provide the Bank with additional security?
>
> A. So far as I can recall, yes, that was the explanation that I gave her."

1107. The most interesting aspect of this evidence is that, if accepted, it would suggest, indeed would establish, that Lt. Col. Levitskaya was expressly informed that the chorus of evidence was false, in that its effect and purpose was to depict an absolute sale in which the Bank had no interest. That would cast a harsh light on Lt. Col. Levitskaya's conduct and objectives: it would suggest that she was prepared to record and attribute to witnesses a version of events inconsistent with facts of which those witnesses themselves had made her aware, all in order to assist Mrs Malysheva, Mr Savelyev and the Bank (and presumably at their direction).

1108. If that evidence is not accepted, it is, I suppose, not impossible that Lt. Col. Levitskaya accepted dictation from Mrs Malysheva and simply did not appreciate the inconsistencies. But even then, much more likely, to my mind, is that after the holding (see above) that the repurchase contracts were not admissible and the Counterclaimants were not relying on them, she was content to go along with the fiction of an absolute sale at fair market price in accordance with Dr Arkhangelsky's wishes and in which the Bank had no involvement other than to assist the sale and never had any interest. Anyway, the suspicion would still linger that in addition she was able to exert or transmit from others considerable pressure to achieve a pre-planned evidential record such as to overbear individual sense of morality, even at the risk of perjury.

1109. That suspicion was increased by Mr Nazarov's evidence (albeit hearsay) of the intrusive and oppressive tactics apparently deployed by Lt. Col. Levitskaya when seeking evidence from Ms Natalya Saltykova ("Ms Saltykova", a former chief accountant of various companies in the OMG). It chimed with the gist of Mr Nazarov's further evidence that the employees of Renord-Invest and the Bank she interviewed were frightened of her, and that she adopted an aggressive and "heavy-handed" approach in which she "made it clear to them that it was up to her to treat them as witnesses or suspects". However, that evidence was all hearsay, and quite general. Mr Nazarov was not able to name who had thus been intimidated; he told me:

> "Now, of course, I would not be able to name them. It's rather my evidence would be general. That was the general emotional background around the situation. I mean, the impression from my communication with these people, for example, with Ms Saltykova."

1110. In this uncertain but troubling state of things, the Counterclaimants invited me to draw the following inferences:

(1) A perjury by six witnesses telling substantively the same lie can only result from a collusion.

(2) The only purpose of that perjury was to conceal the so-called 'repo' arrangement.

(3) The reason for concealing it was because it was fraudulent.

(4) Three different employees of the Bank gave the same false evidence because the Bank was responsible for that fraud.

(5) Three different employees of Renord-Invest gave the same false evidence because Renord-Invest was also responsible for that fraud.

(6) A conspiracy involving, at least, the Bank, Renord-Invest, and the six individuals is, by far, the most probable explanation.

1111. However, although the points were neatly and powerfully made, I cannot go as far as that. Even though I accept, with real and abiding concern, that a contrived and co-ordinated tale was concocted, and that this and its context cast considerable doubt on the reliability and sense of propriety of the Claimants, I must remind myself (not for

the first or last time in this case) that the more serious the allegation the more assiduous must be the exploration of alternative explanations, and the more cogent must be the evidence of a malign rather than a more benign rationale.

1112. I must also bear in mind the fact, much stressed on behalf of the Claimants in the written submissions on their behalf, that Mrs Arkhangelskaya and OMG's lawyers themselves appear repeatedly to have made submissions to the Russian courts asserting an apparently absolute 'sale'. That is relevant, not to fuel any forensic suggestion that what is sauce for the goose is sauce for the gander, but because (a) it may go some way to explain the origin of the concocted chorus, (b) it may tell against any earlier conspiracy pre-dating Mrs Arkhangelskaya's own depiction of the share sales, and (c) more generally, the adoption, with their own fanciful and false embroidery by Mrs Malysheva and Lt. Col. Levitskaya of a story first spun by Mrs Arkhangelskaya and the Arkhangelsky's lawyer, may smack more of opportunism than pre-planning and conspiracy. Though I continue to harbour doubts as to these more benign origins, for what on any view is an extraordinary fabrication, I cannot exclude them.

1113. Further, in those circumstances, it would not, in my judgment, be justified and fair to infer that the Claimants considered or feared the repo arrangements to be fraudulent. All that it may show is that Mrs Malysheva, and probably (given his subscription to the same false record, and his position putting him beyond pressure from Mrs Malysheva or Lt. Col. Levitskaya) Mr Savelyev, had determined that the presentation of the arrangements as an absolute sale which Dr Arkhangelsky had himself put in place suited her objective at the time of promoting and supporting the Morskoy Bank criminal proceedings, and that they were in a position to and did, with the assistance of Lt. Col. Levitskaya, procure not only Bank employees, but employees of Renord-Invest, also to support the story, regardless of its accuracy or even truth.

1114. Adopting and elaborating Mrs Arkhangelskaya's depiction of the arrangements as an absolute transfer avoided any difficulties that might stand in the way of a successful criminal prosecution if the true nature of the repo arrangements as intended to give security and not absolute ownership, and the fact that the Bank had demanded them as the price of any loan restructuring, came properly to be understood. Put another way (and as the Counterclaimants indeed put it in their written Opening Submissions):

> "the criminal case on fraud could only proceed so long as there was evidential basis for an allegation of dishonesty; i.e. that he knew Sevzapalians was a genuine shareholder but misrepresented the position to Morskoy Bank. There is no such basis save for the false evidence of the six witnesses."

1115. But, as I see it and find, the purpose of the concocted chorus was to support and substantiate the criminal proceedings, as part of the continuing 'war' against Dr Arkhangelsky; and I do not infer from any of this any recognition or concern that the repo arrangements were fraudulent; the evidence was concocted and coordinated to assist the Morskoy Bank criminal complaint. That is reprehensible: but, in my judgment, it does not demonstrate a conspiracy to conceal the repo arrangements because the participants recognised them to be fraudulent.

Morskoy Bank criminal proceedings and the harassment of the Arkhangelskys as part of the alleged conspiracy

1116. What, then, was the objective of Mrs Malysheva and/or Mr Savelyev in thus providing the foundation for and pursuing or assisting the maintenance of the Morskoy Bank criminal proceedings in which the chorus of concocted evidence was given? The Counterclaimants contend that this was all part of a "campaign of persecution" and "systemic harassment" accompanying the takeover of OMG companies, typical and demonstrative of a 'raid'.

1117. By the time of the commencement of the proceedings, and at the time of the interviews some 4 months or so later, the Arkhangelskys had fled Russia and had become resident in France (although they did not seek asylum until June). The Counterclaimants contend that, having harassed Dr Arkhangelsky into fleeing Russia in June 2009, the purpose of the Morskoy Bank criminal proceedings was to establish a claim for their extradition: for it was on the basis of those criminal proceedings that the Russian Federation issued an Interpol International Arrest Warrant or 'red notice' against Dr Arkhangelsky and applied for his extradition from France.

1118. The Counterclaimants contend further that the fact and development of the criminal complaint is a further example and demonstration of close and inappropriate collaboration between the Claimants and elements of the Russian state and its apparatus, having all the tell-tale characteristics of a state-assisted 'raid'.

State assistance in dishonest collaboration: the signs and characteristics of a classic 'raid'?

1119. The Counterclaimants submit that the Morskoy Bank criminal complaint, and the way it was falsely supported, fits into a pattern of systematic harassment and pressure, exerted through arms of the state, orchestrated by the Bank and implemented with the assistance of Gen. Piotrovsky and Lt. Col. Levitskaya (and see paragraph [573] above), in a manner typical of a state-assisted 'raid'.

1120. They contend that this inappropriate collaboration, together with the fact of the other raids and criminal proceedings to which I have referred (which they protest never had any substance at all), went beyond Lt. Col. Levitskaya, beyond even Gen. Piotrovsky, and extended to Mrs Matvienko and the apparatus of regional government in St Petersburg (and possibly beyond, to the federal government itself).

1121. In their own words, the Counterclaimants allege:

> "165 The takeover of the Companies was accompanied by a campaign of unlawful persecution of the Defendants by Russian authorities. It is averred that the persecution was co-ordinated between the Claimants and corrupt Russian officials, known and unknown, who thus were a party to the conspiracy.
>
> 166. Since early 2009, the Defendants were subjected to systematic harassment by the police and Interior Ministry officials.

> 167. The harassment became particularly intense since June 2009 when the First Defendant publicly appealed to then President of Russia, Dmitry Medvedev, about the unlawful takeover of his businesses…
>
> …
>
> 173. This campaign of persecution was organised as part of the conspiracy."

1122. Further:

(1) Paragraph 177(i) of the Re-Re-Amended Defence and Counterclaim identifies "corrupt officials in Russian law enforcement agencies in St Petersburg", including Lt. Col. Levitskaya, the St Petersburg chief prosecutor and Gen. Piotrovsky, the head of the St Petersburg police, who are said to have been "responsible for the campaign of political persecution of [Dr Arkhangelsky] and the fabrication of criminal cases against him, unlawfully and solely in the interests of the Bank, Mr Savelyev, and the Scheme" (as defined, in the same terms as "the conspiracy", in paragraph [855] above).

(2) Paragraph 177(j) identifies Mrs Matvienko as a conspirator, and alleges as follows:

> "Members of Mrs Matviyenko's family are or were major shareholders of the Bank. Her role was to use her influence to facilitate unlawful assistance of corrupt law enforcement officers, authorities, and courts, in furthering the conspiracy. Her participation is to be inferred from (i) her close association with the Bank and Mr Savelyev; (ii) the concerted unlawful actions of the said authorities and courts, which could only be directed by a single will and mind, high-positioned in the hierarchy of the Russian regime; (iii) her propensity to, and past record of, participating in unlawful 'raiding operations' of similar nature."

(3) The 'conspiracy' case contends that Mrs Matvienko, Gen. Piotrovsky, and other "corrupt officials" joined the conspiracy before June 2009 and/or before October 2009 "by agreeing with Mr Savelyev and/or the Bank acting by Mr Savelyev" to carry out such roles as to "further the Scheme".

(4) The Counterclaimants allege also that one of the objects of what they depict as a state-assisted campaign of harassment and the bringing of (allegedly) false criminal charges was to force the Arkhangelskys to flee Russia, which they allege is "a well-known procedural tactic to secure the raided property."

1123. The Counterclaimants seek findings that this pattern of harassment, and repeated and various forms of pressure and the way it was exerted, (a) are characteristic of a state-assisted 'raid'; (b) exemplify and demonstrate the involvement of Mrs Matvienko and others in positions of political power in assisting the alleged 'raid'; and (c) give rise to an inference that the Bank and those associated with it were determined to take control of Western Terminal and Onega Terminal, whether or not entitled to do so by legal

right, without regard to the interests of the borrower, and with a view to their assets (pledged and unpledged) being syphoned off to persons associated with the Bank or its management and/or persons associated with them.

1124. The Counterclaimants submitted that the pattern was too clear to admit of a benign interpretation and plainly smacked of coordination in accordance with a preconceived plan. They submitted, more especially, that I should assume an intention to 'raid' from the parallels with well-known practices of 'raiding' to which the Counterclaimants drew attention and on the basis of which they submitted that:

> "Far from being a series of sporadic reactions to the alleged revelations about Mr. Arkhangelsky's dishonesty and/or his hostile actions, all the Bank's actions fit precisely into one of the classic schemes of raiding described by the researchers of that phenomenon."

1125. Dr Arkhangelsky's evidence was that in transferring the shares in late December 2008:

> "I was exposing myself to the risk of a raid. That was precisely why I was so aggrieved at Mr Savelyev's demand for the shares to be transferred."

1126. He added (in his witness statement for trial):

> "… everything changed forever at the end of 2008, when the Claimants, together with other connected parties, effectively stole many of the Group's most valuable assets. The Group and its businesses were destroyed in the process. The theft of the assets and the destruction of the Group have been accompanied by an aggressive campaign of harassment and persecution against me, no doubt in order to ensure that the assets can never be recovered. The situation ultimately became so serious that I was eventually forced to leave Russia for the sake of my and my family's safety.
>
> While such conduct on the part of a bank may seem extreme, it bears emphasising that, unfortunately, the actions of the Claimants and their co-conspirators are not unusual in a Russian context. Indeed, this kind of conduct has become so common that the Russian language now has a specific term for it, namely "reiderstvo" or "raiding". The Court will be provided with other evidence that explains the concept of reiderstvo in detail. However, it typically refers to the hostile takeover of a business or asset by unlawful or illegitimate means, often with the assistance of corrupt officials or courts. This is an entirely apt description of what happened to the Group and its assets in the present case."

1127. The Counterclaimants referred in this regard to the 2011 report of a body styled the 'National Anti-Corruption Committee', which they appended to their written opening and in which a summary is given of what is described as one of the four principal 'schemes' of raiding, said to be extrapolated from analysis of a series of case studies. The summary is as follows:

> "Scheme 4 (Manufacturing of rights under a REPO contract)
>
> 1. A large loan is given to a representative of a successfully operating big or medium-size business
>
> 2. Securities are formalized:
>
> - pledges of assets which constitute the business;
>
> - personal guarantees of the business proprietors;
>
> - guarantees of companies involved in the business and having significant assets or trading turnover.
>
> 3. REPO contracts are made for the shares (at least the controlling shareholding) of the companies controlling the business, on the following terms:
>
> - usually, at a nominal price;
>
> - repurchase is subject to the condition of repayment of the entire loan;
>
> - always with a counterpart who is not formally affiliated with the bank;
>
> 4. The lender bank declares that the debt is overdue. Like in Scheme 2, the lender bank may deliberately create the conditions for an overdue indebtedness to emerge.
>
> 5. A demand to repay the debt at a short notice in connection with a breach of the contract;
>
> 6. The Bank declares there have been a breach of the loan agreement (the clause on early repayment of the loan) and a breach of REPO contract.
>
> 7. Since a company controlled by lender bank is the controlling shareholder of the companies which control the borrower's business, that company is entitled to initiate a shareholders' conference to replace the company's director-general and to approve any transactions with the company's assets.

> 8. A replacement of director-general, seizure of management in the borrower's company, failure to service the loan, dissipation of assets.
>
> 9. An assignment of the principal loan obligation to a third company, along with all the securities for the loan agreement except REPO.
>
> 10. Recovery of the debt from the debtor and guarantors/pledgers without giving credit for the assets removed from the borrowers' control using the REPO contracts."

1128. The parallels between that description and the events in this case are clear, and on that basis the Counterclaimants contend that "[t]he 'repo' arrangement and subsequent events fit perfectly into the known patterns of fraudulent 'raiding' in Russia." However, the status of the report is much more debatable.

1129. Professor Guriev described the report as "public information, as media reports, but not as something decided by the court of law". Mr Turetsky cast doubt on the experience and authority of the authors, though under cross-examination by Mr Stroilov he backed away from his initial assertion that they are "low-key lawyers and anti-corruption activists with no banking experience" and settled instead on saying that they "do not appear authoritative enough for me" and that "the substance did not look scientific to me", concluding that "I did not find this report and the analysis scientific enough. That's what I would like to say."

1130. In those circumstances, Counsel for the Claimants submitted that the report "is of no evidential value at all" and that the attempt to depict the events here as redolent of 'raiding' because they share many, if not all, of the adumbrated features is unsustainable.

1131. In my view, the report offers some confirmation of the prevalence of 'raiding' in the Russian Federation, and its adumbration of the usual characteristics of the practice is useful in that it elucidates the means whereby typically a raid may be effected. However, each case must be assessed on its own facts, and the departures from the usual 'check list' may be as instructive as the similarities. In particular, it is the element of premeditation, and the ability unilaterally to bring about the premeditated result, which is the overall characteristic.

1132. I suspect that the most telling indication of a 'raid' is evidence of a premeditated decision on the part of the Bank and/or a power reserved to it, to deliberately engineer a default, thus enabling the Bank to be sure it can implement the raid, and at a time of its own choosing.

1133. For reasons which will already be apparent, I do not consider that the evidence is sufficient to demonstrate such premeditation in December 2008/January 2009 (that is, when the repo arrangements were made). Given the gravity of what is alleged, and its consequences, and the need for cogent proof, I do not consider that there is sufficient evidence to show that the Bank was intending to engineer a default, or to demand

repayment not otherwise due: in that context, my finding that there was no agreed general 6-month moratorium as alleged by Dr Arkhangelsky is, of course, crucial even if not (for the reasons I have sought to explain) determinative.

1134. For the avoidance of doubt, I have borne in mind the Counterclaimants' submission that I should discern intention from the use later in fact made of the arrangements: but that is not enough to get over the basic fact that on the findings I have made there is no sufficient evidence to suggest that the Bank either intended or had the ability deliberately to engineer a default, or that it had changed its focus from debt recovery to a 'raid'.

1135. As in many instances in this case, I would accept that the facts reveal a thoroughly disturbing tendency on the part of the Claimants and their associates to put forward sworn evidence which they consider advances their case and a propensity to require their subordinates to subscribe to and support the version of events thus put forward regardless of its truth. I would accept also that there are clear signs that the Claimants enjoyed an unusual ability to call on state resources and assistance at the local level to reinforce the exercise of their legal rights and to prevent Dr Arkhangelsky from putting obstacles in their way (as he had made clear he intended to do).

1136. But, in my judgment, it does not irresistibly follow from this, so as to give rise to the inference the Counterclaimants assert, that all this was done to advance a preconceived plan to 'raid' Dr Arkhangelsky's businesses without regard to legal right, and with state assistance to syphon off those businesses (together with their assets both pledged and unpledged) to co-conspirators in the plan.

1137. As I have noted previously, the fact is that the pledges, the defaults, and the triggering of the repo arrangements gave the Bank the keys to the relevant assets. In the events that happened they had the legal right to rely on their securities, including the rights conferred by the shares transferred to them under the repo arrangements: and that was Dr Arkhangelsky's undoing.

1138. Nor, however unsettling it is, do I consider that the evidence of a concocted chorus and of state assistance is sufficient, whether of itself or in context, to implicate Mrs Matvienko, Gen. Piotrovsky, and other "corrupt officials" in a conspiracy to raid or assist the raid of Western Terminal and Onega Terminal. Again, I take into account that the more serious the allegation and the more improbable the event sought to be established:

> "the stronger must be the evidence that it did occur before, on the balance of probabilities, its occurrence will be established"
>
> *per* Lord Nicholls in *Re H (Minors)* [1996] AC 563.

1139. I turn therefore to consider perhaps the most fundamental part of the Counterclaimants' case, which is that all the evidence must be seen and tested in the context of a sustained effort on the part of the Claimants to deny the reality, being (as they would have it) that to the knowledge of the Claimants and their co-conspirators, all the sales of assets were within a closed circle of controlled entities, and all the auctions were shams.

1140. This requires an assessment as to whether the long train of events following default, adumbrated in sub-paragraphs [(8)] to [(15)] of paragraph [901] above, reveals a pattern of conduct as well as an ultimate result consistent only with a pre-conceived and co-ordinated 'raid'. That also requires an analysis of the ownership and control of the entities which participated in that train of events, to test the premise of the Counterclaimants' allegations that they were all associated and indeed ultimately owned or controlled by the Claimants. I start with the latter before turning to address each of the events thus adumbrated.

Control and/or ownership of the Renord-Invest Group, SKIF, the Original and Subsequent Purchasers and the long train of transactions between them

1141. The Counterclaimants submit that "the history of these proceedings has largely been a history of the Claimants' disingenuous efforts to avoid the issue of Renord Group and their own connections with it", and that although "that finding is not strictly necessary for the success of the counterclaim…it is where the evidence leads; and that increases the likelihood of the conspiracy alleged…".

1142. The fundamental importance attached to the issue by the Counterclaimants is indicated by the fact that they spent some £35,000 of their resources (which they say are extremely limited) on a draft report dated 24 June 2015 prepared by a third party called FTI Consulting ("the FTI Report").

1143. The FTI Report, the primary objective of which was to identify the beneficial owners of Kontur and Baltic Fuel but which also sought to determine the structure and ownership of the Renord Group, was never completed (apparently because of inadequate funds). Further, its conclusions were subject to various caveats. But it provided the springboard for an enquiry and cross-examination of the Claimants' witnesses which accounted for a not inconsiderable part of the trial.

1144. The Counterclaimants contend that Renord-Invest and SKIF companies, acting under the Claimants' instructions, were used as the warehouses and vehicles for the appropriation and transfer of Dr Arkhangelsky's businesses to the Claimants' controlled associates pursuant to a fraudulent scheme; the essential steps in that scheme being first, to snatch control of those businesses, then, to sell their assets in a fragmented way whereby to reduce their value, and lastly to bring the assets together and parcel them up in such a way as to ensure that their ultimate pre-ordained recipients (Baltic Fuel Company, in the case of Western Terminal and ROK No. 1 Prichaly, in the case of the Onega Terminal) or their controllers or owners could extract maximum value from them.

1145. The Counterclaimants have invited me to find that the machinations and opaqueness of the Claimants in this regard were necessary in order to disguise the falsity of the various auctions, and the fact that the ultimate purchaser of the Western Terminal assets and businesses was a Renord company, Baltic Fuel Company, and thus, in economic reality, Mr Savelyev "or the Bank" and their associates.

1146. They submit further that ROK No. 1 Prichaly, the ultimate purchaser of the assets at Onega Terminal and its business, though not in the Renord-Invest Group, was also,

according to the Counterclaimants (and to quote the Counterclaim) "a company connected to the Claimants and/or the Conspiracy".

1147. From all this they draw or at least feed their punch-line: that the various auction sales and subsequent transactions in the end led to the acquisition of the OMG businesses and assets by none other than Mr Savelyev and/or the Bank and their "loyal friends".

1148. For their part, the Claimants have never denied that Renord-Invest or SKIF worked with the Bank to realise the sums owed to the Bank by OMG; but they have consistently denied that either was ever actually 'owned' or 'controlled' by the Bank.

1149. Further, they were adamant that Baltic Fuel and ROK No. 1 Prichaly were and are independent and substantial companies, which were never owned or controlled by them and which acquired the Western Terminal and the Onega Terminal assets (respectively) at arm's length.

1150. I shall focus first on the ownership and control of the entities involved in the repo arrangements, and the auction sales thereafter, that is to say, Renord-Invest and SKIF, and in that context, of the Original and Subsequent Purchasers. I shall then address the issue as to the ownership and control of the ultimate purchasers (Baltic Fuel and ROK No. 1 Prichaly).

Ownership and control of Renord-Invest and SKIF

1151. The Claimants insisted that Renord-Invest was and is a successful investment business and private equity firm established in October 2007, which has a good relationship with a number of banks, including the Bank, but which is independent from the Bank and owned by Mr Smirnov. They invited me to accept Mr Savelyev's evidence as follows:

> "I also understand from the Defendants' Re-amended Defence and Counterclaim (in particular from paragraph 100 onwards) that, broadly speaking, Mr Arkhangelsky alleges that the Bank achieved its ends through arranging for the assets of OMG to be purchased by entities owned or controlled by the Renord Group (the Renord Group) of companies, and he appears to allege (though the allegation is not entirely clear) that the Renord Group is ultimately owned or controlled by the Bank. This is not true. The Renord Group is a client of the Bank and it is and always has been independent of the Bank and not owned or controlled by it and, as I have already stated above, there was no such conspiracy. I also understand that the Defendants allege that the companies defined in the Re-amended Defence and Counterclaim (at paragraph 122) as the "Original Purchasers" and also those defined (at paragraph 129) as the "Subsequent Purchasers" were directed and controlled by the Bank and/or me personally and that the directing mind and will of these companies was the Bank and/or me personally. That is also not true. I did not direct or control these companies and nor did the Bank."

1152. The Claimants likewise denied that SKIF and Renord-Invest were the "same business" and/or owned by the Bank and/or Mr Savelyev. Mr Sklyarevsky's evidence was as follows:

> "Q. Do you accept that SKIF's business is entirely dependent on Bank of St Petersburg?
>
> A. This is absolutely something I don't accept.
>
> Q. And do you accept that SKIF and Renord are the same business?
>
> A. No, I do not accept that.
>
> Q. And that is the same business as Bank of St Petersburg.
>
> A. No, that is something I do not accept at all."

1153. In their Closing Submissions, the Claimants submitted further that "it is also irrelevant that Renord-Invest was, in many cases, the ultimate purchaser of OMG assets. As explained…below, the relevant auctions were public and open to all bidders. They were conducted in accordance with Russian law. That is the beginning and end of the matter – there is no ground for Mr Arkhangelsky to complain".

1154. I need to discuss four facets of the issue as to the control and ownership of Renord-Invest and SKIF: (a) the business and constitution of the Renord-Invest group and SKIF; (b) the relationship between the Renord Group and SKIF and the Bank; (c) the beneficial ownership of the Renord-Invest group and SKIF; and (d) the nature and scope of Mr Savelyev's association with the Bank.

Business and constitution of the Renord-Invest Group

1155. As to (a) in paragraph [1154] above, and the Renord-Invest Group's business operations, the Claimants contend that:

(1) Renord-Invest operates through a number of companies and SPVs. Mrs Yatvetsky, who was the witness best placed to know, told me that:

> "…I don't know all of them, but roughly, indicatively, the companies I know, perhaps there could be 50, perhaps 60".

(2) The shareholdings or ownership of these companies were often, indeed typically, held by Renord-Invest employees as nominees on behalf of Renord-Invest under arrangements which Mrs Yatvetsky told me were usually oral, and relied "on trust between the parties".

(3) Also, there was a long-standing practice for various employees of the Bank to act as nominal shareholders and/or directors in such companies. These included (most relevantly to the present case):

(a) Mr Nikolay Lokai ("Mr Lokai"), who held shares in Solo on behalf of the Bank and/or Mr Savelyev (or, as Mr Savelyev preferred to put it, "the Bank's managers") until March 2009 and who the Counterclaimants suggested was involved as a nominee in a variety of other relevant companies on behalf of Mr Savelyev or the Bank, almost all with a registered address at the Bank's Olymp office at 15 Ispolkomskaya Ul. in St Petersburg (the "Olymp Office"). Mr Lokai was until 2007 on the Investment Directorate of the Bank and he continued to play a role in the Bank (on its 'Revision Committee') until at least 2012. Mr Lokai, in my view, exemplifies one of Mr Savelyev's "loyal friends" and close associates, who acted for him as nominee.

(b) Similarly, Mr Maleev, who in addition to being a nominee 100% shareholder and Director-General of Barrister (see paragraph [470] above), acted as a nominee and/or director general in numerous companies beneficially owned by Mr Savelyev or members of his family, including Verniye Druzya; Ordynka 40 LLC ("Ordynka 40"), which appears to be a joint venture between Mr Savelyev or his daughter and Mr Serdyukov) and which owns the premises of the Bank's branch in Moscow; and Balststar LLC the 99% shareholder in Malaya Okhta, which manages the Bank's head office at 64 Malookhtinsky Prospekt, St Petersburg.

(c) Mr Andrey Romashov ("Mr Romashov", since June 2014 the corporate secretary of the Bank's supervisory board, and before then in the legal department), who also (though Mr Savelyev disclaimed any knowledge of any of this) was 100% nominal shareholder of one of the Original Purchasers, Asset Management Agency, as well as a shareholder (with Mr Lokai and Mr Belykh) in a company called Evolution-G which held a significant shareholding in the Bank.

(d) Mr Zelyenov, who owned shares in Solo after Mr Lokai until their acquisition by Renord-Invest, and whom Mrs Malysheva had known for many years.

(4) All recorded transfers of shares in Renord-Invest in the material period were for nominal consideration.

(5) There was no formal group structure. Mrs Yatvetsky explained this:

> "…on the whole I can admit that there is no link in the register between Renord and its subsidiaries. Once again, I repeat, the choice of an owner depends on many factors. It is totally unnecessary for Renord-Invest to be shown everywhere as the parent company because, as a matter of principle, that does not have any influence on anything."

(6) Mrs Yatvetsky accepted that for the most part at least, any decisions would be taken by Renord-Invest rather than the 'subsidiary' company.

(7) A number of individuals work at Renord-Invest who have previously worked at the Bank; for example, Mr Smirnov came from the Bank and brought many of his previous team with him. (Mrs Yatvetsky also worked for Renord-Invest, though she was not an employee of the Bank.)

1156. Amongst the 50 or 60 or so companies which according to Mrs Yatvetsky were in the Renord-Invest group, the following at least (in addition to Renord-Invest itself) were involved in relation to the matters in issue in this case:

(1) Renord-Invest: although not (as explained above) the legal parent company in the usual sense, the head company in the group at the material times was established in 2007 under the number 1077847617264, and it is that company which is referred to in this judgment as Renord-Invest. As a matter of detail, I should perhaps note that Mr Smirnov, in his witness statement, refers to that entity as "Renord 2007" in order to distinguish it from another entity of the same name (CJSC IC Renord-Invest) which Mr Smirnov established in 2014 under the number 1147847070953 after he had sold his shares in what he calls "Renord 2007" to a Mr Mikhail Matveev whom he describes as "a nominal representative of a major smelter". What Mr Smirnov calls "the successor company" (the second 'CJSC IC Renord-Invest') is, according to his witness statement, 100% beneficially owned by him, but the legal title is held by his brother Mr Andrea Smirnov. According to Mr Smirnov's witness statement, the original Renord-Invest was originally a "joint venture between [himself] and Mr Malyshev".

(2) The Original Purchasers: see paragraph [367(2)] above.

(3) The Subsequent Purchasers: see paragraph [476] above.

(4) Trak: which acquired a proportion of a 75% shareholding in Renord-Invest which was until March 2008 held by Mr Malyshev (Mrs Malysheva's husband): Mr Smirnov's witness statement states that Trak was and remains his "vehicle", as was and is Barrister.

(5) Barrister (with Trak, the 75% shareholder of record in Renord-Invest in 2008-2011) is said by the Claimants also to be owned by Mr Smirnov. They say that this also explains why in August 2013 Barrister transferred its shares to Mr Smirnov. Conversely, it is said by the Counterclaimants that in fact Mr Savelyev is the real or ultimate beneficial owner and that it is through Barrister that Mr Savelyev controlled the Renord-Invest group.

(6) Solo was nominally owned by Mr Lokai from 2002 to 2009, then by Mr Zelyenov (in 2009) and then by nominees of Renord-Invest, including an offshore Cyprus entity called Datadot Technology Limited. No substantial consideration was paid on any of the changes of registered holder, which appears to confirm that the holdings were in (changing) nominee names.

In closing, Mr Stroilov described Solo as "obviously one of the crucial companies in this case…crucial, among other things, to the understanding of what Renord is…".

There was a dispute as to Solo's true ownership and activities. Mr Savelyev's evidence was confused and contradictory. But in the end I took Mr Savelyev to accept, and in any event I find, that Solo was beneficially owned by the Bank or as Mr Savelyev preferred to put it (as I have previously explained) "the managers of the Bank", which I take in practice to be himself and his "loyal friends".

It was common ground that Solo was a 12% shareholder in the Bank in 2005 and 2006, but it is not thought or submitted that it had any shares thereafter.

Solo purchased the Scan land at Onega Terminal in October 2009 (at auction at the Russian Auction House), and later re-sold it to ROK No. 1 Prichaly. I address this further later. Mercury was owned initially by Mr Sklyarevsky (see paragraph [485] above), and he was its Director-General; but it is accepted that (to quote the Claimants' written closing) "he was prepared for Mercury to act on behalf of Renord-Invest at this time in relation to the purchase of the Onega Terminal Assets" and he sold it to Renord-Invest in late March 2011. Mercury was also on 29 November 2009 registered owner of Seleznyovo for Renord-Invest.

(7) Nefte-Oil was another Renord-Invest company, as acknowledged by the Claimants in their written Closing Submissions.

As stated above (see paragraph [633(7)] above), Nefte-Oil acquired Western Terminal assets both pledged (on 26 December 2011) and unpledged (on 23 December 2011) at two auctions held to satisfy the Morskoy Bank claim.

(8) Vektor-Invest was yet another Renord-Invest company. I have described its use and involvement in the series of transactions leading up to the acquisition in April 2012 of Western Terminal by Kontur at in what the Counterclaimants contend was a contrived and false auction process: see paragraph [634] above. According to the Claimants, Renord-Invest used Vektor-Invest for tax reasons, as a company with heavy losses on its balance sheet and with a view to using it to reduce tax payable on the onward sale of Western Terminal assets.

Hence, according to the Claimants, its acquisition (see paragraph [633(9)]) above of the Western Terminal assets from Nefte-Oil which Nefte-Oil had acquired subject to the Bank's pledge was in part driven by tax considerations, and presumably to reduce any equivalent of capital gain. That, of course, suggests that at least by 2012 a considerable profit or gain on onward sale was envisaged.

(9) Globus-Invest, another Renord-Invest company, was the losing bidder in the auction of the Western Terminal assets in September 2012 (see paragraph [633(13)] above).

(10) Kiperort made up the quorum in various of the auction sales, in each case the only other participant being Solo (see paragraphs [614], [615(2)], and [627(4)] and [(5)] above). It was always the under-study: it never bid.

1157. It seems to me to be clear that the Bank used the Renord companies, and in the context those specifically identified above, as and when it required them for such undertakings,

business operations or investments as appeared to it expedient at the time. It does not seem to me to be possible to characterise the business of the Renord Group more exactly: its diversity is itself confirmatory of the Bank's needs, and the facility with which the companies were made available to it to service them.

1158. Thus, for example, Kiperort was not only an understudy in the various auctions, but (according to Mrs Yatvetsky) it also:

> "played a role of…a collection agent based on a contract with the Bank, it purchased distressed assets and it worked for money…it got a fee…It purchased bad debts and sold them on…"

No documentation was made available to define their relationship in this context. That would seem to me to be extraordinary, unless the Bank had other means of control, as indeed I am persuaded that it did (see below).

1159. The fact that the Renord entities deployed by the Bank were not *de jure* subsidiaries no doubt was of utility: it enabled their operations to be kept off the Bank's balance sheet. But *de facto*, as it appears to me, certainly those expressly identified above were used, or made available for use, by the Bank in the context of these proceedings. In my judgment, their involvement in the auctions and transactions referred to above was not as independent third parties.

1160. The Counterclaimants relied also on the physical links between Renord-Invest, the Bank and the companies associated with Mr Lokai. Thus:

(1) Renord-Invest and most of its constituent companies had offices, or at least a legal address, at a building at 15 Ispolkomskaya Ul. in St Petersburg, known as the Olymp Office (see paragraph [1155(3)(a)] above).

(2) The Olymp Office is or was also the legal address of five companies associated with Mr Lokai (Olymp-Finance LLC, Evolution-G LLC, IFK BSPB LLC, Polus-Stroi LLC, and ADK LLC).

1161. There was and remains a dispute as to whether the Bank also operated from the Olymp Office. The Bank again demonstrated troubling inconsistency.

1162. Initially, the Claimants accepted that the Olymp office address is a large business centre and that Renord-Invest had an office there, but denied that the Bank had anything more than what Mr Smirnov in his witness statement described as a small "cash desk" providing cash drawing and cheque facilities within a Mercedes-Benz car dealership on a different floor: Mr Smirnov's evidence was that this was no longer in operation and in any event "had no connection at all with Renord-Invest". The Claimants refused to search for documents for disclosure.

1163. In response, Dr Arkhangelsky served his 17th witness statement, where he (a) exhibited documents (including several copied print-outs from St Petersburg online business directories) evidencing the existence of the Bank's "additional office Olymp" at that address, (b) recalled having meetings in the Olymp Office with Mr Belykh, who was

permanently based there, and (c) recalled meeting other Bank employees from the Bank's "International Financing Department", which he recollected being housed there.

1164. The Claimants then admitted the existence of the "additional office Olymp" until 2010, separate from the "cash desk", but stated that all its documents had been "archived and destroyed" – an assertion which later turned out to be incorrect.

1165. In the meantime, Dr Arkhangelsky made enquiries to confirm and expand on his recollection of the "International Financing Department"; and contacted a former Bank employee, Mr Konstantin Bobrov ("Mr Bobrov"). Mr Bobrov then informed the Bank about those enquiries. The Claimants then admitted, by letter, that the Olymp Office housed the Bank's 'Financial Markets Operations Directorate' but that this department, which dealt for example in currency exchange transactions, "did not deal directly with the Bank's clients such as OMG, but only with other parts of the Bank and with credit organisations" and so "would not have held any other documents relating to any…transactions or otherwise relating to any OMG company or Mr Arkhangelsky". It was also accepted in the same letter that the Bank had contacted Mr Bobrov, who did recollect meeting Dr Arkhangelsky at the offices on "an exclusively personal basis" but who believed "they were outside the FMOD's offices given their personal nature".

1166. As for Mr Belykh, he made a 2nd witness statement where he denied ever working at the Olymp Office. In paragraph 6 of his 2nd statement, Mr Belykh purports to list all four locations where he was based while working for the Bank, and exhibit documentary evidence. However, the period between August 2008 and August 2011 is not documented, though his evidence is that he continued to work in "Business Centre Moscow" until late 2009, then moved to Nevsky 174, and then back to Business Centre Moscow in 2010.

1167. That account contradicted the evidence given in paragraph 28 of *Belykh 1st* about the documents which Dr Arkhangelsky gave to Mr Belykh at a meeting in October or November 2008, said to be probably "lost in the course of one of the 5 office relocations since that time". The list in his second witness statement identifies only three office relocations after October-November 2008.

1168. The morning before his cross-examination, Mr Belykh made corrections to reduce the number of office relocations to which the loss of documents was attributed from 5 to 4, and to explain that while his documentary exhibit shows a relocation to Business Centre Moscow in August 2008, in fact it only took place in December 2008 or January 2009. But there is one relocation still missing, and a slot of time remains undocumented and unaccounted for. I consider that I should accept Mr Belykh's earlier evidence that he worked in 5 locations in preference to his later inconsistent versions. That supports Dr Arkhangelsky's consistent evidence that he did meet Mr Belykh there, which I accept.

1169. In the round, moreover, I consider that the balance of the evidence does compel the conclusion that the Olymp Office was a substantial office of the Bank's at the relevant time, large enough to house a staff of at least nine, with facilities for the processing of currency exchange transactions which are likely to be quite technology-heavy.

1170. The Bank's somewhat heavy-footed, and, I am afraid to say and find, false, efforts to deny this chime with their efforts to seek to distance the Bank from Renord-Invest; and both suggest unreliability and a consciousness of vulnerability in this regard. I accept the Claimants' point that it is not surprising that a bank based in St Petersburg rents office space in a business centre in St Petersburg, and that the mere fact that Renord-Invest have offices in a business centre where there was also a (limited) Bank presence is of no relevance, especially in circumstances where the OMG accounts were not managed there. It is the inconsistency and unreliability of the Bank's various iterations of the factual position which are of the greater interest.

1171. They are of such interest because they seem to me to chime with the conclusion that the ties between the Renord-Invest group and the Bank, or more accurately those with conduct of the Bank's affairs at the relevant time (Mr Savelyev's evidence being that "it's all the same"), and especially Mr Savelyev and Mrs Malysheva, were close, personal and pervasive, and extended well beyond the confines described by the Claimants.

Relationship between Renord Group, SKIF and the Bank

1172. As to (b) in paragraph [1154] above, a number of companies were associated with SKIF and/or Mr Sklyarevsky and Mr Smirnov, which in his evidence Mr Sklyarevsky described as "not quite owned by the Bank…"; but that description itself demonstrates the closeness of the links and association between Renord-Invest and Mr Smirnov, SKIF and Mr Sklyarevsky, and the Bank and Mr Savelyev.

1173. According to Mr Sklyarevsky's oral evidence, most of the companies concerned were set up in about 2006, early in SKIF's commercial life, working with the Bank and with the:

> "idea of developing businesses around the banking business, a managing company, a leasing company and insurance company and so on and so forth…"

1174. These companies included:

(1) Nevskaya Management Company, which appears subsequently to have been transferred to a Mr Lestovkin and Mr Smirnov, but Linair and Backbone LLC also appear to have held shares. Nevskaya Management Company had offices at the Olymp Office address (Ispolkomskaya 15). Its management consisted of former top managers of the AVK group.

(2) Khortitsa, one of the Subsequent Purchasers which was sold first to Nevskaya Management Company and then to Renord-Invest, and of which Mrs Yatvetsky became 100% record shareholder and Mr Lestovkin its Director-General. Khortitsa shared offices and telephone numbers with Nevskaya Management Company.

(3) Leasing Company St Petersburg, which was apparently established to service clients of the Bank who required leasing services; Mr Savelyev thought it had been owned by the Bank initially but then sold to Renord-Invest as Mrs Yatvetsky confirmed, though its registered address was and is at the Bank's main offices.

(4) Gaide Insurance, which was set up to provide insurance services for Bank customers and the Bank itself, is now in the Renord-Invest group.

(5) Intermit, which seems to have owned a leisure centre or spa in which SKIF had a controlling shareholding in 2007, which was subsequently transferred to Sevzapalians in the Renord-Invest Group for a nominal RUB 10,000 or so. By way of explanation of this, and more generally the relationship between SKIF and Renord-Invest as he saw it, Mr Sklyarevsky told me:

> "…SKIF was looking for projects in the market, trying to raise finance. I think the idea with respect to that leisure centre or the spa did not enjoy much support, we did not find any funding, and I think we transferred it to Renord after it [Renord] had been incorporated. Then in 2008, after it had been incorporated, Renord needed companies, it needed to have some assets available to them, which we sold or transferred to them if we no longer had any use for those assets…"

1175. Mr Stroilov put to Mr Sklyarevsky that these companies were "floating, so to speak, between SKIF and Renord". Mr Sklyarevsky did not object to this summary description, although it seemed from his evidence that most ultimately became Renord-Invest entities. Mr Sklyarevsky stated as follows:

> "Q. Now, you also indicated…that it was not unusual, as between you and Mr Smirnov, to use each other's companies for projects, to lend a company to one another, is that so?
>
> A. The companies for projects, yes. We sometimes would lend each other companies for projects, at least for 2007 to 2010, for that time period."

1176. This, and the pattern demonstrated above, seem to me to support the Counterclaimants' submission that it was a usual practice between the Bank, Renord-Invest and SKIF to 'borrow' companies from each other for various purposes. I consider that the likeliest explanation is that both Renord-Invest and its group (described by Mr Smirnov as essentially a multitude of ostensibly independent companies controlled by employees of Renord-Invest as nominees) and SKIF provided a store of SPVs at the Bank's disposal, often with offices at either Olymp (Ispolkomskaya 15) or 64A Malookhtinsky Prospekt, which were then controlled and beneficially owned through nominees according to the nature of the project and its participants.

1177. Further, the arrangements between the Bank, Renord-Invest and SKIF were almost invariably undocumented, and could be fluid, with shared interests through one company in particular projects and nominee shareholdings for "oversight" purposes. Mrs Yatvetsky's description of the position in relation to the 50% shareholding (held until 2011) of Mr Kalinin (Renord-Invest's financial director) in SKIF provides an example. The following extract from her cross-examination illustrates this:

> "Q. Now, isn't it the case that for a number of years, until I think 2011…Mr Kalinin, Renord's financial director, was 50% shareholder of SKIF?
>
> A. Yes, for a certain time Mr Kalinin did own a 50% stake in the SKIF company. That was in connection with one project, Nevskaya 58.
>
> Q. Now, it wasn't in connection with one project. If you own 50% in a company, you own 50% in all its projects; isn't that right?
>
> A. No, this is not correct. In that case Mr Kalinin owned a 50% stake only in connection with this project, Nevskaya 58.
>
> Q. And so for purposes of other projects, what happened? Did he hold his 50% as a nominee for someone else or what?
>
> A. Yes, as a nominal shareholder. As a kind of an oversight body. At that time Renord was only interested in that project, Nevskaya 58. And it is quite possible that between Mr Smirnov and Mr Sklyarevsky there were some agreements regarding that the oversight will be ensured only with respect to this project. The other projects, if there other projects under SKIF, Mr Sklyarevsky managed himself.
>
> Q. And Mr Kalinin held this 50% shareholding in SKIF on behalf of Renord, didn't he?
>
> A. Yes on behalf of Renord."

1178. Another exemplar of the close connection and cross-over between the Bank, SKIF and the Renord-Invest Group is provided by Linair, a company owned, or at least ostensibly owned, in equal shares by Mr Smirnov (also its Director-General from January 2008 onwards), Mrs Malysheva and Mrs Ivannikova (sometime deputy chair of the Bank) (see paragraph [468] above). Linair was a shareholder of Nevskaya Management Company. Mrs Yatvetsky insisted that through her work as a lawyer for Nevskaya Management Company, she knew "for sure that they held these shares personally in their own interests as individuals, this was their own separate business, which had nothing to do with the Bank"; but this did not, in my view, carry conviction. Mrs Yatvetsky's evidence was that Linair was "simply a participant in Nevskaya Management Company" and "most likely" had no business other than holding shares in that company. Both that and the identity of its shareholders and Director-General suggest to me strongly that Linair was another of the 'floating' companies, and probably subject to the ultimate control of the Bank.

Beneficial ownership of the Renord-Invest Group and SKIF

1179. As to (c) in paragraph [1154] above, the Counterclaimants allege that the Renord Group is "no more than a collective name for various companies which are beneficially owned by the Bank and/or by the Bank's top managers, through various nominees."

1180. The Counterclaimants contended that the control structure of the Renord-Invest Group and the almost invariable use of employees to hold shares as nominees without any documentary record of the nominal nature of their position, is evidence of both its true ownership and a desire to disguise it.

1181. It is their case that on detailed analysis of (i) the reliance of Renord-Invest on the Bank; (ii) the identity and links between persons concerned in companies within the Renord-Invest Group; (iii) the links between those persons and Mr Savelyev and/or Mrs Malysheva; (iv) the intricate web of companies through which Mr Savelyev partly owns and controls the Bank itself; and (v) the resort to allegedly collusive auction processes whereby to seek to justify transactions which were inexplicable except if Mr Savelyev and/or the Bank and their "loyal friends" and associates had interests served by the result, it is apparent that the true owner of the Renord-Invest Group is Mr Savelyev and/or the Bank and those of its senior managers who were "loyal friends" or associates.

1182. The Claimants, on the other hand, were consistent in their denials of this. On their behalf, Mr Savelyev and Mrs Yatvetsky, with more inconsistent support from Mr Sklyarevsky, maintained that Renord-Invest and the Bank were not part of the same business, and that "instead, Renord-Invest is an independent business owned by Mr Smirnov".

1183. Mr Savelyev insisted, "I've never controlled Renord". His evidence was follows:

> "Q. And Renord is part of your business, is it not?
>
> A. No, not at all, my Lord. That is a separate standalone entity that has no relation to the Bank. It operates independently in the market. It receives loans from the Bank in the same way that a common borrower would be. Mrs Malysheva and Mr Smirnov have a good, friendly relationship going back to their work together at AVK, as far as I recall, but that does not mean that the Bank owns Renord."

1184. Mr Smirnov's written statement said:

> "I understand that the Defendants have alleged that the Renord-Invest companies which were used in the repo transaction … were somehow owned or controlled by the Claimants. This is untrue. The Renord-Invest group has never been owned or controlled by the Bank. It is an independent successful business in its own rights, with its own governance and controls. Renord-Invest makes its own investment decisions, uninfluenced by the Bank."

1185. The way in which the Renord Group companies and SKIF were deployed, and the absence of any documentation detailing the relationship with the Claimants such as would be expected in the case of parties truly at arm's length, tell in favour of the Counterclaimants' contentions. In addition, however, there is also documentary evidence of some materiality in this regard.

The spreadsheet

1186. Mr Stroilov also relied especially on one item of documentary evidence as providing confirmation of, and further insight into, the beneficial ownership and control of various companies in the Renord-Invest Group: this is a heavily redacted spreadsheet exhibited by Ms Stalevskaya which is headed "Information on legal persons as of 02.07.2010". The corporate information table lists 132 companies, their shareholders, projects in which they are involved, and the companies' own shareholdings.

1187. Columns 5 and 6 are collectively headed "Founder" which (according to Mr Stroilov) in Russian business language actually means the shareholders. It is not disputed that column 5 identifies the nominal shareholder. Column 6 is titled "Belonging", and lists either the Bank, or "partner", or both. Column 7 specifies each shareholder's share in charter capital, and column 8 specifies the amount of charter capital in roubles. Column 9 appears to list each company's projects. The dispute is as to the real meaning of the sixth column, and the significance of the descriptions "Founder" and "Belonging".

1188. For the Claimants, Ms Stalevskaya told me that it was she who had created the spreadsheet when she was with the corporate finance department; she put forward the following explanation of the purpose behind it:

> "It is a list of corporates, of companies that received loans in order to be able to conduct investment projects, and they were monitored by the client monitoring directorate, therefore we compiled a list of borrowers and all the individuals and corporate affiliated with them, or associated with them."

She continued:

> "This table was compiled with a view to monitoring the links that might exist between corporates, the companies, and I did this at the request of my boss and I then handed it up to the credit risk department. So at some point in time, speaking from memory I think it was at the end of 2010, the credit risk department took over all the work with respect to all the borrowers, and then started compiling spreadsheets of all the individuals, all the corporates, all the persons that are associated with each other and so on and so forth; ie the information that the Central Bank would require to be provided."

1189. In their written Closing Submissions, and based on Ms Stalevskaya's evidence, the Claimants explained the position more elaborately as follows:

(1) The entry "Bank" in the sixth column did not mean that the relevant company 'belonged' to the Bank, but rather related to the Bank's financing of the company's various projects (as listed in the ninth column). As to the reference to "partner", if the particular project was funded by a third-party partner as well as the Bank, then 'partner' would be included.

(2) The evidence shows that the sixth column did not, and could not, mean that the Bank beneficially owned various companies when it was listed in the sixth column.

(a) For each company's entry, the sixth column has a number of rows corresponding to the number of the company's projects. "Bank" sometimes does, and sometimes does not, appear in each row. It sometimes appears in two or more separate rows, and at other times appears in one row only but not in other rows for the company entry. Where 'Bank' appears in a row, then that indicates the Bank funds the particular project listed in the row. Ms Stalevskaya explained the Bank wanted to monitor the projects which it was funding. If the sixth column was concerned with 'ownership' of the company by the Bank, then 'Bank' would not appear more than once for each company entry. In short, the use of 'Bank' is related to the particular project entry, not the company's ownership.

(b) The Counterclaimants' interpretation is inconsistent with, and would undermine, nearly all of their case on the Bank 'owning' various purchasers of shares or assets.

1190. The Counterclaimants rejected this explanation as tortuous and incredible: Mr Stroilov suggested that it was all "a rather clumsy lie".

1191. They submitted:

(1) There is no logical reason why what Ms Stalevskaya describes as identification of a lender could be put into the column "Founder" which (according to Mr Stroilov, and as Ms Stalevskaya accepted was the case "as a rule") is the accepted Russian euphemism for "shareholders", the column "Belonging", or against the names of nominal shareholders in column 7.

(2) Column 8 clearly specifies the charter capital of each company and not, as Ms Stalevskaya asserts, the amount of financing for projects. The figures correspond to the public record of the amount of charter capital of each company.

(3) The data in column 6, "Belonging", is logically linked with the data on shareholding in columns 5, 7 and 8; not with investment projects named in column 9.

1192. The Counterclaimants' case is that the spreadsheet clearly concerns ownership of the listed companies, not lending to them. It clearly identifies the Bank as the beneficial owner of Renord-Invest, SKIF, Khortitsa, Datadot Technology, Trak, Sevzapalians (via Havana Trading) and Aqua Ladoga. As Ms Stalevskaya stressed, the "Belonging" column is no longer filled starting from page 3. She said that was because all companies were the Bank's clients and therefore receive finance from the Bank. Mr Stroilov submitted that the truth probably is that the purpose of the table was to record

information on companies controlled by the Bank via nominees, and those which do not belong to the Bank would not be there. Where the "Belonging" column is filled, each company is either owned or co-owned by the Bank, signifying either the entity or, in accordance with Mr Savelyev's use of that term, Mr Savelyev and "top management".

1193. Obviously, the fact that Ms Stalevskaya was apparently its author lends additional support to her explanation of the document. But I have to say that the explanation is difficult to square with the language. Conversely, the Counterclaimants' submissions are consistent with the language; and it is not easy to see why the words "Founder" and "Belonging" were used if not to mean what they say; and with respect to Ms Stalevskaya, I do not think she offered any reason for selection of (on her case) such inappropriate descriptions.

1194. On balance, therefore, I consider that the Spreadsheet does offer some further support for my view as to the *modus operandi* of using a plethora of companies which were under the ultimate control of the Bank and/or Mr Savelyev and top managers selected by him, though I should perhaps make clear that I would have reached that view without it.

Conclusion as to paragraph [1154] above and the ultimate control and ownership of these various companies

1195. In my view, it is not necessary to decide whether Renord-Invest itself was owned or controlled by the Bank, Mr Savelyev or their associates or "loyal friends". But I do accept the Counterclaimants' description of the Renord Group as "a store of SPVs at the Bank's disposal". The question now is more limited: that is, whether in relation to the arrangements, their implementation, and the subsequent steps taken to obtain control of Dr Arkhangelsky's companies and sell their assets, the Bank and/or Mr Savelyev called the shots.

1196. It is clear to me, and I hold, that the Bank was able to and did, commandeer companies from the Renord Group for its own use, and in the case of those companies, during the period of its use of them, the Bank did own and control their businesses, usually through nominees as above described, and in particular, Mr Lokai, Mr Maleev, Mr Romashov and Mr Zelyenov.

1197. In that latter context, I appreciate that the Claimants throughout denied that any of those four acted as nominees, or had any relevant connection with the matters in issue; but I cannot accept that. The multiplicity of their connections, without any other substantive explanation, seems to me to demonstrate that they did, as the Counterclaimants contended, serve as nominees for the Bank and/or Mr Savelyev and his close associates and were accustomed to act subject to the instructions of the management of the Bank, and ultimately of Mr Savelyev, when their interests were concerned and they or he thought it appropriate to give them. That is not irrelevant, as the Claimants would have it. On the contrary, it is of interest and relevance because it seems to me to chime with the conclusion that the true relationships of importance in the context of the Bank, Renord Group and SKIF were personal rather than structural.

1198. The ties between the Renord-Invest Group, SKIF and the Bank, or more accurately those with conduct of the Bank's affairs at the relevant time (Mr Savelyev's evidence being that "it's all the same"), were close, personal and pervasive and extended well beyond the confines described by the Claimants, and operated to render substantially unimportant the appearance of individual corporate forms or structures.

SKIF and Mr Sklyarevsky

1199. SKIF, in my view, performed much the same function as the Renord Group, but more usually was involved itself (rather than providing SPVs).

1200. Again, I do not think it is necessary to determine its beneficial ownership. But, as in the case of the Renord Group companies 'lent' to the Bank, when it was engaged at the request or direction of the Bank in the Bank's business, the Bank controlled the relevant involvement and was entitled to the benefit of the activities through SKIF or the companies so lent (as the case might be). I consider that the suggestion that, in its relevant involvement with the Bank in the context of OMG, SKIF was an independent third party, is plainly incorrect.

1201. I also accept the Counterclaimants' case that there is ample evidence that SKIF's business is not only similar to, but also closely connected with, the Renord Group. In that regard, though (as I have said) it is not necessary to make a finding as to its beneficial ownership, it seems to me to be plain that Renord-Invest has at least a substantial interest in SKIF, and to my mind the probability is that so does the Bank, either through Renord-Invest or directly. Mr Sklyarevsky's evidence to the contrary was not persuasive. In particular:

(1) Contrary to Mr Sklyarevsky's original assertion that he "set up" SKIF together with Mr Ved in 2006, in fact SKIF was originally known as Vekselnaya Kompaniya ('Securities Company') St Petersburg, and then as BSPB-Finance. Its legal shareholders in that period were the Bank, Solo, and two individuals. Mr Sklyarevsky admitted in cross-examination:

> "I do not deny that that company, that was the Bank's company that first was held by the Bank."

(2) In 2006-2008, the shareholding of SKIF was divided 50/50 between Mr Sklyarevsky and Mr Ved. While Mr Sklyarevsky claims that Mr Ved had nothing to do with Renord-Invest, the public records show that in 2010, Mr Ved was the director-general and 100% legal shareholder of Moskovsky Dvor LLC ("Moskovsky Dvor"). Moskovsky Dvor is undoubtedly a Renord-Invest company: at the time, it was a 50% shareholder of Sevzapalians. The 100% shareholder of Moskovsky Dvor before Mr Ved was Razvitie Sankt-Peterburga LLC (a known Renord-Invest company). The 100% shareholder and director general of Moskovsky Dvor after Mr Ved was Ms Darya Filina, a Renord-Invest employee.

(3) Mr Sklyarevsky admitted that in 2008, Mr Ved's 50% shareholding in SKIF passed to Mr Kalinin, the financial director of Renord-Invest, who held the shares as a nominee of Renord-Invest.

1202. I accept the Counterclaimants' summary that:

> "The likeliest explanation is that Mr. Ved, Mr. Kalinin and Mr. Sklyarevsky owned the company as nominees for the same beneficiary. It may be that SKIF has a degree of autonomy within the system of the Bank's affiliated businesses, but its description as an independent business does not hold water."

1203. In the round, I have concluded that (a) Renord-Invest and its group companies, and (b) SKIF and companies associated with it as described above, were vehicles used by the Bank and/or Mr Savelyev, with the top managers and "loyal friends" he gathered around him, for the purposes of the repo transactions and the transactions which followed in respect of the pledged assets.

1204. I do not think that the evidence clearly demonstrates one way or the other whether the Bank and/or Mr Savelyev beneficially owned Renord-Invest and SKIF: and it may be that even the SPVs or other vehicles they provided were also engaged (or from time to time became so) in independent projects and businesses with which the Bank and/or Mr Savelyev were not directly concerned. But I do consider it clear in all the circumstances that the Bank and/or Mr Savelyev, themselves or through their "loyal friends", were in a position to control those vehicles in all matters relating to the repo arrangements and the transactions for the realisation of the OMG assets and businesses which followed.

1205. In all the circumstances, I am satisfied, and find, that for those purposes and in that context, the Renord-Invest and SKIF companies can be treated as all within a group controlled by the Bank and/or Mr Savelyev.

1206. That obviously raises a question as to the validity (and propriety) of the auction sales where the only participants were under common direction or control. I address this in paragraphs [1283] to [1299] below.

Mr Savelyev's interests (direct and indirect) in the Bank

1207. As to (d) in paragraph [1154] above, Mr Savelyev did not deny or much disguise, and I find, that he had a controlling interest in the Bank, though he did not hold directly all the shares conferring that control.

1208. These interests were held:

(1) In his own name and through his company called Strelets and another called Strelets-2; and

(2) Via SPVs, and especially (a) Solo, (b) System Technologies LLC ('Sistemnye Teknologii'), (c) Malvenst Investments Ltd ("Malvenst") and (d) Verniye Druzya (which it will be recalled means 'Loyal Friends'), which he ultimately controlled through his relatives and other top managers at the Bank acting as his nominees.

1209. In the 2007 Prospectus for the Bank, Mr Savelyev's personal holdings were stated to be some 30% (although it was stated that his aggregate "beneficial holdings" exceeded 35%) dropping to 28.18% by the time of the 2008 Prospectus. According to the 2013

Prospectus, and after investment by Western entities such as EBRD (5.4%) and JP Morgan Group (2.8%), this had dropped by September 2013 to some 21%.

1210. The proportionate shareholdings in the Bank that these SPVs had varied over time. However, it appeared from Mr Savelyev's oral evidence that:

(1) Solo's shareholding in 2005 to 2007 was about 13% (but it ceased to hold shares in 2009);

(2) System Technologies' holdings varied between about 13.5% and 20%;

(3) Malvenst's holdings fluctuated around 20%; and

(4) Ms Mironova told me that Verniye Druzya presently holds 29%.

1211. In addition, through a call option (governed by Russian law) with his sister-in-law, L.I Stepanova, Mr Savelyev was (and I think still is) entitled at any time to call for her 100% interest in Systems Technology which in 2008 held some 11.75%. Further, Ms Stepanova held 100% of the shares in Wellfame Pacific Limited (BVI) which in turn held 100% of the shares of Malvenst. Mr Savelyev confirmed in the course of his cross-examination that Ms Stepanova was his nominee.

1212. As to the other SPVs, it was Mr Savelyev's case that the shares were held collectively for himself but also other "top managers" of the Bank. Indeed, he regarded the shares so held as being so "on behalf of the Bank, for the Bank's interest". Thus, for example, when cross-examined as to Solo's holdings (and, in particular, the nature of Mr Lokai's interests) he said this:

> "Q. And when you say "the Bank", do you mean – well do you mean the managers of the Bank, or do you mean the Bank as a corporation?
>
> A. I mean the Bank's managers."

1213. In the 2008 Prospectus it was noted that:

> "The senior management of BSPB headed by Mr Savelyev controls in aggregate 55.76 *[sic]* of the voting share capital of BSPB. Approximately 20.75 per cent. of the ordinary shares of BSPB freely float on the MICEX and the RTS stock exchange.
>
> There is no formal shareholders' agreement between the key shareholders of BSPB. However, they all work together as a team (both through participation in the Bank's management and assisting it to meet its capital needs) towards BSPB's growth…
>
> …
>
> BSPB's management intends to purchase by the end of 2008 4.6 per cent. of the Bank's ordinary shares from the company

> controlled by BSPB's shareholder Mr D. Korzhev [*then a member of the Supervisory Board*]. As a result of this anticipated transaction the stake controlled by BSPB's management will exceed 60% of BSPB's ordinary shares…" *[My interpolation]*

1214. By 2013, it was noted in the 2013 Prospectus as regards 'management shares' that:

> "As at the date of this Prospectus, members of BSPB's management hold 49.60 per cent. of BSPB's ordinary shares.
>
> There is no formal shareholders' agreement between or among any of the principal shareholders of BSPB, but the shareholders who are the members of senior management of BSPB and other major shareholders work closely together in pursuing BSPB business objectives."

1215. This lack of any "formal" agreement, as to how the shares thus said to be held collectively by management could be allocated between them or otherwise dealt with or voted is notable; and to my mind Mr Savelyev's answer to questions as to the lack of any such arrangements, to the effect that he could no longer remember, were not compelling. In my view, the likelihood is that the shareholdings were spread about various entities to avoid having to disclose holdings of more than 20%.

1216. Mr Savelyev's control of what he plainly regarded as 'his' bank was central to his outlook; and it must be remembered that throughout the period in question until August 2014 he was the Bank's Chairman. I consider it clear on the balance of probabilities that all these shareholdings were subject to his ultimate control, at least *de facto*. That includes the shares held through Verniye Druzya, which is the largest block.

1217. Indeed, Verniye Druzya provides an insight into the arrangements that enabled centralised control of the Bank, concentrated in the hands of Mr Savelyev. Both Mr Savelyev and Ms Mironova (who was one of the 'top managers' with an interest in Verniye Druzya) emphasised repeatedly that Verniye Druzya was and is a separate legal entity, with its own board of directors and a group of managers whom Ms Mironova depicted as "professionals in various aspects of economics" who could be expected "to take well thought out decisions so as to vote at the Bank of St Petersburg's AGM on behalf of Verniye Druzya, which holds 29 per cent of Bank of St Petersburg".

1218. The shares in Verniye Druzya were originally held as to 100% by Soviet Direktorov; but they came to be divided between four Cyprus companies, whose beneficiaries appear to be:

(1) Mr Filimonenok, a top manager of the Bank

(2) Mr Reutov, a top manager of the Bank

(3) Ms Mironova, and

(4) (But according to Mr Savelyev, only from late 2015 onwards) Ms Oksana Savelyeva, Mr Savelyev's daughter. Mr Savelyev told me that he financed the acquisition of that shareholding by his daughter, but denied that she was a nominee.

1219. I think it more likely than not that these shares were held to the ultimate direction of Mr Savelyev. The suggestions that his daughter held the shares independently, and would not have followed her father's directions, struck me as formalistic and unlikely.

1220. Ms Mironova's evidence as to the basis on which she acquired her shares reinforces the supposition that all concerned became and remained as shareholders by favour of Mr Savelyev and were beholden to him. Ms Mironova was only required to pay €2 million for a 9.4% interest in the Bank in 2014 (implicitly valuing the entire Bank at between €20 and 25 million). She was, moreover, permitted to pay by way of a promissory note issued for a period of 15 years and thus given 15 years to pay, with a dividend entitlement in the meantime likely to exceed the purchase price. Ms Mironova could not suggest that these were commercial terms; she simply said "Nevertheless, those were the payment terms". All the signs are that all concerned were beholden to Mr Savelyev and likely to act according to his directions if that was what he required.

1221. Furthermore, the Director-General of Verniye Druzya (as also of Sovet Direktorov) was Mr Maleev, who the Counterclaimants submitted, and I accept, habitually managed companies on Mr Savelyev's behalf. Those described as "professionals" included both Mr Serdyukov, whose role and experience Ms Mironova accepted she knew nothing about, and Mr Savelyev's daughter, (Oksna Savelyeva) who was and is a medical doctor with no business experience, of whom Ms Mironova could say no more than that "it will be an opportunity for her to draw on the experience of other participants". The same sort of analysis and conclusions is likely to be justified in the case of Soviet Direktorov also.

1222. I accept that although Mr Stroilov did occasionally seek to introduce an air of mystery suggestive of non-disclosure, Mr Savelyev's personal shareholdings in the Bank and any option arrangements he has had in respect of the shareholdings of other individuals were recorded and in the public domain.

1223. But the extent of his personal indirect control was not so transparent, and obviously just as important. The fact is (as I find it) that Mr Savelyev, with his "loyal friends" operating at his direction, had built such a position and interests in the Bank that he was in a position as a practical matter to control its activities; and he regarded his and the Bank's commercial interests as, in practical terms, substantially synonymous.

Ownership/Control of ultimate purchasers of (a) Western Terminal and (b) Onega Terminal

1224. I turn to address the issue as to the ownership and control of the ultimate purchasers of the Western Terminal and Onega Terminal assets respectively.

1225. The entities in question are (a) Kontur and Baltic Fuel Company (the ultimate purchaser(s) of Western Terminal), and (b) ROK No. 1 Prichaly (the ultimate purchaser of Onega Terminal).

Kontur and Baltic Fuel

1226. There is no dispute that Kontur and Baltic Fuel Company are both companies in the Baltic Fuel Group. Kontur 'purchased' Western Terminal from Vektor-Invest for RUB 675,000,000 but (in a manner not disclosed) Baltic Fuel Company came to be treated as owner of the Western Terminal and it uses and operates Western Terminal for its bunkering business. The Baltic Fuel Company was established in 2008. The Baltic Fuel group of companies comprise a substantial business which is involved in the transport of oil products and bunkers.

1227. Kontur's Director-General was Mr Korneev, who was (and may still be) the record owner of some 23.5% of the shares in Kontur, and its other shareholders (as matter of record at any rate) are Nefte-Oil (23.5%) and an entity called 'Timus LLC' ("Timus") (51%).

1228. When Mr Stroilov put to Mrs Yatvetsky that Mr Smirnov seemed to be the ultimate beneficial owner of both Timus and Nefte-Oil, she thought that "quite possible", and she thought it quite possible also that Mr Korneev held his shares as nominee for Mr Smirnov.

1229. However, in his witness statement, Mr Smirnov described Nefte-Oil as an "investment vehicle" of Renord-Invest, and it seems more likely than not (and I find) that Timus was also. Similarly, the likelihood appears to me to be that Mr Korneev was a nominee of Renord-Invest also (as was his predecessor, Mr Chernobrovkin, who it will be recalled became deputy Director General of Western Terminal when Mr Vinarsky was removed (and see paragraphs [526] to [527] above)).

1230. I have concluded, therefore, and find, that Timus and Nefte-Oil, all being entities within the Renord-Invest Group, and Mr Korneev being a nominee of Renord-Invest in this context, held their shareholdings in Kontur for Renord-Invest, and that Kontur was and is a Renord-Invest company accordingly.

1231. The position as regards Baltic Fuel is both more important and more difficult. Important, because if it were established that Baltic Fuel is owned, directly or indirectly, by the Bank and/or Mr Savelyev and/or their associates, that would be a powerful piece of evidence of collusion. Further it might provide a basis for preventing enforcement of the indebtedness secured over Western Terminal assets without giving credit for value in Baltic Fuel. Difficult, because (as is also apparent from the inconclusive nature of the draft FTI Report) the Counterclaimants rather rested their case on establishing that Baltic Fuel was part of the Renord Group and the supposition that therefore it was owned by the Claimants; but that supposition is not necessarily justified. As elaborated below, the Counterclaimants though insistent, could provide so little by way of evidence to contradict the Claimants' contention that the Baltic Fuel Group is nothing to do with them and is ultimately owned by Mr Smirnov and Mr Korneev, even though Mr Smirnov's witness statement acknowledged that in 2008, 51% of its shares were held by Renord-Invest "both directly and indirectly" and "as of today, Renord-Invest holds a 74.5% share in Baltic Fuel".

1232. Mr Smirnov's evidence in his witness statement was as follows:

> "63. Kontur is a company engaged in the supply and shipping of petroleum products and is part of BTK (or 'Baltic Fuel') Group which owns bunkering vessels. Baltic Fuel is a company incorporated in Russia, which was established in 2008. Before mid-2013, Renord-Invest held a 51% share in Baltic Fuel, both directly and indirectly. As of today [28 August 2015 being the date of the witness statement] Renord-Invest holds a 74.5% share in Baltic Fuel….It is a substantial operation; it employs over 800 people and generates in the region of EUR 130,000,000 per annum.
>
> 64. I recall that I mentioned to Mr Korneev at the time, that the Western Terminal Assets were to be sold at auction. He may have known about it anyway because the market for buying port assets in St Petersburg is relatively small.
>
> 65. I understand that the Defendants have alleged that Kontur is part of the Renord-Invest group and is a company owned and controlled by persons connected with the Claimants. They also allege that Baltic Fuel is 'closely affiliated' to the Bank. Baltic Fuel and Kontur are not owned or controlled by the Claimants. As I have explained, Baltic Fuel is a substantial independent company in its own right. It is correct that I own Baltic Fuel through its major shareholder, Renord-Invest and Renord-Invest has a good relationship with the Bank, but Baltic Fuel is not owned or controlled by the Claimants and is an independent business in its own right.
>
> 66. I understand that the Defendants have made various allegations about the shareholdings in Kontur. I recall that Mrs Malysheva's son only held shares for a month in 2011; he was not otherwise involved in Baltic Fuel…"

1233. Mrs Yatvetsky's evidence was as follows:

> "Q. do you agree that Kontur LLC is one of the Baltic Fuel Company entities, one of the entities in the Baltic Fuel Group?
>
> A. Kontur LLC is part of the BTC companies, yes.
>
> Q. And obviously that is controlled by Renord, isn't it?
>
> A. No. Baltic Fuel Company is a personal private investment within Mr Smirnov's personal investment portfolio.
>
> Q. So you are saying that it has nothing to do with Renord as such; it's just another company of Mr Smirnov?
>
> A. Correct. Mr Smirnov owns a shareholding in the fuel company and the fuel company only reports to Mr Smirnov.

> Renord does not analyse this company, does not look at this company…
>
> Q. Right…
>
> A. …or this company's business."

1234. Mr Savelyev's evidence (in his second witness statement for trial) was that:

> "Save for the fact that Baltic Fuel Company is a customer of the Bank, I have no other links or interest in [it]".

It is relevant to note that he was not challenged on that evidence in cross-examination.

1235. Noting that Mr Smirnov in his witness statement never claimed more than to "co-own Baltic Fuel through its major shareholder Renord-Invest" I do not accept Mrs Yatvetsky's evidence if and insofar as it might be taken to suggest that Baltic Fuel was not and is not a Renord-Invest company: I find that it was and is. But, as previously indicated, that does not conclude the necessary enquiry.

1236. The fact that it is clear that Renord-Invest held a controlling shareholding in Baltic Fuel, and I have previously determined that Renord-Invest and SKIF were vehicles used and controlled by the Bank and/or Mr Savelyev, with his top managers, for all purposes in connection with the repo and the transactions in respect of the OMG pledged assets and businesses which followed (see paragraphs [1195] to [1205] above), does not necessarily answer the difficult question, raised by the evidence, as to ultimate beneficial ownership of Baltic Fuel.

1237. In other words, it does not follow from their control of Renord-Invest and SKIF in all matters relating to the pledged assets that therefore Mr Savelyev and/or the Bank beneficially owned and/or controlled Baltic Fuel (which had an independent business as above described). As recited above, the available witness evidence is to the contrary.

1238. Of course, Mr Smirnov was not available for cross-examination and could not be questioned as to his evidence that, though Renord-Invest was its controlling shareholder, he was the person who ultimately owned and controlled Baltic Fuel. I have to take into account, in that regard, that I have not accepted his evidence as to the independence of the Renord-Invest Group and I should treat his untested written evidence with circumspection. Further, Mr Stroilov sought to make much of the "rather intriguing discrepancy between the evidence of Mr Smirnov and Mrs Yatvetsky" as regards the ownership of Baltic Fuel, since she appeared to deny any link with Renord-Invest. But the differences were not, to my mind, significant in reality: her punch-line was the same, that Baltic Fuel was Mr Smirnov's company.

1239. I have taken into account indirect evidence relied on by the Counterclaimants such as the appointment of Gen. Piotrovsky, plainly an ally of Mr Savelyev, as economic security adviser to the Director-General of Baltic Fuel.

1240. I have also taken into account that there is evidence to support the Counterclaimants' contention that it was from the outset of the time of default the intention of Mr Savelyev

and/or the Bank was to use Western Terminal in the Baltic Fuel Company business: there is logic in their case that this was the reason that a Baltic Fuel Manager, Mr Chernobrovkin, was appointed as deputy director-general of Western Terminal when the Bank obtained control pursuant to the repo arrangements (see paragraphs [526] to [527] above).

1241. However, in my view, the hard evidence to demonstrate ultimate control and ownership of Baltic Fuel (if not Renord-Invest) remains meagre. It is not such, in my judgment, as to displace the possibility that, consistently with my view that Renord-Invest and SKIF were corporate vehicles available for use for the control and fulfilment of various potentially independent projects, Renord-Invest and/or Kontur were used by Mr Smirnov (rather than the Bank and/or Mr Savelyev) as vehicles for the purposes of an oil business which included Baltic Fuel, in much the same way as I have found the Bank and/or Mr Savelyev used Renord-Invest in connection with the pledge realisations and transactions. That would accord with Mr Smirnov's evidence in his witness statement to the effect that (with Mr Korneev) he co-owns Baltic Fuel through Renord-Invest, but Baltic Fuel is not owned or controlled by the Claimants; and, indeed, with the evidence of Mrs Yatvetsky and Mr Savelyev.

1242. In the end, therefore, though not without equivocation, I have concluded that such circumstantial evidence as was provided by the Counterclaimants is insufficient to warrant a finding, contrary to the evidence of Mr Savelyev (which, as I have previously noted, was not challenged), of Mr Smirnov and of Mrs Yatvetsky, and notwithstanding the equivocation of FTI, that the Bank and/or Mr Savelyev owned and/or controlled Baltic Fuel.

ROK No. 1 Prichaly and Onega Terminal

1243. I turn to the Counterclaimants' case that the ultimate purchaser of the Onega Terminal assets and business, ROK No. 1 Prichaly, was also "connected to the Claimants and/or to the Conspiracy" (as pleaded by the Counterclaimants in the final amendment to their case) before next turning to discuss whether the complex series of "Onega Transfers" were "cosy deals" orchestrated in accordance with a malign scheme or conspiracy.

1244. The questions are inter-related since the Counterclaimants rely on the cosiness of the deals in support of what they contend is the irresistible inference that ROK No. 1 Prichaly was in the Claimants' ownership or control, and then on that ownership and control as explaining the motivation for that cosiness. The circularity is obvious.

1245. Against this, the Claimants insist that ROK No. 1 Prichaly was and is an independent third party, and that there is no evidential basis whatever for the Counterclaimants' contention that the sale to it of the Onega Terminal assets was fraudulent, 'cosy', or in some way part of a conspiracy to which it was party.

1246. The actual evidence as to the ownership and control of ROK No. 1 Prichaly is (leaving aside any inference from the allegedly 'cosy' deal) is very slim: indeed, I do not think there is any of any substance. Further, (again leaving the 'inference' case aside) the evidence of any substantial connection between the Claimants and ROK No. 1 Prichaly,

let alone such a connection as might of itself suggest conspiracy, was also vanishingly weak.

1247. This was put to Dr Arkhangelsky in cross-examination. Even by his own standards his replies were blustering:

> "Q. …I just suggest to you, Dr Arkhangelsky, that you have no basis for saying that ROK Prichaly, a business associated with Sea Fishing Port [SFP], that that is in any way involved with any conspiracy here?
>
> A. It's involved, and so far as I understood from cross-examination of Mrs Volodina she confirmed that to Mr Stroilov; that she knows very well the director and they have a long-lasting co-operation - or owner.
>
> Q. I will check, but I don't think, Dr Arkhangelsky, it was put to the witness in those terms.
>
> A. Mr Stroilov was referring to Mr Soshnik, who is the owner and the shareholder and the director of all these companies discussed, and she confirmed that they are having long-lasting co-operation with him."

1248. Mr Stroilov accepted in his closing submissions that all Ms Volodina had said was that she had "good relations" with Mr Soshnik, who she identified as "general director of fishing processing plant number 1 and he received loans" though she would "rather not" describe him as a friend. Mr Stroilov could not take this further than to suggest that she "seemed rather uncomfortable with that question." That is no demonstration of ownership or control, or of conspiracy.

1249. Apart from the 'inference' case as described above, I see no basis for the claim that ROK No 1 Prichaly was owned or controlled by Renord-Invest, SKIF, the Bank or Mr Smirnov. There is no evidence that it was part of either the Renord Group or the SKIF stable.

1250. Thus, the Counterclaimants' allegation that ROK No. 1 Prichaly was and is somehow connected to the Claimants and/or their Conspiracy must depend on the inference relied on and/or proof of some arrangement between it and them, and not on coincidence of ownership or control. To establish such an inference, the Counterclaimants must show, not only the malign scheme that they assert, but also ROK No. 1 Prichaly's knowing connivance, if not active participation, in it.

1251. That leads me on to consider in greater detail the sequence of auction sales preceding the ultimate acquisition by ROK No. 1 Prichaly of Onega Terminal and by Kontur/Baltic Fuel of Western Terminal, which the Counterclaimants contend lacked any real substance and constitute the most compelling evidence of the conspiracies they allege.

Long series of transactions

1252. I have outlined previously the sequence of auction sales and other transactions relating to the Onega and Western Terminal assets, and how it was that those assets, both pledged and unpledged, and when brought together comprising the entire respective businesses of Onega and Western Terminal, finally ended up in the hands of ROK No. 1 Prichaly and Baltic Fuel Company respectively. My focus now is on the auctions themselves, their advertisement, conduct, and results; and then on the subsequent sales.

1253. That a properly advertised and fairly-conducted auction is a commonly accepted, well tried and *prima facie* satisfactory way of testing and achieving a fair (even if not the highest potential) value is not contentious.

1254. However, the Counterclaimants refer to what occurred in this case as being "purported public auctions", which in truth were not conducted in accordance with Russian law but rather as "fraudulent insider dealings, and/or fraudulently at a gross undervalue."

1255. Thus, the Counterclaimants allege that the explanation for the fact that in not a single one of the numerous auctions did any third party participate as a bidder, is that the auctions were in name only ("purported", rather than real). At the heart of the Counterclaim are the allegations that:

(1) In each case the auction process was contrived, fundamentally flawed and intentionally perverted, and each of the auctions was nothing more than a mechanism for the laundering of assets, in auction sales of carefully selected packages designed to reduce their attractiveness and value, between a seller and a buyer under common control, with another controlled company literally making up the numbers;

(2) Once laundered at auction, the assets were then re-packaged, and the assets respectively comprising the businesses of Onega Terminal and Western Terminal were then transferred on, with apparently clean title and in accordance with a pre-agreed plan, to ultimate purchasers (ROK No. 1 Prichaly in the case of Onega and Baltic Fuel Company in the case of Western Terminal).

1256. Thus, the Counterclaimants' case is that there was a conspiracy, and that the long sequence of auction sales was pre-determined: that the reality is that the only participants were Renord-Invest companies, who were sole actors in false auctions which were conduits for laundered assets; and those in control of the Renord-Invest companies, or their "loyal friends" or associates, were then the ultimate recipients of, or the value in, the business enterprises which the assets enabled and comprised.

1257. The Counterclaimants were constrained to accept that they could not establish an express agreement to engage in and effect a conspiracy, nor when and how each of the participants came to be and was involved: rather, they submitted, conspiracy was to be inferred from the "overt acts" constituting a departure from a proper auction process, the consistency of the actual results of the auctions, and the ultimate destination of the assets and businesses concerned.

1258. Put another way, the Counterclaimants' case is that the "overt acts" constituting departures from the norm demonstrate the method; the ends or results reveal the motive; and that is sufficient proof of conspiracy.

1259. Mr Stroilov sought to rely in this regard on *Kuwait Oil Tanker Company SAK v Al Bader & Ors* [unreported, Court of Appeal, 18 May 2000]. He cited especially the following statement in the judgment of the Court of Appeal (at paras. 111 to 112):

> "111.…it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they do deliberately combine, albeit tacitly, to achieve a common end. Although civil and criminal conspiracies have important differences, we agree with the judge that the following passage from the judgment of the Court of Appeal Criminal Division delivered by O'Connor LJ in R v Siracusa (1990) 90 Cr. App. R. 340 at 349 is of assistance in this context:
>
> "Secondly, the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity"
>
> …
>
> 112. In most cases it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination. It will be the rare case in which there will be evidence of the agreement itself…"

1260. The Claimants reject the allegations as fanciful. They contend that each auction was a necessary way of completing the enforcement process, and in every case was conducted by duly authorised and independent auction organisers in accordance with the applicable Russian law.

1261. The Claimants deny any dishonest plan or collusion. They insist that the auctions were honestly conceived, sequenced properly, advertised in accordance with the rules and

conducted entirely properly. They deny any attempt to reduce the value of the assets to be sold or to structure the auctions to any like effect.

1262. They ascribe the results of the auctions to the difficult economic circumstances and, thanks to the diversion by Dr Arkhangelsky of the proceeds of the loans from the Bank, the dismal state of the assets to be auctioned at the time that the auctions took place. They submit that there is simply no evidence to the contrary; and there is no basis or proper ground for an inference of collusion and dishonesty where the facts are consistent with a plausible innocent explanation.

1263. The Claimants point out that no breach of the rules has been demonstrated and there is no record or other evidence of any potential bidder ever having complained of any infringement. They reject as entirely unsubstantiated the suggestion that the bailiffs and/or auction organisers were co-conspirators. They also make the point that none of the bailiffs and/or auction organisers was a party or a witness, and that in their absence a case that they were dishonest or participated knowingly in a dishonest scheme could not be and was not put.

The issues to be addressed to adjudicate between the competing positions

1264. The arresting characteristics of all the auctions certainly invite sceptical inquiry, especially as to why it was that third-party bidders were never interested or how it was that they were deterred. That in turn invites scrutiny of the way the auctions were advertised and conducted, and who was responsible for that conduct.

1265. To determine whether the auctions were abnormally conducted with features and results having no plausible innocent explanation such as to support an inference of conspiracy, I turn to address the following sub-issues:

(1) The duties of a pledgee under the relevant (being Russian) law;

(2) The Russian law and practice governing auction sales, and remedies for breach;

(3) Whether the sales complied with that law and practice, and if not, why not;

(4) The choice of auction sale and the way in which the Western Terminal and Onega Terminal assets were packaged for auction sale;

(5) Whether the steps whereby the Western Terminal and Scan assets, pledged and unpledged, were parcelled out, or the way in which the auctions were advertised, explains the absence of bidders other than Renord-Invest companies;

(6) The alleged links between Mr Savelyev and top management of the Bank, the participants in the auction sales, and the ultimate recipients of the relevant Terminals and assets; and the significance of the undated ‘Stage Plan’; and

(7) The alleged disparity between (a) the values achieved for the assets and applied in diminution of the outstanding loans, and (b) the real value of the assets sold in the hands of the ultimate recipients.

Russian law as to duties of pledgees and processes of realisation

1266. It was common ground that the law applicable is plainly Russian law.

1267. Under Russian law, a pledgee must realise its security in the manner specified in the pledge agreement, subject to any mandatory terms of law. Articles 349 and 350 RCC set out provisions concerning levying execution against and realisation of pledged property.

1268. In broad terms, the experts were agreed that, under that law, a pledgee may enforce its security in one of two ways:

(1) Enforcement through the court, in which case a court bailiff will arrange for the auction of the pledged asset; or

(2) Enforcement out of court, pursuant to an agreement between pledgee and pledgor, in which case a licensed independent auction house conducts the auction.

1269. Mr Turetsky explained that a distinction is drawn between the two procedures. Although realisation of the security by way of 'auction' is a shorthand for both procedures, it is perhaps more accurate to refer to (i) a 'public sale' conducted by the state bailiff service when enforcement is through court proceedings, and (ii) an 'auction' conducted by a specialist commercial entity when enforcement is through an out-of-court procedure.

1270. Enforcement through court proceedings is the default option; out of court enforcement requires agreement between pledgor and pledgee after the grounds for enforcement have arisen.

1271. Whereas Professor Guriev's evidence had been that the parties would "try to agree to sell the assets at a reputable auction house", Dr Arkhangelsky was quite clear as to his perception that it was never the practice for borrowers to consent to such a sale; rather, he said, they would seek to obstruct it:

> "Q. Dr Arkhangelsky, that timescale you are describing proceeds on the basis that the borrower is not consenting to the Bank's realisation of the security, isn't it?
>
> A. I don't know any borrower who would be consenting unless they have good reasons, consenting to the reservation of the assets.
>
> Q. Why not?
>
> A. Because. It's a standard market practice. At least in Russia.
>
> Q. Well, a standard market practice, what, when you haven't paid your debts, not to agree that the lender can enforce the security you have agreed to provide for the debt; is that your evidence?

> A. It's a question for the court to decide, and the court has a practice and the court has a formal procedure, and each procedure takes time. So any argumentation could only be settled in the court and agreed in the court…"

1272. The Claimants submitted, and I accept, that it is obvious that Dr Arkhangelsky himself would never have consented to the Bank realising its security out of court; but, of course, once the Bank had secured control of the relevant entities (as it did) that control could secure consent: and, in the event, the sales of the Onega and Sestroretsk assets were through sales through a private auction house, Russian Auction House (see further below).

1273. In this case, the public auction sales of assets at Western Terminal were conducted by the court bailiff; whereas the auction sales of Scan assets, including the Scan land at Onega Terminal and the Scan land at Sestroretsk, were organised and conducted by Russian Auction House in accordance with an agreement with the Bank (under an 'Extrajudicial Foreclosure Agreement').

1274. The experts (Professor Guriev and Mr Turetsky) were agreed that if the right of the pledgee had lawfully arisen, a sale through public auction in compliance with the relevant legal requirements would be valid and effective, whether more properly called a public sale or an auction, and whether by the court bailiff service or through the (licensed) auction house.

1275. In any event, the mechanics of the actual sale itself is in the hands of either the court bailiff or the auction house, and not the pledgee. As Ms Kosova explained by reference to the Bank's asserted role in this case:

> "The actual sale, certain entities are dealing with it, and the Bank has the proceedings with regard to enforcement of debt, and the court proceedings with regard to obtaining court judgment, then the Bank gets the enforcement letters and produces them to the court bailiff service, and the further actions and steps are carried out by the court bailiffs service, and neither myself nor my employees organised the auction and this sale."

1276. Thus, while the pledgee (here, the Bank) could oversee the enforcement procedures, Ms Kosova explained that it (rightly) could not interfere with the actions of the court bailiff:

> "…that control, the overseeing function, can be done by us in our capacity of lawyers based on the information we receive from the federal bailiffs service, and the Bank cannot impact the actions of the federal bailiffs in any way, but they act within the law in any way, and they act within the procedures that they have."

Auctions: legal framework and practice in Russia

1277. The relevant rules governing auctions under the relevant Russian law are found in Articles 89 to 93 of the Law on Enforcement Proceedings (Federal Law No. 229-FZ), as supplemented in the case of real property by Articles 56 to 58 of the Law of Mortgages (Federal Law No. 102-FZ).

1278. The additional requirements of the latter, which reflect the approach of Russian law in requiring more exacting requirements in relation to real property, deal with such matters as the place of the auction (which must be the populated area in or closest to which such property is located) and its advertisement.

1279. Articles 89 to 93 of the Law on Enforcement Procedure provide (as explained by Professor Maggs):

> "…that the property to be auctioned must be appraised as a basis for setting the starting price, with the appraisal by court order in the case of a judicial auction or by a licensed appraiser in case of non-judicial auction. This appraisal sets the starting prices for the auction. The rules provide that an auction will fail if there are not at least two registered bidders and not at least one bid at or above the starting price."

1280. There must be a notice period of 30 days before the sale, and any bidder must provide a deposit of 5% of the initial selling price, which is returned to unsuccessful bidders.

1281. Dr Gladyshev agreed that as a matter of Russian law the specified notice period is 30 days, but that, in his opinion, this is the minimum and is subject to a general requirement of not abusing rights set out in Article 10 of the Civil Code, so that in the case of a complex industrial asset longer would be required for due diligence and the like. Professor Maggs considered that 30 days is sufficient and there is no case holding that the period should be longer.

1282. I do not think it necessary to decide between the two views: it was not suggested that short notice was given, nor that the failure to give more than the prescribed minimum period would, of itself, ground a claim. Something more would have to be established: for example, that it was perceived and intended that a longer period was required for the advertisement to have any real utility, and a decision taken for that reason not to give more notice. The inadequacy of the minimum period would have specifically to be established by reference to the particular factual circumstances: a general supposition that the more notice, the more prospect of encouraging interest (and *vice versa*) would not, as it seems to me, suffice. (I return in paragraph [1315] *et seq* below to the claim that in this case, there was indeed a dishonest conspiracy to ensure no third parties attended.)

1283. As to the essential qualities of a valid auction, it is not disputed that to qualify and establish a quorum for a legal auction there must be at least two registered participants. However, there is an issue between the experts concerning the extent to which, where

there are only two registered participants, they must be "genuine bidders" and independent of each other.

1284. Dr Gladyshev's evidence was that:

> "There has to be more than one genuine bidder at the auction. If there is only one bidder, the auction is considered as not having taken place – Article 447(5).
>
> If compliance with the rules is a mere pretence of form, and a competing bidder is a mere puppet, with no genuine interest of its own in bidding for the asset, it would be an abuse of right."

1285. Professor Maggs, however, opined that there is no requirement that individuals or legal entities bidding in an auction are independent of one another or of a third party, but instead "auction bidders are free to act in their own best interests and are not required to be independent". In particular, Professor Maggs noted that whereas in some areas of Russian law there are formal rules restricting 'affiliated persons' (in the context of anti-monopoly laws), there is no such rule affecting auction bidders. He referred to a decision of the High Arbitrazh court in *NIK-TRAST* in which it was held that participants in an auction may be affiliated, and that the law on protection of competition:

> "….do[es] not contain a prohibition upon participation in an open auction of affiliated persons, and that in and of itself, the participation in an open auction of such persons may not be considered an action of the organizers of the auction that leads or might lead to prevention, limitation, or elimination of competition."

1286. There seemed to me to be some confusion in both experts' approach between (a) whether two affiliated parties can constitute a quorum, and (b) whether, if their affiliation is such that there is neither prospect nor intention of competitive bidding, the purported event is not in truth an 'auction'. However, it may not matter: the *NIK-TRAST* case seems to me to confirm that whilst the affiliation of two parties may not itself provide grounds to invalidate an auction, it could do so if the relationship is such as in fact to prevent, limit or eliminate competition. I acknowledge Counsel for the Claimants' complaint that Professor Maggs's view was not expressly challenged in cross-examination: but the difference between the experts in this regard was clear and crystallised, and in any event I should not adopt an opinion which I consider wrong.

1287. In my view, the words 'in and of itself' in the extract from the case Professor Maggs cited are indicative that the question is whether, on the one hand, the bid process is real and competitive (which the participation of an associated person would not prevent, especially where there are other bidders) or, on the other hand, fictional and collusive (as where all bidders are associated and there is no genuine competition). An idle or rehearsed chorus is not, in reality, an auction.

1288. I also note in this context that in the Claimants' Closing Submissions it is accepted that "the key issue is not the relationship between the bidders, but whether the auction process is somehow limited, or restricts genuine attempts to bid." Professor Maggs's formalistic view would confound this approach.

1289. However, the problem for the Counterclaimants is that the substantive validity of an auction is, under the applicable Russian law, the responsibility of the auction organisers; and any challenge to it must be brought against them within one year. An inquorate or collusive auction is not invalid until declared so by the court further to action brought within the stipulated period.

1290. Neither expert specifically addressed the question of whether the auction organisers' certificate as to the validity of the auction would be vitiated and invalidated if the only bidders were in collusion in fact, but the auction organisers were not aware or on notice of that, or what the other consequences might be in such circumstances. But if, as I take it (see below), the auction would cease to be capable of being invalidated by action if brought more than one year after the auction (see paragraph [1293] below), the matter may in any event be academic in this case.

1291. The court bailiff and auctioneer have a duty to comply strictly with the relevant rules; and recourse is against the bailiff and auctioneer if there is any default. As Professor Maggs explained (and Dr Gladyshev substantially agreed):

> "The duty of organizers of an auction is to comply strictly with the requirements of all laws governing auctions. In the case of auction of security, these laws are designed to provide a balance between the interests of creditors in speedy liquidation of property for payment of debts and the interests of debtors in obtaining maximum prices. The auction organizations are not allowed to deviate from the rules to favor *[sic]* either creditors or debtors. Further, liability would be that not of the pledgee of the security, but of the auction organization."

1292. The experts agreed also that only if the relevant auction rules have been broken is there a potential remedy for the pledgor, and in those circumstances, if there has been a violation of the auction rules, liability would fall upon the court bailiffs or auction house which conducted the auction rather than upon the pledgee.

1293. The normal remedy for the pledgor would be a declaration that the auction was invalid, pursuant to Article 449. An inquorate or collusive auction is not invalid until declared so by the court further to action brought within the stipulated period. There is, however, a limitation period for such a remedy of one year from the date of the transaction, pursuant to Article 187(2) of the RCC. That time bar does not appear to me to be unreasonable, having regard to the need to promote security of bargain. That period has elapsed long since. I questioned Dr Gladyshev as to whether, after the expiry of the year, it was any longer possible to set aside the auction and the sales which resulted; he confirmed that it was not.

1294. There was and remains a disagreement between the experts as to the availability or not of other remedies (apart from under Article 449) in the event of one party being dissatisfied with, and able on the evidence to demonstrate, some flaw in the auction process and the price achieved for the assets sold.

1295. Professor Maggs's evidence is that this specific provision (in Article 449) excludes or trumps reliance on the more general tort remedy in Article 1064, the reasoning being that the more general provision would otherwise undermine the specific provision and, particularly, the limitation period stipulated (since the three year period stipulated in respect of Article 1064 would conflict with the one-year period stipulated by Article 181).

1296. Dr Gladyshev's view is that "security must be realized in good faith" and that if an auction organiser and pledgee are "complicit in abuse of right and/or other wrongdoing, they are liable jointly and severally under Article 1080". He referred to various cases on "pretence of corporate form", including what he called the *Keystone* case, where a construction company, Keystone, defaulted on a loan to Sberbank and in order to avoid recovery, transferred its assets to a creature called K-Stone owned by the same shareholders. He noted that the court had refused to respect the corporate form as being an "abuse of right" and set aside the transfer. That seems to me to be analogous to English law theories of 'piercing the corporate veil': the court will look through corporate form in limited circumstances.

1297. However, I am not convinced that the application of the theory does anything more than render the auction invalid under the terms of the laws relating to auctions. Dr Gladyshev did not identify any case where a claim for 'abuse of right' had succeeded in such a context. The logical consequence of disregarding the corporate form is that no independent legal existence is attributed to the creature entity; but that does not necessarily mean that thereby some separate wrong is committed.

1298. Thus, although I would not accept Professor Maggs's broad proposition that Article 449 is the only recourse, excluding all others, I do not accept Dr Gladyshev's theory that the use of affiliated companies to establish an apparently quorate auction of itself gives an additional claim (under Article 1064). Again (and see paragraph [1282] above), something more must be established.

1299. As to what will suffice, I accept the point that the rules that the auction organisers are exclusively responsible for the conduct of the auction, and that the price is fixed by the court or by a licensed appraiser, narrow the scope for a claim against the pledgee, and dictate that room for the deployment of Article 1064 may be limited, in effect, to cases of demonstrated dishonesty or participation in dishonesty on the part of those who have undermined the auction process.

1300. As it seemed to me, both experts accepted that if actual dishonesty was established then the dishonesty would sustain a claim under Article 1064 which was not knocked out by Article 449. It appeared to me that Dr Gladyshev also accepted that bad faith in the valuation or bidding process would have to be shown; and he agreed under cross-examination that it would not suffice to show only that the price achieved was an undervalue:

> "…undervalue itself is not a factor. Undervalue in conjunction with intent to harm me and enrich you, this is the actionable offence."

(I assume by "harm me" Dr Gladyshev meant, applying that to this case, "harm the Counterclaimants" (whether intentionally or by reckless indifference to the inevitably damaging effect upon them) and by "enrich you" I assume he meant "enrich the Bank or those who dishonestly contrived the undervaluation".)

1301. Professor Maggs accepted during his cross-examination that 'bid-rigging' (which he defined as "a conspiracy among bidders not to outbid each other") would give rise to liability as well under the combined effect of Article 10 and Article 1064, demonstrating that Article 449 is not invariably exclusive in its application. However, as discussed later (see paragraphs [1380] to [1386] below), where the real cause of any loss is the non-attendance of anyone except associated parties, it may be very difficult (if possible at all) to establish causation.

1302. In summary, therefore, I take the position under the Russian law to be that in the absence of proof of such dishonesty there can be no claim, except for breach of the auction rules, the latter of which is a claim that could lie only against the bailiff or auction organiser, and must be brought within one year. But, if dishonesty which causes loss is established, a claim may lie at the suit of the victim under Article 1064 for recovery of demonstrable loss. Causation may however not be easy to prove.

1303. Further, it seems to follow from the fact that the starting price is fixed by the court, or (in the case of out of court enforcement) by appraisal, that it would be necessary to show that the court or the appraiser were either dishonestly misled in some way which caused them to undervalue the asset (presumably as to some feature or quality of the auctioned asset, or some contrived flaw in the assets to make it appear less valuable than in truth it is) or themselves directly implicated in the dishonest attempt to harm the Counterclaimants and enrich the pledgee or its associated parties.

1304. Linked to that, it would also have to be shown that steps had been taken or deliberately omitted, presumably by or on behalf of those sought thereby to be enriched, calculated to have, and (in a causative sense) having, the result that the (unacceptably) low valuation should not be (as it were) "rescued" by active bidders raising the price by virtue of their competition.

Choice and real purpose of auction sale

1305. The Counterclaimants contend that the Claimants never had any interest in selling the pledged assets by private contract: they wanted the protection and formality of public auctions, to ensure that the price achieved, being at or above an apparently independently established reserve price, could not be challenged, and to enable in due course the assets to be passed to associated entities free of any adverse claim, notwithstanding both the association and the low prices achieved.

1306. There is certainly very little evidence, and none of it is documentary, of efforts to sell the assets or businesses by way of private arrangement or contract.

1307. The only witnesses for the Claimants to suggest that there were efforts to find a third-party buyer by private treaty were Ms Mironova (who had not mentioned any such efforts in her witness statement) and Mrs Yatvetsky.

1308. Ms Mironova, in cross-examination, referred rather airily to the Bank having "held negotiations with a lot of prospective buyers", including the state-owned North Shipbuilding Company ('Severnaya Verf Northern Shipyards'), but without success. Mrs Yatvetsky's oral evidence was:

> "…[Mr Smirnov] did a lot to try and find third party buyers and sell the stuff to them, and I understand that at the end of the day Mr Korneev and himself decided for themselves that they were going to become bidders because they were not able at the end of the day to identify any willing buyers.
>
> Q. Now, Ms Yatvetsky, there is absolutely no documentary evidence of these alleged efforts to find third party buyers, is there?
>
> A. On a number of occasions I drafted confidentiality agreements for Mr Smirnov because he was conducting some negotiations, and with respect to Western Terminal I know he was negotiating [with] Severnaya Verf Northern Shipyards, it's a state owned company, and Western Terminal used to be located on their territory, and I think they were thinking about building a dry dock there, but at the end of the day they abandoned the idea. He was also negotiating with Modul LLC which owned some of the assets in the Port of St Petersburg. They carried on the business of container shipments and logistics, and I think they were also thinking about buying Western Terminal. I know that Mr Smirnov was also engaging other companies in his negotiating effort.
>
> Q. Now this is not mentioned in his witness statement, is it?
>
> A. Maybe he is simply not going into all these details. He did mention that he kept on trying, but at the end of the day the negotiations, or rather the confidentiality agreements, the NDAs that I had drafted for him, he never returned them to me, so I thought that the whole thing just stopped at the very initial stage, and the parties never went beyond the very initial stage and never moved on to actually execute any transactions.
>
> Q. And indeed there were no negotiations with third parties at all? That…
>
> A. This is not true. Negotiations did take place.

> Q. I put it to you that this is a lie which you guys have invented very recently in a desperate attempt to wriggle out of the evidence of your fraud?
>
> A. I can only reiterate that negotiations were being conducted."

1309. I formed the clear impression that both Ms Mironova and Mrs Yatvetsky were so vague because neither had direct knowledge of any concrete negotiations or even preliminary negotiations. I do not reject their evidence entirely: it is plausible, and seems to me to be likely, that at least some approach would have been made to North Shipbuilding Company, which owned the site adjacent to Western Terminal and for whom the site is likely to have had some synergistic value. But both the vagueness of the oral evidence and the lack of documentary support (in circumstances where the Bank might be expected to be careful to keep a record) leads me to conclude that any approaches to third party purchasers were at most preliminary, designed to test the waters, and never pursued with any sustained effort directed towards a private sale or encouraging a bid.

1310. That is of course consistent with the Counterclaimants' case that the Bank and/or Renord-Invest never intended any sale outside their own associated entities, and resorted to auction sale to ensure that there would be no challenge to the intra-group sales.

Were steps taken to deter potential buyers of the assets?

1311. It could also be consistent with the Counterclaimants' suggestion that far from seeking sales by private treaty, the Claimants' true objective in contacting persons with a potential interest was to encourage them to step back and allow the auction sales to proceed free of competition, on the understanding that they could acquire the 'cleansed' asset(s) from the successful auction bidder at a subsequent stage.

1312. If the Claimants' objectives were as suggested by the Counterclaimants, the Bank and/or Renord-Invest needed not to attract third party interest, but to depress it. A vital component of such a scheme as is alleged would be control of the auction process and, in particular, the bidding constituency. Active participation by independent third parties with proper information would ruin any such scheme, since proper competition between independent and genuine bidders would destroy any prospect of a reduced price.

1313. The crux of the Counterclaimants' case is that this was the means by which the Claimants' objectives (in particular to ensure that all the assets "ended up in the hands of Renord-Invest, or other companies connected with Renord and/or the Bank" for their own or some indirect benefit to them) was achieved; and that this is proof of the falsity of the auction and sale processes in each and every case.

1314. A, possibly the, crucial question, therefore, is how the auction process was so confined to associated companies, who was responsible for that, and whether the means of doing so were lawful.

1315. The Counterclaimants suggest that third party interest was dampened and/or deterred in three ways: (i) by subjecting the assets to encumbrances so as artificially to reduce their value; (ii) by splitting assets into unattractive parcels for sale, whilst ensuring the

ability and power to re-unify them for further onward sale to the intended ultimate purchasers; and (iii) by avoiding any serious efforts to market the assets.

Artificial encumbrances

1316. An obvious technique for artificially reducing the value of an asset in the perception of third parties and to reduce any interest in it is to subject it to an encumbrance or 'flaw', such as a lease on severely uncommercial terms.

1317. The Counterclaimants focused on the Gunard Lease as the most striking example of such a contrivance; but (as also mentioned above) a similar lease arrangement was also proposed to be made with SKIF (also in respect of the Western Terminal).

1318. I have summarised the terms of the Gunard Lease in paragraphs [579] to [581] and their obviously uncommercial effect in paragraphs [1050] to [1066] above. In previously considering the Gunard Lease, I concluded that two principal objectives were to afford the Claimants control over Western Terminal assets even if the repo arrangements were struck down, and to insulate those assets from the effective reach of other creditors: see especially paragraphs [1065] above. In paragraph [1066] above I left for consideration until this section of this judgment whether a further objective and effect was to reduce the utility and attractiveness of the Western Terminal assets to anyone outside the Renord Group so as to dampen or even destroy any third-party interest at the auctions for their sale (which of course the Claimants deny).

1319. Some further support for the submission that at least part of the rationale was a reversible (and to that extent artificial) reduction in the value of the pledged asset to such an extent that "no one except Renord would ever bid" may be offered by a report to the BKK (entitled "Information Memorandum") dated 20 November 2009 (signed by, amongst others, Ms Yashkina and Ms Mironova). This, at its foot in a note which is handwritten, expressly draws attention to the need to take into account "the risks…that are associated with reducing the auction sale price due to the encumbrance in the form of long-term lease". The Counterclaimants submitted that this handwritten note does not simply recognise an associated risk: it betrays or confirms an intention to introduce it and benefit from it.

1320. In my view, the note expresses the undeniable and somewhat jejune reality that an encumbrance on an asset, especially one with such uncommercial terms, depresses the attractiveness and value of that asset, and demonstrates that the Claimants were aware of that and were prepared to accept it. But I do not consider that it is therefore to be inferred that this was their primary or even substantive objective.

1321. The fact is that in the end neither the Gunard Lease nor any similar arrangement was in fact deployed as part of the marketing of the pledged assets. Nor is there any evidence that it was known to the market so as to depress third-party demand or interest. The arrangements do not seem to have been deployed or even hinted at in any marketing exercise; and by the time of the auction (much later, in September 2012) it was (as Mr Birt put it in his oral reply) "long lost in time".

1322. Further, even if the evidence was stronger, the fact would remain that in the event, the Gunard Lease had no impact on the auction sale process: it is difficult to infer an intention to deter third party interest when there is no evidence that it was ever deployed or resulted in deterrence. Of course, I cannot exclude the possibility that it was put in place and held in abeyance in case it was needed to depress demand and reduce the market value of the assets, and simply never was so: but I do not think the evidence or inference is sufficient to warrant such a finding.

1323. Another way of testing this is to pose the question whether the fact of the Gunard Lease explains the lack of third party bidders at the 2012 auction and thereby affected the auction price: and there is no evidence that it did. In my view this chronology offers the key to assessing the intention that lay behind the Gunard Lease arrangements.

1324. I have concluded that when the Gunard Lease was put in place its object was protection of the assets of Western Terminal, rather than their extraction for the benefit of the Bank and its associates, and that Ms Mironova's evidence to that effect, and to that extent, is correct. According to her (as appears from my summary of her evidence above), and though it is now confusingly denied by the Claimants, the purpose was indeed to subject the Western Terminal assets to an encumbrance calculated to prevent Dr Arkhangelsky re-establishing control if he should succeed in the Russian courts in setting aside the repo arrangements, and to impede and deter third party creditors from looking to Western Terminal assets for enforcement in competition with the Bank and/or Renord-Invest.

1325. The lack of any evidence of its deployment to dampen any third-party interest in the (almost) three years which followed before the auction sale in 2012 seems to me to preclude a finding that it was or became its purpose to deter third party bidders at such auction.

1326. I see no reason for any different conclusion as regards the other proposed lease to SKIF. The purpose of both, as it seems to me, is more likely than not to retain control over the relevant property in the event of losing the levers of control provided by the repo arrangements.

Sales of assets in unattractive parcels, lowering demand and auction values

1327. The Counterclaimants contend that a second method deployed by the Claimants and/or Renord-Invest of depressing third party interest in the assets at auction was to divide the assets to be sold into packages for sale which were designed to undermine their usability or utility, thereby depress or remove demand for them, and compromise their immediately realisable value.

1328. Thus, for example, the Counterclaimants cite the complex manoeuvres which they contend were only or primarily adopted to ensure the separate realisation of different components of Western Terminal with the objective of securing the ultimate vesting of the whole in the hands of a Renord-Invest company for use in the course of its oil business (in the event, Kontur). This complex sequence of steps is described in paragraph [632] *et seq* above.

1329. The Counterclaimants contend that this sequence of steps was designed and pre-determined to minimise the attractiveness and value of the Western Terminal assets at the auction sales and then, after re-unifying the assets, to maximise their value on onward sale. This was done by ensuring that:

(1) Renord-Invest remained in control of all assets, and therefore of their synergistic value (because it could exercise its control to bring together assets for onward sale); but

(2) By separating the pledged assets from the unpledged ones, the value on sale was reduced: any bona fide purchaser would be concerned about the risk of being held to ransom by the owner of the unpledged assets;

(3) Any risk that Renord-Invest would face any genuine competitor bidders at the 'public auction' would be reduced.

1330. The Counterclaimants relied also on the Onega Terminal asset sales as demonstrating the same tactic, and as, in addition, illustrating and confirming that the Bank and/or Renord-Invest identified from the commencement the ultimate purchasers, never intended to open up the sale process to an independent third party, and always intended to deliver up to pre-determined ultimate acquirers synergistically packaged assets after fragmented but cleansing auction sales.

1331. In that regard, and to illustrate both the policy of fragmented sales and the objective of onward transactions of reunited assets, the Counterclaimants rely especially on the Stage Plan and inferences to which they contend it gives rise. They contend that the Stage Plan (which was followed) provided a complex series of transactions (described in some detail in paragraph [627] *et seq* above) which provided for the intermediate realisation of fractured interests, which would be of little or no interest to third parties and would yield comparatively little for application in reduction of indebtedness, but with a settled intent subsequently to reunify those interests for an ultimate sale of the unified holding comprising all the OMG land at Onega Terminal to ROK No. 1 Prichaly, realising the synergy value which had been held back by the Bank.

1332. Thus, according to the Counterclaimants, the steps provided for and put into effect in accordance with the 'Stage Plan' for the ultimate sale of the Onega Terminal assets were contrived to reduce the amounts realised for payment down of indebtedness whilst maximising the benefit for the Bank and/or Renord-Invest. Sales of fractured interests dampened (and may have destroyed) third party interest, minimising in turn recoveries applicable in diminution of the loans; then unifying and retaining the assets within the group reserved to them the true value of the assets for their own benefit.

1333. I elaborate this by reference to the Western Terminal assets and then the Onega Terminal assets in turn.

1334. As to the way the Western Terminal assets were dealt with:

(1) The separate auction sales to Nefte-Oil (on 23 December and 26 December 2011) of the non-pledged and pledged assets which were, respectively, adjacent to and within Western Terminal, realised only a nominal sum for the former and a low sum

for the latter; and that provides a basis for suggesting that the division of assets for the purposes of sale lowered the saleability and value of both.

(2) That appears to be confirmed by the fact that, when Nefte-Oil transferred the united assets to Vektor-Invest (still subject to the pledges in favour of the Bank), the consideration (RUB 2.3 million), even though alleged by the Counterclaimants still to be substantially deficient, exceeded by some margin the aggregate consideration earlier paid by Nefte-Oil for the divided interests.

(3) That appears to be further confirmed by Ms Mironova's oral evidence that a principal rationale of the sales (as well as to remove the unpledged assets from the clutches of Morskoy Bank) was to bring together, to enhance their value, the pledged and unpledged assets.

1335. Against that, however:

(1) It is not clear that the Bank had either any obligation to sell the unpledged assets at Western Terminal together with the pledged assets; and it may not have been able to do so until the two were unified in the hands of Nefte-Oil, given (a) Mrs Arkhangelskaya's one per cent shareholding and her objections (a point prayed in aid by Ms Mironova), and (b) Morskoy Bank's claims.

(2) When the assets were unified, there is no evidence of any more interest from third parties emerging than had emerged previously: and there is no evidence to contradict the oral evidence on behalf of the Claimants that various and substantial efforts had been made to attract interest at a high level, even though undocumented.

(3) The commencement of enforcement proceedings and their compromise by court-approved settlement as the means of realising the property was consistent with standard practice (as Professor Guriev agreed), and was required in order to ensure ultimate sale on clear of adverse claims if (as was the case) Dr Arkhangelsky was determined to oppose realisation and otherwise make trouble in any way he could.

(4) The settlement agreement valuation of RUB 670 million was not vastly at variance with the value put on the Western Terminal report from GVA Sawyer dated 12 April 2012, which valued the Western Terminal assets at RUB 709.8 million (and which the Counterclaimants did not question), and a July 2012 report from ADK which valued the assets at RUB 837.4 million: and the reduction might be justified as a means of attracting interest in a very difficult market.

(5) In any event, the practice of the Russian court, apparently, is to set the starting value for auction purposes at 80% of market value as assessed by an independent valuer. The fact is that the Russian court, on the basis of an apparently independent valuation, did place its imprimatur on the settlement agreement and the approved price: and the evidence is not such as to warrant dismissing that fact.

(6) The intermediate transfer from Nefte-Oil to Vektor-Invest may look contrived; but the rationale given for it (the tax planning considerations to which I referred above, and Nefte-Oil's wish to focus on its own investment projects, and not to be party to

enforcement proceedings) are not so implausible that they can, on the evidence, be rejected.

(7) Although in a form giving rise to some suspicion, I am not persuaded that either the subsequent arrangements between Vektor-Invest and the Bank, or the sale on thereafter at auction to Kontur, necessarily connote or give rise to the inference of an attempt to acquire the assets on the cheap and/or a conspiracy in any of the variations pleaded.

(8) To elaborate a little (since the suspicion is understandable) I accept that, especially in the context of the dearth (already noted earlier) of any documentary evidence to show efforts to find a private buyer, the Claimants' attempt to present as arms-length the proceedings brought against Vektor-Invest on 1 August 2012 "to enforce its pledge" and the settlement agreement they subsequently concluded less than three weeks later, on 20 August 2012 (see paragraph [633(9)] to [(12)] above) was unconvincing; and the time given under the settlement agreement to Vektor-Invest to pay (seven days) was so short as to lend support, in my view, to the notion that the arrangement was contrived in order to "generate a fictitious auction with a stamp of approval of judicial proceedings, whereas in fact the proceedings are collusive, the Bank and Renord working together" (as Mr Stroilov put it to Ms Mironova). However, I do not consider it necessarily wrong of the Bank to seek to engineer sale at an auction at a price approved by the court, so long as the starting price is not itself artificially reduced: and I do not think the evidence demonstrates that it was. I accept Mrs Yatvetsky's answers in the following exchange when cross-examined by Mr Stroilov:

> "Q. So the real purpose of this agreement was simply to reduce the starting price at the auction, was it not?
>
> A. No, that is not correct. The true purpose was to judicially establish by the courts the market value of these assets.
>
> Q. So what you mean is that, rather than simply agreeing the terms, Renord and the Bank wanted the sale to take place at a public auction so that it would be more difficult to challenge it for any third party; is that a fair summary of what you meant to do?
>
> A. Well, public auction definitely eliminates all types of risk for the purchaser."

In light of the 'war' I do not think these steps, albeit self-interested, connote conspiracy.

(9) The fact that the assets ended up, in effect, with the Bank or Renord-Invest, and were then passed on to Baltic Fuel, is not necessarily of itself objectionable either, if (as is the case) there is no evidence to demonstrate an improper explanation why no third-party bidders ever emerged, nor any demonstration of impropriety in the sale price of RUB670 million approved by the court or the auction process.

(10) Even if, as Mrs Yatvetsky came close to conceding and I tend to think, the Claimants and/or their associates or "loyal friends" by now, or even some time ago, had resolved to retain within their circle and exploit Western Terminal for their own advantage, using the resources they (but not the Counterclaimants) could command, I do not think that gives rise to actionable impropriety, as long as fair value was achieved; and there is, as I say, nothing such as to dislodge the value accepted and approved by the Russian court.

1336. Turning to the separate sales of assets at Onega Terminal, there are features of the packaging of the assets, the sequencing of their sale, and the resort to public auction, similar to those in the context of Western Terminal, which *prima facie* encourage suspicion and seem supportive of the Counterclaimants' case.

1337. In particular:

(1) The Claimants accept that the Stage Plan "set out the steps by which ROK No. 1 Prichaly would purchase the Scan land from Solo, and then acquire the shares in Mercury which owned the LPK Scan land." The fact of such a plan invites the question why such complexity was necessary, and to what end.

(2) Had the Claimants really wanted to maximise the amounts realised on enforcement to be applied in reduction of the loans, it seems strange that they did not make greater efforts to arrange a direct sale to ROK No. I Prichaly in a single transaction: it is true that although the land at Onega Terminal was partly owned by Scan, and partly by another OMG company, LPK Scandinavia, both parts of Onega Terminal, as well as some (but not all) of the other real estate owned by Scan, were pledged to the Bank, and both those companies were subject to its control.

(3) The complexity of the sales processes was not inherently likely to result in the realisation of the highest amount for application in diminution of indebtedness. On the contrary, Mrs Yatvetsky herself stated that "selling Onega 3 and 4 without Onega 1 and 2 was an exercise in futility…there would be no willing buyer"; the fracturing of interests in effect stripped out synergistic values until the final transaction of sale to ROK No. I Prichaly (from which no amounts were raised whereby to diminish indebtedness).

(4) A measure of proof of the adverse effect of fragmented sales is offered by the fact that the aggregate amount realised from sale of the pledges and apparently applied in diminution of the indebtedness was many factors less than the ultimate sale price of the pledged assets as eventually unified and sold to ROK No. 1 Prichaly.

(5) The amount realized on auction sale of the Scan land at Onega Terminal (to Solo) in October 2009 and applied in diminution of the indebtedness was about RUB 207 million (including VAT) and that for the LPK Scan land there (of some 3.4 Ha) sold to Mercury in January 2011, only some RUB 99,000 (the land remaining subject to the obligation to the Bank secured by the pledge); and the assignment in June 2011 of the benefit of the Bank's loans secured by the pledge over the LPK land at Onega, releasing the pledge, was for a sum of about RUB 27 million (representing a 97% discount on the face value of the pledge); that total was far less than the amount

paid by ROK No. 1 Prichaly for the combined holding (of Scan and LPK land) at Onega Terminal of at least RUB 500 million (though, as I return to later, there is no evidence of the exact price: it is undocumented and may have been more).

1338. However, as in the case of the Western Terminal assets, there are contrary factors also:

(1) There is no evidence to contradict the assertion that ROK No. 1 Prichaly only developed concrete interest in acquiring the assets in early 2011, and even then its interest was contingent upon the assets being available free of the Bank's pledge and free of adverse claims.

(2) In light of the 'war' with Dr Arkhangelsky, it is understandable that both the Bank and the ultimate intended recipients felt it necessary to ensure that they needed the blessing of the court and the cleansing effect and protection of open auction sales of the constituent elements of the package of Onega Terminal assets.

(3) It was not suggested to me that the Bank was obliged in law to bring together assets pledged under separate agreements in respect of separate assets owned by separate companies, even if it had the economic ability to do so, and even if it was aware that thereby it could achieve greater reduction of indebtedness for the benefit of the Counterclaimants.

(4) The fact that neither the Bank nor Mercury has ever sought to enforce the loans in question (see paragraph [1416] below) also tells against malign motive, even though there is little or no evidence as to when any decision on their part, in effect to release the balance of indebtedness, was made.

Inadequate marketing

1339. Another obvious technique for depressing demand is inadequate marketing and/or advertisement. The Counterclaimants relied on the alleged adoption of this technique as further evidence of a concerted plan to minimise values at the auction sales (reducing the amounts to be applied in diminution of indebtedness) and maximise benefits on onward sales.

1340. The evidence as to the advertisement of the auctions and the marketing of the assets put up for bid in this case is slim. That is relied on by the Counterclaimants as signifying that little was done.

1341. As indicated previously, the Claimants focused primarily on demonstrating compliance with the basic minima prescribed by the relevant Russian law. For the Counterclaimants, Mr Stroilov in his oral closing submissions did not contend that there was any non-compliance with those standards. He submitted, however, that no more was done than was "just enough to comply with formal provisions for auctions" and that "there was no genuine marketing effort".

1342. To counter this, the Claimants relied on:

(1) Mrs Yatvetsky's oral evidence under cross-examination as follows:

> "Q. …what I'm trying to understand is that by the time when…Renord decided to bid for those assets at a public auction, by that time at least, the position was that Renord-Invest was interested in the assets for its own purposes: would you agree with that?
>
> A. Well, we were always living in hope that a final buyer will actually participate in various auctions for these assets, but we undertook market analysis, we talked to potential purchasers, and we realised that most likely nobody would participate in these public auction and we had to use our companies and then we analysed whether we would be able to use those assets in our further business."

(2) Ms Mironova's oral evidence in cross-examination with specific reference to the Western Terminal assets that:

> "the Bank took all possible steps and measures in order to advertise this facility as widely as possible on the media.
>
> If there was an opportunity to sell this facility at the price of RUB 2 billion, RUB 3 billion or RUB 4 billion to somebody else…it would have been in the direct interest of the Bank, because by doing so would have repaid the loans…That would have been wonderful. If only we had such a prospective buyer…"

(3) Ms Mironova's oral evidence in cross-examination with specific reference to the Scan Onega land auction, as follows:

> "Q. So at any point between the alleged default in March 2009 and the purported auction in October 2009, are you aware of any attempts by the Bank or Renord to sell these assets at the price which they had been pledged? Say, at a higher price? Any attempt to market them and obtain a higher value?
>
> A. My Lord. Obviously some steps were taken, including by the auctioneer, i.e. Russian Auction House. The announcement was published over 30 days prior to the auction. This is also part of the statute book. It is a legal requirement. The announcement was announced in various media outlets, promotional publications, in order to raise awareness of this sale…"

1343. The lack of any evidence of any marketing efforts beyond the minimum prescribed speaks for itself. I do not accept Ms Mironova's extravagant claim that those concerned took all possible steps and measures in order to advertise this facility as widely as possible on the media. There is no sign of that; there is no documentary evidence to support it (though it might be expected to be readily available if it existed); and even Mrs Yatvetsky made no such claim.

1344. The overall impression I formed from the oral evidence, consistently with the lack of documentary evidence to the contrary, was that no more was done to advertise and market the relevant assets than the basic minimum required, and the Claimants did not press for more.

1345. However, it must be remembered that, whereas the packaging of the assets for auction was a matter for the vendors/pledgees and their associates, the advertisement of the auctions was a matter for the auction organisers.

Summary as to the effect of whether what was done intentionally dampened third-party interest

1346. All these factors - separate sales of assets flawed by fragmentation after inadequate marketing and advertisement - are obviously likely to have had some effect; and the fact is that, in the event, no third parties emerged sufficiently interested even to attend at the various auctions.

1347. I also think it possible, and indeed more likely than not, that by this time the Claimants and/or their associates had determined to retain the assets within their circle, with a view (by 2012) to realising their potential by substantial investment of which they had been starved: they were not interested so much in maximising recoveries in diminution of the loans, but in maximising benefit for themselves and their associates, subject only to formal compliance with the Russian law and practice. On that basis, the lack of third party interest undoubtedly suited the Claimants and may well have been vital for the accomplishment of what had become their preferred outcome.

1348. That said, however, it was not incumbent on the Claimants to do anything more than what was required by the relevant Russian law and practice. Provided the requirements were fulfilled to the satisfaction of the auction organisers they were, as I see it, entitled to pursue their own interests as they perceived them.

1349. As to that, the assumption must be, and I find, that a marketing exercise which appeared to the auction organisers to be compliant with their obligations was undertaken, unless there is sufficient evidence to establish that the organisers themselves were complicit and/or actively involved in a scheme or schemes to reduce the attractiveness of and demand for the relevant assets and/or to depress third party interest by inadequate marketing.

Is there any evidence of complicity on the part of the auction organisers?

1350. Since under the relevant Russian law, as explained above, the auction process itself is the responsibility of the bailiffs or other auction organisers, and not the pledgee, the focus of any complaint regarding the conduct of the auctions themselves must be on whether the way those bailiffs or auction organisers, being apparently independent third parties, discharged their obligations was objectionable and unlawful (or not, as the case may be).

1351. The Counterclaimants contend that although ‘purportedly’ under their control in accordance with the Russian law, in truth and in effect the bailiffs and others abdicated their responsibilities and surrendered control to the Claimants, facilitating a “collusive

'public' auction…to cover up the fraudulent nature of the transaction". The Counterclaimants would have to show that they carried out, or stood back and enabled others to carry out, the auctions unlawfully.

1352. The process of packaging and marketing the assets, which was the responsibility and strategic decision of the Claimants, preceded the auctions: and I have discussed that already. Similarly, I have already addressed the issue as to advertisement, which was the responsibility of the relevant auction organisers, and concluded that neither demonstrates any breach of the relevant law or rules.

1353. The questions now in issue seem to me to be (a) whether in the conduct of the auctions the bailiffs or Russian Auction House did abdicate or allow themselves to be dictated to by the Claimants, (b) whether any would-be bidders were improperly excluded from any of the auctions, (c) whether the auction organisers were aware that the only bidders were associated, and (d) whether the Counterclaimants have demonstrated that the auctions (or one or more of them) were affected by 'bid-rigging' (in the sense of an anti-competitive agreement between bidders), as they allege.

1354. As to (a) in paragraph [1353] above and whether any of the auction organisers abandoned their responsibilities and/or allowed themselves to be dictated to by the Claimants, the Counterclaimants' case is necessarily based on suggested inference, rather than direct evidence, whether oral or documentary. That this should be the only means of proof is unsurprising: in the absence of any of the auction organisers, and without disclosure of their documents, it is inevitable.

1355. The gist of the Counterclaimants' case was that, in permitting the auctions to proceed as they did without apparently raising any objections, the relevant auction organisers can only have either abdicated or accepted dictation. The Counterclaimants relied on inferences to be drawn, so they submitted, from the antecedents to the auction (for example, in the case of the Western Terminal assets, the 'sham' and collusive proceedings and settlement agreement) resulting in (amongst other consequences) low initial and reserve prices in comparison to the stated pledge valuations; from the absence of third parties and competitive bidding and the low values achieved; and (perhaps most importantly) from the absence of any evidence that any of the auction organisers ever queried or tested any of these oddities or curiosities.

1356. I do not consider that the fact (assuming for present purposes it to be so) that none of the auction organisers queried the initial or reserve prices is, of itself at least, either remarkable or suggestive of impropriety. The prices were established by or by reference to apparently reputable valuers; and in the case, for example, of the Western Terminal assets, which are the prime focus in this context, it has been seen above that they were blessed by the Russian court. It was not for the auction organisers to gainsay the values thus established: their role was to run an auction on the basis of the valuations, not query whether they were correct.

1357. Furthermore, unless bidders were excluded (or effectively discouraged and dissuaded from attendance at all) any issue as to the reserve value is something of a non-starter. Plainly, if the assets were worth anywhere like the values suggested by Lair, then someone would have made a bid above the winning bids. No one did; and (as Ms

Mironova put it) "if there are no willing buyers, they just do not turn up at the auction and they do not buy the stuff."

1358. As to (b) in paragraph [1353] above and the formal validity of the auction, it is a notable omission from the evidence assembled by the Claimants, with all the considerable resources available to them, that there is no documentation recording whether any other bidder than Nefte-Oil attended the auction of Western Terminal assets on 26 December 2011.

1359. Mrs Yatvetsky, for once, was less than clear and definite in her recollection. When pressed to accept that the only bidder was Nefte-Oil she did seem to acknowledge the possibility that her memory might be failing her, and could not quite remember; but she dismissed the possibility that there was only one participant as:

> "rather unlikely…because Renord had to offer at least two bidders for the auction to be ruled valid."

1360. When Mr Stroilov raised the lack of evidence in his oral closing, observing that no other bidder had ever been named, and the formal written Protocols ordinarily supplied (and supplied in the case of every other auction of relevance) to record participants were not in evidence, I asked for the matter to be specifically addressed in reply: but it was not. All this has concerned me.

1361. Nevertheless, the fact is that the bailiffs gave their certificate as to the result of the auction on the basis that it had been properly constituted. I do not consider there to be any sufficient basis for disregarding that evidence.

1362. Moreover, looking at the matter more generally, it does seem to me very unlikely that Renord-Invest would have neglected to rope in one of its group companies in this case, given the ease of that and its care to do so in all the others.

1363. Except for the above, and subject to whether there were arrangements with ROK No. 1 Prichaly which kept it on the side-lines away from the competition (see below), there does not appear to be any evidence to contradict the assertion of fact on the part of the Claimants that all the auctions were open to any bidder. The assumption must be that any person interested could have participated and made a bid, and the fact that, save for Renord-Invest companies, none chose to do so signifies only that there was no one else interested and not that they were improperly barred.

1364. More difficult, theoretically at least, is whether the auction organisers were aware of the fact that all the bidders and the Bank were associated (through Renord-Invest) and probably acting in unison, and if so, whether they should have required the attendance of at least one unassociated bidder as a condition of proceeding with an auction at which otherwise it was at least likely that the bidding would not be competitive, and the process a charade or collusive – what I have referred to as a rehearsed chorus (see paragraph [1287] above).

1365. Dr Arkhangelsky sought to focus particularly on the Russian Auction House, which was responsible for the auctions in October 2009 concerning the Scan land at Onega Terminal and Sestroretsk. He maintained in particular that the Russian Auction House

was run and part-owned by Mr Andrei Stepanenko, "an official in Mrs Matvienko's administration", and asserted that "he was under the influence of Matvienko and Savelyev for sure". It is correct that Mr Stepanenko was a member of Mrs Matvienko's administration at the time. There is at least a possibility that Mr Savelyev was rather gilding the lily in his evidence to me that:

> "…I think that this would have been impossible. Mrs Matvienko never deals with the commercial projects, she is a serious politician, someone who never fiddles with commercial matters, she simply is not interested in that…"

But even allowing for that, and taking into account signs of her involvement in other contexts, Dr Arkhangelsky's assumption of such a connection and influence over the Russian Auction House through Mr Stepanenko is a wholly inadequate foundation for such a serious claim.

1366. The attitude of the auction organisers (judicial and non-judicial), especially after auction followed auction at which there was barely a quorum and no participation at all by third-parties, is arresting. I confess to have wondered at their apparent willingness to pursue, time and again, the same, apparently unsuccessful path. But once again, unanswered questions and surprising indifference is not proof of impropriety if there are any benign explanations which are not implausible.

1367. It may be that the auction organisers were comforted in the minimalist approach they seem to have adopted by a perception that the Claimants and/or Renord-Invest were not pressing, and had no wish, for anything more to be done. It may even be that the impression was gained, in an already apathetic market, that the Bank and/or Renord-Invest wished to discourage any such interest, and that this in effect snuffed out any, already weak, third-party interest. However, I do not think that there is any evidence that the auction organisers were themselves prevented or deterred by the Claimants or Renord-Invest from further effort as regards presentation and marketing: and accordingly, I do not consider there to be any sufficient basis for inferring from the way the assets were packaged, presented and marketed that the auction organisers' marketing processes were designedly deficient in terms of the Russian law requirements.

Is there evidence to support the claim that the starting prices were grossly deficient?

1368. However, the Counterclaimants contend in addition that the Claimants also contrived and conspired with the auction organisers to establish valuations which appeared to have court approval, but which were in fact established in collusive proceedings between associated companies, and in truth represented very substantial under-valuations which the courts were (in effect) misled into accepting.

1369. The Counterclaimants relied, for example, on the tortuous process whereby a reserve price was established for the Western Terminal assets and then approved or franked by the court. I have described the process in outline in paragraph [633] above, but it is worth recalling and elaborating on certain facets of the steps there described.

1370. To recap: (a) under the original pledge to the Bank of assets at Western Terminal it was stipulated and agreed that the "initial selling price" on sale at public auction of the assets on realisation by the Bank of its security would be RUB 1,209,784,295.86; (b) the Bank did not enforce its security immediately; (c) first in a sequence of steps was that the pledged assets were acquired at auction by Nefte-Oil (a Renord-Invest company) and then on-sold by Nefte-Oil to Vektor-Invest (another Renord company), in each case subject to the Bank's continuing pledge; (d) after the Bank had sued Vektor-Invest to enforce its continuing security a settlement agreement was reached between the Bank and Vektor-Invest which the court blessed under the umbrella of the court proceedings; (e) under the settlement agreement, Vektor-Invest agreed to pay the Bank the full price of RUB 1,209,784,295.86 within 7 days, failing which the assets would be offered at auction at a reserve price (free of the Bank's pledge) of RUB 670 million, barely half the previously agreed "initial selling price"; (f) Vektor-Invest failed to pay within the stipulated period; (g) the pledged assets were sold at auction together with other assets which the Bank had obtained at Western Terminal, to Kontur; and (h) arrangements were made thereafter (but were never disclosed) for Baltic Fuel to acquire the assets from Kontur.

1371. Thus, the overall effect was that (a) the requirement in the mortgage/pledge agreement between the Bank and the original pledgor for the auction price for the pledged assets on public sale free of the pledge to start at RUB 1,209,784, was side-stepped with the blessing of the Russian court; (b) a new reserve price of barely half that (RUB 670 million) was also blessed by the Russian court; and (c) the entirety of the assets, pledged and unpledged, were brought together and sold to an associated company.

1372. I think it is difficult to regard this careful sequence of steps as anything other than contrived. The bringing of proceedings; the settlement agreement with its unrealistic deadline for payment; the inevitability of Vektor-Invest failing to pay; and the pre-ordained result: none of it bears scrutiny as other than a preconceived plan, with the object which it achieved of obtaining court blessing for auction sale, at a greatly reduced valuation, but nevertheless clearing off adverse claims. Thus:

(1) There was little or no realistic prospect of Vektor-Invest being in funds: and the inference must be, and I find, that it was not seriously envisaged or intended that it would be. When I asked Ms Mironova whether she accepted that this was simply part of a sequence of pre-ordained steps (designed not to result in payment but default under the Settlement Agreement) she answered in a way which simply confirmed that it was, saying as follows:

> "My Lord, theoretically Vektor-Invest could have found a buyer over that week and it could have paid the Bank 1.2 billion… could have obtained assets – unencumbered assets. Miracles do happen."

(2) This was fanciful, and, of course, no such miracle was either anticipated or eventuated.

(3) Indeed, except for Ms Mironova's fanciful attempt, the Claimants do not pretend otherwise than that the arrangements were intended to establish a reserve market

value endorsed by the court. Although she firmly denied the suggestion put to her in cross-examination that the proceedings themselves were manufactured and bogus, Ms Mironova said:

> "The logic of the Bank, I've already explained that our main task was at the time to make the original realisation price of the immovable property set by the court bailiffs at the open auction to the market value of that particular subject, 1.2 billion did not correspond to the original, to the market value…The task, the reason behind this amicable agreement, settlement agreement, was set in paragraph 4 to set a new starting realisation sales price which would correspond more to the market value at the time, to which interested parties would respond to the open auction."

(4) Mrs Yatvetsky, likewise, was open about the purpose:

> "The purpose of this settlement was to establish the market value for the assets, which was indeed established by the court."

1373. Once the fact that all the actors apart from the Bank were Renord companies is known, the reality is obvious; and the Claimants took the course of confessing and avoiding in this Court. Whether the matter was so clear when the Russian court was invited to approve the Settlement Agreement and the revised starting price is a different matter. It is right to note that the Russian court would probably not have been aware of the fact that, apart from the Bank itself, the actors in the play were all Renord companies; and that accordingly, it may have been misled as to the true nature of the Settlement Agreement.

1374. As so often in this case, that has given me further pause for thought. I would not wish either to condone or to minimise the gravity of the situation where it appears to one Court that another may have been intentionally misled. Further, it is a factor to be weighed in the balance in assessing the reliability of the Claimants, as well (later) in determining whether or not to grant declaratory relief (as to which see paragraphs [1619] to [1637] below).

1375. But it is perhaps worth considering what might have been the course of events if the original "initial selling price" had been maintained. There is no evidence to suggest that anything like the agreed price of RUB 1.2 billion odd would have been achieved at auction; and the evidence was that if the auction failed to achieve the reserve another would have to be held, and the starting price would have had to be fixed by valuers and approved by the court. As it was, the substituted starting price of some RUB 670 million was fixed in accordance with valuation advice.

1376. In short, even though in my view there was a pre-ordained series of steps calculated and intended to establish a court-approved valuation and a pre-packaged sale, that does not mean that the value so established was false or deficient.

1377. Quite how the new 'market value' was fixed is unclear (although the Bank sought to convey the impression that it emanated from the court process itself); but it is the fact

that the Bank had a report from GVA Sawyer dated 12 April 2012, which valued the Western Terminal assets at RUB 709.8 million, and a July 2012 report from ADK which valued the assets at RUB 837.4 million. It is also the fact that the Lair valuation on which the price stated in the mortgage agreement was founded was four years out of date, produced before the financial crash at the end of 2008 and based on a development plan that had not been even nearly completed (indeed had barely started).

1378. I cannot, in these circumstances, accept the Counterclaimants' punch-line that the steps taken were part of a conspiracy which was intended to and did result in a sale at a fraudulent undervalue.

1379. As to their alleged participation in this aspect, I do not think the Counterclaimants have provided evidence of such knowledge of impropriety on the part of the Russian Auction House or any of the auction organisers. I do not consider that such knowledge can be inferred from the evidenced circumstances, even though (as previously noted) the repeated instances of attendance only by two companies and the lack of any competitive bidding must have given rise to at least some suspicion. They may or may not have been aware of the pre-arranged character of the sequence of steps, and of the intention to fix a price protected by the imprimatur of the Russian court: there is no evidence one way or the other, and no basis, in my view, for an inference either way.

Has a case of bid-rigging causative of loss been demonstrated?

1380. The allegation of 'bid-rigging' (see (d) in paragraph [1353] above), by which the Counterclaimants clarified they meant "an anti-competitive agreement between bidders", is in a sense another way of putting the allegation of collusion between associated persons. The main differences are that 'bid-rigging' may be organised between otherwise unassociated and independent persons; does not necessarily go the ostensible validity of the auction or any breach of the auction rules *per se*; and may not necessarily implicate the auction organisers, or be dependent on them being implicated.

1381. It is the Counterclaimants' case that where an auction is affected by bid-rigging then anyone who was party to the illicit bid-rigging arrangement, including a pledgee of the relevant asset where applicable, would be liable under Article 1064.

1382. I have discussed earlier (see paragraphs [1299] to [1304] above) whether any claim under Article 1064 is excluded by the specific provisions of Article 449 relating to auctions and determined that it is not, but that dishonesty is required to be shown.

1383. The Counterclaimants maintain that dishonesty is an inherent feature of 'bid-rigging'; and that the nexus between the Claimants and the Renord-Invest companies that participated in the ring is such that complicity of the Claimants is to be inferred. In his closing submissions, Mr Stroilov described the auctions at which only two commonly controlled entities participated as "paradigm bid-rigging", and the fact that the auctioned assets therefore never left the Renord group as denoting a sham transaction in each case.

1384. But the difficulty for the Counterclaimants is that they must show not only the fact of 'bid-rigging' but also that, had it not taken place, the result of the auction would have

been different. If the fact was that no one in the outside world was interested in taking on the assets, having regard to their poor condition, the unattractive packages, the economic circumstances, and the huge debts to which they were subject, it is that which determined the result. The attendance of two associated entities did not affect the price.

1385. Put another way, I accept that the mere fact of bid-rigging does not suffice for liability because a complainant stills needs to 'show causation from bid-rigging'. The point was explained by Professor Maggs and I did not understand it to be contradicted:

> "A. What I mean is to show the bid-rigging resulted in harm in the sense of a lower price. That the pledgee was engaged in somehow encouraging or organising bid-rigging and you need causation of harm that the bid-rigging resulted in the price being less than it would be received otherwise.
>
> Q. I understand. So would that require an investigation into what other bids might have been made, absent the bid-rigging?
>
> A. Yes, it would require an investigation if any other bids were made or might have been made, or if somehow prospective bidders were improperly excluded by some sort of physical exclusion or something.
>
> Q. So are you saying that it would or that it would not require working out what the auction would have fetched in other circumstances?
>
> A. In order to figure the damages, you would have to figure what would have been received had there been no bid-rigging.
>
> Q. If it were the case that without what you have described as bid-rigging there was only one participant in an auction, what would the consequence have been of that?
>
> A. The auction would have failed.
>
> Q. And then what would happen after that?
>
> A. There would be a re-auction at a reduced price in accordance with the laws governing a particular type of property being auctioned."

1386. If there was no other bidder prepared to pay more than the winning bid – and there is no evidence that there was any such bidder – then the Counterclaimants have not suffered any loss from any 'bid-rigging'. Subject to the next issue (and whether in the case of Onega Terminal, ROK No. 1 Prichaly would or might have been a competitive bidder, but was effectively bought off with a side deal) my finding that there is no sufficient evidence of wrongful exclusion of any bidders thus leads to my further conclusion that there is no alternative sustainable claim in respect of 'bid-rigging': there

is no evidence of any loss in consequence unless there were other bidders or higher bids shut out by the rigging.

Allegations based on links of ultimate purchasers with Mr Savelyev and others

1387. That brings me back again to the Counterclaimants' central contention that the persons really interested in the auctioned assets never had to participate in the auctions, since the (dishonest) plan contrived was that they should be the ultimate purchasers under private deals made after the assets had been laundered at earlier auctions, and thus the real competitive interest was kept away. It is the Counterclaimants' case that the circle was closed and always intended to be so: neither cleansing sunlight nor enlivening competition was ever allowed into the processional march to a pre-appointed destination.

1388. I have already set out in paragraphs [627] to [629] above the complicated sequence of steps whereby the Onega Terminal assets were first split into two for sale at auction and then re-unified and sold on to ROK No. 1 Prichaly by Solo, and mentioned that the steps taken were in line with the Stage Plan: and see also [1331] to [1332] above.

1389. As previously explained (see paragraphs [1336] to [1342] above), the Claimants did not dispute that the complicated sequence of transactions which ultimately culminated in the acquisition of Onega Terminal by ROK No. 1 Prichaly substantially conformed with those set out in the Stage Plan document. The dispute was whether that gave rise to or sustained an inference of a malign scheme in which ROK No. 1 Prichaly participated is established as being the only rational explanation for what occurred such as to feed the inference of conspiracy in any of the variations pleaded.

1390. It is important to emphasise immediately that it is not the fact that ROK No. 1 Prichaly acquired the Onega Terminal assets which is surprising. On the contrary, ROK No. 1 Prichaly was part of the SFP group, which was a neighbouring business which owned not only the land adjacent to the Onega Terminal but also the berths on which the Onega Terminal depended. The Onega Terminal assets undoubtedly had special synergy value for it. Indeed, ROK No. 1 Prichaly was probably the only realistic buyer of the land at Onega Terminal.

1391. What is surprising is that ROK No. 1 Prichaly took no apparent active steps to acquire the assets at auction or otherwise, but instead appears passively to have waited for the assets to be transferred to it after they had first been sold in separate parcels in auction sales and then re-unified for transfer on to it as a cohesive whole.

1392. Mr Stroilov also pointed to the lack of documentary evidence (whether as regards marketing or sale) in relation to the ultimate sale of the combined assets at Onega Terminal to ROK No. 1 Prichaly, and the fact that the only evidence of the sale price is oral, and inconsistent.

1393. Ms Mironova thought the price was "a little over" RUB 400 million (which she suggested equated to about US$15 million); whereas in her witness statement Mrs Yatvetsky (who took responsibility for "overseeing the legal processes involved, such as drafting the various assignment and purchase agreements") stated the price as being

RUB 500 million, which Mr Sklyarevsky sought to corroborate in his oral evidence. Mrs Yatvetsky struck me as an assiduous legal operator: the failure to provide in evidence any documentation in respect of the transaction is, to put it mildly, surprising.

1394. Also inviting enquiry, and relied on by the Counterclaimants as further supporting the inference of a malign scheme designed to exclude any genuine bidders who would offer a genuine market price, then launder the assets through public auctions, and finally transfer them to the designated and connected end-purchaser, is the way the transactions were funded. The Counterclaimants focused on two aspects: (a) Solo's source of funds, and (b) ROK No. 1 Prichaly's source of funds.

1395. As to (a) in the preceding paragraph, and Solo's source of funds, the Counterclaimants prayed in aid a 'spreadsheet' prepared by Renord-Invest in connection with the acquisition by Solo of the Scan land at Onega Terminal prior to its onward sale to ROK No. 1 Prichaly. The document, which is headed "Project Scandinavia" sets out the sums spent by Solo/Renord-Invest on Onega Terminal, including the investment made, interest charges, and running costs, before the sale to ROK No. 1 Prichaly. It also records Renord-Invest's internal cashflows to fund the purchase of the Scan land at Onega Terminal and its subsequent investment. So far that is unexceptional; however, the top of the document reads:

> "Purchased for borrowed funds obtained by SKIF LLC under loan agreement № 0027-09-00089 of 25.09.2009".

1396. The Counterclaimants rely on that as evidence that SKIF was not only involved in the purchase but also borrowed the purchase money from the Bank and disguised its dealings with Solo. On the basis of their interpretation of the spreadsheet, they allege that the money used by Solo to purchase the Scan land at Onega Terminal "never actually left the Bank". Thus, Mr Stroilov put this to Mr Sklyarevsky (and similarly later to Mr Savelyev and Mrs Yatvetsky):

> "It was advanced by the Bank to the SKIF account under this loan agreement, then under whatever pretext, moved from SKIF account to Solo account? Then that sum was moved from Solo account to Russian Auction House account in Bank of St Petersburg, and then credited back to the Bank; does that make sense? Does that seem to be the way how it was done?"

1397. As to (b) in paragraph [1394] above, the Claimants did not deny that the purchase of the assets by ROK No. 1 Prichaly from Solo was funded by the Bank, which was secured for that funding by a pledge over the assets, though Ms Mironova told me that the loan was repaid "over a number of years" and the pledge discharged. The Counterclaimants relied on this as another demonstration of the artificiality and scheming contrivance of the entire sequence of steps.

1398. They submit that all this unmasks the conspiracy they allege. They say that a malign scheme is plain and obvious: that ROK No. 1 Prichaly simply had to wait until a pre-choreographed set of arrangements delivered the assets into its hands at a knock-down price; and that the remaining and most likely explanation is collusion with a view to

profit, either because Mr Savelyev and/or the Bank and their associates in fact were interested in ROK No. 1 Prichaly and stood to gain that way, or because some part of the consideration in truth paid by it was disguised and went (directly or indirectly) to them.

1399. The Claimants reject all this as ingenious but flawed in every respect. As to the funding of Solo through SKIF, they maintained that the Counterclaimants had fundamentally misunderstood the spreadsheet on which the allegation was built. According to them, all the schedule recorded was the money spent by Solo/Renord-Invest on Onega Terminal, including the investment made, interest charges, and running costs, before the sale to ROK No. 1 Prichaly.

1400. In any event, the Claimants dismissed as "irrelevant to the matters in issue" that the Bank funded ROK No. 1 Prichaly's purchase of Onega Terminal from Solo. Mr Savelyev was unmoved by the suggestion put to him in cross-examination that the net result of the various steps which the Claimants depicted as "realisation of assets", was (apart from safely vesting the Onega Terminal in the hands of (according to the Counterclaimants) its long-intended recipient) that the "money was recycled within the Bank…[leaving]…the same assets…pledged to the Bank." In Closing Submissions, Counsel for the Claimants stated that:

> "If this was a 'conspiracy' in which the money simply went round in a circle, then one can be sure that the assets would have been 'purchased' at much higher prices to avoid suspicion because it would be the Bank's own money which was coming back to it in any event."

1401. The Bank's position was that there was no sinister 'plan' or malign scheme, but simply (as Mrs Yatvetsky depicted it) a coordinated sequence of steps designed to unify the two main sets of land assets at Onega Terminal and package them for sale at their unified and thus enhanced value for the benefit of the Bank (as both Mr Sklyarevsky and Ms Mironova seemed to accept was its ultimate effect).

1402. Mr Sklyarevsky was insistent that SKIF was not involved in the sale of the Onega Terminal assets. In particular:

(1) The loan number and date of the SKIF loan on the spreadsheet relate to a separate SKIF project concerned with the construction of a building at Antonenko in St Petersburg ("the Antonenko project"). The Bank had provided a loan to SKIF in respect of that project.

(2) Mr Sklyarevsky had given affidavit evidence about the Antonenko project in the BVI (which the Counterclaimants knew about), and the relevant loan agreement was disclosed. The loan amount was RUB 1.5 billion, which was completely different from the figures in the spreadsheet, and which could not have been used for another project.

(3) Accordingly, the Claimants' case (here, as in the BVI) was that the Bank's loan to SKIF for the Antonenko project has nothing to do with these proceedings.

1403. Mrs Yatvetsky, who said she had prepared the document, was also cross-examined on it. She described the heading as a "technical mistake. A typo…anyone can make a mistake" and insisted that the SKIF loan had absolutely nothing to do with the Scandinavia Project. She confirmed her evidence in her witness statement, where she said this:

> "This spreadsheet refers at the top to the provision of a loan from the Bank to SKIF, which must be some sort of transposition error as the loan number and date do not relate at all to Solo's acquisition of the Onega assets. No loan was provided by the Bank to Solo (or to Renord-lnvest) for this acquisition of the Onega Terminal Asset, nor to the best of my knowledge was there any loan between SKIF and Renord-lnvest in relation to the acquisition of these assets. Apart from the heading, the spreadsheet concerns Renord-Invest's investment in the Onega Terminal Assets prior to their onward sale to ROK-Prichaly."

1404. As to the question which naturally arises as to why, given the special synergies and advantages for it of acquiring the Onega Terminal, ROK No. 1 Prichaly had not itself made any of the running and had not participated in any of the auctions, the Claimants made great play of the fact that the LPK Scan land and the Scan land at Onega were in different ownerships: and (to use Mrs Yatvetsky's phrase) it was an "exercise in futility" to sell them separately. They maintained that there were no other buyers for a terminal with no access to the sea of its own; and ROK No. 1 Prichaly only indicated interest in early 2011 (at about the same time, it seems, as the auctions) but made clear that it was (a) only interested in buying the entirety in one bundle, and (b) not at all interested in acquiring the assets whilst pledged to the Bank.

1405. Thus, it is said by the Claimants, ROK No. 1 Prichaly only became actively engaged after the unification of the LPK Scan land and the Scan land at Onega Terminal, and the release of the Bank's pledges further to the transactions with Mercury (and the sale of Mercury by (notionally at least) Mr Sklyarevsky to Renord-Invest) that I have previously described. Mr Sklyarevsky told me:

> "[Mr Smirnov] told me that there is a buyer for the common plot Scandinavia, which consists of two plots of the insurance company and LPK Scandinavia, and this buyer wanted to purchase this common land plot as one unit, and in order to do this deal, one needed to buy out at an auction this LPK land plot, settle with the Bank and carry out a number of actions".

1406. The oral evidence of Ms Mironova and Mrs Yatvetsky was to the same effect. The latter told me:

> "It took some time to find a buyer, and thereafter ROK N1 Prichaly company said that it was willing to acquire Onega 1 and 2 Terminals on condition that it would acquire at the same time also assets called Onega 3 and Onega 4" [i.e. the Scan land and the LPK Scan land].

1407. Further, according to the Claimants, the recoveries effected and applied to the amounts outstanding under the 2007 LPK Scandinavia Loan and Second Onega Loan were as much as could be expected. They were only a little less than the "initial balance sheet" price of the LPK Scan land at Onega Terminal as recorded in OMG accounts, which was just over RUB 29 million, and represented fair value according to valuations in the depressed conditions of the time. The ubiquitous and apparently omniscient Mrs Yatvetsky's evidence was that RUB 27 million was the market value for the real estate; she told me:

> "…27 million roubles was the value of the -- the cost of the transfer agreement was established on the basis of the market value for LPK Scandinavia property, the land plot, and if I remember a workshop building, and I think the price was totally market based, especially taking into account that literally two years prior to the auction Mr Arkhangelsky had acquired this building, this workshop building for 2 million roubles. The value also included leasing rights for the land plot. Over a year he privatised the land plot on which the workshop building was standing. Given the prices for privatisation at that point in time, I think his expenditure was no more than a million roubles. Therefore, the purchase price for Mr Arkhangelsky was 3 million roubles altogether. He acquired this for the books of his -- for the balance of his company called SKIF. Later when he privatised the land plot, he sold these very same assets to another one of his companies for 43 million roubles. At the same time there had been no capital investment according to the technical specifications for the building. It was built in 1977 and it remained a building built in 1977 with no investment, it was artificially increased costs, so the price realised finally was totally based on the market value of the asset.
>
> Q. Was that based on any valuation report, to your knowledge, this 28 million figure?
>
> A. Yes, yes, it was based on a valuation report prepared by a valuer."

1408. Turning to my assessment of these matters, it does seem to me to be obvious that the Bank did, early on, identify ROK No. 1 Prichaly as a (probably the only) likely purchaser. The crux of the matter is whether (as the Counterclaimants would have it) the Bank adopted "unusual ways" in dealing with the lands at Onega in separate tranches in order (I quote from their Closing Submissions) to:

> "avoid any genuine marketing, or any genuine public auctions, where the connected party purchaser could face genuine competition",

with a view to then bringing the lands together to maximise the synergistic value of the asset on onward sale whilst minimising its ostensible recoveries in realising its securities.

1409. I must confess that I have found the true motivation of these complications difficult to pin down. My difficulties have been increased by what appears to me to be either inadequate disclosure or the unsettling lack of documentary evidence for at least two vital issues, being (a) any attempts to interest ROK No. 1 Prichaly, or the expression by ROK No. 1 Prichaly of any interest, in a direct sale; and (b) the terms of the ultimate onward sale of the combined assets at Onega Terminal by Scan to ROK No. 1 Prichaly.

1410. As previously indicated, I do find surprising the lack of any documentary evidence of marketing or any attempt to interest ROK No. 1 Prichaly in a direct sale; and the lack of evidence as to the ultimate sale price even more so. In his oral closing submissions and in answer to questions from me Mr Stroilov made the point that such lack of transparency inevitably gave rise to suspicion, increased by the total absence of any explanation from anyone on behalf of ROK No. 1 Prichaly, who (Mr Stroilov submitted) really might have been expected to give evidence to say (as he put it):

> "No of course it's all rubbish, we are genuine buyers, we bought it because we wanted to run a business and we did pay".

1411. Nor is it surprising that in such an evidential vacuum, Mr Stroilov submitted (and I quote him *verbatim* to capture the flavour, including the understandable but somewhat speculative nature of his submission) that:

> "…we don't really know the full arrangements, why the Bank decided to let them have it. It may be for money, it may be because they are a connected party, and we may not necessarily know the full extent of that connection. Well, after all, Mrs Yatvetsky told you that the fishing port, which is the same as ROK Prichaly, belongs to a business partner of Mr Smirnov; and she told you that she assisted in assessing the risks of port business. But the full extent of that partnership and what that involves is something we don't know.
>
> So it may be either or both these things. It may have been a sale at a higher price, or it may have been some concealed gift, or a good bargain given to a friend.
>
> Whatever it is, the aim clearly was for the asset to end up in the hands of ROK Prichaly, and there was quite a considerable effort obviously to keep that quiet…"

1412. Further, the fact that what ROK No. 1 Prichaly acquired was subject to a pledge in favour of the Bank obviously casts real doubt on the submission (in paragraph 967 of the Claimants' Closing), advanced to justify the assignment of rights to Mercury (see paragraph [628(4)] to [(8)] above) that:

> "Renord Invest could not sell the LPK land at Onega Terminal to ROK No 1 Prichaly while the land remained subject to the Bank's pledges."

1413. However, whilst sharing these concerns, and having repeatedly wondered why the simple course of obtaining evidence from ROK No.1 Prichaly itself was not adopted, I have concluded that the punch-line urged by the Counterclaimants, that ROK No. 1 Prichaly was a party to a dishonest conspiracy and acquired the Onega Terminal land as assets at a gross and fraudulent undervalue, is not substantiated by the available evidence or any inferences to be drawn from its absence. Speculation may be understandable, suspicion inevitable: but it is not proof.

1414. The spreadsheet did initially strike me as supportive of the Counterclaimants' case. In the end, however, I accept the evidence of both Mr Sklyarevsky and Mrs Yatvetsky in this regard. They and it struck me as believable in this particular context; and there is nothing to gainsay their explanation beyond the fact of the heading to the relevant document. Although the error is odd, I accept that such errors do happen; and the edifice sought to be built by the Counterclaimants is too heavy for its foundations.

1415. Furthermore, the Counterclaimants' fundamental premise that the Claimants accounted for and applied in diminution of the outstanding loans far less than the true value of the Onega Terminal assets ignores key elements of the various intermediate transactions which cast a different light. In particular:

(1) The sale (by public auction through Russian Auction House) of the Scan land at Onega Terminal on 26 October 2009 (see paragraph [614] above) realised a price paid by Solo of a total of RUB 207 million. Although the Counterclaimants assert that this was a "gross undervalue", the Claimants make the point that the contract for Scan's purchase of the Onega Terminal land in 2005 gave a purchase price of RUB 102.556 million. There was some investment made between 2005 and 2009, as Mrs Yatvetsky acknowledged ("tarmac or asphalt was laid down or something like that"); but not of such extent or value as to destroy the comparison. When account is taken of the collapse in land values after 2008, the suggestion of fraudulent undervalue is difficult to sustain, quite apart from the fact that I have determined that the auction process itself was not flawed.

(2) As to the values realized for the LPK Scan land at Onega, which the Counterclaimants assert were fraudulently low, the price of RUB 99,000 for which the land was sold at auction is obviously minimal. However, the land was sold subject to pledges in favour of the Bank for undischarged debts exceeding some RUB 600 million. As Mr Sklyarevsky put it:

> "You see, the price here was composite: it was the price and the encumbrance. The fair value is compounded of two parts: the price and the encumbrance. So here it is RUB 99,000, plus 600 or 700 million, and that price would be likely to be fair."

(3) The Counterclaimants then assert that when later, on 17 June 2011, the Bank assigned to Mercury its rights relating to (i) the 2007 LPK Scandinavia Loan and

(ii) the Second Onega Loan (including a transfer of rights relating to the associated security agreements), in respect of which the LPK Scan land at Onega Terminal Assets had been pledged, for the sum of RUB 27 million, that price was at a "97% discount". That is arithmetically correct and justified. However, it is a false calculation: the sum of RUB 27 million (which accorded with an independent valuation) was all the Bank could have hoped for because it was the market price for the land at the time. Mrs Yatvetsky explained:

> "The price paid by Mercury was effectively a price for the assets (given that there was no real possibility of enforcing the outstanding loan amounts to any greater extent than the collateral value)."

(4) It is to be noted that Dr Arkhangelsky had, only two years before the auction, acquired the land for some RUB 2 million, and had spent little more on its improvement.

1416. Moreover, when ultimately the Scan land and the LPK Scan land at Onega Terminal were brought together in Mercury for sale to ROK No. 1 Prichaly (see paragraph [629] above) the Bank wrote off the sums owed to it under the 2007 LPK Scandinavia Loan and the Second Onega Loan (amounting to over RUB 810 million); and Mercury brought no claim against LPK Scandinavia and/or Onega and/or any claim under any associated security agreement before the expiry of the relevant (Russian law) period of limitation. As Ms Mironova put it (and for the avoidance of doubt I take it that the Claimants accept, and I proceed on the basis, that this binds them):

> "… after the conclusion of the two contracts that we've just looked at, the Bank forgave over RUB 850 million worth of loans under the two contracts with respect to Mr Arkhangelsky personally and with respect to OMG. This is more than adequate. In other words, they completely forgave all the outstanding loans under the two loan agreements."

Consequently, Dr Arkhangelsky's exposure was reduced (and theoretically he benefited) by that amount.

1417. Looked at overall, therefore, there is substance in the Claimants' case that Dr Arkhangelsky benefited from the ultimate result since he and his companies were entirely released from further liability in respect of the relevant loans, unless the value of the Onega Terminal exceeded the full amounts outstanding together with interest and costs. That does, as it seems to me, spike the Counterclaimants' guns in the context of any claim for recovery of loss in respect of the transactions.

1418. For completeness I should record that the complex series of dealings was the occasion of profit for Renord-Invest in an amount that is unclear (and for lack of any documentary evidence must remain so). But there is nothing in the evidence before me to contradict Mrs Yatvetsky's evidence that it was not more than about RUB 55 million gross and only about RUB 5 to 10 million after deducting costs "incurred with respect to Morskoy Bank".

1419. Whether the Claimants and/or their associates then or thereafter profited under some arrangement with ROK No. 1 Prichaly is speculation. There is no evidence either way so far as I am aware.

Expert valuation evidence

1420. So far, I have focused on whether the factual evidence discloses or gives rise to the inference that some defect or impropriety in connection with the auction processes or the manner in which the assets were presented for auction sale led to auction prices which were grossly deficient. For completeness and with some reservations, I should address also the clash of expert evidence (the experts being Mr Millard for the Claimants and Ms Simonova for the Defendants/Counterclaimants) on the issue of value, which the Counterclaimants sought to rely on both as proof of collusion and impropriety in connection with the auction process, and to establish and quantify their loss if the Counterclaim is established.

1421. My reservations, in short, are these. First, in my view, the Counterclaimants' contention that fraud could be inferred from showing gross undervalues was always ambitious at best. As Mr Birt submitted in his oral closing submissions:

> "…it's not just a question of showing that that assets were sold a bit on the low side, or even that Ms Simonova's approach should be preferred to that of Mr Millard. In order to infer fraud, what the defendants would have to show is that there is no explanation for the sale price other than the sale was a dishonest one. It is no good showing that there is a range of honest valuations but that Ms Simonova is obviously right and Mr Millard is obviously wrong. That's not good enough for fraud."

1422. Secondly, my earlier conclusions make the valuation exercise largely, if not completely, superfluous. The Counterclaimants' resort to the expert evidence of value to establish a factual conclusion of impropriety and conspiracy involves a circularity and the assumption of a functioning market in, and demand for, the auctioned assets which the auction process otherwise appears to have demonstrated not to exist. In the real world, market value is the product of demand: no demand, no market value. The fact that not a single third party attended any of the auctions appears to demonstrate that there was no demand; and to argue (as the Counterclaimants argue) that the true market value of the assets demonstrates that the absence of third parties is evidence of fraud is to argue in a circle. I cannot accept the Counterclaimants' approach or their argument: having held that the auctions were not improperly conducted, and that ultimately the factual evidence provides no basis for any other conclusion than that the reason for there being no third parties bidders was because there was no real and sustained demand for the relevant assets, I cannot think it right, and I do not propose, to reverse engineer a different conclusion on the basis of a necessarily theoretical value analysis.

1423. Thirdly, the conclusion that there was no properly functioning market for assets of the relevant nature, which defeats the theoretical exercise based on the assumption that there was, is not as surprising in the particular circumstances in Russia in the wake of the credit crunch and collapse in asset (and especially real estate) values from and after

September 2008 as usually it would be. Ms Simonova tended, in my perception, to dismiss the notion of such a serious collapse in market values as Mr Millard considered had occurred as inherently too unlikely to be given credence. It is this which in large part explains the extreme variations between them. But the result is that Ms Simonova's valuations do not to my mind engage sufficiently or at all with the market reality; her reports have been devalued accordingly, and I have been left with a chasm too deep and broad to reach any secure conclusion.

1424. Fourthly, and with regret, I also have to say that neither expert appeared to me to be as independent and dispassionate as is required of an expert and necessary to merit the court's reliance on him or her. Both were dogged to the point of obstinacy in adhering to their chosen valuation approach and seemed unwilling to explore alternatives even for the purpose of elucidation: Mr Millard's refusal to contemplate valuing Western Terminal by reference to the profit earning potential which ownership of the land might unlock being an example in his case; and Ms Simonova's insistence, when confronted with the fact that land she had valued at some US$ 2.848 million as at May 2015 had been on the market for almost a year at a suggested sale price of approximately US$ 36,000 without attracting a buyer, that "No way I will alter my appraisal…" being an example in hers.

1425. Both also seemed to me to tend to descend to advocacy, that tendency being particularly marked in Ms Simonova, whose evidence was further devalued by the fact that (as she admitted) she had not visited any of the sites, and she has had no direct experience of the Russian market and her firm has no office there. She had to accept that she had no experience at all of selling what she described as "big real estate in Russia".

1426. These reservations might have persuaded me not to undertake the task of assessing the competing expert valuations; but I have felt bound to do so because although loss may not be in issue, the Counterclaimants rely on Ms Simonova's evidence in support of their claim; and further, the exercise seems to me also to cast some light on the objectives of the Claimants and their associates.

1427. I turn, therefore, with that reluctance, to the expert evidence adduced, starting with certain uncontentious matters.

1428. It was, as might be expected, common ground that the objective was to establish the market value of the relevant assets, market value being defined by the International Valuation Standards Council ("the IVSC") as the estimated amount for which an asset "should exchange on a valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion".

1429. It was also common ground (as might also be expected) that, to establish "market value" there are three different approaches to asset valuation:

(1) A market approach provides an "indication of value by comparing the subject asset with identical or similar assets for which price information is available".

(2) An income approach provides an indication of value by converting future cash flows to a single current capital value. The income approach employs two methods: (i) a direct capitalisation method which capitalises expected future income as a basis for estimating value; or (ii) a Discounted Cash Flow ("DCF") analysis, which gives the value of an asset on the present value of the expected future cash flows that will accrue to the owner. A discount rate is applied to future expected income streams to estimate the present value.

(3) A cost approach based on the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset of equal utility, whether by purchase or by construction. Neither expert considered the cost approach to be appropriate or viable in the present circumstances.

1430. The 'market approach' postulates the availability of price information for assets sufficiently comparable to provide a valuation basis. That involves a judgment as to comparability; and it may also involve adjustments calculated to cater for inevitable differences between the assets being compared. In the present case, Mr Millard adopted a broad view of what assets might fairly be comparable and what adjustments would be legitimate to take account of differences. His position, which Ms Simonova did not agree, was that:

(1) Even if a valuer needs to make large adjustments to a particular comparable, it does not follow that the comparable asset is not a true comparable for the subject asset, or that the resulting valuation is inaccurate;

(2) While the more comparables which a valuer has, the more likely it is that resulting valuation will be accurate, there can still be an appropriate valuation if the valuer uses only one comparable.

1431. In relation to the income approach and the DCF method, the IVSC provides the following guidance:

(1) If the DCF method is used to determine 'market value' then it is important that the inputs are based on market evidence. Thus:

> "The use of the DCF method in a market valuation makes use of available market evidence and should reflect the thought processes, expectations, and perceptions of investors and other market participants as best as they can be understood. As a technique, the DCF method should not be judged on the basis of whether or not the specific DCF expectation was ultimately realized but rather on the degree of market support for the DCF expectation at the time it was undertaken. When the purpose of the valuation requires market value it is therefore important that the inputs into the DCF model are based on market evidence or reflect common market sentiment. If criteria specified by a particular owner or prospective owner is to used it should be compared with market evidence and expectations. If it differs

> then it can only be used for giving an indication of *investment value*, not *market value*."

Similarly:

> "All valuation inputs and assumptions should have regard to the conceptual framework for *market value* in the International Valuation Standards. Sufficient research should be undertaken to ensure that cash flow projections or expectations and the assumptions that are the basis for the DCF method are appropriate, likely and reasonable for the subject market."

Accordingly, the DCF inputs need to be checked to make sure that they correspond to real world evidence. Mr Millard said:

> "… a discounted cashflow is a technical exercise which can become divorced from market realities, because the model's sensitivity to certain inputs can lead to a wide range of results ... Therefore, in any DCF exercise, reference should always be had to the market, where possible, as a sense check to ensure that the level of values being received from the analysis is justifiable and represents a realistically achievable sales price."

(2) The IVSC guidance emphasises that it is good practice to disclose the assumptions underlying any DCF model, and notes that the information normally provided will include a "sensitivity analysis on the impacts of key operating forecasted data and the critical financial assumptions (discount rate, perpetuity growth rate) on the valuation results."

(3) An 'investment value' derived from a DCF approach may be different from the market value because to estimate the investment value "the discount rate, discount period and cash flow assumptions may not be the same as those that would be used by a general market participant." As Ms Simonova commented:

> "The investment value is the value for some investor who has some special features, and then the -- if appraisal doing that, he has to take into consideration that special features which could be referenced to the market participants."

1432. Mr Millard considered the DCF analysis inappropriate for the valuation of real estate at Western Terminal and Onega Terminal: on the basis that given (in his view) the complexity, the very many assumptions, and the wide range of results, he could have no confidence in any valuation which was so calculated. He thus performed no such analysis.

1433. On the other hand, Ms Simonova considered the DCF approach to be appropriate and in a sense mandated, on the basis that (in her view) there were no suitable comparables, and the process of adjustments was subjective, convoluted and inaccurate, and

confirmed the inappropriateness of the analysis. She rejected that approach and conducted no such analysis.

1434. The numerical extent of the dispute between the experts can be illustrated in tabular form: I refer to and adopt with gratitude the table of the auction results and the valuation figures of the two experts, as follows:

Asset	**Auction result**	**Millard**	**Simonova**
Sestroretsk Assets	RUB 106.656 million (October 2009)	RUB 70.78 million (June 2009); or RUB 68.57 million (October 2009)	RUB 564.405 million (December 2008)
Apartment	RUB 11.59 million (October 2011)	RUB 20.485 million (June 2009)	RUB 58.696 million (December 2011)
Parking Spaces	RUB 1.826 million (Late 2011)	RUB 1.478 million (June 2012)	RUB 9.579 million (June 2012)
Pravdy Street Assets	RUB 19.15 million (August 2012)	RUB 34.48 million (June 2009)	RUB 393 million (May 2015)
Onega Terminal Assets owned by Scan (i.e. excluding LPK Scandinavia land)	RUB 196.173 million (October 2009)	RUB 117.7 million (June 2009)	RUB 2.947 billion (December 2008)
Western Terminal Assets	RUB 675 million (September 2012)	RUB 695.955 million (September 2012)	RUB 4.531 billion (September 2012)

1435. The disparity is immediately obvious and striking. In terms of the main bundles of assets:

(1) Western Terminal is valued by Ms Simonova at almost US$144 million, but by Mr Millard at just over US$21 million;

(2) Onega Terminal is valued by Ms Simonova at around US$100 million, but by Mr Millard at just under US$4 million.

1436. At the risk of some over-simplification, these arresting differences (large even given my own experience that expert valuation spreads are often substantial) are attributable to the combination of two principal factors flowing from their different approaches:

(1) Mr Millard's refusal to characterise the land as 'Trade Related Property' ("TRP") (notwithstanding its special attributes and profit-earning potentiality) and his insistence, in adopting a market comparable approach, on treating ordinary industrial land as comparable to the land at the two ports, with limited adjustments in deference to its commercial use;

(2) Ms Simonova's contrasting insistence on adopting a DCF methodology (which is inherently heavily dependent on its inputs and assumptions), and in making bold and optimistic assumptions in that context as to the profit-earning potential for the port enterprises without applying any sensitivity analyses which might temper those assumptions.

1437. I should also record that at one point it was suggested by the Counterclaimants that Mr Millard's results were "contrived" and, in coinciding so closely with the prices actually realised at auction, "too good to be true". Mr Lord, unsurprisingly, strongly objected to this, and challenged the Counterclaimants to clarify whether they asserted dishonesty on the part of Mr Millard also. Mr Milner of Counsel, who appeared on behalf of the Counterclaimants to cross-examine Mr Millard and to present their closing submissions on valuation issues, made quite clear that no allegation of dishonesty was intended, and accepted that the suggestion of contrivance was regrettable and not pursued.

1438. As to the detail, I propose to focus primarily on the rival valuations of Western Terminal and Onega Terminal assets, though (as appears from the table above) the experts also valued the lands at Sestroretsk, Seleznyovo and Tsvelodubovo, as well as the Arkhangelsky's apartment at 8A Kharkovskaya, St Petersburg, and its three parking spaces, and commercial property at 22 Pravdy Street, St Petersburg.

Experts' valuations of Western Terminal

1439. As alluded to above, there was an important disagreement between the experts as to whether the land at the two ports should be classified as TRP. Although in their written closing submissions Counsel for the Claimants sought to marginalise the debate as "arid" and the classification as "merely a label", all on the footing that "the market value of the asset should be the same whether or not it is a TRP", the question of classification seems to me to be important.

1440. First, classification as a TRP suggests that an income approach, and specifically, the DCF method, is indicated, at least in default of close TRP comparables. Secondly, if the market comparable approach is nevertheless adopted, the economic characteristics and profit earning potentiality of the land is likely to be the most important factor in determining comparability.

1441. As to the disagreement about classification of the land at Western Terminal (as also at Onega Terminal), in my view Ms Simonova is right: the seaports fit well into the IVSC and RICS definition of TRP, which is:

> "any type of real property designed for a specific type of business where the property value reflects the trading potential for that business."

1442. I did not find persuasive Mr Millard's somewhat ingenious attempts to confine the classification to assets such as hotels or pubs, and then to finesse the concept on the basis that the classification makes no difference.

1443. Indeed, it seemed to me that when cross-examined (very effectively) by Mr Milner, Mr Millard, having floated and then retreated from a far-fetched suggestion that the land might be better used for houses with a waterfront view, had reluctantly to accept that (a) the "highest and best use" of both parcels of land was as a terminal, and (b) each in such circumstances "may well be a trade related property." He eventually settled for this:

> "I pointed out in my supplementary, there are a number of difficulties and challenges with applying a discounted cash flow, which is why I chose not to apply it, but I do not have any issue with valuing it on that basis per se."

1444. Mr Millard nevertheless stuck to his market approach and selected what he considered to be comparables, with adjustments to take into account of differentiating economic characteristics. Thus, taking the case of the Western Terminal assets, his approach was as follows:

(1) He took as his base figure what he assessed to be the average price of industrial land in the St Petersburg region (US$1.1 million per hectare);

(2) He then discounted that by 30% to arrive at what he regarded as a realistic sale price in the difficult circumstances existing (approximately US$800,000 per hectare);

(3) He then added a 100% premium to reflect the fact that the land has access to the berths and had potential use as a container terminal, that uplift being calculated based on a comparison between the average price of industrial land in England and a plot of land in Southampton which has access to a berth; and

(4) Lastly, he extrapolated the value in 2012 by analysing the 68% growth in prices in warehouse properties since 2009, applied to the base figure of US$1.1 million per hectare.

1445. His justification for this approach, which necessitated applying percentage uplifts in value to reflect the basic flaws in the comparisons (in effect, that there was no true or even imperfect comparison), was, I regret to say, unimpressive. A flavour is captured in the following exchange in the course of his cross-examination:

> "Q. Now, someone who wants to buy a port facility is unlikely to have an interest in buying assets that are not located next to the sea; would you agree with that?
>
> A. Yes, that's correct. It's a fairly limited marketplace, if you look at the big port of St Petersburg in particular, the number of landowners is fairly restricted, and therefore the number of potential buyers, I would suggest, is probably also quite limited.

> Q. So he wouldn't ask himself, the buyer, what premium it was appropriate to pay for access to the sea, because land that didn't have access to the sea would have no interest to him whatsoever?
>
> A. You are asking me to speculate on the specific requirements. I mean, if he wanted the land for direct access to the sea, then clearly that would not be the case, but it would be perfectly reasonable for someone who is operating a port facility to require storage five miles up the road. So, I mean, it would depend what his specific purpose would be.
>
> Q. But equally, someone who just wants to buy a warehouse, for example, is unlikely to pay a 100 per cent premium for a warehouse in the middle of a major port?
>
> A. Correct.
>
> Q. So they are, more or less, completely distinct markets, aren't they, the market for general industrial land and the market for port facilities?
>
> A. They are, to a certain extent, a distinct set of buyers. It doesn't mean that they are distinct markets, per se.
>
> Q. So to try to reach conclusions about the value of one based on the value of the other doesn't make a lot of sense, does it, you are not comparing like with like?
>
> A. I hope that I explained that I believe it makes perfect sense.
>
> Q. With respect, Mr Millard, it doesn't, does it, because they are not even apples and oranges. They are not even conceivably in the same market at all?
>
> A. Well, they are apples and apples, it is just one apple is next to the port and the [other] one is half a mile up the road.
>
> Q. They are not comparable in any true sense, are they, Mr Millard?"

1446. That lack of comparability was emphasised by the size of the percentage uplift which Mr Millard considered was required. Further, the resort to the average price difference between industrial land and a port plot in England seems facile, and takes no account of the special characteristics and value of access to the sea in North Russia. Mr Millard's attempts to justify this aspect of his approach were similarly less than impressive, as to my mind appears from the indicative exchange taken from his cross-examination, as follows:

> "Q. Now, if the premium in Southampton is 100 per cent, and it might not be because none of the comparables is actually in

> Southampton, but let's leave that to one side. If the premium in Southampton is 100 per cent, it doesn't from that, does it, that the premium in Hamburg or Dubai or, indeed, St Petersburg, is also going to be 100 per cent?
>
> A. No.
>
> Q. And, in fact, the difference in value between a piece of land which has access to a berth and a piece of land in the same city which doesn't have access to a berth is not going to be a constant relationship around the world, is it? It's going to depend on the characteristics both of the berth and the port, and of the land that you are comparing it to; isn't that right?
>
> A. That's potentially true, yes.
>
> Q. So if we take the berth, for example, the potential premium that one might pay would depend on things like the size of the berth?
>
> A. Yes.
>
> Q. Is that right? The types of ships that it can accommodate.
>
> A. Yes.
>
> Q. The quality of the transport links at the port?
>
> A. Yes.
>
> Q. The size of the local market that the port serves, and the amount of competition from other nearby ports.
>
> A. Correct.
>
> Q. Those things could make a substantial difference to the value of a port terminal, couldn't they?
>
> A. Correct…"

1447. The Counterclaimants emphasised this as follows in their Written Closing Submissions:

> "It is sufficient to look at the globe to see the scale of Mr. Millard's error. Russia occupies 1/8th of the world's land mass (although not 1/3rd, as Mr. Millard seems to think); but its Baltic shoreline is very short. The difference in supply is therefore enormous: Russian market of industrial land is more or less infinite, whereas the Big Port of St. Petersburg is a small dot on the map where mainland Russia touches the Baltic Sea. St. Petersburg itself was built amidst marshy wilderness as a new

> capital of Russia precisely because that short Baltic shoreline was treasured as Russia's 'window to Europe'."

1448. In short, I have serious reservations about both Mr Millard's comparables, and his approach for making up for the lack of comparability by adopting percentage uplifts.

1449. Against that, however, there were obvious flaws in Ms Simonova's approach also: even accepting as justifiable her classification of Western Terminal as TRP (as I would be disposed to accept, having regard to the obvious potentiality of the land for use as a terminal), and accepting further that on that basis the employment of a DCF method may well also be justified, I would accept most of the criticisms levelled against her approach by the Claimants.

1450. In particular, and again taking Western Terminal as the exemplar:

(1) Central to her valuation employing a DCF method is an assumption of an annual capacity for Western Terminal of 500,000 TEUs. The Claimants criticised this as entirely implausible: and I have previously explained why I agree (see paragraphs [193] to [194] above). Furthermore, the final draft IM's 500,000 TEU figure was based on the development of Western Terminal in three stages, involving capital expenditure of US$220 million and including critically the construction of a third berth: but Ms Simonova assumed full capacity with only two stages of development, capital expenditure of US$ 104.5 million, and no construction of a third berth. Her analysis took an even more optimistic view than the exaggerated predictions in the final draft IM.

(2) Her assumptions as to throughput also appear over-optimistic. On the basis of a total capacity of 500,000 TEUs, Ms Simonova assumed a throughput of 420,000 TEUs per annum. That would be equivalent to 15% of the total activity in the Big Port of St Petersburg, generated from a land site that was only 1.5% of the total area of the Big Port of St Petersburg. By way of comparison, the largest operator in the Big Port, CSJC First Container Terminal, occupied a 74 hectare space and produced a turnover of 1,000,000 TEUs per annum. As a reality check, in 2014 Global Ports, the largest operator of berths and porting facilities in Russia, had throughput at its First Container Terminal in St Petersburg of 1.25 million TEUs per annum. On Ms Simonova's analysis, Western Terminal would within only 5 years achieve a capacity equivalent to 40% of Global Ports. That is difficult to accept as realistic.

(3) One reason why it is unlikely to be realistic is revealed by the assumptions taken by Ms Simonova as to the average storage time for containers, which obviously affects capacity. The IM proceeded on the assumption of storage of containers for an average of 10 days to a maximum of 5 containers high, yet Ms Simonova proceeded on the basis of storage of containers for 3 days, assuming that each standard container would occupy $15m^2$ when in fact Mr Steadman, the Counterclaimants' expert on business valuation, assumed a container could be up to $20m^2$. It is difficult to see how Ms Simonova's calculations can work for the physical space at the Western Terminal site once more realistic assumptions are made.

(4) Moreover, Mr Steadman assumed capital expenditure of US $220 million in using a capacity figure of 500,000 TEU. Ms Simonova assumed capital expenditure of only US $104.5 million. It is not easy to see how Ms Simonova could plausibly expect the terminal to have the same capacity of 500,000 TEU as the capacity in Mr Steadman's analysis, but to do so at half the cost, with a saving of US$ 115 million.

(5) Other of Ms Simonova's inputs to her DCF model are questionable: for example, her tariff figures appear too optimistic. She acknowledged that tariffs at Ust-Luga were 30% to 40% lower than at the Big Port of St Petersburg, but suggested "Ust-Luga has a significant drawback in that it requires an additional 150 kilometres of road transportation". But Ust-Luga would have been a significant competitor to any developed Western Terminal. Ust-Luga's location provided it with direct access to the transportation network which gave it a distinct advantage over a port located by the city centre. There is force in the Claimants' submission that given its significantly lower tariffs, Ust-Luga would have exerted downward pressure on the charges at Western Terminal.

(6) None of Ms Simonova's reports refers to or appears to demonstrate any sensitivity analysis. When cross-examined as to this, Ms Simonova told me that she had done "some internal analysis" and had probably undertaken a sensitivity analysis for "not all of the assets, but some of them"; but she could not "remember right now exactly" what analysis she had done. More generally, she asserted that a sensitivity analysis would not be required in 95% of cases. I cannot accept this. I agree with the Claimants that a sensitivity analysis is almost always required in order to understand how changes in parameters affect market value (which Ms Simonova accepted was the purpose of such analysis).

(7) My strong impression was that the reality was that Ms Simonova had not undertaken any organised sensitivity analysis, perhaps because her expertise and more usual deployment is in valuing for the purpose of IFRS accounting and not from the perspective of an actual market. Particularly in a volatile and uncertain market, where the potentiality and value of land may be greatly affected by changing market perceptions and assumptions, I agree with the Claimants that it is difficult to consider a DCF model robust and reliable if a sensitivity analysis has not been conducted. An immediately obvious example is that Ms Simonova performed no sensitivity analysis on the effect of a reduction in tariffs, nor on the effect of increased storage times leading to lower throughput.

1451. The Claimants' expert offered a further telling example of how relatively small changes in assumptions can entirely alter the DCF modelling, based on a comparison of EBITDA figures for Global Ports (the operator of the First Container Terminal at Big Port of St Petersburg, and the Port of Brisbane). He explained that if the EBITDA of Global Ports is compared with Ms Simonova's projected EBITDA of Western Terminal, then (without making any other adjustments to Ms Simonova's model) the terminal value of Western Terminal would be just over US$ 100 million (a value less than the capital expenditure needed to create it), and its net present value would be US$ 40.58 million. This sense-check (and it did not purport to be anything more than a sense-check) shows just how sensitive is Ms Simonova's DCF valuation.

1452. An additional flaw, though I would accept that the Claimants tended wrongly to ignore the fact that any DCF valuation of TRP inevitably is based on business potentiality available on the land in question and thus focuses on the level of business which a purchaser would perceive to be achievable from the site, stems from the fact that there is a well-recognised difference between a business valuation and an asset valuation. There is, in my view, some substance in the Claimants' further criticism of Ms Simonova that she tended to blur the two, and her valuation failed to make a sufficiently clear apportionment between the value of the land and the value of the business. A confusion in her mind between the two was revealed in the following exchange in the course of her cross-examination:

> "Q. And can I suggest that, given the intervening financial crash, and the effect that had on property values, it is quite implausible that the Western Terminal land could have gone up in value in that way over that period?
>
> A. I didn't state that the land increased in value, and what I am stating: this is the value of the terminal"

1453. There is substance too, in my view, in the Claimants' submission that Ms Simonova's valuation did not reflect the necessary specific circumstances of the Western Terminal development. Thus:

(1) She assumed that at least US$ 100 million would need to be invested to create a container terminal. However, to have any such development, OMG needed the necessary permits and approvals. If those approvals were only obtained on the basis of alleged corrupt payments made by Dr Arkhangelsky, then that factor would inject a very high level of risk into the Western Terminal valuation which Ms Simonova's analysis did not reflect.

(2) She did not take any account of the fact that there was only a limited pool of buyers for port capacity at Western Terminal. As Mr Millard commented:

> "It's a fairly limited marketplace, if you look at the big port of St Petersburg in particular, the number of landowners is fairly restricted, and therefore the number of potential buyers, I would suggest, is probably also quite limited."

(3) Ms Simonova herself explained Western Terminal is situated in a "combined military zone" and therefore "you couldn't put there anything because nobody could go there without any special permissions". It "sits next door to this military factory, which also is a special regime". This further restricts the pool of buyers, as Ms Simonova agreed: "Yes, of course. We call this weak market".

1454. In summary, I cannot accept Ms Simonova's evidence on the value of the pledged assets at Western Terminal as reliable.

1455. Similar (with some additional) criticisms and the same conclusion follows in the context of Ms Simonova's DCF-method valuations of the land at Seleznyovo, the land at Onega Terminal, the land at Sestroretsk and the land at Tsvelodubovo.

Valuations of land at Onega Terminal

1456. The most important, of course, at least in terms of value, is the land at Onega Terminal, part owned by Scan (about 40%) and part owned by LPK Scan (about 60%). In total the Onega Terminal consisted of 4,506.5m^2 warehouse and supporting space, and 55,208m^2 of land.

1457. Once again, the experts used different methods in valuing the land, and in important respects different basic assumptions. I discuss each expert's approach in turn.

1458. Mr Millard valued the Scan land at Onega Terminal at RUB 117.7 million (or US$ 3.8 million) as at June 2009. He valued the entire Onega Terminal (Scan and LPK Scan land) at US$ 19.06 million as at May 2015.

1459. Mr Millard used the direct capitalisation method (one of methods in the income approach) to determine the market value of the buildings at Onega Terminal, and then the comparable (i.e. market) approach to determine the market value of the remaining land as "open yard space". As to each:

(1) In relation to the buildings, he took actual warehouse rental figures for St Petersburg, and made appropriate adjustments to his capitalisation rate. He provided what he presented as comparables for 2009 and 2015.

(2) In relation to the land, he took comparable land values and applied a premium to reflect the proximity to a berth.

1460. Once again, the comparables he selected were obviously rather different from the land actually being valued: as in the case of the Western Terminal land, the comparison was between industrial land and port land, with the differences sought to be made good by the application of a premium (see paragraphs [1451] to [1453] above as to the process adopted, which was the same in the case of the Onega land).

1461. Mr Millard accepted that the comparisons were imperfect. I asked about them after the conclusion of his oral examinations:

> "MR JUSTICE HILDYARD: One rather thinks with comparables that there must, at least, be some similarity of likely demand underlying the market which you say is comparable…
>
> A. Yes, I think the point Mr Milner made was well made: that the people who are probably buying industrial land and the people who are buying ports are a different type of buyer, or a different set of buyers. The people who could possibly buy the port, particularly in the case of Onega where they are reliant on other people, is probably fairly limited…
>
> MR JUSTICE HILDYARD: But to put it rather inelegantly, and probably too vernacularly, if someone comes to you and said: I would like a warehouse, and you said to them: I've got just the

thing for you, it's a port terminal, they would think you were off your head, wouldn't they?

A. Yes, they would. They would rather have the warehouse -- depending on what they want --

MR JUSTICE HILDYARD: It depends on what they want, but they are very different things, aren't they?

A. The comparables used are all in the Kirov District of St Petersburg, they are not very far from the port at all. If you want to have a warehouse in and around the port, you may say: I want to be 10 metres from the sea -- that's the case with Onega, probably, roughly -- or: I am happy to be 200 metres from the sea, is there a premium for the land that is closer to the sea? Yes there is. I've used a premium of 100 per cent. Is that right? It's not easy, it's not a science, and I can't say: yes, that's exactly the right number, but experience suggests that that's probably broadly right where you are using as a baseline something which is for the same use and very close by, albeit that it is 500 metres or 300 metres from the berth rather than 10 metres. Clearly it is better to be close, and hence the application of the uplift. But the people looking for warehouses in the Kirov District close to the port are probably a similar set of people, albeit some would want to be right on the port and some are happier to be a bit further away.

MR JUSTICE HILDYARD: People very rarely pay for economic advantages they do not need, because they usually cost them.

A. Correct, and if you want to have just a warehouse, there are any number outside St Petersburg. There's a ring road, it's called KAD, which basically means circular road, and there are any number just outside that on major highways, and you can go there and pay 50 per cent of what you would pay to have a warehouse in Kirov, which is close to the port, or if you want to be right on the port, you would probably pay more. But that's correct: if you don't have the requirement to be close to the port, you would just rent a warehouse outside the city, where you have access to the major infrastructure.

MR JUSTICE HILDYARD: The comparability is quite tenuous, is it not?

A. I'm not going to say it's perfect. It's far from straightforward, and I'm not going to say it was a straightforward process. We went through quite a lot of soul-searching in terms of what we thought was the right answer, because it is clearly not difficult

> -- it's clearly difficult, and, as I explained at the outset, actually there's very little assets trading at all in the market. So, you know, finding a buyer would be problematic full stop. As I say, we went through a lot of soul-searching and looked at different ways, and we felt, and I specifically felt, having looked at it with my colleagues, that this was the best way to get at the best answer. I'm not going to say it's perfect, but I do strongly believe, and it is my opinion, that it is very close to what the right answer should be."

1462. The exchange confirms this at least: that Mr Millard chose his comparables on the basis of treating Onega Terminal simply as industrial land within the port, for which a premium was payable in comparison to similar industrial land in the same district and close to, but not, within the port. He did not take account of any special qualities or demand for a berth and port terminal. The question is whether that is comparing two comparable things; of which (he accepted) a possible test is whether "a similar set of people" would be interested.

1463. In this context, it is important to appreciate the nature of the Onega Terminal (a factor which I should wish to acknowledge my questioning did not in retrospect adequately take into account). The position is very different compared to Western Terminal. For these purposes, that is primarily because Onega Terminal was not a 'port' or a 'transhipment terminal': it had no access to the sea. It did not have its own berth on its own land, but had to rely on two berths owned by the SFP. Mr Millard did strive to make this point:

> "It is important to note that in accordance with the land title plans provided and used by both experts the property does not have direct access to the wharf, and is therefore dependent on a third party owner for loading and unloading of cargo vessels."

1464. In consequence:

(1) The income generation of the land was necessarily restricted. Ms Simonova said that Onega Terminal did not need its own berth, but she had to accept that business could not be conducted on the Onega Terminal site as a Ro-Ro facility without access to a berth. Access was only possible across another party's land. Mr Millard observed:

> "…if you don't have access to the sea and you do not have an agreement for the actual unloading and loading of the cars with the person who has the access to the sea, you cannot operate it for that use."

Thus, in effect, the SFP group had a ransom strip over the running of any transhipment facility at Onega Terminal.

(2) The absence of its own berth was an important restriction on the development of any business at Onega Terminal; it was the Claimants' case that this made the Onega

Terminal site no more than an ordinary industrial land plot. Their expert Mr Popov said:

> "I should mention that the subject site does not include a berth, which is vital for any port facility. OT outsources the berth located in the immediate vicinity from an unrelated third party - Sea Fishing Port [SFP] of St Petersburg…
>
> It is my view that absence of own berth makes the site no more than an ordinary industrial plot (which are in abundance around the city and in the Port of St Petersburg) with very little upside from its proximity to the seashore."

(3) In reality, the only realistic buyer for the Onega Terminal land would be the SFP group which owned the relevant berths. An 11-month service agreement dated 15 November between SFP and Onega for loading and unloading services was disclosed: and it may well be (though no document was provided in evidence) that it was extended; but it could be brought to an end. SFP were accordingly in a strong position in any negotiations.

1465. All this, according to Mr Millard, strengthened the case for comparability to ordinary industrial land with reasonable proximity and access to the port and weakened the case for a DCF methodology, even if the land was classified as TRP. As to the latter (that is, classification as TRP), Mr Millard seemed to think that in comparison to Western Terminal, there was a slightly better case for treating Onega Terminal as a TRP, but two factors in particular told against the classification: (i) the split ownership; and (ii) the lack of direct access to the sea.

1466. Against this, and as in the case of Western Terminal, Ms Simonova rejected the market comparable approach, both for lack of realistic comparables given the special purpose for which the land was dedicated and because she considered the DCF approach to be appropriate, given her classification of the land as TRP.

1467. For my part, I would be prepared to accept that the land at Onega Terminal could quite justifiably be classified as TRP; and it would be wrong to dismiss or devalue Ms Simonova's approach on that score. In my view, it is plain that its best use would be as a port terminal; and its value would be likely to be perceived as such and quite arguably should be calculated accordingly.

1468. Further, as to the split ownership, it is obviously the case, as Mr Millard emphasised as justification for his approach, that:

(1) LPK Scan is not a party and the Counterclaimants could not themselves make and have never made any claim in respect of the LPK Scan land *per se*, though they have sought to rely on the value of that land and the "overall value of the land at Onega Terminal…as background to the claims…";

(2) In fact, as previously noted, Scan and LPK Scan were separate legal entities, had separate obligations as mortgagors of different land plots which served as security for different loans; and

(3) In the event, the Scan land at Onega Terminal was sold separately from the LPK Scan land to different legal entities.

1469. However, both parts of land were eventually brought together in ROK No. 1 Prichaly (in the manner previously described): and the control of the Renord-Invest Group companies which (I have already held) the Bank and/or its associates enjoyed militates, to my mind, against treating the two pieces of land as separate for the present purposes, and also against excluding any 'synergy' value which both experts agreed would result from valuing them together.

1470. For the purpose of analysis, therefore, I would be prepared to proceed on the basis that the Onega Terminal land should be valued as one and treated as TRP, and valued accordingly employing a DCF methodology as proposed by Ms Simonova. Even on that basis, however, I consider that her application of the methodology is flawed, and her conclusions as to value cannot be treated as reliable.

1471. I accept in particular the Claimants' submission that Ms Simonova's inputs for her DCF model are decidedly optimistic (they said "flawed"):

(1) In relation to Ro-Ro handling:

(a) Ms Simonova assumed a maximum Ro-Ro capacity of 240,000 cars per year by 2009. However, under cross-examination Ms Simonova herself accepted that to be "some theoretical number" and could neither further explain or justify it; whereas Mr Popov gave reasoned evidence that 92,000 units was likely to be the maximum achievable for the 4.2 hectare site. Even OMG's own September 2008 presentation recorded Onega Terminal's capacity at 120,000 units per annum, half what Ms Simonova assumed.

(b) On the basis of capacity of 240,000, Ms Simonova assumed, again without sufficient basis (but simply on the basis that she "didn't see any problem"), a throughput utilisation rising from 31% to 54%. Mr Popov's reasoned evidence was that 38% would be the appropriate utilisation figure.

(c) Ms Simonova's tariff figures for Ro-Ro of US$129 per car assumes charges equal to fully-fledged terminals such as Ust-Luga and SFP itself. In cross-examination she sought to justify this on the basis that the alternative, when cars had to be shipped into and then transported from Finland (before the terminal was built) was a charge of $800. But this did not appear to me to address the point that existing competitors offer more for the same amount. It was (in her words) "taken from the other Ro-Ro terminals in the Big Port of St Petersburg" but it took no account of the uncontradicted evidence of Mr Popov that the charge ordinarily includes transhipment, in-port movement and storage charges amounting to 30% of the total. Onega Terminal's infrastructure constraints would mean it was unable to provide that full service within the single charge. Mr Popov's figure of US$ 90 takes account of that, at the least casting real doubt on the realism of US$ 129.

(4) As to container handling:

(a) Ms Simonova assumed 75,000 TEU per hectare, but Mr Popov pointed out that this very considerably exceeded the maximum container throughput of 37,000 TEU per hectare reached by established European terminals (their average capacity apparently being 27,000 TEU per hectare). It also very substantially exceeds the capacity of other Russian "peer" terminals. Mr Popov adopts a figure of 55,000 TEU per hectare as the maximum possible capacity for the site which is generous by "peer" and European standards but still 25% below Ms Simonova's assumption.

(b) In relation to throughput, Ms Simonova assumed an increase in utilisation from 51% to 67%. Mr Popov pointed out that this figure of 67% compares with a maximum utilisation according to his analysis of European Terminals of 60%.

(5) In relation to her EBITDA projections, Ms Simonova was much more optimistic than the EBITDA margins of other ports: According to Mr Popov, over the period 2008-2014 the metrics for all of the European, Asian, South American and Russian seaports he scrutinized demonstrated a flat EBITDA margin of c. 36%, which is more than a third below Ms Simonova's estimates.

1472. The reliability of Ms Simonova's valuations is further put in doubt by her admission that she had not performed any sensitivity analysis in relation to her DCF calculations for Onega Terminal. She sought to justify this on the basis that:

> "…the sensitivity of this model is the standard sensitivity. This is – there is almost nothing to check, and we used very, very conservative numbers, and so basically in the low end of the market value. The market value always has a range, but we are always trying in these kinds of projects to use the bottom."

I cannot accept this. The suggestion flies in the face of Mr Popov's evidence, which I have to say it seemed to me Ms Simonova did substantially but not justifiably ignore.

1473. The Claimants also submitted that Ms Simonova did not properly distinguish between the value to be allocated to the real estate at Onega Terminal and the value to be attributed to the business. Mr Popov explained as follows:

> "Mr Steadman's valuation of the Onega LLC business relies upon the very cash flows projected by Ms Simonova with respect to her [Onega Terminal] property valuation.
>
> In contrast to Ms Simonova who allocates the entire value of $202 million to the subject property, Mr Steadman splits the cash flows between business and physical assets in a proportion of 75/25 respectively…
>
> …
>
> Even without any cross-check of the final results, I can conclude that Mr Steadman's implied property valuation of USD 64 mln

> results in only one-third of Ms Simonova's estimate of USD 202 mln attributed to the very same assets thus questioning reliability of both valuations (1 - USD 64 mln/ USD 202 mln = 68%)."

1474. Though she accepted that the "value of the land" was different from her valuation of the terminal, it does appear to me that Ms Simonova, in effect, carried out a business valuation; and that, furthermore, in doing so she reached a valuation very materially higher than did Mr Steadman, whose own business valuation of Onega relies on the assumptions made by Ms Simonova, but attributes a value to the Onega Terminal assets which is only a third of the value attributed by Ms Simonova. That there is such a discrepancy between the two, even when they use the same assumptions, raises further doubts about the reliability of Ms Simonova's analysis.

1475. Lastly, I take into account the "sense check" suggested by the Claimants. As to this:

(1) On her figures the Onega Terminal would be valued at US$35 million per hectare, which would be 9-12 times higher than the value of any industrial site in St Petersburg.

(2) Her valuation of over US$ 200 million for a container 'port' facility which did not even have its own berth or own access to the sea, is difficult to accept (the Claimants described it more tartly as "fanciful").

1476. In summary, I cannot accept Ms Simonova's valuation of Onega Terminal, even assuming in her favour that the Scan land and the LPK Scan land should be valued as a single whole, that it should be classified as TRP, and that the proper valuation method for the land is DCF. Certainly, I could not take the valuations she suggests as plausibly beginning to indicate that the figures in fact achieved demonstrate, by reason of a comparison, fraud or other dishonesty.

1477. I turn to the other valuations, which I can deal with much more briefly.

Seleznyovo

1478. Seleznyovo is a land plot of 14.76 hectares in the Vyborg region. It was not a pledged asset. The Counterclaimants contend that Renord-Invest "grabbed" the Seleznyovo land plot for itself, using the control over Western Terminal (which owned it) conferred by the repo arrangements. Ms Mironova (and also Mrs Yatvetsky) assured me under cross-examination that it was intended to apply the proceeds of the sale of the land in diminution of the debts of OMG. There is, however, an issue as to the sale price achieved in addition to the propriety of the deployment of the repo arrangements in this way. There is, once more, a very large gap between the experts as to the value of the land.

1479. Mr Millard used the sales comparison approach and valued it at US$ 529,200 in May 2015. His evidence was that the plot was classified as agricultural land and it was not realistic to assume that the land could be developed. Although there is a wide variation in the value per hectare for agricultural land in the region, if the most generous figure is taken (US$ 36,000 per hectare), the plot could not be worth more than US$ 529,200.

1480. Ms Simonova used the income approach and a DCF model to give a value of US$ 15.142 million, on the premise that a change of use to settlement for residential development would be approved.

1481. The Claimants submitted that once again Ms Simonova adopted a flawed approach and reached an unreliable valuation. They submitted that:

(1) The land was classified for agricultural use; and Ms Simonova had seriously underestimated the difficulties in securing permission for a change in its use to settlement for residential development, which would be time-consuming and uncertain:

(a) In her evidence Ms Simonova relied on a letter suggesting that the municipal authority had no objection in the change of use, but that letter was far from confirmation of any planning permission.

(b) In any event, as to any reclassification of the land so that it could be developed, as Mr Millard explained "although it may be possible, in terms of the cost of doing so, both direct and indirect costs and the time it would take to do it would make it prohibitive."

(2) The relevant utilities are at Vyborg, 15km away. The relevant cost of connecting the site to the utilities would likely be prohibitive such as to make any development not financially feasible.

(3) Her DCF model relied on unrealistic assumptions: for example, in assuming the construction of 102 houses, she did not sufficiently take account of the infrastructure area, the construction costs, or the time for development (her assumption that 20 houses would be sold in the first year before being built being a particular example). The model also used a discount rate which was said to be far too optimistic.

(4) All the assumptions were subject to variation: and she failed to conduct any sensitivity analysis for her DCF calculations concerning Seleznyovo, undermining their reliability.

1482. The difficulty of assessing these competing opinions is greatly exacerbated by the fact that they were entirely disagreed on the two principal parameters, being (1) the prospect of obtaining permission for change of use, and (2) the extent of the infrastructural problems which would have to be overcome, especially as regards the capacity of any electricity supply to cope with the greatly increased demand from some 102 envisaged houses in a rural area. Cross-examination in detail of both experts did not really assist in the determination of these basic, ultimately factual, issues. Mr Millard was insistent but his certainty was not convincing; Ms Simonova was apt to descend to unsubstantiated and sometimes shrill assertion, and her complete lack of experience in sales made acceptance of her somewhat idiosyncratically expressed views all the more difficult.

1483. In the end, however, there is a piece of evidence in relation to the Seleznyovo plot which does assist, even if in a rather negative way. The Seleznyovo land plot has been on the

market for sale since 2014 at an asking price in 2014 and 2015 of RUB 12 million (or US$ 172,000); yet no potential buyer has been prepared to buy the plot and/or offer such a sum. These figures suggest an achievable price much closer to the order of magnitude of Mr Millard's valuation and that Ms Simonova's approach is unrealistic. It is primarily on this basis that I prefer Mr Millard's evidence on the issue.

Sestroretsk

1484. The Sestroretsk land plot, owned by Scan, was about 2.5 hectares, 35 km from St Petersburg. The land was registered for agricultural use, specifically a fishery. The experts agreed that the "highest and best use" for the land plot was for the development of individual dwellings, and that permission for change of use ought to be available, but disagreed as to how long it would take for permission to be available now. The experts also disagreed once again as to the appropriate valuation method, and even more so as to the value of the plot, as in the case of Seleznyovo.

1485. Mr Millard valued the Sestroretsk land plot at RUB 68-70 million (or some US$ 2.285 million) in June/October 2009, and US$ 3.01 million in May 2015. This was less in 2009 than the Russian Auction House auction sale price of RUB 106.656 million.

1486. For his valuation, Mr Millard used the market approach, and took as his guide the prices of what he regarded as comparable plots of land, one in Lisiy Nos in the Kurotny region (some 11 kilometres further out from St Petersburg than Sestroretsk) and the other in Zelenogorsk, about 30 kilometres from Sestroretsk and thus further still from St Petersburg. He considered such an approach to be preferable to the use of a DCF model.

1487. Remarkably, Mr Millard did not give the full address of either of the supposedly comparable sites; and it emerged in the course of his cross-examination by reference to this omission that Mr Millard had not visited either of them, and was unable to comment on their topography or situation, or even exact location. For example, he was unable to say whether either was on the water-front. He accepted that in those circumstances he did not really know how the sites truly compared to the Sestroretsk land. He resorted to a general assertion of comparability, as the following extract shows:

> "Q…If you are being properly objective, you can't seriously place much weight on these as comparable, can you, because we don't know any details about the land and also they are not particularly close to the land you are valuing?
>
> A. I think if we're being properly objective, they are reasonable comparables. They do have a better permitting status than the land in question. I am not sure I take the implication that being on the waterfront is an advantage because of the difficulties of constructing in water protection zones in Russia…"

1488. It was put to him that Sestroretsk is "a very prestigious area" but he disagreed, stating that it is a "largely industrial town" in which the St Petersburg elite would not have properties, though they would "along the coastline further north". He pointed out that

the channel bordering the town (the Vodoslivnoy Channel) is known as the "Rusty Ditch" and is "notorious for the levels of pollution".

1489. Mr Millard's main point though was that he could justify his approach by reference to his firm's own difficulties in selling land in the area, including unsuccessfully struggling to sell a plot very close to the Sestroretsk land, even with the benefit of planning permission. He referred also to the unsuccessful efforts of a company for whom he had previously worked, called Senator, to sell land all over the St Petersburg area in 2012, saying:

> "…in 2012 I worked for a company called Senator. They have a branch called Senator Land which has land plots all over the St Petersburg Oblast, specifically held with permits for purchase and they are offered for sale all the time and between 2009 and today, they have sold exactly none of them because there are no purchasers in the market."

1490. That is, of course, in the nature of factual (and probably hearsay), rather than expert, evidence: but it is of some interest nevertheless. It also may explain (though Mr Millard did not actually suggest this) why he looked elsewhere than Sestroretsk itself for comparables.

1491. It may also, however, in part justify the different valuation methods adopted (as always) by Ms Simonova: she used the income approach and the DCF method in reaching her valuation of US$ 19.21 million as at December 2008, and US$ 24.167 million as at May 2015.

1492. The Claimants and Mr Millard contended that the income/DCF approach was not appropriate in the circumstances, and that even if it was Ms Simonova had wrongly applied it:

(1) Ms Simonova was wrong to treat Sestroretsk as an 'investment property' justifying assessment for its 'investment value' rather than its 'market value' (see paragraph [1431(3)] above); her justification for this, that it was described in Scan's accounts as having been acquired for the purpose of developing it, could not affect its market value; and furthermore she appeared to have taken the value as that for the 'as-developed' land.

(2) In such circumstances, and given the land's present use, a DCF method is not appropriate for the valuation of the Sestroretsk land.

(3) In any event, Ms Simonova's assumptions and inputs which she used in her DCF model are flawed:

(a) Sestroretsk is not a luxury destination. It is an industrial area where the subject property borders the Vodoslivnoy Channel, known locally as the Rusty Ditch. It is a channel notorious for its levels of pollution.

(b) Ms Simonova took insufficient account of the infrastructure and access roads which any developed site would need (and which would be required

by law). Because of such infrastructure needs, a maximum of only 12, not 25, separate houses could be built.

(c) Her construction costs were inaccurate and did not take into account the additional costs for design, permits, and infrastructure.

(d) The timescale which she assumed for the construction and development of housing was too optimistic: she assumed, unrealistically, that construction would begin from the first day. Mr Millard said:

> "…I appreciate that I have the advantage of actually working in Russia and doing development there and advising developers, but I know from my experience that that is just not realistic."

In this respect, Mr Millard explained the difficulties and length of time to gain permits and necessary approvals:

> "…in order to get a consent, which is a construction permit so that you can start construction, you have to change the use of the land, the classification, first. You have to then get what's called project planning, and then you have to get a pre-planning approval, and then you have to get a construction permit based on a physical design. In order to get from the first stage to the final stage of that you need approximately 195 stamps from different people. Regardless of how good your different people. The process does take quite a long time. It is a significant drawback, I think, for the Russian economy, and somewhere where we could improve our competitiveness as an economy, but today it is a very laborious and bureaucratic process."

(e) Her discount rate was too optimistic. Ms Simonova's discount rate suggested that property development was less risky than investment in the government bonds of the country in which the development was taking place. Mr Millard explained in his oral evidence the factors which he took into account when determining the discount rate, and why Ms Simonova's rate was unrealistic.

(4) Further, she did not carry out any sensitivity analysis on her assumptions.

(5) Mr Millard urged the conclusion accordingly that the Court cannot consider her figures reliable.

1493. It emerged clearly in the course of cross-examination of each expert that these criticisms in relation to the assumptions made were on matters of subjective assessment on which,

regrettably but predictably, Ms Simonova took an unerringly optimistic point of view and Mr Millard a relentlessly pessimistic one. Thus:

(1) Mr Millard's polluted channel was Ms Simonova's waterfront view over a "beautiful river" (the reference to "Rusty Ditch" being shrugged off as a "very old nickname");

(2) Mr Millard assumed that 30% of the land would be required for access roads compliant with what he presented as inflexible fire regulations and extended 'water protection zones', reducing housing capacity with no more than one house per 1,000 sq. metres to a maximum of 12; Ms Simonova considered that far less land would be required for roads, 800 sq metres would suffice for each plot, and that there was room for at least 25 houses;

(3) Whereas Mr Millard presented the obtaining of planning permission in Russia for change of use as a bureaucratic quagmire prone to extreme delays, Ms Simonova regarded a letter already obtained giving a very broad approval in principle as "the most difficult document to get" and did not foresee any problems in getting formal permission "very quickly";

(4) Neither expert could rationalise their chosen discount rates beyond Mr Millard saying that auditors would not in his experience usually accept less than 25%, and Ms Simonova insisting that 10.5% taken from a website report from what she said was a "well-respected source of information used by the Big 4…."; and

(5) Mr Millard presented sensitivity analysis as a pre-condition of dependability; Ms Simonova regarded it as redundant since her approach, she considered, took it into account already.

1494. There was, as it appeared to me, practically no common ground, nor any real effort by either expert to contemplate or accommodate it. Both experts presented extreme positions and sought to defend them as if there was science behind them, which there was not.

1495. I would not have felt able to rely on either of them to reach a concluded view as to the true market value of the Sestroretsk land. The situation and characteristics of Mr Millard's chosen comparable sites appear to me to be too different to provide any reliable basis for valuation; and his disparagement of the prospects for the Sestroretsk site seemed to me at best overblown. However, there was force in the criticism of Ms Simonova's assumptions in her DCF approach, which she rejected but offered no certain grounds to dispel. Further, the result to which it led seemed to me to defy common-sense: it gave a value per hectare of US$ 9.465 million, almost nine times more than the value of land at the sites referred to by Mr Millard, which though not satisfactory comparables for the purposes of a valuation are likely to provide some sort of cross-check.

1496. Fortunately, however, my task is to determine, not the market value according to the evidence, but whether the auction price achieved has been demonstrated to be so far

below the true market value as to suggest and tend to substantiate a claim of dishonest conspiracy. In my judgment, it does not.

Tsvelodubovo

1497. Tsvelodubovo is a land plot of 18.5 hectares in the Vyborg Region, in the same region as the Seleznyovo land plot. It was transferred to Meridian LLC, another Renord-Invest company, in December 2009, and then to Mr Kalinin, to hold on behalf of Renord-Invest, for RUB 500,000. Mrs Yatvetsky believed that Dr Arkhangelsky had bought the land for RUB 700,000. However, in Scan's accounts, as at 31 December 2007, at the peak of the market, the land was given a 'fair value' of US$ 414,000.

1498. Adopting the market approach, and valuing the plot as agricultural land, Mr Millard valued the Tsvelodubovo land plot at US$ 277,500 as at May 2015.

1499. Ms Simonova's valuation was US$ 2.848 million as at May 2015. She adopted different assumptions than did Mr Millard:

(1) She assumed that development of the site would be permitted. Mr Millard considered that assumption to be wrong, and in particular that the letter on which she relied did not give any permission for a property developer (let alone Scan) to develop the land, but was simply an approval for the use of the land by a "dacha non-profit partnership", in effect a local residents' association of citizens, and certainly did not amount to any planning permission.

(2) Ms Simonova assumed almost immediate development. Again, Mr Millard disagreed with this assumption, and considered that even if the land could be developed, then that would still take time. Mr Millard did not consider it viable to develop the land for residential use because of the prohibitive costs and the timescale which that would entail. Mr Millard's evidence was:

> "…it would be necessary, if possible, to change both the category of the land and the permitted use. This process, even if possible, is long, expensive and lacks transparency. The land does not adjoin, or indeed is close to, any existing residential developments so there is no compelling reason why a change of use should be desirable or possible. Once again there is an assumption that it would be possible, legally and financially to provide utilities to the site, but there are many practical difficulties with this.
>
> …It would certainly not be legally possible to start construction on the site on day one after any assumed purchase, which is the basis that has been adopted in Ms Simonova's financial analysis.
>
> …the land plot is rather small, and the level of investment required to try and obtain permits and to supply the site with utilities would prima facie be far too high to make development a viable option."

In his oral evidence, he said:

> "If I was asked to advise on the viability of developing on this land plot, my clear advice would be that it is not a viable option and find something else to do with it."

(3) Ms Simonova treated Tsvelodubovo as an 'investment property' justifying a DCF valuation approach. Mr Millard did not consider this to be justified, but also considered that Ms Simonova's DCF model used a number of flawed inputs. Mr Millard set out various criticisms in his report, including her failure to account adequately for infrastructure space and costs, her unrealistic construction costs, and the optimistic time for her development plans, and the discount rate. Even on her evidence, the houses she envisaged were "low value houses that actually basically very, very – they are cheap houses…".

1500. Mr Millard also pointed out that the best indicator of the market value of an asset is whether the owner can successfully sell the asset at a particular price. Like the Seleznyovo land plot, Tsvelodubovo has been on the market for sale by Renord-Invest since 2014. In 2014 and 2015, it was for sale at RUB 2.5 million, or approximately US$ 36,000. This figure is much closer to the order of magnitude of Mr Millard's valuation. It reflects the difficulty of selling Russian real estate in the relevant circumstances.

1501. Ms Simonova had not seen or taken account of the sale advertisement, despite the fact that Mr Arkhangelsky's witness statement had exhibited it.

1502. In the light of actual market evidence, I accept that her valuation is unrealistic. Mr Millard's valuation seems to be closer the mark. But in any event, I am satisfied that the prices actually attributed do not demonstrate dishonesty.

Pravdy Street

1503. It will be recalled (see paragraphs [606(6)] and [623(4)] above) that the auction sales of the Pravdy Street Assets in six lots realised RUB 19.15 million. That sum was distributed to the Bank and Scan's other creditors. The Bank received RUB 3.745 million, which it applied to the sums owed under the Second Vyborg Loan.

1504. The purchasers were two companies which were the only participants in the auction, BarD LLC and Stimul LLC. BarD was successful in one auction, and Stimul was successful in the other, they being the only participants in both. Particularly having regard to this consistent pattern I find on the balance of probabilities that both were in the Renord-Invest Group.

1505. The experts were agreed that the sales comparison approach is the most appropriate valuation method.

1506. Mr Millard valued the properties at US$ 1.113 million as at June 2009, and US$ 2.838 million as at May 2015. He valued the premises on the basis of the registered use of one apartment and a number of non-residential premises. One of the comparables which Mr Millard used was itself in Pravdy Street. It had an offer price of RUB 148,650 per m^2. His figures were not challenged in cross-examination.

1507. Ms Simonova valued the combined Pravdy Street assets at US$ 7.849 million as at May 2015. Ms Simonova's comparables did not include the comparable identified and relied on by Mr Millard in Pravdy Street itself. She considered that the appropriate comparison was with commercial property, since all but one of the Pravdy Street Assets were commercial. The comparables she selected had a median price of RUB 431,266 per $m^{2.}$

1508. Again, I am relieved that I do not consider that I have to determine a figure, but only whether the values in fact realised are so out of kilter as to demonstrate dishonesty; and I am not persuaded that they are.

1509. Although the Counterclaimants suggested that the sale in separate lots, rather than "as a whole" was also a contrivance calculated to reduce value, there was little or no evidence to support the suggestion; and the undisputed fact is that the lots consisted of six spaces on two floors, each of which was registered with a separate cadastral number.

1510. It is of some further comfort that it does not appear that any of the other creditors of Scan also interested (to the tune of some RUB 16 million) in the proceeds have complained.

Personal assets

1511. Dr Arkhangelsky's personal assets, namely his apartment, car parking space, and certain chattels, were sold by the court bailiff. The details of the sales are set out in paragraphs [635] to [636] above. The chattels were transferred for sale on 20 October 2011.

1512. There being no basis disclosed by the evidence upon which to upset the process or the result of the auctions, it is perhaps unnecessary and even inappropriate to hazard a valuation in the teeth of an actual sales result. However, since the exercise was undertaken by the experts I set out briefly their conflicting views and my assessment.

Apartment

1513. In the case of the apartment, which (see paragraph [636(1)] above) was sold for RUB 11.59 million, both Mr Millard and Ms Simonova agreed that a sales comparison approach is appropriate. The differences between them concern: (i) the size; and (ii) quality of the apartment. Mr Millard values the apartment at US$ 652,000 as at December 2011, and US$ 460,985 as at May 2015. Ms Simonova gives valuations of US$ 1.823 million and US$ 1.353 million respectively.

1514. The issue as to the size of the apartment arises in relation to the fact that it seems that a 'mezzanine' floor may have been constructed to give additional (and not permitted) floor space, and on that basis the apartment is in fact substantially larger than the registered title. Ms Simonova has valued the apartment as is, not taking into account that (i) title to the attic is not included in the registered title that could be marketed and sold, "may well be illegal", and could if anything have a negative effect on the apartment's value; and (ii) it cannot be assumed that any mezzanine level would attract the same price per square metre as the registered title. Mr Millard valued the apartment as described in the cadastral title, and regarded Ms Simonova's reliance on any such

additional floor space as flawed because, and if anything, that factor tended to devalue the property.

1515. The issue of quality relates to the fact that Ms Simonova took comparables from the most prestigious addresses in Saint Petersburg, which Mr Millard considered are inappropriate in view of the location of the apartment. Mr Millard described the location as good but not the most prestigious. According to him, her approach is:

> "a little like using apartment prices from Mayfair to infer property prices in Fulham as that is broadly how the areas in question compare."

1516. These differences are very difficult to adjudicate; but if I had to choose I would prefer Mr Millard's evidence, which strikes me as more compelling on both points in issue. Ms Simonova appeared to me to be straining for values beyond the realistic. But I do not have to choose: in my view, the question is whether the valuation evidence establishes some dishonesty in the auction process and the price in fact achieved, and in my view it does not.

Parking space

1517. Mr Millard values the parking space, which was sold for RUB 1.826 million, of which the Bank recovered RUB 455,994 (see paragraph [636(2)] above), at US$ 44,900 as at June 2012, and at US$ 97,590 as at May 2015. If the parking space was underground, Mr Millard's valuation is not materially affected: the value as at June 2012 would be US$ 58,400.

1518. Again the gap between the experts is substantial. Ms Simonova values the parking space at US$ 294,000 in June 2012 and US$ 213,000 in May 2015. In doing so she assumes that the value of a parking space varies proportionally with the value of the apartment in which it is located. Mr Millard rejected this, with examples from comparables; and for my part, it seems unlikely to be correct.

1519. Again if I had to choose which evidence to prefer, I would prefer Mr Millard's, not least given his market experience (Ms Simonova having none). Once again, however, I need not choose: in this context too, in my view, the question is whether the valuation evidence establishes some such discrepancy between the values achieved in the auction process and those suggested by credible expert evidence; and in my view it does not.

Chattels

1520. The chattels were sold on 21 December 2011 for RUB 51,950, of which the Bank recovered RUB 21,973 (see paragraph [636(3)] above). Although the Re-Amended Defence and Counterclaim contains an Annex which sets out the purported values of the chattels, the Counterclaimants have not adduced any factual or expert valuation expert in respect of any of the chattels. The Counterclaimants relied, in effect, on the 'smell' arising from the basic fact that almost the entire contents of the apartment, were sold for RUB 52,000 (less than £1,000 by the then exchange rate). As Mr Stroilov put it in the Defendants/Counterclaimants' written Opening:

> "It is submitted to be a fact capable of judicial notice that £19 for a jacuzzi is a rather good bargain, and that even the most extraordinary level of asceticism does not quite explain a sale of the entire contents of a multi-millionaire's dwelling for less than £500."

1521. Mr Stroilov also referred to and relied upon my own interlocutory comments indicating my surprise and discomfort; and excused the lack of further evidence on the basis (again quoting from his Opening) that:

> "The chattels are gone, and at least the Defendants are not in a position to find out to whom they were 'sold'. They cannot be traced and cannot be shown to a valuer. Nor have the Claimants adduced any evidence on this point to 'dispel the smell'."

1522. The Claimants have sought to bat this away ("sweep it under the carpet", the Counterclaimants say) on the basis (to quote their written Closing Submissions) that:

> "It is hardly surprising that second-hand personal property may fetch low prices. The initial sale values were set by the bailiff. Ms Kosova believed them to represent the market value. As she said, 'I have no reasons not to trust the federal bailiffs service.'"

1523. I have continued to be concerned about the values achieved, which seem extraordinarily low: lower than remaindered items in a bargain basement. But for all I know, once the purchaser of the apartment had declined to purchase them, items such as Jacuzzis may indeed be of no material value; and such luxury items, possibly only affordable by the very wealthy, may have practically no used value. In short, in the absence of at least some evidence there is no basis for me to promote abiding concern into a finding of dishonesty. At most, the extremely low prices demonstrate extreme indifference on the part of the Claimants.

Conclusions as to the auction sales

1524. I return to the overall question, which needs to be revived after being drowned in the above detail: in effect, whether (as the Counterclaimants assert) the auction sales were dishonestly orchestrated to yield hugely discounted values with a view to the Claimants and their loyal associates scooping the real value at the later stage of subsequent sales.

1525. From this long analysis of the auction sales I have concluded as follows:

(1) The extraordinary fact that no independent third parties attended any of the public auctions (save, it appears, those concerning the personal chattels) remains arresting.

(2) However, whilst that might initially suggest some failure of advertisement, improper exclusion, or insidious means of control, neither the manner in which the auctions were apparently advertised or organised, nor any of the evidence relating to their conduct, is such as to elevate that suggestion into proof or establish an inference of dishonesty.

(3) The values achieved for the assets as sold were low; but they are not so inconsistent with credible expert evidence as to demonstrate dishonesty.

(4) The imposition of encumbrances on assets prior to sale which could be released after sale, such as the Gunard Lease, invite a dark interpretation. But in the end I have concluded that the primary purpose was protection of the assets concerned rather than their extraction at a reduced price for the benefit of the Bank and its associates (see paragraphs [1316] to [1326] above).

(5) The Counterclaimants' case that the Claimants adopted a repeated tactic of presenting and packaging the assets to be sold at auction, and of sequencing the sales, so as to minimise rather than maximise their interest and value to all but an ultimate buyer who could bring together separate assets and realise their true value, has caused me considerable concern. The way that the assets at Western Terminal and at Onega Terminal were packaged for sale and the sequence in which they were sold does not seem likely to encourage third party interest nor to maximise the amounts applicable in reduction of indebtedness. The Counterclaimants' fundamental allegation that this was a stratagem designed to reduce the amounts realised for payment down of indebtedness whilst maximising the benefit for the Claimants and their associates has throughout the case struck me as plausible. However, in the end I have concluded that the Bank being entitled to sell assets separately pledged separately, the justifications advanced by the Claimants for the packaging and process of sale are not so implausible that they must be rejected, bearing in mind the heavy onus of proof in the context of an assertion of dishonesty.

(6) The Counterclaimants' case that the fact that no third parties attended any of the auction sales was because there was inadequate advertisement and marketing has not been established. In any event, there is no longer any real dispute that the basic minimum standards were met, demonstrating compliance with the Russian law, even if not much more was done than that. The same applies to the marketing efforts made: no more than the basic minimum was done (and see paragraph [1344] above). But in each case, absent proof that that which should have been done was intentionally left undone there is no basis for the inferences invited.

(7) The Counterclaimants' case that the auction organisers were knowingly complicit in a conspiracy orchestrated by the Claimants, involving at the behest of the Claimants (a) inadequate advertisement and marketing, (b) improper exclusion of potential participants, (c) artificially reduced and improper starting prices, and (d) bid-rigging has not been made out.

(8) In such circumstances, and in the absence of proof of dishonest collusion, any claim in respect of the auction processes is barred under Russian law.

(9) I have also and in the round not been persuaded by the Counterclaimants' over-arching submission that the values achieved for the assets sold at auction were so low that only dishonesty can explain them.

No recovery in any event

1526. My conclusion that the Counterclaim has not been substantiated makes it unnecessary, on that view of the case, to determine the Claimants' further contentions that even if the Counterclaimants' claims did have any factual foundation, the Counterclaimants would still not be entitled to make any recovery. However, in case my view is later found to be incorrect, and since I have heard full argument, I turn to comment, and where appropriate, state my views on, those further contentions.

Public policy

1527. The first matter relied on by the Claimants as disqualifying the Counterclaimants from any relief in any event relates to Dr Arkhangelsky's own evidence at trial, which was that he made corrupt payments or bribes of US$160 million to an official so as to procure the necessary official support and/or licences and/or permits for the development of Western Terminal. The Western Terminal development project required OMG to obtain permits to carry out the development. In fact, according to Dr Arkhangelsky, such payments also secured the necessary official support for his other OMG port businesses and/or assets, namely Onega Terminal and Vyborg Port.

1528. Although the Claimants do not accept that explanation as to the purpose of the payments made (contending that in truth Dr Arkhangelsky pocketed the moneys), they contend that if his evidence is to be accepted, and Dr Arkhangelsky made secret payments to officials as bribes, whether in the amount of US$160 million or a lesser amount, then that should be the end of the Counterclaim.

1529. Put shortly, and according to the Claimants, such corrupt payments fatally taint the Counterclaim on the basis that to establish it Dr Arkhangelsky needs to rely on his criminal conduct for the purposes of the development of any business at either Western Terminal or Onega Terminal. Further, the Claimants contend, any such payments were closely connected and inextricably bound up with Dr Arkhangelsky's continued ownership of the Western Terminal and Onega Terminal sites. Without them, and without the maintenance of any official support, the real estate could not have maintained any value.

1530. The Claimants go on to contend that if the Counterclaimants were permitted to recover any sums, they would bring this Court into disrepute, and undermine the integrity of the English legal system. They pray in aid public policy to preclude the claims.

1531. At the date of the oral closing submissions the decision of the Supreme Court in *Patel v Mirza* [2017] AC 467, [2016] UKSC 42 was pending and soon expected but had not yet been handed down. The parties reserved their right to make further submissions in the light of the judgment(s); and each side thereafter filed written supplementary Notes on Illegality accordingly, the Counterclaimants' Note having been provided by Mr Milner. Neither side sought any further oral hearing, though it was common ground that the decision of the majority in *Patel v Mirza* does redefine the defence, and the previous approach in *Tinsley v Milligan* [1994] 1 AC 340 has been modified, if not supplanted.

1532. Addressing first the law as it has now restated by the majority in *Patel v Mirza*, the essential change is the adoption, instead of the test in *Tinsley* which precluded a claim if the claimant needed to rely on his own illegal conduct for the purpose of establishing it ("the reliance principle"), of a flexible approach requiring the Court to evaluate the nature and circumstances of the claim as a whole to determine whether that claim should be denied in the public interest having regard to the policy factors underlying the common law doctrine of illegality.

1533. That doctrine, sometimes known as the *ex turpi causa* rule, was famously expressed by Lord Mansfield CJ in *Holman v Johnson* (1775) 1 Cowp 341 at 343, as follows:

> "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act."

1534. Lord Mansfield stated the reason for the doctrine as being one of public policy. Obviously, however, it is also public policy that a claimant should ordinarily be entitled to adjudication of his claim; and confinement of the *ex turpi causa* rule is necessary accordingly. Unsurprisingly (given these conflicting interests) application of the doctrine has given rise to uncertainty and complexity, and sometimes inconsistency, as acknowledged by Lord Toulson JSC in the opening paragraphs of his judgment in *Patel v Mirza* (with which judgment Lady Hale, Lord Wilson, Lord Reid and Lord Hodge expressly agreed, Lord Neuberger also being in broad agreement).

1535. In effect, the "reliance principle" was the means of confining the doctrine established in *Tinsley*. The minority in *Patel v Mirza* (comprising Lords Clarke, Mance and Sumption JJSC) continued to favour and support that approach. However, Lord Toulson and the majority preferred a more open-textured approach, requiring the evaluation of the claim concerned and its circumstances by reference to the policy factors behind the *ex turpi causa* rule (see [109]): this is the "range of factors" approach (and see [113]).

1536. Lord Toulson identified (see [101]) the most significant factors to be considered as being (a) the underlying purpose of the prohibition which has been transgressed; (b) whether there are any other relevant public policies which may be rendered ineffective or less effective by denial of the claim; and (c) keeping in mind the possibility of overkill unless the law is applied with a due sense of proportionality.

1537. Under this approach, the Court must thus take into account such matters as the seriousness of the illegality and the value of the interest at stake; as indeed the Law Commission had suggested it should in its report, *'The Illegality Defence'* [Law Com No 320]. I agree with Mr Milner's submission that in adopting a more flexible test the majority of the Supreme Court were not purporting to broaden the circumstances in which the illegality defence would operate, even though in some cases (this one included) the *Tinsley* approach would result in more obvious rejection of the plea of illegality. Indeed, as Mr Milner pointed out, they clearly considered that the reliance test in *Tinsley* was capable of operating too harshly by barring deserving claims without justification (see Lord Toulson's judgment at [24]). What the new approach really introduces is a greater degree of judicial discretion in determining when the illegality defence should apply.

1538. The competing submissions as regards the application of the principle in this case may shortly be summarised as follows.

1539. The Claimants submit that it would be offensive to and contrary to public policy, as being likely to undermine the integrity of the legal system, for the Court to assist the Counterclaimants to recover any sums in relation to (i) the loss of business value at Western Terminal and/or Onega Terminal, and/or (ii) the value of any real estate at Western Terminal and/or Onega Terminal, insofar as that value is dependent on any development of the plots (which would have required, on Dr Arkhangelsky's evidence, corrupt payments to have been made). In their Note the Claimants submitted that:

> "In seeking to recover such loss, Mr Arkhangelsky is seeking to profit from his own illegal conduct, and to do so on the most extreme and extravagant scale."

1540. As to the various factors to be taken into account, the Claimants submitted that:

(1) Bribery is seriously wrongful, constituting a crime and a civil wrong in both England and Russia, and is morally reprehensible: an "evil practice which threatens the foundations of any civilised society" (quoting the Privy Council in *Attorney-General for Hong Kong v Reid* [1994] 1 AC 330); and in this case "particularly egregious because it involved corrupting state official(s) and was conducted on a massive scale".

(2) There is no relevant public policy which may be rendered ineffective or less effective by denial of the Counterclaim, and "certainly not one which trumps the prohibition on bribery": the suggestion made by the Counterclaimants that "there is a strong countervailing public interest in holding defendants who have committed fraud to account" which should take precedence confuses public and private interests, there being no public interest in enabling and upholding such a claim.

(3) The Claimants exuberantly (and hyperbolically) rejected any suggestion of disproportionality:

> "in the light of the gravity and scale of Mr Arkhangelsky's illegality. The English Court can never have encountered so brazen a litigant who has come to the Court making a counterclaim in excess of US500 million in circumstances where his own evidence is that he has bribed officials in an admitted sum of US$160 million in relation to the very projects for which he claims damages."

1541. The Claimants stressed also that (a) they did not seek to bar claims in respect of loss not referable to Dr Arkhangelsky's seriously illegal conduct, and (b) they had nothing whatsoever to do with that illegal conduct, so that this is not a case where the Court has to consider the relative involvement of both parties in the illegality, or consider whether one procured the other to take part. These are plainly factors of relevance, especially on the issue of proportionality; Lord Toulson stated (at [107]):

> "Potentially relevant factors include the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties' respective culpability."

1542. The Counterclaimants, on the other hand, submitted that nevertheless the *ex turpi causa* defence cannot operate in this case. By reference to the three factors highlighted by Lord Toulson:

(1) It is important in a tortious or delictual context such as this to take into account the degree of connection between the illegality and the claim. Where there is no or no substantial connection between the illegality and the claim, and when the illegal conduct cannot be said to have caused or given rise to the loss, recovery should not be denied by reason of the illegality. Here, the bribery at issue in this case is not clearly or closely linked to the Counterclaim, nor is it in any sense a legally effective cause of the Counterclaimants' loss. On the contrary, it plays no part in the Counterclaim at all and only emerged as a fact adventitiously in the course of Mr Arkhangelsky's evidence. It would be a misuse of language to describe the Counterclaim as being somehow "founded" on bribery: the antecedent illegality is merely collateral to the claim and thus irrelevant.

(2) With respect to the second factor identified by Lord Toulson in *Mirza* at [101], there is a strong countervailing public interest in holding defendants who have committed fraud to account. That interest must take precedence over the public interest in penalising bribery, at any rate where the bribery is not closely connected to the claimant's cause of action. Cf *Saunders v. Edwards* [1987] 1 WLR 1116 per Kerr LJ at p.1127:

> "The plaintiffs have an unanswerable claim for damages for fraudulent misrepresentation. The possible illegality involved in the apportionment of the price in the contract is wholly unconnected with their cause of action. The plaintiffs' loss caused by the defendant's fraudulent misrepresentation would have been the same, even if the contract had not contained this illegal element. Their claim for damages is in no way seeking to enforce the contract or any relief in connection with it. The moral culpability of the defendant greatly outweighs any on the part of the plaintiffs. He cannot be allowed to keep the fruits of his fraud. I therefore hold that the *ex turpi causa* defence fails."

(3) As to Lord Toulson's third factor, it would be disproportionate ("overkill") to deprive the Counterclaimants of the entirety of the damages to which they are entitled on account of bribes that are wholly unconnected with their dealings with the Claimants. To apply the *ex turpi* defence in this situation would also give inappropriate encouragement to defendants to trawl through the detailed background to any given transaction in the hope of uncovering some historic illegality which might conceivably give rise to a defence. That would significantly increase the cost and complexity of a great deal of commercial litigation and generate significant uncertainty. It is important to keep the defence within proper

limits, and apply it only in those cases where the illegality is intimately bound up with the claimant's cause of action, such that to grant the claimant a remedy would render the law incoherent (cf *Patel* at [99]). That, they submit, is not the case here.

1543. Turning to my assessment of these competing arguments, I must admit to some anxiety about the apparent breadth of the discretion conferred upon the Court in determining whether an illegal act is of a quality and closeness to the claim that a person should be deprived of his legal rights (and see Lord Sumption's reservations as expressed at [263] and [265] in *Mirza*). The fact that, as Millett LJ (as he then was) noted in *Tribe v Tribe* [1996] Ch 107, 135 the *ex turpi causa* rule is "not a principle of justice but a principle of policy" adds to the anxiety, since the exercise of discretion as to policy is not a customary role for a judge; and in this predicament, I find resonance, but not solace, in Lord Sumption's observation at [262] that:

> "If the application of the illegality principle is to depend on the court's view of how illegal the illegality was or how much it matters, there would appear to be no principle whatever to guide the evaluation other than the judge's gut instinct."

1544. Whether or not a product of gut instinct, I consider that in a non-contractual case, where the Court is not being asked to enforce an illegal contract, and in a case where the Court is not in effect being asked to grant relief in the teeth of a statutory prohibition, it will be rare indeed that the Court will refuse a person the opportunity to vindicate a right on the grounds that the integrity of the system may thereby be imperilled. To warrant the Court "drawing up its skirts and refusing all assistance" (in the words of Bingham LJ (as he then was) in *Saunders v Edwards [supra]*) the illegal conduct would, to my mind, have to be not only serious but also central: the springboard for the claim sought to be pursued.

1545. Furthermore, in this case, what the Claimants are in effect contending, at least in the context of the claims in respect of the assets sales, is that the Counterclaimants should be prevented from vindicating their rights in respect of dishonest dealings with their property (or their equity of redemption). Their property was not obtained illegally. On that basis, and by reference to the factors adumbrated illustratively by Lord Toulson, this case seems to me some distance from an appropriate case in which to deprive the Counterclaimants and insulate the Claimants in the name of preserving the integrity of the judicial process.

1546. It may be that the decision would be less clear-cut in the context of the claim to business values. But even then I would consider, upon proof of dishonesty on the part of the Claimants in respect of assets entrusted to them, that the integrity of the judicial process would be besmirched and not safeguarded by the Court declining to intervene.

1547. If, therefore, contrary to my actual conclusions, the Counterclaims were otherwise well-founded, I would not have accepted the illegality defence raised.

No loss

1548. The Claimants submitted that, even if their challenge to the validity and propriety of the auction sales were successful, the Counterclaimants have failed to establish that they have suffered material loss.

1549. More particularly, the Claimants contend that:

(1) As to the real estate valuation evidence, the opinions of Mr Millard are grounded in the real world; those of Ms Simonova are unrealistic and speculative. At the end of 2008 there was a crash in real estate prices in Russia. There was a flight to quality, and bank lending for commercial property development dried up. The market has not recovered. Ms Simonova herself agreed with Mr Millard's analysis of major investment market trends in 2009 in which prices declined significantly. Her valuations do not reflect either the actual real estate market before the crash or a market after prices crashed.

(2) As to business valuation, it is plain that the businesses of Western Terminal, Scan and Onega had no material value. Mr Arkhangelsky could never have raised the financing to develop the Western Terminal business; the Scan guarantees destroy any value in the Scan business; and the Onega valuation is completely speculative.

1550. The contemplated exercise of substituting valuation figures in place of prices actually achieved at auction on the basis that the relevant auction was flawed is fraught with difficulty (to say the least), especially since it invites speculation as to the particular flaws and their likely effects.

1551. Further, as I have already indicated, I do not feel able to rely on Ms Simonova's figures; yet I also have reservations about Mr Millard's approach in various contexts; and I regret to say that I felt on more than one occasion that the expert evidence had descended into advocacy.

1552. In all the circumstances, and given that the enquiry is upon an hypothesis I have rejected, I decline to determine substitute asset values. If my conclusion that the Counterclaimants have not demonstrated that the auction processes were actionably improper is overturned, then the issue of loss will have to be re-addressed in light of the factors supporting that reversal, and their effect in terms of assessing value.

No claim for business loss is sustainable in any event

1553. The evidence on business valuation was incomplete, largely untested and unsatisfactory. It was always envisaged that a further hearing would be likely to be required if liability was established.

1554. As will be apparent to the parties from exchanges in the course of trial, from an early stage I considered the claim for business loss to be unmaintainable. That is primarily because the business value could not be released without significant further investment, and, in my view, there was never any realistic prospect of the Counterclaimants securing such investment. The fact is that no such investment ever appeared likely; and accurate Offering Memoranda, together with revelation of the fact of astonishing bribes,

and thus the truth (what the Claimants described as "the enormous untruth") that OMG had acquired Western Terminal in 2007 for US$ 40 million, not for US$ 220 million, would in my judgment realistically have made it out of the question. Such a discovery would have put an end to any prospect of financing of the Western Terminal project or any part of the US$ 300 million which OMG sought to raise.

1555. Mr Bromley-Martin accepted this. He was clear that if he had become aware of such payments, they would have raised a red flag. No "explanation" could possibly "pass muster":

> "Q. Can I suggest, Mr Bromley-Martin, that the fact of these alleged payments, that that would have -- that any lender who discovered them would have been very concerned about any project in relation to which these payments had been made?
>
> A. Yes. Definitely, if the facts had come to light at the time, then there would have been a problem, yes.
>
> Q. And by that you mean the lender would, in all likelihood, not have gone ahead and lent, would it?
>
> A. Yes, I suppose, probably not."

1556. OMG's financing could not be saved by describing the payments as "consultancy agreements":

> "MR JUSTICE HILDYARD: … Suppose the discrepancy between the purchase price and the total amount of 220 million had emerged at that time, and it had been queried, but you had been told upon enquiry that the discrepancy was explained by a mixture of consultancy agreements, other innominate costs associated with procuring the agreement of the relevant authorities and so on and so forth. Doing the best you can at that time, would that have lowered the red flag or maintained it?
>
> A. I think if it came out, I think Clyde and ourselves would have probably withdrawn."

1557. Mr Bromley-Martin confirmed that whereas in the container business a concession fee to a government could be justifiable, "if it's a bribe, then I believe it is a completely separate issue." It would have put up a red flag so that even an adventurous lender would back off:

> "MR JUSTICE HILDYARD: … The problem with it, is this right, is that although there are more adventurous lenders in the market and people who are prepared, as it were, to hold their nose, if I can put it that way, if confronted with a red flag which simply won't go away, even the adventurous will back off and the more reputable will long since have fled; isn't that right?

> A. I think your reading is absolutely right, sir, yes. Certainly, if that came clear, as I said yesterday, we would have had to have considered our position and I would clearly have consulted Clyde & Co and I think we would have both come to a similar decision."

1558. My conclusion that the business loss counterclaim was revealed to be unmaintainable, and no such loss could ever have been established, also explains why I considered it unnecessary, because it would have been futile, to make arrangements for oral evidence from Mr Popov and Mr Steadman.

Reflective loss

1559. The Claimants also submit that the Counterclaimants' claims in relation to Scan, Western Terminal and Onega face a further fundamental difficulty: they cannot recover loss by reference to the value of the shares they held, since the loss in question (if any) was sustained, not by them, but by companies in which they held shares, and 'reflective' loss of this sort is not recoverable.

1560. The Re-Re-Amended Defence and Counterclaim pleads:

> "…the Defendants and OMGP have suffered a loss and/or the Claimants have made a profit in an amount equal to the value which the shares in Western Terminal and Scan would have had as at the date of judgment herein plus the distributable income which the Defendants and OMGP would have received (or which the Claimants have or should have received) by virtue of their ownership or control of the shares between 31 December 2008 and the date of judgment."

1561. Likewise, the Counterclaimants:

> "…additionally claim damages in an amount equivalent to the value of the shares in Onega at the date of judgment, plus the distributable income that Onega would have generated since 2009."

1562. The Claimants submit that the position is as follows:

(1) As to Scan:

(a) GOM was the 100% shareholder in Scan. According to Dr Arkhangelsky at least, the Defendants' case is that they owned the shares in GOM.

(b) The Defendants say they have suffered loss equal to the value which the shares in Scan would have as at the date of judgment, i.e. the current value of Scan's business.

(c) The Defendants seek to recover what GOM has lost, which is the equivalent of the diminution in the value of their shareholding in GOM. That is reflective of loss suffered by GOM itself (which is in liquidation).

(d) Further, any claim brought by GOM would itself be reflective of the loss suffered by Scan insofar as the claim is for the loss of the value of Scan's business. It would be for the administrator of Scan to bring any claim.

(2) As to Western Terminal:

(a) OMGP was the 100% shareholder in Western Terminal.

(b) OMGP says it has suffered a loss equal to the value which the shares in Western Terminal would have as at the date of judgment, i.e. the current value of Western Terminal's business.

(c) Insofar as OMGP seeks to recover for the loss of the Western Terminal business, then that is a claim for Western Terminal to bring. To the extent that it seeks to recover the value in its shareholding, such a loss is reflective of any loss suffered by Western Terminal itself.

(d) Insofar as OMGP seeks to recover for the actual loss of the shares (and that is unclear in circumstances where the transfer agreement with Sevzapalians is not said to be invalid), then it would be the value of the shares as at December 2008 – which is very small indeed (and in any event would be extinguished by reason of OMG's remaining indebtedness to the Bank).

(e) OMGP was the 100% shareholder in Onega. For the same reasons as above, to the extent that it seeks to recover the value in its shareholding, such a loss is reflective of any loss suffered by Onega, and it would be for the administrator of Onega to bring any claim.

1563. It is common ground that the question of whether 'reflective loss' may be recovered in this case is governed by the Russian law.

1564. For the Claimants, Professor Maggs's evidence is that there is no basis under Russian law for a claim for reflective loss. He told me:

(1) He had not found any case where a Russian court has permitted a shareholder to recover for the diminution in the value of his shares as a result of harm caused to the company. In his oral evidence he said:

> "… you would think there would be a lot of cases where shareholders had recovered for reflective loss, there would be a large number of them. But we don't see those cases.
>
> Q. Maybe they would, maybe they wouldn't, but you haven't identified a case where a court has positively said that there is a rule prohibiting recovery for reflective loss.

> A. Well, some types of claims are so obviously bad that they are not brought, and I think this is one of them.
>
> Q. So the answer is no.
>
> A. You don't see widespread cases. If shareholders really could recover, I think you would see a lot of cases, just as if you could get around the shorter statute of limitations on contracts you would see a lot of people bringing tort cases."

(2) The absence of claims for reflective loss may be explained by the strict rules of causation. If a shareholder were to sue for his loss which was in fact loss suffered by the company, the causation requirements would not be satisfied because the causation would be too indirect.

1565. Professor Maggs's evidence was as follows:

> 'My principle is in a tort suit where someone commits a tort against a company, an ordinary shareholder of a company has no cause of action. The company has a very valid cause of action, and if the company fails to assert its cause of action, the shareholder could bring a shareholder's derivative suit for the benefit of the company.'

As he said:

> "The proper remedy is a shareholders' derivative action to make the company whole which would be fairer to all the creditors and all the shareholders."

1566. Professor Maggs also placed reliance on the consideration and acceptance of his view when a similar question was considered by the English Court (Andrew Smith J) in *Fiona Trust v. Privalov* [2010] EWHC 3199 (Comm.), which agreed with Professor Maggs (see [101(iii)]).

1567. Professor Maggs made three further points:

(1) During the liquidation process, claims of the company can only be brought by the liquidator. If the bankruptcy administrator conducts bankruptcy proceedings, the administrator is entitled to pursue the claim, not the creditor or shareholder of the company. The creditors cannot give instructions to the administrator, whose duty is to maximise the recoveries, and if the administrator wrongly fails to bring a claim against one of the creditors, he is himself liable to anyone injured by the failure to bring the claim, and can be removed by the court.

(2) If a shareholder has suffered loss because the company has not brought an action, then any loss is caused by the decision of the company not to pursue its remedy and not by the wrong of a defendant. The mere fact that a shareholder is a 100% shareholder of a company does not remove the objection because the company may

have creditors; the shareholder should not be put in a more preferable position than the company's creditors.

(3) In the claim made for the value of Scan, Scan's 100% owner, GOM, does not itself make a claim, but the Defendants who make the claim, on the basis that through various trust arrangements, they were beneficial owners of GOM. Accordingly, the loss is doubly reflective, consisting of the diminution in the value of the shares in GOM as a result of the diminution of the value of the shares in Scan. Professor Maggs stated that he knows of no case where an ultimate beneficial owner has claimed for loss reflective of a company.

1568. Dr Gladyshev accepted (as did Mr Milner in his helpful oral closing submissions) that "ordinarily claims for reflective loss would not be allowed in a Russian court"; but he considers that this is not a complete embargo and that the Russian law does permit a claim for reflective losses "in appropriate cases". He pointed out further that even Professor Maggs accepted that a claim for such loss would be permissible both if the company itself had no cause of action and also if the company was disabled from bringing the claim as a result of the wrongdoing complained of.

1569. Dr Gladyshev also made the point that (a) "reflective loss" is not a specific term or phrase in usage in Russian law, though he understood the phrase to refer to "loss suffered by a shareholder in a company in the form of a diminution in the value of its shares as a result of a wrong done by the defendant to the company", and (b) in any event this would not apply to claims by OMGP:

> "in respect of the loss of its shares in Western Terminal. This is because the loss of the shares represents a real, direct loss suffered by OMGP itself, and is not merely reflective of a wrong done to Western Terminal."

1570. As to (a), Dr Gladyshev referred to and relied also on an article by a Russian academic, Professor V.V. Yarkov (in 2008), whom Professor Maggs acknowledged to be "a very well-known expert on civil procedure…One of the leading Russian experts on civil procedure." Prof. Yarkov's view appears to be that nothing in Russian corporate law precludes a claim by a shareholder for loss to his company falling within Article 1064 where otherwise such loss would not be likely to be recoverable.

1571. As to (b), Mr Milner on behalf of OMGP stressed in his oral closing that the loss claimed in respect of Western Terminal was not the loss of value of shares, but the loss of the shares themselves.

1572. This clash of expert evidence and differences in academic commentary, and the admitted lack of any express enunciation under Russian law of what we know in England as the "rule on reflective loss", suggests to me that though Russian courts would be likely to accept the logic inherent in the rule, its ambit and application is far from settled or clear.

1573. This is not surprising. In this jurisdiction, the 'rule' had not really been discovered or applied until the *Prudential Assurance* case in 1982 (*Prudential Insurance Co Limited*

v Newman Industries Limited (No 2) [1982] 1 Ch 204), and it did not attain common currency until further elaborated, explained and applied in *Johnson v Gore-Wood & Co* [2002] 2 AC 1. The sudden spate of cases in which the rule was asserted in the following years demonstrates not so much its obviousness as its novelty. The frequent re-visiting at appellate level of the extent of what is regarded as an 'exception' to the rule explored in *Giles v Rhind* [2003] Ch 618 (see, for example, *Shaker v Al-Bedrawi* [2003] Ch 350, *Gardner v Parker* [2004] EWCA Civ 781 and *Webster v Sandersons Solicitors* [2009] EWCA Civ 830) demonstrates its continued evolution; and the potential for differences in application within very similar common law systems is shown by the decision of the Hong Kong Court of Final Appeal in *Waddington v Chan Chun Hoo Thomas* [2008] HKCFA 63, in which Lord Millett, who made one of the leading speeches in *Johnson*, declined to follow *Giles v Rhind.*

1574. The Russian Federation is not, of course, a common law jurisdiction, and it is its equivalent of statutes which must be given full effect. It is, I think, a mistake, to assume translation of the rule into Russia as if its logic were immutable and its ambit unquestioned. It is essential to identify the real reasons for the rule and match those reasons against the facts, and any differences in approach more generally under the Russian law.

1575. At heart, the rationale for the rule is that it is necessary to guard against double recovery: where both a company and a shareholder have a claim in respect of damage done to or loss suffered by a company, and recovery by the company would result in the shareholder suffering no material loss, the policy of the law is to recognise only the company as having a remedy.

1576. In my view, there are three primary (and associated) justifications for the policy of permitting the company's claim and precluding the shareholder's claim. First, whereas making good the company will restore the shareholder, the converse is not true. Secondly, the protection of the interests of creditors requires that it be the company which is permitted to recover to the exclusion of the shareholder. Thirdly, it is an incident of the bundle of rights which a share represents that damage to the adventure in which the shareholder has subscribed should be recovered not personally but by the corporate entity undertaking the adventure, subject only to the exception of a derivative action.

1577. To every rule there are limitations and exceptions. Where the wrongdoers are in control and have entirely disabled the company from suing, and where additionally there is no practical possibility of a derivative action, there is no justification for the application of the rule precluding recovery of reflective loss. That is the limitation or exception reflected in this jurisdiction in *Giles v Rhind.*

1578. In my view, in the present case, an assessment of the application of the rule and the exceptions to it needs to be in three parts, distinguishing between different parts of the Counterclaims, and taking into account the primacy of statute law in the Russian system, and the absence of any strict theory of precedent.

1579. The first part relates to the claims of OMGP in respect of the loss of its shareholding. I agree that the loss or rather dispossession of the shares, if wrongful, may be the subject

of claim by the person dispossessed: such a claim is in respect of loss not suffered by and irremediable by the company and does not engage any rule against reflective loss. I took Mr Birt to accept this in his closing submissions in reply, though he understandably (and in my view, correctly) made the point that whether there was a claim for dispossession depended on whether the repo arrangements are wrongful. Other aspects of the Counterclaim relating to Western Terminal depend, by contrast, on demonstrating impropriety in respect of the sale of Western Terminal assets: those aspects may fall within the rule (and the second part of my assessment below).

1580. The second part relates to those and other claims which assert impropriety in respect of the asset sales. Those claims would, as indicated above, fall (*prima facie* at least) within the ambit of the rule; but the questions then are (a) whether the application of the rule would confound or undermine the 'statutory' remedies conferred under the Russian law, and/or (b) whether any exceptions such as in English law are apparent from *Giles v Rhind* are applicable. In my view, a strict application of the rule in the circumstances of this case would be unlikely for two main reasons. First, in all the circumstances there is no practical risk of double recovery: there is no realistic prospect of any of the relevant companies seeking recovery on the basis that their assets were undersold; and since the Counterclaimants no longer have shares any derivative process would not assist them. Secondly, I consider it likely that policy would favour not foreclosing a claim, since (it was common ground) the right to compensation for demonstrated loss suffered in consequence of harm done is a fundamental one under Russian civil law, including Article 1064.

1581. More generally, on the Counterclaimants' case, they were dispossessed by the repo arrangements of their shares; and by fraud of the assets that should have removed any exposure under the guarantees and of the business opportunities which the companies were intended to exploit. Application of a rule against reflective loss to prevent a claim would enable the Claimants to ensure their insulation from any remedy notwithstanding material gain by them and loss by the Counterclaimants. I do not think the policy of the law would be advanced.

1582. The third part requires focus on that part of the Counterclaim which is sought to be set off against liability under any guarantees established to have been given. Even if I am wrong in my assessment under part 2 above, I consider that it would be wrong for the rule against reflective loss to be applied to prevent such set-off if the claims can be established. For in that context, the loss is not reflective: it is a defence in respect of a separate contractual engagement. Furthermore, up to the amount of their guarantee liability, and on their case, the Counterclaimants simply seek to prevent the Claimants obtaining a double benefit: procuring sales of assets for less than their true value to entities they control whilst thereby decreasing the amounts to be treated as reducing the guarantee liability and increasing the nominal value of claims under the guarantees.

1583. In such circumstances, I do not think the evidence of Russian company law and procedure establishes a settled rule against the recovery of reflective loss, and still less its confines; I do not, in such circumstances, accept that a fledgling Russian law version of the rule against reflective loss would be held to preclude the claims advanced by

counterclaim. But in the end a final determination of this is not necessary on the findings I have made.

Dr Arkhangelsky's (allegedly) hidden assets

1584. Before turning finally to the Claimants' claims against Mrs Arkhangelskaya and also for declarations as to certain facts and conclusions, I should consider the Claimants' submissions in the last part of the Claimants' Closing Submissions, entitled "Part XII: Arkhangelsky's Hidden Assets".

1585. These are to the effect that Dr Arkhangelsky has salted away and hidden from the Court and the Claimants considerable assets (at least, it is said, US$80 million), and his pleas of destitution are false fabrications designed to seek sympathy and indulgence from the Court, and to avoid any payment to the Bank for his debts.

1586. On the same basis, it is contended that his assertions of impecuniosity are false and that in truth he has access to those resources: he has chosen to present himself as a victimised litigant in person unable to pay for representation but this is a pretence so as not to reveal them.

1587. The Claimants submit that:

(1) Dr Arkhangelsky has siphoned off significant sums from OMG companies, sums which were provided to those companies by a large number of banks, to City-Centre LLC ("City-Centre"), which (they contend) is an OMG company owned by him and/or controlled by and/or for his and/or his family's benefit.

(2) Dr and Mrs Arkhangelsky maintain directly and/or indirectly a financial interest in Vyborg Port (as to which see paragraph [109(3)]), which could be very substantial. Furthermore, OMGP has received and had access to very significant sums from Vyborg Port.

(3) It seems likely that Dr Arkhangelsky established OMG 'mirror' companies to shift OMG assets to and/or for his benefit.

(4) Dr Arkhangelsky has other assets and ventures which undo his claim to impecuniosity.

City-Centre

1588. The Claimants' submissions in relation to City-Centre and the facts on which they were based were somewhat sketchily addressed in the submissions on behalf of Dr Arkhangelsky, though Mr Stroilov told me orally in closing that City-Centre was not one of Dr Arkhangelsky's companies, that the evidence was not available to him but only to Scan's administrator, and it was for that administrator to provide the evidence, not him.

1589. The Claimants based their submissions largely on accounting evidence, and the record in Scan's accounts of very considerable transfers to City-Centre of third-party discount notes in return for receivables from City-Centre. As to these transfers:

(1) Scan's 2007 audited accounts record that its financial assets and investments comprised discount notes of 17 banks and shares in 2 other banks.

(2) Those discount notes must have been sold or transferred because Scan's RAS accounts as at 31 December 2008 show that Scan had 13 discount notes of City-Centre amounting to RUB 725.9 million, and 2 discount notes of Gazprombank amounting to RUB 27.5 million, out of total liquid assets of RUB 805.6 million. It is unclear from the accounts when the transfers to City-Centre took place.

(3) Accordingly, the major single 'asset' of Scan to support its insurance business was the receivable from City-Centre. As at end Q1-2009, Scan's credit exposure to City-Centre was RUB 842 million, which accounted for 50% of Scan's total balance sheet. The value of the receivables held by City-Centre was approximately US$ 25 to 30 million.

1590. Dr Arkhangelsky signed the Scan accounts as the Director-General. In other contexts, he seemed to accept responsibility for Scan's accounting records and approach: he expressed particular pride that he had worked hard to ensure that Scan adopted western accounting standards. He also professed that insurance was his "personal hobby". Yet he told me that he could not recollect or explain the transfers of the majority of his insurance company's assets to City-Centre (which he stated he was sure was not within OMG).

1591. Dr Arkhangelsky floated the following "conjecture":

> 'The insurance business in Russia is tightly regulated. At the relevant times, there were annual instructions issued by the insurance regulator, Rosstrakhnadzor, as to the size of insurance companies' (a) charter capital and (b) insurance reserves; and in what form that capital had to be kept. It is likely, and consistent with my recollection, that under the rules then in force (a) real estate was the most sensible asset to form the charter capital (this is why Scan had to own part of the Onega Terminal) and (b) insurance reserves had to be in liquid assets, and invested through some kind of investment broker or placement broker. I therefore conjecture that City Centre may have been an investment broker or placement broker, engaged by Scan to invest its insurance reserves. It is also possible that Petroles and LPK Scandinavia also used the services of City Centre as an investment/placement broker. I stress once again that this is no more than a conjecture on my part and I have no specific recollection of that company…'

Then this:

> "Q. But it looks, on the face of it, doesn't it, Dr Arkhangelsky, as if half of Scan Insurance's assets are now held with an exposure to an entity called City Centre, 50 per cent of Scan Insurance?

> A. No, it doesn't look strange for me. After discussion in correspondence with you, I assume that it relates to the reserves, because in Russia, insurance companies are under the very strong supervision by insurance supervision authority, which is now part of the Central Bank.
>
> So the Central Bank control where and how the reserves and the capital of the company invested -- there is a special list which is changing from time to time of the assets -- where and how it could be invested, and it is controlled, I think, at least on a quarterly basis.
>
> So in case anything done against that instruction, what they call, or regulation, then the insurance licence withdraw automatically, so it's very heavily controlled."

1592. When I expressed some surprise, Dr Arkhangelsky addressed it as follows:

> "MR JUSTICE HILDYARD: But those matters may be surprising, but it also may said to be surprising that in this, your hobby company, the one you attach particular importance to, which had had in the previous year a balanced portfolio of receivables, which became a much less balanced portfolio of receivables, that you are not able to help me a little bit more as to what this company did and why you placed such trust in it.
>
> A. Yes. No, I cannot agree with this point. So, first of all, my hobby is underwriting in insurance, so not investments, for sure.
>
> MR JUSTICE HILDYARD: You will never meet catastrophes you may have to pay for unless you have the investment backing with which to meet the liability.
>
> A. Absolutely, absolutely.
>
> MR JUSTICE HILDYARD: So it is crucial for the business that you should have an available source of money.
>
> A. Absolutely.
>
> MR JUSTICE HILDYARD: And all I'm asking, really, is for your help as to what City Centre was in which you placed 50 per cent of your eggs --
>
> A. Yes.
>
> MR JUSTICE HILDYARD: Do you see my slight surprise you cannot assist me at all on that?

> A. Yes, yes, I understand. I understand. Yes, I'm nearly sure -- I am, let's say, 100 per cent sure that this City Centre, it was one of the management companies of the assets, because based on the regulation, you cannot invest money into any securities unless you are considered to be a professional player. So I'm nearly sure and -- I should say I'm absolutely sure that the City Centre was a professional player on investment side, so either placement broker or management company, which been placing and buying all these securities. And if you look on the balance sheet where they are referring to the papers, which have been shown as -- let's say when -- I think it was at the end of the year, then many, many bank papers been brought. So it has always not been done on direct basis; it was done through the professional intermediary. So what I should say, and I'm absolutely sure, that the City Centre is a professional player in financial markets, and that point is strongly controlled by the Central Bank, or insurance provision authorities. So it could not be like this, that we just thrown away half of the assets and it's not controlled. So it's absolutely impossible. And I am really disappointed that, having full control of the company, I don't know by which reason they couldn't identify this company."

1593. This was difficult to accept. As Mr Lord submitted:

(1) If, as Dr Arkhangelsky suggested, City-Centre was "one of the management companies of the assets" then it would be an OMG company, but he denied that: "absolutely not. We haven't had such a company in the group."

(2) The suggestion that the arrangements with City-Centre may somehow be connected with insurance requirements or regulations is incoherent. Scan went from having a wide spread of receivables with a variety of different banks and counterparties to a concentrated risk in an unknown and unidentified entity called City-Centre. Moreover, if City-Centre was a "professional player in the financial markets" and/or somehow used by Scan as part of its compliance with insurance requirements, then both Mr Popov and Mr Steadman would have been able to track down City-Centre. Instead, they drew a blank.

1594. They reported as follows:

(1) Mr Popov said:

> "A large proportion of Scandinavia's liquid assets had already been transferred, prior to the Valuation Date, to City Centre LLC, a company on which I was provided no information from disclosure, nor could I find any public information. This transfer of assets created a corresponding "Receivable Asset" (akin to a loan asset) on the balance sheet. Whilst I cannot confirm whether this company was related to OMG, in my experience such transfer of funds to unnamed special purpose vehicles was

> common practice in Russia at the time of the financial crisis. Receivables from City Centre LLC accounted for 50% of Scandinavia Insurance total assets as of end Q1-2009."

(2) Mr Steadman noted:

> "From the information available to me, I am not able to tell when the discount notes detailed on the 2007 balance sheet were sold or transferred or when the discount notes held by City Centre LLC were acquired – or indeed even the relationship between each. I have noted that Mr Arkhangelsky has no recollection of City Centre LLC or when any transfer took place. Accordingly I am not in a position to evaluate whether adjustments are required to my valuation to reflect the collectability or otherwise of the company's financial assets."

(3) Mr Popov concluded:

> "I do not have information about operations of City-Centre, its role or even linkage to OMG either through disclosed documents or public information research. However, in my opinion given (a) business practices in Russia at that time; and (b) given the insolvency of OMG, the management of Scandinavia Insurance would not have provided a loan of that significance to a company outside [sic] broad OMG perimeter."

1595. City-Centre was also, according to the available accounting records, the transferee of substantial sums from LPK Scan (a timber company, it will be recalled). As to that:

(1) The LPK Scan accounts as at 31 March 2009 show that LPK Scan transferred RUB 950,533,165.59 to City-Centre on 20 May 2008.

(2) The entry describes the "Debt type" as "goods". Approximately one quarter of the accounts receivable for LPK Scan comprised this transaction with City-Centre. The LPK Scan accounts were signed by Ms Tarasova, Dr Arkhangelsky's mother-in-law. According to Mrs Arkhangelskaya, her mother was a "nominal director", who appears to have acted at the direction of Dr Arkhangelsky.

(3) Dr Arkhangelsky could not rely on any insurance explanation for City-Centre in the LPK Scan accounts: but he tried repeatedly to dispute the authenticity of the accounts themselves. He disputed whether Ms Tarasova had signed the accounts, but it transpired that he had not spoken to Ms Tarasova about the accounts (despite the RPC letter raising questions about them) because he did not want to "disturb her".

(4) Dr Arkhangelsky could give no explanation as to the City-Centre entry in the accounts of a timber company:

> "Q. Dr Arkhangelsky, you can give no explanation for why LPK Scan might be putting a quarter of its receivables with an entity called City Centre?
>
> A. I think so far the only explanation I have, it's you produced this artificial document just for the purposes of cross-examination. So that's the only explanation I have right now.
>
> Q. Thank you. Because your insurance explanation for Scan Insurance wouldn't apply to a timber company, would it?
>
> A. No, no, I said you that insurance company been investing through the professional player in the investment market."

1596. Dr Arkhangelsky's resort, "right now", to another plea of forgery or concoction was not impressive. The further line, which Mr Stroilov chose to emphasise in his oral closing submissions, that the Claimants should not be entitled to rely on an incomplete record as giving rise to an inference (to the effect that City-Centre is Dr Arkhangelsky's secret wallet) in circumstances where they had the means (through the documents available to the bankruptcy administrator of Scan and through Mr Berezin (who gave evidence for the Claimants in the BVI Proceedings)), seemed to me to carry little conviction. The Claimants' case that very substantial sums were diverted from OMG companies to City-Centre and have, apparently, disappeared without trace, supporting the inference that those sums have been diverted, directly or indirectly, to the ultimate potential benefit of Dr Arkhangelsky himself, is readily understandable.

1597. However, the direct evidence as to the ownership of City-Centre (as distinct from the evidence of transfers of Scan assets to it) is sparse, and it is right to record that Dr Arkhangelsky strenuously denied that he owns City-Centre:

> "A. No, absolutely not.
>
> Q. And how can you be so sure?
>
> A. Absolutely, because I haven't had this money and I have never, ever had any control of this money personally, and so that's why -- if it would go to me, I would probably would have this money, and would employ a huge team of advocates representing me in these proceedings.
>
> Q. I suggest, Dr Arkhangelsky, that it is likely that you have benefited from the City Centre entry.
>
> A. Absolutely not. Absolutely not."

1598. There is obvious force in the point that Dr Arkhangelsky would surely not have put his young family at such risk and himself at such disadvantage if truly City-Centre was and remains his vehicle and a store of very substantial funds to which he has access. Even if I might well accept that he is capable of such deceit, the years-long self-denial, subterfuge (even within his family) and difficulty involved in not resorting to such

funds, to the detriment of himself and his wife and children, would be remarkable, even by the standards of this remarkable case. Put shortly, whilst the evidence appears weighty, the conclusion urged appears quite extraordinary. In the end I have concluded that I need not, and on the present state of the evidence, should not, decide the question as to the ownership of City-Centre. It is really a point going to credibility and to Dr Arkhangelsky's assertion of impecuniosity, rather than a substantive issue in the proceedings. There I shall leave the matter for the present, though I appreciate that it may become directly relevant at a different stage.

Vyborg Port

1599. There seems to be no doubt or dispute that Vyborg Port had (and I assume still has) substantial value. For example, when Dr Arkhangelsky applied in October 2012 for fortification of the cross-undertaking given as the price of the Freezing Order made in March 2012 by Morgan J (to which OMGP's shares in Vyborg Port were subject), Mr Ameli said that it was worth some £317 million.

1600. There is much more doubt both as to (a) what business Vyborg Port actually did and its true relationship with other OMG companies, and (b) who now really controls it and owns its shares. Both issues have engendered hot dispute. Considerable evidence was given on each point, and the Claimants (though not the Defendants/Counterclaimants) put forward very detailed submissions. But that dispute has also included whether it is fair to attempt to resolve either in the context of this trial.

1601. Taking up that last point, although both issues are plainly relevant to credibility, and to the issue of the Arkhangelsky's alleged impecuniosity (as Mr Stroilov accepted), neither has been pleaded out, and their resolution is not necessary for the determination of any substantive issue in the case (as Mr Stroilov emphasised). The Claimants assured me that after a further review conducted in the course of trial, they are confident that they have no further documents to disclose; but Mr Stroilov pointed to factors suggesting further disclosure could and should be given and emphasised also that the Defendants have not given disclosure themselves, and have not had the chance either to test the Claimants' case or to undertake further focused enquiries that could have been appropriate.

1602. Further, it is submitted by Mr Stroilov that since part of the evidence relied on by the Claimants (relating to the circumstances in which a company called 'Akort LLC' ("Akort") which Dr Arkhangelsky is said to own or control) acquired the shares in Vyborg Port after the date of the Freezing Order) was provided to them by Dr Arkhangelsky pursuant to the Freezing Order, it was protected from use by the terms of that Order and should not be treated as substantively admissible (though evidence was in fact given in respect of it and he did not ask for its deletion).

1603. Mr Stroilov went on to submit that in any event, adjudication of such issues now would be unfair and inappropriate: part of the Claimants' allegations could, if accepted, establish a contempt on the part of Dr Arkhangelsky, and he should not be deprived of the right to full and proper disclosure and to all the protections available in contempt proceedings. As to the last point, I suggested that it seemed that this amounted to using

the Freezing Order as a snooker ball; but Mr Stroilov nonetheless appealed to discretion, and urged against:

> "going into allegations of contempt by the back door without observing all the safeguards there are for that process."

1604. I am not persuaded that any part of the evidence in question is inadmissible or should not be admitted by virtue of the protections in the Freezing Order. However, I am troubled by the incompleteness of disclosure, the suggestion of inadequate opportunity to test it and make inquiries, and the potential overlap with any contempt proceedings.

1605. I have throughout these proceedings been especially anxious to ensure fairness to Dr Arkhangelsky and to minimise grounds for any perception on his part of being at a disadvantage. In all the circumstances, I do not think it necessary or expedient to determine the issue as to the ownership of Vyborg Port or (in particular) how Akort came to be its shareholder and who owns and/or controls Akort. That being so, I do not consider it appropriate to attempt other findings in relation to the ownership of Vyborg Port and Akort. I confine myself to the following observations:

(1) According to both Dr Arkhangelsky and Mr Ameli, Vyborg Port has a value considerably in excess of its indebtedness to V-Bank. Dr Arkhangelsky's third affidavit stated that it was his "only substantial asset". Mr Ameli gave affidavit evidence in support of an application to require the Claimants to fortify their cross-undertaking given in the context of the Freezing Order that the net equity value of Vyborg Port was worth £190 million before the Freezing Order, and said that Vyborg Port was really worth £317 million. Yet until trial and during the cross-examination of Dr Arkhangelsky (see below) it was never suggested that the Bank had sought to take over that valuable asset. Not unreasonably the Claimants noted that:

> "It would be a very odd corporate raid where the 'raider' leaves the 'victim' with the only assets of any value that he has."

(2) Especially since Dr Arkhangelsky has objected to any assessment now of the issue of the ownership of Vyborg Port and Akort, it is likewise wrong for me to entertain or give credence to the (in any event) unpleaded and unparticularised claim he made under cross-examination of a "raider attack" by the Bank on Vyborg Port.

(3) It is not disputed that Dr and Mrs Arkhangelsky have been receiving payments from Vyborg Port and Port Equipment from 2012, which continue to the present day. On 23 July 2015, Withers said:

> "Mr and Mrs Arkhangelsky confirm that they have from time to time received funds from Vyborg Port LLC and/or Port Equipment LLC. In practice, however, since at least 2012 Mr and Mrs Arkhangelsky have not been actively involved in the running of the two companies, and the lead was taken instead by the local management including Mr Vasiliev and Ms Lukina.

> Mr and Mrs Arkhangelsky can only speculate as to why payments to them were still made after they lost control of the companies. In principle, there is nothing strange or suspicious in the fact that the companies continued to discharge its legal obligation to pay wages to their employees, notwithstanding the purported change of ownership or bankruptcy proceedings. It is also understandable that our clients were disinclined to question these payments in view of their extremely straitened, even desperate circumstances."

(4) Whoever may have authorised it, there is no dispute that the documents authorising or effecting the transfers of shares in Vyborg Shipping to Akort appear to be stamped with the OMGP seal. Dr Arkhangelsky denied that it was he who stamped the documents, and his case was that he had no access to the seal after he fled to France in June 2009. I have decided not to seek to resolve that issue; but the question arises as to how, if he had no access to the seal, he was able to provide to this Court, as evidence of OMGP's authorisation of its participation in these proceedings, two letters apparently bearing OMGP seals – one dated 12 September 2013 and the other dated 31 December 2015.

(5) Dr Arkhangelsky's explanation was that the "seal" on the first such letter was "scanned", and that he had somehow "copied" the seal. As to the second letter, on which the seal was in colour, he suggested that he had to assume the seal was in the hands of Ms Lukina and Mr Vasiliev, who must have affixed it. On the basis of that evidence, the Claimants were in my view justified in contending that:

> "either Mr Arkhangelsky did retain the OMGP seal after he left Russia or he fabricated a copy of the OMGP seal for the purposes of these proceedings."

Use of 'mirror companies'

1606. It was not disputed that Dr Arkhangelsky established (at least) three companies which had the same names as three other OMG companies: there are two OMGP companies, two GOM companies, and two Scandinavia Leasing companies.

1607. Dr Arkhangelsky's explanation (in his second affidavit) for this was that:

> "The so-called 'mirror companies' were established within Oslo Marine Group for a legitimate purpose, namely to preserve the rights to well-established trademarks attracting high goodwill."

1608. On a similar theme, in his oral evidence he suggested that he was "associated with all these [OMG] names" and said: "the name of Oslo Marine Group and Oslo Marine Ports is well known internationally, in the media, on the web and so on, so I thought that at some stage maybe I would be able to come back and recover, and that's it." He elaborated on this when cross-examined as follows:

> "Q. So have you set up some companies and transferred various rights into them?

> A. No. What do you mean, "rights"?
>
> Q. Well, I'm not sure what you are talking about. When you say "to preserve the rights", it's your affidavit:
>
> "... to preserve the rights to well established trademarks..."
>
> A. Yes, I just –
>
> Q. What are you talking about there?
>
> A. I just wanted to have -- speaking about Oslo Marine Group and Oslo Marine Group Ports, I just wanted to one day to come back and restart, maybe, business. That was my idea by that time. I think it was 2010 or 2011, something like that, and that was a part of kind of discussions, negotiations, with V-Bank, because V-Bank was supporting me, and there were a lot of different discussions and I was dreaming that maybe at some stage, these or BVI or Cyprus proceedings would bring me to some result.
>
> MR JUSTICE HILDYARD: Are they registered trademarks, or ...
>
> A. No. In Russia it's not that developed, I mean trademarking, or ... you can register any company with any name, just tax authorities would give you the unique registration number, let's say."

1609. The Claimants submitted that this was untrue and that it is far more likely that the real reason why Dr Arkhangelsky established OMG mirror companies was to divert funds from one OMG company to another of the same name.

1610. Again, the issue does not require resolution in order to enable me to determine any substantive issue in the case. It goes to credit and impecuniosity only. I have been able to reach a view as to Dr Arkhangelsky's credibility without reference to this disputed material; I do not feel it appropriate in the circumstances to reach a finding as to whether Dr Arkhangelsky has access to assets contrary to his assertion of impecuniosity, whether as regards 'mirror companies' or otherwise.

Other assets and resources, Co-France, and further claims by the Bank

1611. The Claimants have, under the same heading of "Arkhangelsky's hidden assets", included fairly extensive factual analyses of (a) Dr Arkhangelsky's venture in the South of France, called 'Co-France'; (b) the (admitted) purchase by and in the name of Mrs Arkhangelskaya of three apartments in Nice, France ("the French Properties") with funds alleged to have been extracted from or provided by LPK Scandinavia; (c) the transfer of assets by Dr Arkhangelsky to his wife under the Marriage Contract to which I have referred in paragraphs [838] to [852] above; and (d) the Arkhangelskys' personal accounts and the evidence of their expenditure.

1612. The reason for dwelling on the activities of Co-France was never very clear to me, and it was no surprise that the subject was not pursued at all in oral closings.

1613. The point was made that Co-France's activities include advice and legal services to wealthy Russians living in the South of France (perhaps for similar reasons as Dr Arkhangelsky) and in relation to "Protection of finances and businesses" from "persecution from which you are trying to protect yourself" (I quote from its brochure); and also that (to quote from the Claimants' Closing Submissions) "Co-France seems to specialise in fighting Russian Banks", and in assisting "defaulting borrowers to escape their creditors." None of that is of assistance to me.

1614. No claim is made in these proceedings in respect of the French Properties: The Re-Amended Particulars of Claim states that these are the subject of "separate proceedings", presumably in France. I say no more about them.

1615. I have already determined not to grant relief in respect of the Marriage Contract or the Deed of Donation (see paragraphs [847] and [852] above).

1616. That leaves the criticisms made by the Claimants of expenditure said to "show a lifestyle which is far removed from that of an impecunious litigant", and leading to the Claimants' submission that they "have only presented themselves as such to avoid judicial scrutiny of their finances."

1617. The Claimants engaged in extended cross-examination at trial of (in particular) Mrs Arkhangelskaya's undoubted tendency to occasional bouts of extravagance (see also paragraph [89] above), apparently with a view to showing (a) again, that the Arkhangelskys had elected to cut expenditure on this litigation as a matter of choice rather than inescapable predicament, and (b) that the possible inference is that they have "far more material resources than they contend."

1618. As to (a), the Arkhangelskys' retort was that the amounts involved would not begin to cover litigation costs, though that does not seem to me to answer the real gist of the Claimants' case in this regard, which is that even only occasional and limited extravagance may suggest undisclosed sources of funds, especially in circumstances where the spender has children to feed and clothe and educate. As to (b), as already indicated, I suspect that the bouts of extravagance are sudden uncontrolled, probably soon-regretted, responses to Mrs Arkhangelskaya's predicament. Taken in the round, I do not think any of this sustains an inference that the Arkhangelskys know they have a pot of gold. They may, but they may not: I do not think I have the means of determining the issue now, and in any event, I do not consider that the determination of the substantive issues in this case requires or warrants it.

Claim for declaratory relief

1619. I turn lastly to the Claimants' claim against both Dr and Mrs Arkhangelsky for declaratory relief.

1620. The Claimants seek five declarations, as set out in paragraph 3 of their Prayer for Relief:

> "(a) The Claimants were not party to a conspiracy or scheme as alleged in the BVI Proceedings and/or in the Cypriot Proceedings and/or in the Counterclaim to these proceedings intended to seize ownership and control of two companies previously allegedly owned by the First Defendant, namely Zapadny Terminal LLC and Strakhovoye Obschestovo Skandinaviya LLC without paying full and proper consideration;
>
> (b) The Claimants have not committed the torts of deceit, intimidation and/or conspiracy to commit such torts as alleged in the BVI and/or Cypriot Proceedings and/or in the Counterclaim to these proceedings;
>
> (c) The Claimants have not committed the equivalent of the torts of deceit, intimidation and/or conspiracy to commit such torts under Russian law under Article 15 and 1064 of the Russian Civil Code as alleged in the BVI and/or Cypriot Proceedings and/or in the Counterclaim to these proceedings;
>
> (d) The Claimants have not acted in breach of Articles 349, 350.1, 350.6 of the Russian Civil Code as alleged in the BVI and/or Cypriot Proceedings and/or in the Counterclaim to these proceedings; and
>
> (e) Such allegations were made by the Defendants dishonestly, knowing the same to be false and/or recklessly, not caring whether the same were true or false."

1621. The claim for declaratory relief has been accorded some importance by the Claimants: it is said that Mr Savelyev is only a Claimant because of the declaratory relief which is sought (although, as noted at paragraph [54] above, it was always intended by the Counterclaimants to join him as a defendant, so it was inevitable that he would be a party). It is only the Bank which has a claim under the Personal Guarantees and Personal Loan.

1622. It is common ground that the negative declarations which the Claimants seek are in form the obverse of the allegations in the Counterclaim, and formulated to be in effect their 'mirror' image. It is also not disputed that the allegations advanced in the Counterclaim are, in substance, the allegations made by the Defendants in the BVI and Cyprus. In both the BVI and in Cyprus, the Defendants and OMGP alleged, as claimants, that the Bank and Mr Savelyev had conspired to seize and/or raid Western Terminal and Scan.

1623. The Claimants accept that the Court's power to grant declarations, which is to be found in *CPR* Part 40.20, is discretionary. However, they stress its width in modern time, citing *FSA v. Rourke* [2002] CP Rep. 14, where Neuberger J (as he then was) said:

> "…Accordingly, so far as the CPR are concerned, the power to make declarations appears to be unfettered. As between the parties in the section, it seems to me that the court can grant a declaration as to their rights, or as to the existence of facts, or as to a principle of law, where those rights, facts, or principles have been established to the court's satisfaction. The court should not, however, grant any declarations merely because the rights, facts or principles have been established and one party asks for a declaration. The court has to consider whether, in all the circumstances, it is appropriate to make such an order."

In particular, the Judge said:

> "…when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration."

1624. The Claimants contend that the dismissal of the Counterclaim must mean or connote that the factual basis for the declarations is made out; and that then the only question which arises for the Court is whether, in all the circumstances, this is an appropriate case to grant the Claimants the declaratory relief which they seek. The Claimants submit that for the reasons below, it is.

1625. First, the Claimants stress that the conspiracy allegations advanced by counterclaim, which have been pursued now for well over five years in multiple jurisdictions, are dishonest and should never have been made. They submit that there has never been any evidential basis for them, and that Dr Arkhangelsky has always known them to be untrue and has pursued them to delay recovery from him, and as part of a media and political campaign to generate publicity and sympathy and divert attention away from his own dishonesty. The Claimants urge the Court to grant the declarations in order to redress the wrong to the Claimants of having been subjected to false claims in abusive proceedings made dishonestly.

1626. Secondly, the Claimants submit that it is particularly appropriate that declarations be granted because the Counterclaimants have sought to stigmatise the reputation and name of the Bank and a private individual, Mr Savelyev. They stress the enormous expense to the Bank and Mr Savelyev, both of time and money, in being forced to defend themselves against a barrage of untruths (in and out of Court). They suggest that Mr Savelyev has been the target of particular and personal opprobrium, and should be entitled to public exoneration by way of declaration to dispel any lingering suspicion or doubts as to his honesty and reliability.

1627. Thirdly, the Claimants submit that there is no injustice to the Counterclaimants in granting the declarations. In his evidence concerning the events of December 2008, Dr Arkhangelsky said as follows:

> "… what I am saying, that, you know, I used to be liable for all my steps and all my behaviour…. I want to be liable for my behaviour and for the situation, that's for sure."

1628. Fourthly, the Claimants submit that the granting of declarations would serve a useful purpose. They contend that:

(1) Because of the extravagance of Dr Arkhangelsky's allegations and his disdain for the rules of this Court, this litigation has wasted an enormous amount of Court time and resource; and

(2) The English Court should not be used for that sort of purpose. The declarations would go some way to make clear to litigants that they cannot make wild and false allegations before this Court in order to continue a media or political campaign.

1629. Fifthly, the Claimants contend that if any were needed, the persistent and false media campaign waged by Dr Arkhangelsky against the Bank and Mr Savelyev throughout the course of this trial constitutes a special reason for making declarations, which would ensure that the record was set straight once and for all.

1630. Lastly and more generally, the Claimants submit that in circumstances where the prospects of recovering any sums from Dr Arkhangelsky, whether in respect of their successful claims or in respect of costs, are slight (if any), at least without substantial further cost and litigation, the declarations would go some way to provide some recompense to the Claimants, however imperfect. As indicated above, the starting point of these submissions is that the Counterclaim has not only not been established (as I have found) but has been pursued dishonestly, knowing there to be no evidential basis for them, to distract and delay the Claimants and to assist in a political campaign and generate public sympathy against them.

1631. It is certainly so that I have concluded that the Counterclaimants have not discharged the burden upon them of proving a dishonest agreement or combination comprising a conspiracy to seize ownership and control of Western Terminal and Scan Insurance by unlawful act and/or means. I have sought to set out at some length my findings which have led to that conclusion. The Claimants are, of course, entitled to rely on those findings. But it is, I think, important for me to emphasise that I have not made, and do not make, any of the latter findings on which the claim for declaratory relief appears to be premised.

1632. In particular, although the Claimants throughout disparaged and sought to dismiss the Counterclaim as "one of the most remarkable fictions to come before the English Court", I have found the matter to be much more finely balanced. That is so even though I have found Dr Arkhangelsky to have been, in several instances, dishonest. For one of the features of this unusual case is that whilst the main claims are founded and have eventually been established on the basis of Dr Arkhangelsky's dishonesty, that finding has not of itself much assisted or been relevant in the determination of the Counterclaim, which has been barely concerned with his conduct and has focused almost entirely on the alleged dishonesty of the Claimants and their associates.

1633. The fact that I have found that the Counterclaimants have not established the very serious allegations they put forward does not mean that I have rejected the claims as being a fiction dishonestly contrived: only that the claims have not been established having regard to the strength of the evidence that was necessary to discharge the burden of proof.

1634. Indeed, in considering whether to grant the declarations sought, I think it is relevant that I have, throughout the case, before, during and after the hearing, harboured a nagging and discomfiting feeling that the evidence by which alone the case is to be decided may not have revealed the whole truth; and that the very different conditions in Russia may mean that what seems improbable, or at least not probable, looked at through the lens of a different jurisdiction accustomed to different conditions, may yet have occurred. The Counterclaim always faced the difficulty that it relied on proof of the inherently improbable, and a burden of proof that could only be discharged by showing the facts to be incapable of innocent explanation such as to give rise to the inference of the conspiracy or conspiracies pleaded. The Court can only see through a glass darkly: it can only proceed on the basis of the evidence available to be put before it and determine, either on the basis of findings of fact which it is satisfied are justified by reference to such evidence on the balance of probabilities or, to the extent that it is not satisfied, by reference to where the burden of proof lies. As Lord Hoffmann explained in *In re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35; [2009] AC 11 at para. 2, the Court's approach on the evidence is binary:

> "If a legal rule requires a fact to be proved (a "fact in issue") a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

1635. My findings in accordance with that binary system are as they are; but I have misgivings such that I would not wish to elevate my findings into declarations which might be perceived to go beyond findings and conclusions on the balance of probabilities, on the basis of the available evidence, having regard to the burden of proof. Still less would I be inclined to make some declaration that the Counterclaimants were dishonest in pursuing their counterclaims. The principal features which I think have encouraged and fomented my misgivings, and which, in my view, almost inevitably excited suspicion and to that extent explain the claims, are as follows:

(1) The material omissions from the repo arrangements, which put the Counterclaimants at enhanced risk in the event of default, a risk in which in fact eventuated (and see paragraphs [951] to [958] above);

(2) The fact, and more concerning still, the Claimants' continuing denial of the fact, that at least most of the Renord-Invest group companies were in reality almost

certainly owned or controlled by the Claimants, and even if Mr Smirnov ultimately owned Baltic Fuel, he too is a close friend and ally of the Claimants and his evidence could, in his absence, not be tested;

(3) The signs that the Claimants were able to and did call upon the police and regional authorities to assist them take possession of Western Terminal in circumstances that I very much doubt that persons without considerable influence would have been able to do, which do smack of intimidation and abuse of position;

(4) The resignation and silence of the principal actress and key witness, Mrs Malysheva, of whose evidence the Court was thus denied;

(5) The chorus of plainly false evidence she orchestrated in the context of the Morskoy Bank proceedings;

(6) The extraordinary fact that not a single independent person participated in any of the auctions, leaving the only participants as entities subject to common control, so that but for a limitation period the auctions would likely have been held invalid;

(7) My perception that, in the war between the parties, all sense of commercial reasonableness was lost on both sides, and in the case of the Claimants, they determined to, and did, opportunistically and in some respects ruthlessly, pursue their own commercial objectives without any regard to anything more than formal compliance with their obligations under Russian law, and have personally profited in the result;

(8) The fact that there have been numerous examples of state-orchestrated or assisted 'raids' in the Russian Federation, of which there are at least disconcerting echoes in this case;

(9) The curiosity that so little (in effect, nothing) has been revealed about the present trading and financial position of Western Terminal and Onega Terminal, and the possibility arising from that and the coordination of transactions, as well as Dr Arkhangelsky's direct suggestion to that effect, that the Claimants may have procured for their associates, and may yet have some interest in, assets of far greater value than they have accounted for, even if that value could not have been unlocked by Dr Arkhangelsky and could only be realised with the capital at the Claimants' or their associates' command; and

(10) Overall, my recognition that in a case such as this not all the truth may have been revealed by the evidence, and that declarations such as are sought may be deployed, in a manner which cannot as a practical matter be controlled, to suggest broader findings and firmer conclusions than the evidence justified, or simply not to vindicate the Claimants, but to vilify the Defendants.

1636. Similarly, I do not accept the suggestion that the declarations sought should be made in this case in order to discourage wild allegations and abuse of this Court's process. I accept, as will be apparent from the details of this long judgment, that Dr Arkhangelsky did indeed make some wild, and in some instances fanciful, allegations. But I would not characterise the Counterclaim as a whole in that way. I consider that there were

serious issues to be tried in that context, such as those particularly mentioned above, which in some instances I have had to determine after not a little equivocation.

1637. In short, it should be sufficient for the Claimants that, on the evidence before the Court and the findings I have made, they have succeeded in their main claims, and the Counterclaim has been dismissed. I do not consider that I should go further. In particular, and even taking into account Dr Arkhangelsky's demonstrated dishonesty and the likely difficulty (probably impossibility) of achieving any substantial restitution and vindication by recovery of the considerable costs, I do not consider that justice to the Claimants requires the exceptional step of declaratory relief in addition. The claims by and against them have been adjudicated. They have that result and the findings I have made; but they are not entitled, in my view, to more than that. I therefore refuse to make the declarations sought.

Conclusion

1638. In the result:

(1) The Claimants are entitled to judgment under each of the Guarantees and Loan Agreements in respect of which they made claims for recovery: the sums due will require re-calculation in light of the passage of time.

(2) I dismiss the claims against Mrs Arkhangelskaya.

(3) I dismiss the Claimants' claims for declarations.

(4) I dismiss the Counterclaim.

(5) Any issue as to interest and costs, or other consequential matters, should be agreed, if possible, but otherwise determined at a hearing following judgment.

1639. I regret and apologise for my long delay in providing this judgment, as well as for its length, and any shortcomings which nevertheless may remain.

1640. Finally, I would not wish to end without an expression of my thanks to Counsel and their team, who have assisted me with patience, skill and clarity throughout; and to Mr Stroilov for his impressive work and assistance as a McKenzie friend in difficult circumstances in this tortuous and complex case.