Neutral Citation Number: [2010] EWHC 3199 (Comm)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2010

Before:

MR. JUSTICE ANDREW SMITH

- -

Between:

Claim no: 2005 Folio 534

Fiona Trust & Holding Corporation and 75 ors.	**Claimants**
- and -	
Yuri Privalov and 28 ors.	**Defendants**

And in the part 20 proceedings between:

Yuri Nikitin and anr.	**Pt. 20 Claimants**
and	
H. Clarkson & Company Ltd	**Pt. 20 Defendants**

and between:

Claim no: 2007 Folio 482

Intrigue Shipping Inc. and 50 ors.	**Claimants**
and	
H. Clarkson & Company Ltd. and 8 ors.	**Defendants**

And in the part 20 proceedings between:

Yuri Nikitin and anr.	**Pt. 20 Claimants**
and	
H. Clarkson and Company Ltd.	**Pt. 20 Defendants**

and between:

Claim no: 2009 Folio 91

	Claimants
Fiona Trust & Holding Corp. and 9 ors.	**Defendants**
and	
Dmitri Skarga and 3 ors.	

and between:

Claim no: 2009 Folio 281

Southbank Navigation Ltd. and 6 ors. — **Claimants**

and

H. Clarkson and Company Ltd. — **Defendants**

Counsel

Andrew Popplewell QC
Dominic Dowley QC
Justin Higgo
Simon Birt
Fionn Pilbrow
Instructed by Ince & Co. for **the Claimants** in actions: 2005 Folio 534, 2007 Folio 482 and 2009 Folio 91.

Graham Dunning QC and Susannah Jones
Instructed by Stephenson Harwood for **Mr. Dmitri Skarga**

Steven Berry QC
Nathan Pillow
David Davies
Instructed by Lax & Co. for **Mr. Yuri Nikitin and the Standard Maritime Defendants** in actions: 2005 Folio 534, 2007 Folio 482 and 2009 Folio 91 and **the Claimants** in 2009 Folio 281 and **the Part 20 claimants** in 2005 Folio 534 and 2007 Folio 482.

Simon Bryan QC and Jern-Fei Ng
(instructed by Stephenson Harwood) for **Mr. Tagir Izmaylov**

John Odgers and Ian Wilson
(instructed by CMS Cameron McKenna LLP) for **H. Clarkson & Company Ltd**.

Hearing dates:

1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 October 2009,
2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30 November 2009,
1, 2, 3, 4, 7, 8, 9, 11, 14, 15, 16, 17 December 2009,
1, 2, 3, 5, 8, 9, 15, 17, 18, 22, 23, 24, 25, February 2010,
22, 23, 24, 25, 26, 29, 30, 31 March 2010,
And 9 July 2010.

- - - - - - - - - - - - - - - - - - - -

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.

.....

MR. JUSTICE ANDREW SMITH**:**

Introduction

1. This is the trial of four actions to which I shall refer as the Fiona action (claim 2005 folio 534), the Intrigue action (claim 2007 folio 482), the second Fiona action (claim 2009 folio 191) and the Southbank action (claim 2009 folio 281).

2. The Fiona action and the second Fiona action are brought by OAO Sovcomflot ("Sovcomflot"), a Russian ship-owning and ship-operating company, and subsidiaries of Sovcomflot. They allege that Mr. Dmitri Skarga, a former Director-General of Sovcomflot, and Mr. Yuri Nikitin embarked on a course of dishonest conduct between about the end of 2000 and 2004, whereby companies in the Sovcomflot group entered into transactions which benefited Mr. Nikitin and companies associated with him and were against the interests of the Sovcomflot group. They say that among those who were engaged with Mr. Nikitin and Mr. Skarga in this conduct were Mr. Yuri Privalov, the Managing Director of Fiona Maritime Agencies Ltd. ("FML"), an English company which is the second claimant in the Fiona action and is now called Sovcomflot (UK) Ltd., and from some time in 2002 Mr. Igor Borisenko, then the Executive Vice-President and Chief Financial Officer of Sovcomflot. (In this judgment I often use the term "Sovcomflot" to refer to the group of companies and not only to OAO Sovcomflot, without distinguishing the individual companies unless it matters.)

3. The Intrigue action is brought by JSC Novorossiysk Shipping Company ("NSC"), another Russian ship-owning and ship-operating company, and by subsidiaries of NSC. The claimants' allegations are similar to those in the Fiona actions in that it is said that between about 2002 and 2004 Mr. Tagir Izmaylov, a former President of NSC, and Mr. Nikitin, sometimes with Mr. Privalov's assistance, dishonestly entered into transactions which were against the interests of the NSC group and profitable to Mr. Nikitin and companies associated with him. (Again, I often use the term "NSC" to refer to the group and not only to the parent company.)

4. In the Fiona action Mr. Nikitin and one of his companies, Milmont Finance Ltd. ("Milmont"), a company incorporated in the British Virgin Islands ("BVI"), have brought proceedings under part 20 of the Civil Procedure Rules ("CPR") against H. Clarkson & Sons Ltd. ("Clarkson") in which they claim that Clarkson are liable to them for sums in respect of business that they handled for companies in the Sovcomflot group. There is a similar part 20 claim against Clarkson in the Intrigue action in respect of business handled for companies in the NSC group. In the Southbank action, companies controlled by Mr. Nikitin (the "Southbank claimants") bring claims against Clarkson on the basis that, if (as the claimants in the Fiona action allege) Clarkson, when acting as brokers upon certain ship purchase agreements, received from the shipyards sums by way of address commissions, then they are liable to account to the Southbank claimants for those sums attributable to the purchases

which they made. (When I refer in this judgment to "the claimants", I do not include the Southbank claimants.)

5. As Mr. Andrew Popplewell QC, who represented the claimants, made clear when he opened the case, the claims are pursued against the defendants upon the basis that they were dishonest. In the two Fiona actions, their only case against Mr. Skarga is that he acted dishonestly in breach of his duties in relation to the various transactions into which the Sovcomflot group entered with Mr. Nikitin and companies associated with him, and their only case in the Intrigue action against Mr. Izmaylov is that he acted dishonestly in breach of his duties in relation to the various transactions entered into by the NSC group with Mr. Nikitin and his companies. No claim is pursued on the basis that Mr. Skarga or Mr. Izmaylov acted honestly in relation to the relevant transactions but in breach of contractual, fiduciary or other duties. As far as concerns the claims against Mr. Nikitin and corporate defendants with whom he is associated and to whom I shall refer as the "Standard Maritime defendants" (an expression that I shall define more specifically below), the claimants' case generally depends upon them showing both (i) that Mr. Skarga or, as the case might be, Mr. Izmaylov acted dishonestly in relation to the transaction in question, and (ii) that Mr. Nikitin acted dishonestly in relation to the transaction and through him the relevant corporate defendants acted dishonestly. The only exceptions to this are to the "commissions claims", an expression that I shall explain below. In the case of the commissions claims, the claimants' case depends upon them establishing that Mr. Nikitin acted dishonestly, but not necessarily upon showing dishonesty on the part of Mr. Skarga or Mr. Izmaylov. The claimants pursue an alternative case that, even if Mr. Skarga and Mr. Izmaylov were not dishonest in relation to the commissions claims transactions, Mr. Nikitin and the relevant Standard Maritime defendants are liable because they dishonestly colluded with Mr. Privalov or the brokers involved in the transactions or dishonestly assisted them to act in breach of their duties.

6. The defendants deny that they engaged in any dishonest or improper dealings. Mr. Nikitin and the Standard Maritime defendants accept that, when Mr. Skarga and Mr. Izmaylov were in office as the Director-General of Sovcomflot and the President of NSC respectively, they entered into transactions with the Sovcomflot and NSC groups that proved to be very profitable, but they say that this was because Mr. Nikitin invested heavily in shipping when others did not do so, and he profited from his shrewd business acumen and the sustained strength of the shipping market, which many had not foreseen. They also accept that they received payments from Sovcomflot's and NSC's brokers, namely Clarkson, Galbraith's, Norstar and Mr. John Sawyer, but say that they were legitimate and proper payments. Mr. Skarga and Mr. Izmaylov say that the impugned transactions were entered into in the proper course of business, and in the case of Sovcomflot, in particular, in accordance with the planned development of the group, and that they and other senior executives together decided to enter into them in the belief that they were in the interests of their companies' group.

The parties

7. Sovcomflot and NSC were at the relevant time among the largest Russian operators of tankers and other commercial ships. As at 31 March 2001, the three largest Russian

tanker businesses were the Sovcomflot group, who had 34 tankers with a total tonnage of 2,534,308 dwt, the NSC group, who had 66 tankers of 3,293,312 dwt in total, and Primorsk Shipping Company, who had 36 tankers of 786,922 dwt in total. The Russian Federation owned and owns the shares in Sovcomflot. NSC were owned by the Russian Federation until 5 December 2007, when the shares were transferred to Sovcomflot.

8. Sovcomflot, the 28th claimant in the Fiona action and the 3rd claimant in the second Fiona action, own a company called Glenas Shipping Co Inc. ("Glenas"). Glenas in turn own (i) the first claimant in both the Fiona action and the second Fiona action, Fiona Trust & Holding Corporation ("Fiona"), a Liberian corporation, and (ii) Megaslot Shipping Corporation Ltd. ("Megaslot"), a company incorporated in Bermuda. (It appears that Megaslot Shipping Corporation Ltd. was sometimes referred to as Megaslot Ship Holding Corporation Ltd. If that is not so, the difference between the two companies with these names is not important and I refer to them both, without distinction, as Megaslot.) Fiona are Sovcomflot's principal operating subsidiary, they conduct their business through wholly owned subsidiaries and joint venture companies and they operate (or at least at the material time operated) from Sovcomflot's offices in Moscow. As at 31 December 2001 the Sovcomflot group comprised 84 subsidiary companies, of which 71 were single ship-owning companies. The others included:

   i) FML, which was incorporated to act as the London commercial agent of Sovcomflot's shipping business and was engaged in the purchase, sale and financing of vessels on behalf of the group and in particular in chartering the bulk carrier fleet.

   ii) Sovchart SA ("Sovchart"), a Swiss company, which is the 29th claimant in the Fiona action and the 4th claimant in the second Fiona action. They operated from offices in Geneva until their activities were transferred to FML in London in August 2007 (after the transactions which are the subject of these proceedings), and they acted as the group's chartering agent for the tanker fleet. In August 2000 Mr. Jan van Boetzelaer became the managing director of Sovchart in succession to Mr. Alex Prezanti, and he held that position until August 2007.

   iii) Unicom Management Services (Cyprus) Ltd. ("Unicom"), which was incorporated in and operated from Cyprus, and dealt (and still deals) primarily with the technical management of Sovcomflot's fleet. Some of the accounting and financial functions and treasury services of the group were also conducted from the Cyprus offices through various subsidiaries.

9. The other claimants in the Fiona action and the second Fiona action were wholly-owned subsidiaries of Fiona, many of them owning a single vessel, and are incorporated in Liberia, Cyprus, Panama and Malta.

10. NSC are the 30th claimant in the Intrigue action. The principal operating company in the group is and was at the relevant time Intrigue Shipping Inc. ("Intrigue"), a Liberian company, which is the first claimant in the Intrigue action. Novoship (UK) Ltd. ("NOUK"), a subsidiary of the NSC group, operated from London, and were responsible for managing the vessels and also for hiring out on charter the NSC

vessels which were not registered in Russia. The general manager of NOUK between October 2002 and March 2006 was Mr. Vladimir Mikhaylyuk, who is not a defendant in the proceedings before me but is being sued by NOUK and others in other proceedings in this court. The other claimants in the Intrigue action, apart from Novoship SA, are single purpose companies incorporated in Liberia and Malta and owned by Intrigue. Novoship SA, the 51st claimant and a Liberian company, are a party to the Intrigue action for procedural purposes so that the action is properly constituted to pursue certain causes of action which had been vested in ship-owning companies owned by Intrigue and which are said to have been transferred to them and Intrigue.

11. Mr. Yuri Privalov, the first defendant in the Fiona action and 6th defendant in the Intrigue action, is a Russian citizen. He was first employed by the Sovcomflot companies in 1983. In 1992 he joined FML, and was their Financial Manager from 1 December 1992 to 1 October 1997. During this time he reported principally to Mr. Borisenko, the Deputy Chairman and then the Deputy Director-General of Sovcomflot. He was appointed to the Board of Directors of FML on 1 April 1997, and on 1 October 1997 he became their Managing Director. He resigned in February 2005, in circumstances that I shall describe later.

12. Mr. Privalov had personal bank accounts with the Royal Bank of Scotland ("RBS") in the Isle of Man and Banque Cantonale Vaudoise ("BCV") of Switzerland. He also used, and was interested in, a number of companies, which he described as vehicles for holding bank accounts, including the following:

    i) Continental Shipping Ltd. ("Continental"), which was incorporated in Liberia on 25 April 1997 and registered as a foreign company in the Isle of Man on 19 January 1998. Continental was de-registered in September 2000. According to Mr. Privalov, Mr. Vladimir Lyashenko, whom he had known since about 1995 and who had been the managing director of Far Eastern Shipping Company (UK) Ltd. ("FESCO UK"), the London commercial agents of OAO Far Eastern Shipping Company ("FESCO"), a major Russian shipping company, had a beneficial interest in Continental, and he was a director and had authority to transfer money from Continental's accounts. Continental had bank accounts with the Isle of Man branch of RBS, with the London Shipping Centre branch of RBS and with EFG Private Bank SA, Switzerland.

    ii) Montrose Maritime Ltd. ("Montrose"), which was incorporated in the Isle of Man in August 1996. Its name was changed to Paribas Shipping Ltd. in April 1997 and to Fesco Management Ltd. in October 1999, although it had no association with the bank or the Russian transportation group that those names might suggest. Mr. Privalov has said that Mr. Lyashenko had a beneficial interest in Montrose, as he did in Continental, but I do not need to decide and do not decide whether he did so.

    iii) Getwire Corporation ("Getwire"), which was established in Panama on 24 May 2001 and which opened an account with Credit Suisse in Switzerland in 2001 in circumstances which I shall explain later. Mr. Privalov was the sole beneficial owner of Getwire.

iv) Sisterhood Participation Corporation ("Sisterhood"), a BVI company, the 18th defendant in the Fiona action, which was incorporated in September 2002 and apparently used by Mr. Privalov from November 2002.

v) Shipping Associates Inc. ("Shipping Associates"), a Panamanian company, which is the 27th defendant in the Fiona action and the 7th defendant in the Intrigue action. Mr. Privalov used Shipping Associates to receive payments from Clarkson, Norstar and Galbraith's made in connection with business that they handled for Sovcomflot and NSC.

13. On 29 June 2005 Fiona, FML and the 3rd to 12th claimants in the Fiona action (the other claimants being added as parties later) brought proceedings against Mr. Privalov and on the same date obtained against him a Freezing Order and a Search Order to have documents and information preserved. Interlocutory orders were also obtained against Mr. Privalov in the Isle of Man. The allegations were both about transactions conducted between about the end of 2000 and 2004 involving, or said to involve, Mr. Nikitin and Mr. Skarga, and that earlier in 1999 and 2000 Mr. Privalov had dishonestly misappropriated commissions payable to Fiona and their subsidiaries, unlawfully diverted business from FML and made secret profits. It is not said that Mr. Nikitin or Mr. Skarga was involved in those earlier transactions.

14. The Fiona claimants' claims against Mr. Privalov were compromised in October 2005 in what I shall refer to as the "Privalov settlement agreement", on terms that the proceedings should be stayed against him on conditions (i) that he should serve an affidavit within 28 days providing a full and frank explanation of each transaction with Mr. Nikitin and supply relevant documents, and (ii) that he should co-operate with the claimants in the prosecution of the Fiona proceedings. However, the Russian authorities brought criminal proceedings against him, and he was arrested in Switzerland and extradited to Russia in 2008. He was released from custody subject to restrictions which prevent him from leaving Moscow. On 13 April 2009 Mr. Privalov entered into an agreement with Sovcomflot to provide consultancy services in relation to the prosecution of these proceedings. His duties include that he will "assist and cooperate with [Sovcomflot] in connection with the preparation and hearing of [Sovcomflot's] case(s) in the High Court of England". That obligation was to continue until January 2010.

15. The claimants called Mr. Privalov as a witness, but he was not permitted by the Russian authorities to come to England. He gave his evidence over a video-link from Moscow over 7 days. Although the Fiona proceedings against him had been settled in October 2005, the Intrigue action had not been, and before he gave evidence I stayed the Intrigue action against him because I considered that it would otherwise be unfair that he should be cross-examined without having legal advice or representation. I ordered this stay on my own motion, but the parties did not oppose it.

16. Mr. Yuri Nikitin, the 3rd defendant in the Fiona action, the 4th defendant in the Intrigue action and the 1st defendant in the second Fiona action is a Russian citizen. He has been a successful businessman and is apparently very wealthy. He left Russia in December 2004 and came to England via Switzerland. Since then he has returned to Russia for only half a day in February 2005 in order to obtain a visa, and he now lives in England. An application was made by the Russian authorities to extradite him

on criminal charges, but on 8 December 2008 Senior District Judge Workman refused the application. There has been no appeal against that refusal.

17. Before 2003 Mr. Nikitin worked from the offices in St Petersburg of Premium Nafta Products Ltd. ("PNP"), the 20th defendant in the Fiona action and 4th defendant in the second Fiona action, which was owned by Mr. Nikitin and business associates of his, including Mr. Andrei Katkov, Mr. Evgeny Malov and Mr. Gennady Timchenko. In 2003, PNP's shipping business was transferred to Henriot Finance Ltd. ("Henriot"), the 22nd defendant in the Fiona action. PNP's offices were closed in December 2003, and they re-opened in January 2004 as the representative offices of Henriot. Mr. Nikitin's associates gave up (or had given up) their interests in the business, and thereafter Mr. Nikitin managed it for his own profit. Mr. Nikitin also used Remmy Commercial Corp. ("Remmy"), the 21st defendant in the Fiona action, for his shipping business. PNP, Henriot and Remmy are all incorporated in the BVI.

18. Mr. Nikitin operated through a large number of companies, many if not all of which were incorporated in the BVI and had bearer shares. In 2003 he decided to organise at least many of the companies under the umbrella of the Standard Maritime Holding Corporation ("Standard Maritime"), the 4th defendant in the Fiona action, which was incorporated in the BVI on 17 March 2003 and of which Mr. Nikitin is the sole beneficial owner.

19. Milmont, the 5th defendant in the Fiona and the Intrigue actions, was incorporated in the BVI in August 1999, and was always wholly owned and controlled by Mr. Nikitin. At one time, the claimants suggested that Mr. Skarga might also have, or have had, some interest in Milmont, but, if that suggestion be pursued, in my judgment there is no proper evidence to support it and I reject it.

20. Amon International Inc. ("Amon"), a BVI company and the 8th defendant in the Intrigue action, was established in May 2002 and was at all times wholly owned and controlled by Mr. Nikitin. He used it for his dealings with Galbraith's, to which I shall refer, and I accept his evidence that he established Amon for this purpose.

21. Mr. Nikitin had interests in and, as I have said, operated through many other companies, and his evidence about their purposes was vague and unsatisfactory. His business associates also had interests in some of them, including Pollak Management Inc. ("Pollak"), the 25th defendant in the Fiona action, which was incorporated in the BVI in March 2001, and was partly owned, at least until 2003, by Mr. Katkov and Mr. Malov, as well as Mr. Nikitin.

22. Since 4 August 2003 Mr. Nikitin has owned Meino Group Ltd. ("Meino"), another BVI company and 19th defendant in the Fiona action. It is not clear who owned Meino previously. It apparently had bearer shares. The claimants' pleaded case is that in 2002 the company was owned by Mr. Katkov, Mr. Malov and Mr. Nikitin, and was controlled by Mr. Nikitin. Mr. Nikitin and the Standard Maritime defendants plead that it was then owned by Mr. Katkov. By an agreement dated 31 July 2003 Mr. Katkov and Mr. Malov agreed to transfer their shares in Meino to Mr. Nikitin, but Mr. Nikitin's evidence was that he bought them only from Mr. Katkov. I conclude that before August 2003 Meino was owned jointly by Mr. Nikitin, Mr. Katkov and Mr. Malov. Mr. Nikitin signed a form for BCV dated 21 May 2002 in which he, Mr. Katkov and Mr. Malov were named as beneficial owners of Meino, and Mr. Nikitin,

Mr. Katkov and Mr. Malov all signed a record dated 21 November 2002 of resolutions of Meino (and another BVI company, Kosta Continental SA, to which I refer as "Kosta") on the basis, as I interpret the document, that they were all shareholders of Meino. As with Milmont, the claimants at one time alleged, or at least suggested, that Mr. Skarga had some interest in Meino, but I reject that suggestion, if it be pursued.

23. I have used the expression Standard Maritime defendants to refer to companies with which Mr. Nikitin is associated. More specifically, I use this expression to refer to these corporate defendants: Standard Maritime, Milmont, Meino, PNP, Henriot, Remmy and also the 6th to 17th defendants in the Fiona action, namely, Blanter Shipping Co. Ltd. ("Blanter"), Socoseas Marine Co. Ltd. ("Socoseas"), Repmar Shipping Co. Ltd. ("Repmar"), Plutorex Marine Co. Ltd. ("Plutorex"), Martex Navigation Co. Ltd. ("Martex Navigation"), Class Properties Ltd. ("Class Properties"), Akola Maritime Corp. ("Akola Maritime"), Savory Trading Inc. ("Savory Trading"), Titanium Transport Corp. ("Titanium"), Pendulum Navigation Ltd. ("Pendulum"), Accent Tanker Inc. ("Accent"), and Severn Navigation Ltd. ("Severn"). These companies and Mr. Nikitin were represented at the trial by Mr. Steven Berry QC.

24. Mr. Dmitry Skarga, the second defendant in the Fiona action, is a Russian citizen, and is married with three children. He now lives in England, but his wife and family still live in Russia. In May 2000 Mr. Skarga was appointed Director-General of Sovcomflot in succession to Mr. Vadim Kornilov, who had held the position from May 1991 to November 1999, and Mr. Borisenko, who had been acting Director-General for a few months. At about the same time, he was appointed to be a director of Fiona, a director and the Chairman of FML and a director of Sovchart. Mr. Skarga left Sovcomflot in October 2004 in circumstances which I shall describe later. He was appointed a Senator in the Upper House of the Russian Parliament, but he resigned in September 2006. He came to England in 2006 and has not returned to Russia. The Russian Government applied to have him extradited to Russia on criminal charges, but on 8 December 2008 Senior District Judge Workman rejected the application, and there has been no appeal against that decision.

25. Since coming to this country, Mr. Skarga has been living in Mr. Nikitin's house, and, according to his evidence, which I accept for present purposes, he has been largely or wholly dependent upon Mr. Nikitin to provide him with living expenses and other funds. In particular, Mr. Nikitin has funded legal expenses which Mr. Skarga has incurred in these proceedings, in the extradition proceedings and for other purposes. He was represented at the trial by Mr. Graham Dunning QC.

26. After graduating from Marine College in 1968, Mr. Izmaylov, the 9th defendant in the Intrigue action, worked as a navigator on Soviet vessels and then joined the Legal Department for Foreign Relations of the Russian Ministry of Merchant Marine. In 1991 he became the Head of Sovcomflot's Legal Department, in March 1997 he was appointed to be their Deputy Director-General responsible for operations and in 1999 he was appointed their Deputy Director-General responsible for administrative matters. From the time that he joined Sovcomflot in November 1991 until he left in November 2001 he was a member of the Executive Board.

27. From November 2001 he acted as President of NSC, being formally appointed to the position by a contract of employment dated 25 January 2002. The claimants do not pursue any allegation that he acted improperly when he was with Sovcomflot or that his appointment as President of NSC was procured by him improperly or for improper purposes.

28. Mr. Izmaylov ceased to be the President of NSC in circumstances that I shall describe. He left Russia in October 2005 and, after a short stay in Germany, he came to London. In 2006 criminal proceedings were brought against him in Russia, and also against Mr. Mikhaylyuk. The Russian authorities applied that both be extradited to Russia, but the applications were refused by Senior District Judge Workman on 22 December 2008. Again, there have been no appeals against that decision.

29. Mr. Nikitin has provided Mr. Izmaylov with some financial support while he has been in England, including funding his legal costs in respect of the extradition proceedings and these proceedings. He was represented at the trial by Mr. Simon Bryan QC.

30. Mr. Nikitin, Mr. Skarga and Mr. Izmaylov all gave evidence in English. (Mr. Skarga had an interpreter available, but he seldom required her assistance.) I assess their evidence with this in mind. Occasionally they did not immediately understand a question, or gave an answer that might on a literal reading of the transcript appear evasive or inconsistent with their account, but I consider that any misunderstandings were clarified. Sometimes the phraseology of their answers was awkward and lacked fluency, but they were entirely able to convey their intended meaning. Similarly, some of the Russian witnesses called by the claimants who gave evidence in English (including Mr. Borisenko, but not Mr. Privalov) struggled from time to time with the language, but I do not consider that this significantly detracted from their evidence or prevented them from making themselves understood.

31. Clarkson, the 28th defendant in the Fiona action and the first defendant in the Intrigue action, is a company incorporated in England and Wales, which carries on business in London as shipbrokers. It is a subsidiary of Clarkson PLC. At all relevant times until April 2004 Mr. Richard Fulford-Smith was Head of their Sale and Purchase Division, and thereafter until 30 April 2008 he was their Chief Executive Officer. The claimants' claims against Clarkson both in the Fiona action and in the Intrigue action were settled by agreements dated 26 June 2008, but on 13 June 2008 Mr. Nikitin and Milmont had brought the part 20 proceedings against them in both actions.

32. Until about March 2006 Mr. Richard Gale, another director of Clarkson and the 29th defendant in the Fiona action and 2nd defendant in the Intrigue action, was a broker in Clarkson's Sale and Purchase Department, but he has now retired from Clarkson. The claims against him were settled together with those against Clarkson, and under the settlement agreements he and Clarkson agreed that they would co-operate with the claimants for the purposes of the litigation. However, Mr. Gale was not called by any party to give evidence at the trial and no statement from him has been put in evidence. According to Mr. Nikitin's evidence, Mr. Gale told him in August 2006 and again in October 2006 that Clarkson had put him under pressure to give false evidence about his dealings with Mr. Nikitin, but Clarkson deny that they put him under such pressure and, whatever Mr. Gale might have said to Mr. Nikitin, I accept that they did not do so. I also accept Clarkson's submission that, in view of Mr. Gale's

involvement in the transactions that gave rise to the claims against Clarkson, the explanations of them that he has given and the nature of his own defence in the proceedings, no inference can be drawn against Clarkson or any other party from the fact that they did not call him as a witness of truth.

33. Galbraith's Ltd. ("Galbraith's"), an English company, are shipbrokers in London who acted for companies in the NSC group in sale transactions (and also a re-financing arrangement and a purchase transaction) in and after 2002. They are the 3rd defendants in the Intrigue action, but the claims against them were settled by an agreement dated 9 April 2009. Before the settlement was reached, Galbraith's had served witness statements of the evidence that they intended to adduce in the Intrigue action, but those witnesses did not give evidence before me and their statements were not put in evidence. However, Mr. Popplewell put to Mr. Nikitin and Mr. Izmaylov during cross-examination some passages from a witness statement served by Galbraith's and made by Mr. Neil Rokison, who had been a broker with Galbraith's since 1988, was appointed to Galbraith's board on 1 June 1998 and became the Head of the Sale and Purchase Department on 21 November 2003.

34. Other defendants, as well as Mr. Privalov and Galbraith's, were not represented at the trial. They were Sisterhood, RTB Overseas Ltd. ("RTB"), Horber Financial SA ("Horber"), Pollak, Glanos Enterprises Ltd. and Shipping Associates (the 18th and the 22nd to 27th defendants in the Fiona action, and the 7th defendant in the Intrigue action). RTB, the 23rd defendant in the Fiona action, a company incorporated in the BVI, was associated with an Italian broker called Mr. Claudio Cepollina, with whom Mr. Nikitin had dealings from time to time. Horber, which was incorporated in Panama, was dissolved on 22 November 2006 and has not been served with any relevant proceedings. Otherwise, these defendants did not acknowledge service. The only claims that the claimants pursue against them are (i) against RTB for $5,500,000 which was paid to them in relation to what I shall call the Athenian transaction, (ii) against Shipping Associates in the Intrigue action and (as I understand the position adopted by the claimants in their final submissions) (iii) against Pollak.

The trial

35. The trial was heard over 76 days. The oral evidence of fact was heard over some 51 days and the oral evidence of experts was heard over 10 days. There were wide-ranging and hotly contested disputes of fact between the parties, even upon questions that were of peripheral importance to the claims. The evidence of the witnesses of fact was unsatisfactory and it has been particularly difficult to resolve the factual issues. I confine myself here to three general observations. First, most of the central witnesses of fact were willing to give dishonest and untruthful evidence. Mr. Izmaylov was, in my judgment, an exception: although he was an argumentative witness, I considered that his account was generally reliable, provided that some individual answers were not given an entirely literal interpretation that was not in my judgment intended. In the case of those of the claimants' witnesses who live in Russia, and particularly those who are employed by the Sovcomflot group or NSC group, I recognise the force of the defendants' submission that they are likely to have felt great pressure to support the claimants' case, and I am driven to conclude that sometimes untruthful allegations were made or supported by generally honest

witnesses called by the claimants, including Mr. Andrei Sharikov, who was Sovcomflot's Head of the Fleet Operations Department from 1 January 2002, and Mr. Andrey Khlunyev, who was their Chief Accountant. Others, including Mr. Andrey Novikov, who was the Deputy Manager of Sovcomflot's Fleet Operations Department, gave untruthful evidence more readily. I shall explain later why I conclude that the evidence of Mr. Privalov and Mr. Borisenko was thoroughly dishonest, why I also regard as untruthful Mr. Vladimir Oskirko, who gave evidence for the claimants relevant to the claims in the Intrigue action, and why I conclude that Mr. Skarga and Mr. Nikitin gave dishonest evidence.

36. Secondly, the claimants' witness statements were shown in cross-examination to be distinctly unreliable. Even in the case of a witness such as Mr. Nikolay Lipka, the Head of Sovcomflot's Legal Department, who gave honest answers in cross-examination, his oral evidence departed so far from his statement that I cannot accept that the statement had ever represented his real account of events or that he understood it in proper detail when he verified it. One implication of this is that I am driven to treat with considerable scepticism other witness statements, such as those of Mr. van Boetzelaer, which the claimants put in evidence without calling oral evidence from the witness.

37. Thirdly, in seeking to resolve disputes of fact about which I considered none of the relevant witnesses truthful, I have had to be cautious about relying upon apparent corroboration for an account found in the documents. Sometimes witnesses manufactured an account of events, or supported a manufactured account of events, that was designed to build a fiction consistent with the documents, and the documents, as I conclude, inspired a false account rather than corroborate a true one.

38. In these circumstances, it is perhaps not surprising that I have found it impossible properly to understand some curious aspects of the transactions that are the subject of these proceedings. There are some matters which are not satisfactorily explained by the defendants, but which, on examination, do not seem to me to advance the allegations which the claimants make. I have sought to restrain myself from impermissible and unnecessary speculation about possible explanations, and to focus upon considering whether the claimants have made out the case that they allege and the defendants have to meet.

39. In order to manage the trial within reasonable limits, I restricted the time allowed for cross-examination. For the factual witnesses, a limit was placed upon the time allowed in total for cross-examination of the claimants' witnesses, of the defendants' witnesses and of the witnesses called by Clarkson. In the case of the expert witnesses, a time limit was placed upon the cross-examination of each individual witness. I made it clear to counsel that I recognised that they could not, in these circumstances, be expected to challenge everything in the witness statements with which their clients took issue. One consequence of the time limits was that some witnesses were not cross-examined at all, and their evidence was presented by way of a statement (or statements) under the Civil Evidence Act 1995, not because the party adducing the evidence could not call the witness to give it orally or was unwilling to do so, but because no other party allocated their allotted time for the cross-examination of that witness, although his evidence was, to a greater or lesser degree, disputed. Although in closing submissions counsel made some observations about evidence that had not

been challenged, I do not generally consider these telling in view of how the trial was managed.

40. There was a vast amount of documentation in agreed trial bundles. I was asked to read, and I read, a great deal by way of evidence and other documents that was not referred to during the oral hearing. In order to control the volume of material to be considered by the court (and upon any appeal), I directed that only those documents which were referred to in a witness statement (of a witness that had been called or that was otherwise put in evidence), in oral evidence or in oral or written submissions should stand as evidence for the purposes of the trial. Those documents are evidence of the truth of their contents, unless a party identified in their statements of case or in their written or oral submissions that they do not accept that a document bears its true date or is otherwise not authentic.

41. Disclosure was an enormous exercise for the claimants, and they disclosed many new documents during the course of the trial. After the parties had completed their final submissions, the claimants disclosed yet further documents which should undoubtedly have been disclosed much earlier and which required me to hear further oral submissions. Some, but by no means all, of this late disclosure was because during the trial there emerged issues which had not previously been appreciated. Some significant documents were disclosed by the claimants after the cross-examination of a relevant witness. To give just one example, after Mr. Borisenko had been cross-examined, there were disclosed documents relevant to the bonuses paid to him by Sovcomflot and to issues about when he and others were travelling abroad and whether they could have been at disputed meetings.

42. This extensive late disclosure made heavy demands upon the defendants and those acting for them. In particular, the claimants disclosed many documents shortly before Mr. Nikitin, Mr. Skarga and Mr. Izmaylov each gave evidence. Mr. Dunning submitted that this reflected a deliberate strategy on the part of the claimants designed to produce "bombshells" at strategically significant times in the trial. I was particularly concerned that a few days before Mr. Nikitin gave evidence the claimants produced documents relating to the purchase by Mr. Skarga's wife, Mrs. Natalya Skarga, of a property at Donino near Moscow. As I shall explain, by an amendment to their pleadings that I permitted after this disclosure, the claimants alleged that Mr. Nikitin made a payment in relation to the purchase by way of a bribe to Mr. Skarga. The relevant documents were made available to the claimants by the Russian prosecuting authorities only shortly before they were disclosed to the defendants. The position was the more unsatisfactory because initially the authorities did not make available all the relevant documents, and it is still not clear that they have done so. However, whatever the extent of co-operation between the claimants and the prosecuting authorities, the claimants did not control the decisions of the prosecuting authorities about what documents they made available, and there is no sufficient evidence to lead me to conclude that the claimants were party to a plan deliberately to withhold these documents. I do not consider that in the event the defendants were significantly prejudiced by their late production, and this complaint does not assist me to decide the issues about the payment and whether it related to Mrs Skarga's purchase.

43. The defendants also complained that the claimants have still failed to make proper disclosure of documents which they must have. I agree that, on some of the issues,

it is remarkable that more documents have not been produced. I here mention only two examples, and shall refer to others in the course of my judgment. Few documents have been disclosed about a proposal that Sovcomflot should raise funds by an Initial Public Offer ("IPO") on the New York stock exchange, and there are important gaps in the documentation about when and how executives in Sovcomflot learned that in 2004 Primal Tankers had expressed interest in acquiring the Arbat vessels and were involved in making arrangements in relation to the sale. The apparent deficiencies in the claimants' disclosure have further been aggravated because in April 2007 Sovcomflot destroyed documents, including some "current Fleet analysis" reports and correspondence with Sovchart which would probably have shown (inter alia) who within Sovcomflot decided upon and authorised some of the impugned chartering agreements with Standard Maritime defendants. In particular, there are few documents about who authorised the so-called stand-alone options in August 2003 and in September 2004. I am not, however, persuaded that the claimants have deliberately withheld or destroyed relevant documentation. Specifically, despite the confusion that surrounded this part of the claimants' disclosure, I reject the allegation made on behalf of Mr. Skarga that the claimants have suppressed electronic documents from the laptop computer that he used when he was at Sovcomflot. I must decide the issues upon the material that is available. The burden of proving their allegations is upon the claimants, and sometimes the want of documentation might well have told against their case.

44. The claimants submitted that Mr. Skarga, Mr. Nikitin and Mr. Izmaylov have disclosed documents which should not properly have been in their possession: for example, that Mr. Skarga has disclosed minutes of meetings of Sovcomflot's General Board and Executive Board that took place after he left the company; Mr. Nikitin has disclosed e-mail correspondence which was internal to the Sovcomflot group; and Mr. Izmaylov is said to have had board papers from NSC. Mr. Skarga explained that some papers were provided to him from persons within the Sovcomflot organisation who were "loyal to [him]" (and whose identity he declined to reveal). Mr. Izmaylov explained that, when he left NSC, he was concerned that he might need to defend himself against false accusations. It is not necessary to investigate these allegations. It suffices to say that, even assuming the defendants obtained documents which should not have been in their possession, this does not assist me to decide the claims against them. I reject the claimants' suggestion (as I understand it) that the defendants are in a position to produce whatever documents held by Sovcomflot or NSC might assist their case, and that this answers any concern that the defendants are prejudiced by deficiencies in the claimants' disclosure. Even if the defendants have managed to obtain some documents from within the Sovcomflot and NSC groups, I cannot accept that they have had general access to the claimants' documents.

45. There were also complaints about the inadequacies of the defendants' disclosure. I refer to Mr. Skarga's disclosure in relation to bank accounts later. Mr. Nikitin and the Standard Maritime defendants have disclosed few documents, for example about what interests Mr. Nikitin has or had in different companies, but I need not explore the adequacy or otherwise of their disclosure. It does not affect my conclusions.

46. The parties produced reports of expert evidence about the laws of Russia, Liberia, Switzerland and Malta. I heard evidence about Russian law and shall explain my conclusions about the issues between the parties relating to it. I did not hear at the

trial evidence about the laws of Liberia, Switzerland or Malta, but ruled that there should be a separate hearing to determine any issues about those laws that it proved necessary to resolve. On the basis of the other findings that I have made, there are none.

The claims

47. I shall next briefly indicate the nature of transactions with which these actions are concerned. The schemes between defendants that are said to be corrupt in the Fiona and the second Fiona actions are these:

i) The "Sovcomflot Clarkson commissions" scheme, by which between 2001 and 2004 it was arranged that Clarkson should act as brokers for the Sovcomflot group to buy and sell ships and should pay "commission" upon the purchases and sales to Mr. Nikitin or at his direction. It is said that as a result the Standard Maritime defendants and other companies, namely Pollak and Horber, have been paid over $30 million, and Mr. Nikitin and Milmont are claiming that they are entitled to further sums of some $8.5 million in the part 20 claim in the Fiona action against Clarkson.

ii) The "Tam commissions" scheme, whereby, when in 2001 the Sovcomflot group were buying in the so-called "Athenian transaction" (which was itself one of the purchases comprised in the Sovcomflot Clarkson commissions scheme) six ships which were being built by Hyundai Heavy Industries ("HHI"), address commissions paid by HHI amounting to $1.2 million were diverted to Milmont.

iii) The "hull no 1231 commission" scheme, whereby, in the context of arrangements made to finance the purchase of hull no 1231, a vessel under construction by Tsuneishi Shipbuilding Co Ltd. ("Tsuneishi"), $105,000 paid by way of an address commission was diverted to Milmont.

iv) The "Norstar commissions" scheme, which was similar to, but on a smaller scale than, the Sovcomflot Clarkson commissions scheme, and whereby it was arranged that Mr. Christopher Bonehill, a broker who carried on business as Norstar Shipping ("Norstar") in Monaco, should act as Sovcomflot's broker for ship sales in 2002 and 2003 and pay "commission", which in the event amounted to some $238,000 in total, to Mr. Nikitin or at his direction.

v) The "RCB" scheme, whereby, as the claimants allege, in 2001 Mr. Nikitin arranged for Meino to acquire a debt owed (or said to be owed) by the Sovcomflot group to the Russian Commercial Bank Ltd. ("RCB"), and Mr. Skarga was party to arranging for the debt to be discharged on terms that improperly benefited Mr. Nikitin. The claim in respect of this scheme is about $3 million.

vi) The "SLB arrangements" scheme, whereby in 2002 the Sovcomflot group sold eight vessels, the Arbat vessels, to Standard Maritime defendants upon terms that they were to be leased back to the sellers on bareboat charters and re-purchased at the end of the charter periods. It is alleged that these arrangements (the sale and leaseback or "SLB" arrangements) were

uncommercial and designed to benefit Mr. Nikitin and the Standard Maritime defendants at the expense of the Sovcomflot group. The compensatory damages claimed in respect of this scheme are some $17 million, and there is also a claim for an account of profits.

vii) The "termination of the SLB arrangements" scheme, whereby in 2004 the Standard Maritime defendants sold the eight Arbat vessels which were the subject of the SLB arrangements, and Sovcomflot were paid $20 million for their rights in respect of them. It is alleged that this was inadequate compensation for the rights that Sovcomflot relinquished. The claimants' primary compensatory claim is for some $159 million, and there is also a claim for an account of profits.

viii) The "newbuildings" scheme, whereby in 2003 and 2004 Sovcomflot entered into agreements with HHI and Daewoo Shipbuilding Marine Engineering Company Ltd. ("Daewoo"), and contracted to buy ships by way of newbuildings and acquired options to buy other vessels. It is alleged that they allowed some of the Standard Maritime defendants to acquire the benefit of options for no proper consideration, and also to acquire the benefit of contracts with HHI (by acquiring the vehicle companies who had entered into newbuilding contracts) at an undervalue. This gives rise to claims of some $212 million.

ix) The "Sovcomflot time charters" scheme, which relates to agreements that were made between 2001 and 2004 whereby certain of the claimants hired eight vessels to Standard Maritime defendants on time charterparties and also granted options to extend the period of hire of some of them. The charterparties and options are said to have been designed, at least in some cases, to benefit the Standard Maritime defendants and correspondingly to have been to the disadvantage of the claimants. The claimants claim some $219 million in respect of these allegations.

x) The "Romea Champion" commission scheme, whereby Milmont are said to have been paid improper commission in respect of a charter of the "Romea Champion". This claim is for only $16,599.50.

48. The claims about the hull no 1231 commission scheme, the Norstar commissions scheme and the "Romea Champion" commission scheme are brought in the second Fiona action, and the claims arising from the other schemes are brought in the Fiona action. As I have indicated, it was also alleged in the Fiona action against Mr. Privalov that:

i) He dishonestly misappropriated commissions payable to Fiona or their subsidiaries in a series of refinancing transactions referred to as the Société Générale loan, the BCV loan and Hamburgische Landesbank and Credit Agricole Indosuez ("CAI") loans; and

ii) He unlawfully diverted business from FML and received secret profits for himself and his companies, Montrose and Continental.

It is not said that Mr. Skarga, Mr. Nikitin or the Standard Maritime defendants were party to these deceptions on the part of Mr. Privalov.

49. The claims in the Intrigue action relate to dealings under four schemes which are said to have been corrupt and to which Mr. Izmaylov and Mr. Nikitin and Standard Maritime defendants are said to have been parties:

i) The "NSC Clarkson commissions" scheme, where the claimants in the Intrigue action make allegations similar to those made in the Fiona action about the Sovcomflot Clarkson commissions scheme, except that Clarkson acted as NSC's brokers only upon purchases. It is said that Milmont received over $10.5 million under the NSC Clarkson commission scheme, and Milmont and Mr. Nikitin also claim some $6.7 million in the part 20 claim in the Intrigue action.

ii) The "Galbraith's commissions" scheme, which is similar to the Clarkson commissions schemes, except that the brokers were Galbraith's rather than Clarkson and it mainly, but not exclusively, concerns sales by NSC. It is said that Amon received some $7,329,052.44 under the Galbraith's commissions scheme.

iii) The "NSC time charters" scheme, which is similar to the Sovcomflot time charters scheme in the Fiona action and concerns agreements made in 2003 and 2004 for the hire of seven vessels to Henriot. It is said that, at least in some cases, the terms were designed to benefit the Standard Maritime defendants and were to the disadvantage of the claimants. The companies who owned two of the vessels at the relevant time are no longer in the NSC group, and no claim is brought in respect of the charters of them, but the claims relating to the other five vessels are for some $128 million.

iv) The "Sawyer commissions" scheme, whereby Mr. Sawyer, after appointment as NSC's financial adviser, made payments to Amon of some $1.5 million which are said to have been unjustified and improper.

50. For convenience I shall use the expressions the "Sovcomflot schemes" and the "Sovcomflot transactions" to refer to all the schemes and the transactions under them which are the subject of the Fiona and the second Fiona action. I shall use the expressions the "NSC schemes" and the "NSC transactions" to refer to the schemes and the transactions under them which are the subject of the Intrigue action. I have used the expression "commissions claims", and by that I mean the claims relating to the Sovcomflot Clarkson commissions scheme, the Tam commissions scheme, the hull no 1231 commission scheme, the Norstar commissions scheme, the "Romea Champion" commission scheme, NSC Clarkson commissions scheme, the Galbraith's commissions scheme and the Sawyer commissions scheme. The expression "Sovcomflot brokers commissions" claim means a claim relating to the Sovcomflot Clarkson commissions scheme, the Tam commissions scheme or the Norstar commissions scheme, and the expression "Intrigue brokers commissions" claim means one relating to the NSC Clarkson commissions scheme, the Galbraith's commissions scheme or the Sawyer commissions scheme

English domestic law

51. The claimants' primary case is that English law governs their claims other than those against Mr. Skarga and Mr. Izmaylov for breach of their contractual duties and of their fiduciary duties owed to overseas companies. The defendants say that the claims against them are governed by Russian law. Before coming to the issues of fact, it is convenient first to say something about the relevant legal principals under both these systems of law and to consider some of the issues between about them; and then to consider which system or systems of law govern the issues between the parties.

52. The claimants in the two Fiona actions allege against Mr. Skarga that he acted in breach of his contract of employment with Sovcomflot and in breach of fiduciary duties that he owed to companies in the Sovcomflot group. Mr. Skarga's first employment contract with Sovcomflot was dated 15 May 2000 and was for a term of three years. After this contract had expired, Mr. Skarga and Sovcomflot entered into another contract of employment dated 30 June 2003, which was for a term of five years and had terms materially similar to that of 15 May 2000. The contracts were governed by Russian law.

53. Clause 5 set out Mr. Skarga's rights and duties. His rights included the right to "issue orders, instructions and other documents pertaining to the operation of [Sovcomflot]". His duties included a duty "to act in the interests of [Sovcomflot] in good faith, reasonably and honestly".

54. I should set out clause 6 of the contract in full because Mr. Skarga pleads that clauses 6.2 and 6.3 of his contracts of employment protect him from liability to Sovcomflot in that:

    i) the transactions which give rise to the claim were all "normal business transactions" within the meaning of clause 6.2, and

    ii) clause 6.3 confines any liability to Sovcomflot to "direct actual loss", and so excludes any claim for loss of profits.

    Clause 6 provided as follows:

> "6.1 Where a breach of this Contract takes place, the Employee shall be subject to disciplinary, administrative and financial liability in accordance with the procedure stipulated by the law of the Russian Federation.
>
> 6.2 The Employee shall not be subject to material liability for damage arising from normal business activities, commercial or manufacturing and business risk, nor if he/she voted against (or did not participate in the vote on) the Management Committee's decision which lead to losses to the Company, nor if losses arose through the Employee's execution of decisions made by the Company's management (Chief Executive Officer, Management Committee, Board of Directors, Meeting of

> Shareholders), which compelled the employee to carry out the actions, which caused damage.
>
> 6.3 Where the company suffers material damage as a consequence of the Employee's culpable conduct (actions or failure to act), he/she shall be subject to material liability to the Company in the amount of the direct actual damage confirmed by a court ruling that comes into force."

(In the agreed translation of clause 6.2 the expression "Management Committee" is used. This body was generally referred to as the Executive Board during the trial, and this is the expression that I shall use.)

55. As I shall explain when I deal with the evidence about Russian law, clause 6.3 is to be understood in light of the Russian Labour Code, and I accept that the expression "direct actual loss" does not include loss of profits. This does not avail Mr. Skarga. English law would not interpret clause 6.2 or clause 6.3 as excluding or limiting his liability for damages for intentional wrongdoing or dishonesty directed against the interests of Sovcomflot. The contract of employment is to be interpreted in accordance with Russian law, but it is not pleaded or alleged that Russian law adopts different principles of contractual construction from those of English law, and I reject the argument that clause 6 protects Mr. Skarga against the claims which are pursued against him.

56. Mr. Skarga was a director of Sovcomflot, of Fiona, of Sovchart and of FML (of which he was also the Chairman), and under English law he would therefore have owed fiduciary duties to those companies, that is to say he would have owed them single-minded loyalty. He would be obliged to act in good faith and not to place himself in a position in which his duty and his interest might conflict and was not to act for his own benefit or that of a third party without the informed consent of the companies. It is not necessary to examine the limits of Mr. Skarga's fiduciary duties in any detail because the claimants pursue their claims only on the basis that he acted in dishonest breach of them. In so far as it is said that on occasions the Executive Board of Sovcomflot or the directors of Fiona endorsed or approved or ratified a transaction which had already been concluded, or it is otherwise said that Mr. Skarga is not liable because the companies consented to transactions which give rise to a claim, a fiduciary who has placed himself in a position which might bring about a conflict between duty and interest can escape liability only if he shows that his principal has given full and informed consent to it. It is not sufficient that he made sufficient disclosure to put the principal on inquiry. The evidence about the endorsement of transactions by the Executive Board, the Board of Fiona or other executives is relevant in assessing whether Mr. Skarga acted honestly, but I see no proper basis for an argument that they gave full and informed consent to any transaction if Mr. Skarga had dishonestly entered into it, dishonestly introduced it to the company or dishonestly promoted it.

57. The claimants say that Mr. Skarga also owed fiduciary duties to other claimants who are one-ship companies in the Sovcomflot group (that is to say, to all the claimants in the Fiona action and the second Fiona action other than Sovcomflot, Fiona, Sovchart, FML and Sovcomflot Bulk Shipping Inc.) because he was a shadow director of them,

that is to say a person in accordance with whose directions or instructions their directors were accustomed to act: see section 741(2) of the Companies Act 1985. Mr. Skarga disputes this, and I do not need to decide this issue. It is not (as I shall explain) governed by English law, and I did not receive submissions about the role that Mr. Skarga personally had in giving directions or instructions to the individual subsidiary companies. Had this been a crucial issue, I would have invited further argument upon it in light of evidence of the relevant law or laws.

58. In the Intrigue action, the claimants make similar allegations against Mr. Izmaylov to those in the Fiona action against Mr. Skarga. He had a contract of employment with NSC dated 25 January 2002 and, as far as is relevant, it was in similar terms to Mr. Skarga's contracts with Sovcomflot. The claimants also allege that he owed fiduciary duties to NSC and Intrigue as a director of those companies and to the ship-owning subsidiaries of the NSC group, including all the other claimants in the Intrigue action, because he was a shadow director of those companies.

59. The claimants pleaded claims against Mr. Skarga and Mr. Izmaylov for dishonestly assisting others to act in breach of their fiduciary duties to them. For example, they pleaded that Mr. Skarga dishonestly assisted Mr. Privalov to act in breach of his fiduciary duties in relation to the hull no 1231 commission scheme and that Mr. Izmaylov dishonestly assisted the brokers in acting in breach of their fiduciary duties in relation to the NSC Clarkson commissions scheme and the Galbraith's commissions scheme. These claims were abandoned in the course of the claimants' closing submissions. They added nothing to the claimants' case.

60. The claims against Mr. Nikitin and Standard Maritime defendants include (i) claims for knowing receipt and (ii) claims for dishonestly procuring or assisting in breaches of trust or fiduciary duty. A defendant is liable for knowing receipt if he receives beneficially (and not merely in a ministerial capacity on behalf of another) assets which are to his knowledge beneficially owned by the claimant, and he is then liable to restore them and to account for any profit that he has made from them. To bring such a claim, the claimant must have a beneficial interest in the assets when they are received by the defendant, and therefore a claim cannot be brought against a defendant who receives the assets as a bona fide purchaser for value. Liability does not depend upon dishonesty, but, if the recipient is a purchaser for value, he is liable only if he knew of the claimant's interest in the assets and knew that the assets are received as a result of a breach of fiduciary duty, so that it would be unconscionable for the defendant to retain them or any benefit from them: BCCI v Akindele, [2001] Ch 437 esp at pp.448H,450D-F, 455E.

61. A defendant is liable for procuring or assisting in a breach of trust or fiduciary duty if a person acted in breach of a fiduciary duty owed to the claimant, and the defendant dishonestly persuaded that person to do so or assisted him to do so. I shall refer to the principles that determine whether a defendant was dishonest later. It is not necessary that the breach of duty should involve property held on trust or its misapplication or misappropriation: "A liability in equity to make good resulting loss attaches to a person who dishonestly procures or assists a breach of trust or fiduciary obligation", per Lord Nicholls in Royal Brunei Airlines v Tan, [1995] 2 AC 378 p.392G. Mr. Berry disputed this, citing the decision of the Court of Appeal in Satnam Investments Ltd. v Dunlop Heywood & Co Ltd., [1999] 1 BCLC 385, 404, and the decision of David Steel J in Petrotrade Inv v Smith, [2000] 1 Lloyd's Rep 486 at pp. 491-2. In

particular, in the Satnam case Nourse LJ referred to cases of liability for knowing receipt of trust property and for knowing assistance and said that, "before a case can fall into either category there must be trust property or traceable proceeds of trust property". The observation of Nourse LJ was considered by the Court of Appeal in Goose v Wilson Sandford & Co., [2001] Lloyd's Rep PN 189 at p.210, and said not to be of binding authority. I agree with the view expressed by Peter Smith J in J D Weatherspoon v Van de Berg, [2009] EWHC 639 (Ch) that liability for dishonest assistance does not require dealing with trust property and adopt his reasons for so concluding.

62. The remedies for knowing receipt include an account of profits. Mr. Nikitin and the Standard Maritime defendants argued, however, that, while a trustee or other fiduciary is normally liable to disgorge any profit that he made as a result of his breach of trust or fiduciary duty, a person who dishonestly induces or assists a breach of trust or fiduciary duty is not. In Fyffes v Templeman, [2000] 2 Lloyd's Rep 643, Toulson J decided that a person who bribed an agent to act in breach of fiduciary duty is liable to account for any profits that he made, although he acknowledged that no English authority directly decided the question and that "the textbooks tend to imply that there is no such remedy" (at p.668). The position under English law was not then firmly established: in Crown Dilman v Sutton, [2004] BCLC 468 at para 11, Peter Smith J recognised that there was "limited English authority providing guidance about the rules applicable in a case where profit is obtained by a third party who is not in a fiduciary relationship with the beneficiary". Mr. Berry argued that I should not follow the decision of Toulson J, submitting that the authorities upon which it was based do not, upon analysis, support it.

63. However, since that decision and Peter Smith J's observation about the paucity of English authority, further decisions have supported the claimants' contention that the remedy of an account is available against a defendant in these circumstances. In Ultraframe (UK) Ltd. v Fielding, [2005] EWHC 1638 (Ch), Lewison J considered (at paras 1589-1601) that a dishonest assistant is liable to account for any profits that he himself made as a result of the assistance, but not for any profits made by the fiduciary who was in breach of duty. In Tajik Aluminium Plant v Ermatov (No 3), [2006] EWHC 7 (Ch), Blackburne J said (at para 23) that:

> "It is well recognised in cases such as Fyffes … and in Ultraframe … that there is an obligation to account for any profits made from a transaction induced by dishonest participation in the breach of trust. Together with an alternative remedy in damages that is the usual remedy of the principal against the other party to a transaction induced by the payment by that other party of a bribe or secret commission to the principal's agent".

64. In OJSC Oil Company Yugraneft v Abramovich and ors, [2008] EWHC 2613 (Comm.) Christopher Clarke J said (at para 392) this:

> "In my judgment the defendants are right to say that the "orchestration" of the sale to Gazprom and of the reinvestment of the proceeds do not amount to dishonest assistance. But that does not render them irrelevant to the dishonest assistance

> claim. There is authority that a claim may be made against a dishonest assistant either for compensation for loss which the claimant has suffered as a result of the misapplication of trust property or other breach of trust; or for an account (as a personal not a proprietary remedy) of any profit that the dishonest assistant may make from his dishonest assistance or from the underlying breach of trust: Fyffes Group v Templeman, [2002] 2 Lloyd's Rep 643; Ultraframe (UK) Ltd. v Fielding, [2005] EWHC 1638 (Ch). It seems to me at least arguable that any profit made by Mr. Abramovich by reason of the inclusion of the participation interests in Sibneft when it was sold to Gazprom, was attributable to and resulted from the original dishonest assistance in relation to the ECMs (if there was any), even though the sale itself was not a further act of dishonest assistance, and that Mr. Abramovich would be accountable (on a personal basis) therefore. If, as the defendants assert, no value was attributed to the 49% interests by either of the parties to the sale, and Mr. Abramovich has, in effect, given them away, he is, nevertheless, accountable for whatever their true value was when he did so."

65. Further the Court of Appeal in Murad v Al-Saraj, [2005] EWCA Civ 959 appears to me to have proceeded on the basis that, as an account of profits is available against a fiduciary, so too it is available against an assistant or secondary participant in a breach of fiduciary duty: see per Arden LJ at para 69 and per Jonathan Parker LJ at paras 118-120.

66. In view of these authorities, I consider it now established that an account of profits is available under English law against one who dishonestly procures or assists a breach of fiduciary duty. There are strong reasons for recognising the remedy, which were explained by Gibbs J in Consul Development v DPC, (1975) 132 CLR 373 at p. 397: "If the maintenance of a very high standard of conduct on the part of fiduciaries is the purpose of the rule it would seem equally necessary to deter other persons from knowingly assisting those in a fiduciary position to violate their duties. If, on the other hand, the rule is to be explained simply because it would be contrary to equitable principles to allow a person to retain a benefit that he gained from a breach of his fiduciary duty, it would appear equally inequitable that one who knowingly took part in the breach should retain a benefit that resulted therefrom". Therefore, although a person who assists a breach of trust or fiduciary duty is not himself a trustee, he is liable to account in equity as if he were: see Dubai Aluminium v Salaam, [2003] 2 AC 366 at para 141 per Lord Millett.

67. There is a further issue about the limits of the remedies available to the claimants if Mr. Nikitin or the Standard Maritime defendants are liable for procuring or assisting the breach of a fiduciary duty. Mr. Berry argued that, if an account of profits is available, they are liable to account only for the profits that result from the act of dishonest assistance. Thus, in Fyffes v Templeman, (loc cit) at p. 672, Toulson J referred to the wrongdoer accounting for the "benefits obtained from the corruption of the agent". Accordingly, as it is argued, a dishonest assistant is not liable to account for profits that could and would have been made regardless of his dishonest

participation in the fiduciary's breach; and he is liable to account only for profits which directly resulted from the transaction concluded through dishonest inducement or assistance and not profits which can truly be said to be the result of another subsequent event, such as the movement of the market. I do not accept this submission. The law does not enter into investigations of what would have happened if the fiduciary had performed his duty when taking an account of profits: see Murad v Al-Saraj, (cit sup) at para 76 per Arden LJ. However, the defendants' argument is, as I understand it, directed particularly to the accounts which the claimants would seek in respect of the newbuildings scheme, and I reject this claim against Mr. Nikitin and the Standard Maritime defendants.

68. The claimants also make claims for damages for conspiracy to defraud them by unlawful means. The claimants in the Fiona action bring these claims against Mr. Skarga, Mr. Nikitin and the Standard Maritime defendants, alleging a conspiracy from around the beginning of 2001 between Mr. Privalov, Mr. Skarga, Mr. Borisenko, Mr. Nikitin and the Standard Maritime defendants. The claimants in the second Fiona action allege a conspiracy (or more precisely, I think, conspiracies) against Mr. Skarga, Mr. Nikitin, Milmont and PNP. The claimants in the Intrigue action allege various conspiracies in relation to the different schemes: in relation to the NSC Clarkson commissions scheme, a conspiracy "from in or about 2001" between Clarkson, Mr. Gale, Mr. Nikitin, Mr. Izmaylov, Milmont, Mr. Privalov and Shipping Associates; in relation to the Galbraith's commissions scheme, a conspiracy "from in or about 2001" between Galbraith's, Mr. Nikitin, Mr. Izmaylov, Amon, Mr. Privalov and Shipping Associates; in relation to the NSC time charters scheme, a conspiracy "from about 2002" between Mr. Izmaylov, Mr. Nikitin and Henriot; and in relation to the Sawyer commissions scheme, a conspiracy "in about early 2002" between Mr. Izmaylov and Mr. Nikitin.

69. Under English law, a claim may be brought for "unlawful means" conspiracy if two or more persons combine (whether or not under an express agreement and whether or not all the persons involved participated at the same time) to use unlawful means with the intention (but not necessarily the predominant purpose) of injuring the claimant. The law does not require that the unlawful means should themselves be actionable at the suit of the claimant: the means might be a criminal action, a breach of contract, a director's fiduciary duty to a company or fraud. The unlawful means alleged in the Fiona action are (i) the various schemes pleaded in that action (the Sovcomflot Clarkson commissions claim, the Tam commissions claim, the RCB scheme, the SLB arrangements scheme, the termination of the SLB arrangements scheme, the newbuildings scheme and the Sovcomflot time charters scheme), (ii) bribery of Mr. Skarga, Mr. Privalov and Mr. Borisenko by Mr. Nikitin and some of the Standard Maritime defendants to bring about the transactions which were the subject of some of the schemes, and (iii) creating "false and fictitious documentation" to conceal the transactions under the schemes. I accept that all these matters might constitute unlawful means so as to give rise to the tort of conspiracy, provided that the "false and fictitious documentation" was created in order to enable the schemes to be put into effect. I cannot accept that deceptive documents that were not contemplated at the time of a transaction and were drawn up subsequently in order to conceal what had been done would constitute unlawful means whereby a combination to bring about the transaction would be tortious. The unlawful means alleged in the second Fiona action are (i) breaches of fiduciary duty on the part of Mr. Skarga and Mr.

Privalov, and (ii) bribery of Mr. Skarga and Mr. Privalov by Mr. Nikitin and Standard Maritime defendants. The unlawful means alleged in the Intrigue action are the wrongs of breach of fiduciary duty, dishonest assistance and knowing receipt done in the course of the various schemes, and also, as is specifically alleged in relation to the conspiracy involving the NSC time charters scheme, bribery of Mr. Izmaylov.

70. The claimants finally assert claims on the basis that bribes were paid by Mr. Nikitin or companies associated with him to Mr. Privalov, Mr. Borisenko, Mr. Skarga and Mr. Izmaylov. English law take a broad view of what constitutes a bribe for the purposes of civil claims. It considers that a bribe (or "secret commission" or "surreptitious payment") has been paid where "(i) … the person making the payment makes it to the agent of another person with whom he is dealing; (ii) … he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) … he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent": Industries & General Mortgage Co Ltd. v Lewis, [1949] 2 AER 573 at p. 575G. Thus, a bribe is "a commission or other inducement which is given by a third party to an agent as such, and which is secret from his principal": Anangel Atlas Compania Naviera SA v Ishikawajima-Harima Heavy Industries Company Limited, [1990] 1 Lloyd's LR 166 at p. 169.

71. "When an agent receives or arranges to receive by way of a bribe or secret commission in the course of his agency from a person who deals or seeks to deal with his principal, the agent is liable to his principal jointly and severally with that person (1) in restitution for the amount of the bribe or secret commission; or (2) in tort for any loss suffered by the principal from entering into the transaction in respect of which the bribe or secret commission was given or promised, and the bribe, if it was paid, is held on trust for the principal", and the person who pays or promises the bribe is also liable in restitution and damages to the principal: Bowstead & Reynolds on Agency (2010) 19th Ed at 6-084. The principal may also require either the agent or the briber to give an account of profits.

72. It is not necessary in order to establish a claim for a claimant to show that the bribe was either paid or received dishonestly: where a bribe is paid, it is irrelevant whether either the briber or the agent realised that they were doing wrong. In English law corruption and fraud are presumed, and so a claim can be brought on the basis of the payment of an "innocent" bribe: Re a debtor, [1927] 2 Ch 367 at p. 376 per Scrutton LJ. It is also presumed that the person paying a bribe intended that the agent would be influenced by it and that the agent was in fact induced to act in favour of the briber in relation to transactions between the briber and the recipient's principal: Hovenden & Sons v Millhoff, (1900) 83 LT 41; Industries & General Mortgage Co Ltd. v Lewis, (cit sup). If a bribe is paid to an agent, it does not assist the briber or the agent to show that in fact the agent acted in his principal's best interests.

73. The reason that the law so protects a principal if his agent receives a bribe is that he is entitled to be confident that the agent will act wholly in his interests, and the test for whether a payment or other benefit or promise amounts to a bribe depends upon whether it puts the agent in a position in which his duties to his principal and his interest might conflict. Accordingly:

i) It is not necessary that the bribe be given in connection with a particular transaction or series of transactions. The possibility of a conflict between duty and interest might be created by a bribe paid to an agent in order to influence him in favour of the person paying it generally and not directed to any particular matter or intended to influence him in relation to a particular transaction. In the Fiona action the claimants have sought to link payments made to Mr. Privalov and Mr. Borisenko and arranged by Mr. Nikitin to particular schemes about which they complain, but, as I shall explain, I conclude that they have not established connections of this kind. This does not mean that they are not entitled to rely upon the payments as bribes. If a secret payment is made to an agent, it taints future dealings between the principal and the person making it in which the agent acts for the principal or in which he is in a position to influence the principal's decisions, so long as the potential conflict of interest remains a real possibility: see Daraydan Holdings v Solland, [2005] Ch 115 at para 132.

ii) The law recognises that some gifts or benefits are too small to create even a real possibility of a conflict of interest and so too small to be treated as a bribe. The defendants say that some benefits that Mr. Nikitin is said to have provided to Mr. Skarga and Mr. Izmaylov were of insufficient value to be bribes, and were only what Gorell Barnes J called in The "Parkdale", [1897] P 53, 58-9 "a little present". It is a question of fact depending on the circumstances of each case where the line is to be drawn between "a little present" and a bribe, and so unsurprisingly there is little guidance about this in the authorities, but the test, as I understand it, is whether it is sufficient to create a "real possibility" of a conflict between interest and duty: Imageview Management v Jack, [2009] 1 Lloyd's Rep 436 para 6 per Jacob LJ. It is not whether such a conflict is actually created.

iii) If a payment is made to an agent that creates a real possibility of this kind, it does not make "any difference whether the surreptitious profit was gained as a pure gift or for services rendered or for any other reason": Keogh v Dalgety & Co Ltd., (1916) 22 CLR 402, 418. An agent might have a conflict between his interest and his duty as a result of being rewarded for "moonlighting" for a person engaged in transactions with his principal.

74. In this case the claimants do not pursue any claim against Mr. Skarga or Mr. Izmaylov on the basis that they received bribes without any dishonest intention. The allegations that they accepted bribes are relied upon by the claimants principally to support their contention that Mr. Skarga and Mr. Izmaylov were acting dishonestly, but the alleged bribery is neither necessary nor sufficient to establish that contention. Equally, no claim is made against Mr. Nikitin or any of the Standard Maritime defendants on the basis that they innocently made payments or conferred benefits amounting to bribes without any dishonest or improper purpose, although they would be presumed to be corrupt under English law. The claimants' case is that he, and through him the Standard Maritime defendants, acted dishonestly. Mr. Popplewell accepted that all that the claims in bribery add to the other claims pursued by the claimants is that, if they do establish that Mr. Skarga or Mr. Izmaylov acted dishonestly in relation to a transaction and that they dishonestly had received a bribe, it will, as a matter of English law, be presumed that the bribe influenced them to act as they did. This

qualification is not important in view of my other conclusions. To my mind, because of the findings that I make the claims in bribery add nothing significant to the other claims that are pursued against the defendants.

75. The remedies sought in respect of each of the schemes include compensatory damages, equitable compensation and for an account of profits. Often claims for compensation in respect of essentially the same loss are made by several claimants, and more than one claimant seeks an account of profits. Prima facie the question which claimant is entitled to compensatory damages depends upon which, if any, of the claimants suffered the loss asserted. As Mr. Popplewell rightly observed, that claimant might not necessarily be the counter-party to the transaction that gave rise to the loss. However, it is necessary to recognise the precise nature of the loss in respect of which damages are claimed, and the distinct corporate identities of the different claimants in the Sovcomflot and NSC groups. I shall here illustrate the point by referring only to the claim in respect of the SLB arrangements scheme. In their closing submissions, the claimants argued that "in reality the losers" were Fiona and Sovcomflot, rather than the eight ship-owning subsidiaries that sold and then chartered back the eight vessels. Their pleaded case, however, is that the transactions "were on uncommercial terms which caused substantial loss to the relevant Fiona subsidiaries" and were correspondingly beneficial to "Mr. Nikitin's companies": see para 103 of the particulars of claim. The starting point for assessing the quantum of loss that they plead is to take the total of the hire paid by the charterers under the charterparties and to deduct from it the cost of raising money by refinancing the fleet by borrowing funds on the basis of interest at the rate of 1.25% over LIBOR (rather than by the SLB arrangements). Nevertheless, the claimants submitted that Fiona or Sovcomflot are the real losers because the SLB arrangements were financing transactions entered into for the group and the funding "passed through to the group for use for group purposes". I do not doubt that the purpose of the SLB arrangements was to improve the cash flow of the Sovcomflot Group generally, but the assertion about the "real losers" being Sovcomflot and Fiona, which is neither pleaded nor supported by evidence, is too vague to justify a claim by Fiona or Sovcomflot for compensatory damages. It is telling that the claimants do not identify which of these two companies is to be said to have suffered loss. As I see it, the only claimants that might be entitled to compensatory damages in respect of the SLB arrangements scheme (if liability be established) are the eight ship owning companies. It is irrelevant that, as the claimants present the claim, had the SLB arrangements not been made, the group would have sought to improve their cashflow in other ways. In reaching this conclusion I do not overlook that the claimants' further argument that Fiona guaranteed the obligations of the eight companies. The guarantees did not lead to Fiona suffering any loss, nor is any such loss pleaded. The "counter-factual" does not mean that another company in the group suffered loss from the eight companies contracting "uncommercial" terms, but provides the measure of how "uncommercial" they are alleged to have been.

76. Mr. Popplewell also submitted that Sovcomflot and Fiona or NSC and Intrigue might have a claim for reflective loss in respect of the value of their shareholdings in subsidiary companies who were defrauded if the subsidiary companies, such as the one-ship companies, suffered financial loss but had no relevant cause of action against

a defendant. Even assuming that loss was suffered by a subsidiary that had no relevant cause of action, in order to establish any such claim in accordance with the principles explained in Johnson v Gore Wood, [2002] 2 AC 1 at p. 35 per Lord Bingham and p. 61 per Lord Millett, it would be necessary not only that a claimant in fact held the shares in the relevant subsidiary but also that it suffered a diminution of the value of the shareholding or other losses as shareholder, such as a reduction in dividends. No such loss has been pleaded or proved.

77. The claimants rightly observed that Mr. Skarga or Mr. Izmaylov might have acted on behalf of more than one company to which they owed fiduciary duties in respect of the same transaction, and, if they acted in breach of duty to both, they would be liable to render an account and to disgorge profits to each. Equally Mr. Nikitin and the Standard Maritime defendants might be so liable to more than one claimant if they dishonestly procured or assisted breaches of fiduciary duties so owed. At this point, I only observe that I do not accept that Mr. Skarga has been shown to have been in breach of any duty to FML because he has not been shown to have been acting in any relevant way as a director of that company and that I also do not accept that he acted in any relevant way as director of Sovchart or was in breach of any duty to them. In so far as he gave instructions to Mr. Van Boetzelaer in relation to the time charters, I conclude that he was acting in his capacity as Director-General of Sovcomflot, because Sovcomflot was authorising Sovchart to enter into the charter or for some other reason.

Russian domestic law

78. The defendants argued, as I have said, that any issues concerning their liability to the claimants are governed by Russian law. As I shall explain, Russian law would in various ways be less favourable to the claimants than English law. In particular, the defendants are able to argue that under Russian law:

i) Mr. Skarga could be liable only to Sovcomflot as his employer and only in contract and under the Russian Labour Code. He could not be liable in tort and could not be liable in the circumstances of this case to any other claimant.

ii) Similarly, Mr. Izmaylov could be liable only to NSC as his employer and could only be liable in contract and under the Russian Labour Code. He too could not be liable in tort and could not in the circumstances of this case be liable to any other claimant.

iii) None of the defendants could be liable to give an account or in unjust enrichment.

iv) In order for Mr. Nikitin or any of the Standard Maritime defendants to be liable in tort, harm would have to be directly caused by the defendant's unlawful fault.

v) There is no presumption that, if a bribe was paid, it influenced the recipient, and the claimants cannot succeed in a claim either against a person paying a bribe or a recipient without proving that the bribe influenced the recipient or otherwise caused loss.

vi) The defendants would be protected by different limitation periods, which appear generally to be more favourable to them than those available under English law.

79. The defendants also argued that under Russian law Mr. Skarga and Mr. Izmaylov could rely on the terms of their contracts of employment to confine any liability to direct actual damage and to exclude liability for loss of profits, but, as I shall explain, I reject that argument.

80. I heard expert evidence about Russian law from Professor Alexander Sergeev, who was the claimants' witness, and Professor Peter Maggs, who was called jointly by Mr. Skarga, by Mr. Nikitin and the Standard Maritime defendants and Mr. Izmaylov. I shall explain the nature of the claims that the claimants might have under Russian law, and, although on the basis of the conclusions that I have reached about the applicable law and my findings of fact, I do not determine any claim by reference to Russian law, since I heard evidence and submissions about how it applies, I shall state my conclusions about the main issues of Russian law.

81. Professor Sergeev is Professor of Law and Head of the Civil Law Department at the School of Law at St Petersburg State University of Economics and Finance. Professor Maggs is Professor of Law and holder of the Clifford M and Bette A Carney Chair at the University of Illinois College of Law, and specialises in Russian Law, the laws of the other former Soviet Republics and Soviet Union. Both have had very distinguished careers, have published widely and were undoubtedly well qualified to give their expert evidence. Both were seeking honestly and carefully to assist the court with their knowledge of and opinions about the relevant provisions of Russian law. Professor Sergeev gave his evidence in Russian and sometimes this made it difficult to follow his answers in cross-examination, but I consider that, while some of his individual answers, as translated, should not be accepted in a precisely literal sense, he clearly explained his views upon the points put to him. The differences between the experts reflect genuine uncertainties about how Russian law would treat some of the questions arising in this case, but I seek to apply the relevant principles of Russian law that were explained to me and examine how far the material presented by the witnesses appears to support their views.

82. Under the Criminal Code of the Russian Federation, a victim of a crime can recover compensation for losses either in the criminal proceedings or through a civil claim, and if he brings a civil claim, a court sentence in the criminal proceedings is binding upon the civil court in any dispute about whether the defendant did the criminal act. The claimants do not advance claims on the basis that they would be entitled to compensation in criminal proceedings but on the basis of civil liability. No party has pleaded that Russian criminal law differs from English law, and, if and in so far as it is relevant whether any criminal offence was committed, Russian law is taken to be the same as English law. Although in his first report Professor Sergeev gave some consideration to whether the defendants are guilty of criminal acts under Russian law, the expert evidence was really directed to their civil liability.

83. Russian civil law is codified, and usually key principles governing different branches of the law are set out in the relevant codes. While Russian law has no doctrine of stare decisis, it is proper to look to Russian court decisions, as well as legal academic writings, for guidance to the interpretation of the codes and their application. The claimants say that under Russian law they have claims (i) against Mr. Skarga, Mr. Izmaylov, Mr. Nikitin and the Standard Maritime defendants under article 1064 of the Russian Civil Code, which has been described loosely as the general tort provision of the Code; (ii) against Mr. Nikitin and the Standard Maritime defendants under article 1102 of the Civil Code, which is concerned with unjust enrichment; and (iii) against Mr. Skarga and Mr. Izmaylov under various provisions of the Civil Code, the Labour Code of the Russian Federation and the Federal Law on Joint Stock Companies.

84. The Civil Code includes provisions about "obligations arising from transactions", that is to say obligations arising from the actions of natural or legal persons directed at the establishment, change or termination of civil law rights: see article 153 of the Civil Code. These include the law of contracts, and they are found in chapter 9 of the First Part of the Civil Code. The provisions of the Civil Code which are more directly relevant to the claims are (i) those governing "obligations arising as a result of causing harm", which broadly cover questions of tort or delict and are in chapter 59 of the Second Part of the Civil Code; and (ii) those about "obligations arising as a result of unjust enrichment", which are in chapter 60 of the Second Part of the Civil Code. Russian law does not have principles equivalent to those of the English law about beneficial ownership, constructive trust or equitable remedies, and it has no concept of shadow (or de facto) directors.

85. The relationship between the parties is key to deciding which provisions of the codes are relevant to determining a dispute. Thus, as between parties to a contract, generally disputes are to be resolved in accordance with the law concerning contracts and the contract itself, and the contracting parties cannot bring claims on any other basis. Professor Maggs explained that this reflects a prohibition under Russian law against "competition between claims" and is an application of a broader principle that a special rule prevails over a general legal rule. As he puts it:

> "Where a claim concerns or arises from contractual relations (which would include the claims in the present case, being (i) claims arising from contracts said to have been uncommercial; and (ii) claims resulting from the alleged diversion of moneys by third parties in breach of contractual duties owed by them to the claimants), the provisions of the Civil Code … do not allow a party to the contract to avoid the structure of Russian law and to bring any non-contractual claim arising out of the same facts against the other party".

86. Professor Maggs considered that, because of the principle of Russian law prohibiting competition against claims, Sovcomflot cannot bring claims against Mr. Skarga otherwise than on the basis of their employment contracts and under the Labour Code, and similarly NSC cannot bring claims against Mr. Izmaylov on any other basis. Professor Sergeev disagreed: he cited in his report of 8 May 2009 eleven Russian cases as examples of cases in which a corporate director-general had been held to be

liable otherwise than under the Labour Code, and considered that Mr. Skarga and Mr. Izmaylov might be liable under Russian law under the Civil Code for non-contractual liability. I do not consider that on examination these cases provide support for Professor Sergeev's opinion. Seven of the cases are shareholder suits, and another two are claims brought by a joint-stock company against another company and not against a director-general. In none of the cases was any reference made to an employment contract between the director-general and the company, and Professor Sergeev accepted that sometimes a director-general is not an employee, although it is relatively unusual for him not to be employed. The cases cited by Professor Sergeev were all decided in the Arbitrazh Courts, which deal with commercial disputes and not disputes concerning individuals, such as employment law disputes. Moreover, Professor Maggs' views seem to me to be supported by a decision of the Federal Arbitrazh Court dated 24 June 2004 in the case of Hotel Sportivnaya. As I understand the report of this decision, the Court considered that an employer can bring against an employee only a claim of a contractual nature. Professor Sergeev accepted that he could cite no precedent for an employer making a claim under article 1064 of the Civil Code. I conclude that such a claim would offend against the principle that Professor Maggs identified and would not be permitted.

87. When determining the nature of the relationship between the parties and therefore which provisions of the Civil Code apply to issues between them, it is important to recognise that, as Professor Maggs explained and I accept, Russian law maintains a clear distinction between the different corporate entities in a group or otherwise associated with each other, and also between natural persons and corporate entities with which they are associated. An entity is not liable for the obligations of another unless a specific provision of the Code so provides. Therefore, for example, Russian law would not recognise any claim in contract made by Sovcomflot or NSC in respect of the impugned contracts said to have been entered under the various schemes because Sovcomflot and NSC were not a party to any of them; no contractual claim would lie against Mr. Nikitin under the impugned contracts because he did not enter into any of them in a personal capacity; and no contractual claims between a claimant and a defendant could be brought in respect of the various commissions schemes since there is no relevant impugned contract between a claimant and a defendant. On the other hand, the principle of competition against claims would not protect Mr. Skarga or Mr. Izmaylov from claims by subsidiary companies of Sovcomflot or NSC because they had no employment (or other) contract with them. As I shall explain, they would have a different answer to such claims.

Article 179

88. Before dealing further with the claims that might be brought under Russian law, I should mention another argument raised by Mr. Nikitin and the Standard Maritime defendants about the Civil Code provisions concerning contracts, and in particular article 179, which provides as follows:

> "1. A transaction made under the influence of fraud, duress, threat, a bad-faith agreement of the representative of one party with another party, and also a transaction that a person was compelled to make as the result of the confluence of harsh circumstances on conditions extremely unfavourable for himself that the other party used (an oppressive transaction) may be declared invalid by a court on suit of the victim.

> 2. If a transaction is declared invalid by a court on one of the bases indicated in Paragraph 1 of the present Article, then the other party shall return to the victim everything it received under the transaction and, if it is impossible to return it in kind, its value in money shall be compensated. Property received under the transaction by the victim from the other party and also due to it in compensation for that transferred to the other party shall be transferred to the income of the Russian Federation. If it is impossible to transfer the property to the income of the state in kind, its value in money shall be taken. In addition the victim shall be compensated by the other party for the actual damage caused to him."

89. This article can apply when a person enters into a contract under the influence of deceit, or when an agent has been bribed and as a result the principal enters into a contract with the briber. In these circumstances, the contracting party can obtain (i) an order that the contract is invalid and that there should be returned anything received under it or its value should be repaid, and (ii) damages for "actual damage caused to him". Mr. Nikitin and the Standard Maritime defendants submitted that the right to recover "actual damage caused to" the contracting party does not allow lost profits to be recovered or a remedy that the other contracting party should disgorge profits. Moreover, a claim would be subject to the Russian limitation period of one year from the time that the relevant claimant knew or should have known of the circumstances upon the basis of which it is alleged that the transaction should be declared to be invalid.

90. These provisions that a contract may be invalidated are not of direct relevance for present purposes. All contracts which might be invalidated are governed by English law by the express choice of the parties. In the case of the time charters, disputes about their validity are covered by arbitration agreements and are to be determined in a reference: Fiona Trust v Privalov, [2008] 1 Lloyd's Rep 254. Mr. Berry argued that nevertheless any issues about consequential financial liability after a contract is invalidated are to be determined by Russian law, and so the compensation that may be recovered is defined and limited by article 179. His argument was that, where a contract has been invalidated, or in the terminology of English law rescinded, whatever law governed the contract and determined its validity, the Private International Law (Miscellaneous Provisions) Act 1995 (the "1995 Act") determines which law applies to any issues about the consequential liabilities between the parties.

91. I do not accept that these are "issues relating to tort" even in the broad and internationalist sense in which the expression is used in section 9(1) of the 1995 Act (to which I refer later). The 1995 Act does not apply to them. They would be characterised for English private international law purposes as contractual issues, and (whether they are covered by the Rome Convention as adopted into English law by the Contracts (Applicable Law) Act, 1990 or whether, as Mr. Berry argued, the 1990 Act does not apply, and that they are governed by common law principles) they are governed by English law as the law chosen by the parties expressly or by implication. Moreover, even if 1995 Act did apply, in these circumstances it would be "substantially more appropriate" for English law to determine these matters and therefore English law governs them under section 12. I therefore need not consider

any issue about what damages or compensation could be recovered in Russian law under article 179, and I decline to do so.

Obligations arising as a result of causing harm

92. The claimants say that under Russian law they would have claims under article 1064 in chapter 59 of the Second Part of the Civil Code against Mr. Skarga and Mr. Izmaylov and also Mr. Nikitin and the Standard Maritime defendants because they entered into and carried out a dishonest conspiracy to cause the claimants loss; and that, if they were parties to fraud or other wrongdoing that caused damage to the subsidiaries of Sovcomflot and to Sovcomflot as a shareholder, or to the subsidiaries of NSC and to NSC as a shareholder, then both the parent companies and the subsidiaries would have claims under the article.

93. Article 1064 provides as follows:

> "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 to 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 a statute. Compensation for harm may be refused if the harm was caused at the request, or with the consent, of the victim, and the actions of the person who caused the harm do not violate the moral principles of society."

94. Thus liability under article 1064 requires (i) harm, (ii) causation, (iii) fault and (iv) unlawfulness. As a matter of Russian law, the burden is upon a claimant to prove harm and causation of harm, and, if he does so, the defendant has to show lack of fault or that he acted lawfully in order to avoid liability. Generally, as a matter of English private international law, the burden of proof is probably a procedural matter determined by the lex fori (The "Roberta", (1937) 58 Ll L R 159, 177 per Langton J, In the estate of Fuld (No 3), [1968] P 675, 696G-7A, per Scarman J, but see Dicey, Morris and Collins, The Conflict of Laws (2006) 14th Ed para 7-027), and therefore I am inclined to think that it would be for the claimant to establish in the trial before the

English court that the defendant did not act lawfully, as well as that he suffered harm and that it was caused by the defendant. I cannot, however, accept that, in determining whether harm was caused by the defendant's "fault", the English court would not give effect to the express provision in paragraph 2 of article 1064 that the burden of proof about this is upon the defendant. In any case, however, the burden of proof about fault and unlawfulness for the purpose of article 1064 would not affect anything that I had to decide, even if I had concluded on the basis of my findings of fact that the claimants have a claim which is governed by the article.

95. 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.

96. There is no dispute that "harm" within the meaning of Article 1064 includes both damage to property and financial losses such as lost profits. It is a question of fact whether a claimant suffers "harm", and in particular whether, if a claimant entered into an "uncommercial" contract, such as a charterparty at an excessively low rate of hire, he suffers "harm" for the purposes of bringing a claim against a third party under article 1064. At one point in his evidence, Professor Maggs expressed the opinion that such a claimant would not have suffered harm, but it became clear that he was supposing circumstances in which the contract might be cancelled before it was performed. He accepted that there might be harm if the contract was performed; if, for example, a shipowner delivered a vessel on charter at an uncommercial rate. He was not, as I understood his evidence, suggesting any restriction upon what sort of loss could in principle constitute harm for the purpose of article 1064. He was simply indicating his view as to what findings of fact would be made in the circumstances that he supposed. As he explained, a contracting party might fail to show that he has suffered harm of this kind because he did not avoid a contract or did not seek to recoup loss from the contractual counterparty; and, although Professor Maggs at one point treated this as a question of mitigation, the thrust of his evidence was that upon a factual analysis it might be held that there was no harm.

97. The claimants observed that Mr. Nikitin and the Standard Maritime defendants plead that the claimants who entered into contracts with the defendants suffered no harm within the meaning of Article 1064 because "the impugned contracts were not uncommercial and/or otherwise than on market terms", and they submitted that therefore Mr. Nikitin and the Standard Maritime defendants are precluded by their pleading from arguing that, even if the contracts were "uncommercial" and not on "market terms", nevertheless the claimants have failed to show harm and so are unable to sustain a claim under article 1064. I do not accept that argument: the pleading does not, to my mind, relieve the claimants of the burden of showing that they in fact suffered harm because the impugned contracts were on uncommercial terms. However, the point is, as it seems to me, of no consequence on the facts of this case. All of the impugned contracts were performed, and there would be no basis for

concluding that, if the terms were sufficiently uncommercial, the claimant who was party to the contract did not suffer harm for the purposes of a claim under article 1064.

98. The remaining element of liability under article 1064 is that the harm was caused by an action of the defendant. This too is largely question of fact. English law presumes that the payment of a bribe or secret commission in relation to a contract causes loss. The claimants rightly did not argue that they could rely upon the presumption made by English law in support of a claim based upon article 1064. The so-called presumption of English law, being irrebuttable, is not a matter of procedure for the lex fori, but a matter of substantive law for lex causae: see Dicey, Morris & Collins, loc cit, para 7-029, 030.

99. Under Russian law, bribery can be a criminal offence. Article 204 of the Criminal Code defines "commercial bribery" as follows: "The unlawful transfer to a person fulfilling management functions in a commercial or other organisation of money, securities, commercial paper or other property, and also unlawful rendering of services to him of a property nature for the commission of actions (or inactions) in the interests of the person giving in connection with the office held by this person". Russian law does not provide a civil remedy in such circumstances and has no presumption or other legal principle comparable to the presumption in relation to bribes made under English law. The payment of a bribe does not relieve the claimant of the burden of proving harm and causation in order to establish liability under article 1064.

100. Although a necessary ingredient of a claim under article 1064 is that the act of the defendant has caused harm, this does not mean that a fraudster can escape liability by acting through a corporate structure. As Professor Sergeev observed, "Otherwise impunity would result for criminals committing white-collar crimes through corporate structures, and it would deprive the aggrieved party of the opportunity to effectively restore their violated rights at the expense of the individuals who directly enriched themselves through the commission of the offences". Professor Maggs accepted that in these circumstances (assuming the company was not an innocent tool of the fraudster) both the fraudster and the company that he used would be regarded as doing the act that caused harm.

101. Under article 1064 the defendant's action must be a direct or immediate cause of the harm. Professor Maggs illustrated this by referring to the procedure available under the Criminal Procedure Code which allows a claimant to make a civil claim in the context of criminal proceedings. Commentators on the relevant provision, article 44 of the Code, explain that a civil claim is properly presented "only when a direct causal link between harm and an event of crime is present", and I accept Professor Maggs' evidence that the position is similar when a claim is made under article 1064. This means in the context of this case that:

    i) If a claimant company had entered into a contract that resulted in loss, Russian law would not attribute that loss to the act of a defendant for the purposes of article 1064 unless the claimant showed that the defendant directly caused the company to enter into the contract. Thus, if an officer of the claimant accepted a bribe, the claimant would not have a claim against the briber in relation to a transaction unless it was established that the bribe directly brought

about the decision to enter into it. This could not normally be done if, for example, those who so decided on behalf of the company (whether their board of directors or their management) took the decision to do so with knowledge of the relevant information about whether the company should enter into the contract. The bribery would only be a sufficient cause of the contract and so any loss or harm resulting therefrom if, because of the bribe, the recipient therefore caused the company to decide to contract, for example by misleading those taking the decision to do so.

ii) Similarly, if brokers such as Clarkson acted in breach of their duties so as to cause loss to their claimant principal, prima facie the brokers' breach of duty would be the direct cause of the loss. Professor Maggs did not consider that, if a defendant had entered into an agreement with brokers that they should do something which amounted to a breach of duty to their principal, Russian law would therefore regard the defendant's action as a direct cause of the principal's loss. The brokers' behaviour intervenes, and prevents the link in the chain of causation being sufficiently direct. I accept his evidence that, in order to succeed in a claim under article 1064, the claimant would have to show a more specific and direct link between the defendant's action and the loss, such as that the defendant and the brokers made an agreement that they should conceal the position from, and deceive, the principal, and that as a result the principal did not enforce his rights against the brokers.

iii) Russian law would not consider that a company has been caused harm simply because the value of its shares in a subsidiary was reduced by harm caused to the subsidiary. The harm suffered by the shareholder would not be sufficiently closely linked to the action of the defendant. In reaching this conclusion, I do not overlook that at one point in his cross-examination Professor Sergeev appeared to contemplate that, where a subsidiary company was caused harm, a parent company might also be treated as having been caused harm, but his answers about this were unclear. There is no dispute on the pleadings that direct causation is required and, if there be a difference between the experts, I prefer the opinion of Professor Maggs about this. Thus, I conclude that Sovcomflot and NSC would not have claims under article 1064 on the basis that they suffered harm because the value of their interest in their subsidiaries was reduced by the acts of the defendants.

102. Mr. Skarga and Mr. Izmaylov submitted that they are not liable under article 1064 because (i) no claim by Sovcomflot or NSC would be permitted because it would offend the principle against competition of claims, and (ii) no other company has a claim because they were at the relevant times acting as employees of Sovcomflot and NSC and therefore any liability under the article falls upon their employer and not upon them. I have upheld the first part of that submission, and now come to consider the second. Generally it must be shown that the defendant himself caused harm if he is to be held liable under article 1064, and no other natural or legal person is liable for harm unless a specific provision of the Code so provides. However, employers may be liable for the action of employees under article 1068 of the Civil Code, which provides as follows: "A legal person or a citizen shall compensate for harm caused by its employee in the performance of labour (or employment, or official) duties ...".

103. The claimants' pleaded case is that article 1068 imposes liability to third parties upon the employer for an employee's wrongful act, and that it does not relieve the employee of liability. Despite the express wording of the article, however, Professor Sergeev and Professor Maggs agreed that the article can also provide protection for an employee from liability to a third party. As Professor Maggs explained, the purpose of the article is two-fold: (i) to protect the employee from claims by those who have suffered harm as a result of what an employee has done, or omitted to do, in the course of his employment; and (ii) to give victims a more substantial remedy against the employer than they would typically have against the employee. Where the article applies, Russian law requires that any claim should be against the employer and not against the employee, and the employee is not directly liable to the injured person, although the protection afforded to the employee is limited in that an employer who is held liable for his employee's action is entitled to be indemnified by his employee: see article 1081 of the Civil Code, which provides that:

> "One who has compensated for harm caused by another person (by an employee in his performance of employment, official, or other labour duties, by a person driving a means of transport, etc.) shall have the right of a claim back (subrogation) against this person in the amount of compensation paid, unless another amount is established by a statute…".

104. Professor Sergeev considered that, "when Mr. Skarga and Mr. Izmaylov took bribes for concluding certain contracts and influenced by those bribes, made the Board of directors take unprofitable or wrongful decisions as far as Sovcomflot was concerned, they were acting against the Civil Code, against the Labour code and against their own employment contract. They went outside the scope of their employment". He considered that therefore article 1068 did not protect them against liability under article 1064 to a third party, such as a subsidiary of their employers. In his opinion, in some circumstances article 1068 would not protect the employee even though it applies so as to make the employer liable to the third party. Both employer and employee would then be liable.

105. I reject Professor Sergeev's evidence that article 1068 can apply for the purpose of imposing employer's liability without also protecting the employee. It had not been stated in Professor Sergeev's reports that in some circumstances where article 1068 applies both employer and employee might be liable, and he expressed this view only in cross-examination. The only case which he identified as supporting this proposition was a decision of the Fifteenth Arbitrazh Appeals Court on 13 October 2008 in ruling no 15-AP-5643/2003. In that case ZAO Flora had brought a claim against Alkema Limited Liability Company on the grounds that Mr. N V Alkema, their Chief Executive Officer, had stolen industrial equipment. The court stated that the fact that an employee causes damage in the course of acting in the interests of his employer company is not sufficient in itself to prove that he acted with the knowledge or on the instructions of the employer and does not per se lead to the employer being liable under article 1068. I do not understand how the case illustrates that article 1068 can impose liability on the employer without affording protection to the employee. To my mind it simply shows that, in a case involving the theft of physical property, the court would not conclude on the facts that the crime had been done in the performance of employment duties.

106. I prefer the evidence of Professor Maggs that, if article 1068 applies at all, it not only imposes liability on the employer, but also prevents the employee from being liable. This view is supported by the ruling of the Military Panel of Supreme Court of the Russian Federation dated 23 May 2003 in the case of claims by Sharokhova and others against Timkiv and another. The defendants were soldiers who had gone on a rampage in which they shot, injured and killed others in their troop: one of the defendants had used the gun with which he had been issued in connection with his military service, and the other had been on duty at the dugout where the shooting took place. It was held that their crimes were committed in the course of their duties as employees of their troop, and so the troop was held to be civilly liable for their crimes; and consequently it was held that the defendant soldiers were not civilly liable to the victims. Professor Sergeev described this as a "strange decision", which he suggested was driven by social considerations, and I accept that the court took a strikingly wide view of what constitutes performance of employment duties. He described it as a "ruling", rather than a full decision of the court. Nevertheless, as I read the judgment, the three judges of the Supreme Court of Russia considered that, because the employer was liable, therefore the individual defendants were not.

107. Article 1068 applies when the employee was acting in the performance of his labour (or his employment) duties. This concept is broadly comparable to the common law's notion of an employee acting within the scope or course of his employment, but Professor Maggs emphasised that the Russian law concept of an employee acting in the performance of his labour duties is a very broad one. There is no single test as to whether an employee is performing his duties for the purpose of article 1068. The employee can be doing so although he commits a criminal act: Professor Sergeev accepted that unlawful and criminal acts can be done "in the performance of labour duties" within article 1068, and the ruling of the Military Panel of 23 May 2003 illustrates this. Equally, the fact that the victim even of a criminal act is a subsidiary company of the employer does not in itself mean that the act was not done by the employee in the performance of his duties. On the other hand, the ruling in the case of ZAO Flora v Alkema LLC, to which I have referred, illustrates that, if an employee does a criminal act, the fact that he caused damage in the course of acting in the interest of his employer does not mean that he was acting in the performance of his duties. As Professor Maggs explained, the Russian courts have consistently rejected arguments that thefts of physical property by employees were by way of the performance of labour duties, but he distinguished such cases from the position where an employee defrauds a subsidiary company by giving it dishonest instructions which are of a kind which he might properly give in the course of performing his duties. Thus, for example, he considered that, if Mr. Skarga gave instruction for a subsidiary of Sovcomflot to enter into a charterparty with a Standard Maritime defendant, the instruction would still be of a kind that Mr. Skarga was expected to give in the performance of his duties as an employee of Sovcomflot. This would be so even if the rate of hire or the terms of the charter were uncommercial and the instruction was given in order to benefit the charterer. I found his evidence about the application of article 1068 convincing.

108. It is a question of fact whether any particular act is done in the performance of employment duties. Professor Maggs did not suggest that, whenever an employee in the position of Mr. Skarga or Mr. Izmaylov gives directions to, or makes arrangements for, a subsidiary company, he is necessarily performing his duties. It

would depend upon what the subsidiary was instructed to do and how far it reflected the sort of instruction that he would properly give in his capacity as an employee. However, I accept Professor Maggs' evidence that the fact that arrangements or directions for the subsidiary were made for fraudulent purposes would not in itself prevent the employee from being protected by article 1068. He said that he had not seen any allegation in the present litigation that harm was caused to any subsidiary of Sovcomflot by Mr. Skarga giving instructions to subsidiaries or making contractual arrangements for subsidiaries which were outside what Russian law would regard as the scope of his duties, because "Mr. Skarga's duties included day-to-day management of Sovcomflot, which would cover relevant instructions to Sovcomflot subsidiaries". He gave similar evidence in relation to what Mr. Izmaylov did.

109. It might be said that here Professor Maggs was expressing his own views about the facts of the case, which is not strictly the role of an expert witness of foreign law, but I agree with his assessment. The question depends upon the nature of the contracts made by the subsidiary companies of Sovcomflot and NSC that are said to have been made as a result of Mr. Skarga and Mr. Izmaylov dishonestly participating in the schemes, and upon what they did to bring about the contracts. I have seen no evidence that any of the contracts was of a kind that the subsidiaries could not properly have made if its terms had been commercial and the circumstances had justified it. Nor have I seen any evidence that Mr. Skarga or Mr. Izmaylov did anything to bring about the contracts, by way of giving instructions to subsidiary companies or participating in decisions of Sovcomflot or NSC or their subsidiary companies, which was different in kind from what they would have been expected to do in the course of their duties in relation to such a contract. The claimants have not identified any transaction to which these conclusions do not apply. I conclude that article 1068 would protect Mr. Skarga and Mr. Izmaylov from liability under article 1064 in respect of the complaints by the subsidiaries of Sovcomflot and NSC.

110. I should refer to a further issue about what liability might arise under article 1064. The article defines the circumstances in which Russian law will hold a defendant liable for harm, but article 15 of the Civil Code states what compensation is to be awarded for any harm if there is liability. Professor Sergeev and Professor Maggs disagreed about the meaning and effect of article 15 and how compensation under it is to be measured. Article 15, which applies to the measure of compensation in cases of contractual liability as well as liability under article 1064, provides as follows:

> "1. A person whose right has been violated may demand full compensation for the losses caused to him unless a statute or a contract provides for compensation for losses in a lesser amount.
>
> 2. Losses means the expenses that the person whose right was violated made or must make to reinstate the right that was violated, the loss of or injury to his property (actual damage), and also income not received that this person would have received under the usual conditions of civil commerce if his right had had not been violated (forgone benefit).
>
> If the person who has violated a right has received income thereby, the person whose right has been violated has the right

> to demand – along with other losses - compensation for forgone benefit in a measure not less than such income."

111. Thus, in some circumstances article 15 allows the recovery of "compensation for forgone benefit" in a minimum sum measured by the income of the person who has violated the right in question. It is to be observed that this provision operates by reference only to the income of that person, and not the income of any company or other person with whom the violator is associated.

112. Professor Maggs considered that this provision allows recovery only of the amount of any immediate profits from the wrongdoing. He emphasised that the right arises if the defendant has received income "thereby", that is to say by violation of a right. He explained that the provision is typically deployed in cases where there has been violation of a trademark or other intellectual property and such violation occurs (or recurs) whenever a sale is made of the protected goods. The sale proceeds are income received by violation of the rights of the claimants because the sale itself is wrongful. As far as he was aware, the Russian courts have not applied the provision in other circumstances, and he considered therefore that if, for example, a ship were sold or chartered as a result of an uncommercial contract or one procured by bribery, payments that the purchaser or charterer received from an on-sale or a sub-charter would not generally be recoverable under this provision, because those receipts would not be caused sufficiently directly by the wrongdoing so as to have been received "thereby" for the purpose of this article.

113. Professor Sergeev considered that article 15 is more generous to the claimant in that it allows his minimum recovery to be measured by the violator's income. In his opinion the provision is directed to any "incomes which, at the end of the day, are derived by the perpetrator", and that were "connected with" the breach. In effect, as the claimants submitted and I accept, his evidence was that it sufficed that the wrongful act allowed the wrongdoer to receive the income.

114. The provision in article 15 was introduced into Russian law in 1995 and, as Professor Sergeev told me, no authority has considered how close a causative link between the income and the wrongdoing is required by the article. Professor Maggs acknowledged that the Russian courts did not, in the intellectual property cases upon which he relied, expressly state that the article requires a direct causation link of this kind that he described. Interpreting the provision as best I can by considering its wording and its purpose, I cannot accept that it is to be given as narrow an application as Professor Maggs described. Undoubtedly some causative link is required between the wrongdoing and the income by reference to which the claimant is entitled to measure his minimum compensation. The express purpose of the provision is not to make the wrongdoer disgorge his profit but to provide a minimum measure of compensation for "forgone benefit", and it seems to me that, if the article is given Professor Maggs' restrictive interpretation, the wrongdoer's income would be unlikely to reflect the claimant's minimum loss. This was, I think, why Professor Sergeev explained the position as follows when he was asked in cross-examination about whether, if a wrongdoer hired a vessel on charter at unduly favourable rates and profited from a favourable sub-charter in the second year of hire, the claimant could recover the amount of the charterers' income from the sub-charter: "Had it not been for the breach, then the victim in the second year could have jolly well sublet or leased out the cargo [sic] himself and would have derived an income by himself and

in the current scenario it's the perpetrator who is deriving the second year income. So there is economic justification for that". The question, as I understand article 15, is whether, but for the violation of his rights, the claimant would under the usual conditions of civil commerce have received income corresponding in kind to that which the wrongdoer received, and I conclude that, if he would have done, he is entitled to recover by way of lost income no less than the corresponding income that the defendant in fact received. This, as I understood his evidence, was the view of Professor Sergeev, and I accept his evidence.

Unjust enrichment

115. Article 1102 of the Civil Code concerns what under English law would be termed unjust enrichment, and it provides as follows:

> "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."

I should also set out articles 1103, 1105 and 1107.

Article 1103:

> "To the extent not otherwise established by the present Code, other statutes or other legal acts, nor otherwise follows from the nature of the respective relations, the rules provided by the present Chapter shall also be applied to claims:
>
> 1) for return of performance under an invalid transaction;
>
> 2) for the recovery of property by an owner from another's illegal possessions;
>
> 3) of one party in an obligation to another for return of performance in connection with this obligation;
>
> 4) for compensation for harm including that caused by the bad-faith conduct of the enriched person."

Article 1105:

> "1. In case of the impossibility of the return of the unjustly received or economized property in kind, the acquirer must

> compensate the victim for the actual value of this property at the time it was acquired and also for the losses caused by later change in the value of the property if the recipient has not compensated for its value promptly after he learned of the unjust enrichment.
>
> 2. A person who has unjustifiably made temporary use of another's property without the intent to acquire it or of another's services must compensate the victim for what the person economized as the result of such use at the price existing at the time when the use ended in the place where it occurred."

Article 1107:

> "1. A person who has unjustly received or economized property shall have the duty to return to or compensate the victim for all incomes that he extracted or should have extracted from the property from the time when he learned or should have learned of the unjust enrichment.
>
> 2. Interest for the use of another's assets (Article 395) shall be calculated on the sum of unjust monetary enrichment from the time when the acquirer learned or should have learned of the unjust receipt or saving of monetary assets."

116. The effect of these provisions is that, where article 1102 applies, the defendant is liable to return the property and income received from it from the time that he knew or should have known of the unjust enrichment; and, if he is unable to return the property, he is liable to pay compensation.

117. Professor Maggs considered that these remedies are available only against a person who has himself acquired property or has "economised" property, that is to say has been saved an expense by another person. He explained the notion of an expense being "economised" by a textbook example of A paying B's telephone bill by mistake with the result that B is not liable to pay it, or has "economised" - or saved - the amount of the bill. Thus, in Professor Maggs' view, if a corporate Standard Maritime defendant received property, no claim would lie against Mr. Nikitin on the basis that he was thereby enriched, although he accepted that, if Mr. Nikitin himself received the property belonging to a claimant through a company that he controlled (or indeed indirectly through an independent third party), the claimant might have a claim against him under article 1102.

118. Professor Sergeev suggested that the article might be applied where a party has received a benefit through a company. He expressed his view as follows in his first report dated 8 May 2009:

> "Furthermore, Mr. Nikitin can possibly be viewed as a person who unjustly enriched himself from the uncommercial contracts concluded by the companies under his control which

> provides grounds for presenting a claim directly against him under Article 1102 of the [Civil Code].
>
> Even though it was companies under Mr. Nikitin's control which benefited from the uncommercial contracts, in my view this would not be an obstacle for presenting an unjust enrichment claim against Mr. Nikitin as the ultimate beneficiary. Taking into account the underdeveloped state of the Russian corporate law and its application in practice, this method of protection of civil law rights of the persons aggrieved by the uncommercial contracts might face certain difficulties in Russia. However, these difficulties would lie in the practical sphere of providing the links of unjust enrichment rather than in existence of any formal obstacles in Russian law to the application of this method of protection of civil law rights."

119. As this passage from Professor Sergeev's report indicates, Russian law has not yet been developed so as to allow a claimant to deploy article 1102 in these circumstances, but Professor Sergeev considers that there is scope for the law to develop to allow property to be recovered from a fraudster who holds it in the name of the company. Professor Sergeev advanced this suggestion only tentatively. Indeed, he accepted that, as Russian law presently stands, a claim under article 1102 is available only against the actual recipient of a claimant's property. I conclude that this is indeed a requirement of article 1102: it seems to me required by the natural meaning of the article. After all, a claim can be made under the article where the defendant is not guilty of fraud or of any wrongdoing at all, and it was not suggested that, if its application was expanded as Professor Sergeev contemplated, its wider application should, or on any principled basis could, be only for cases of fraud.

120. The defendants also submitted that the application of article 1102 is subject to further restrictions, which they said reflect the principle of Russian law that there should not be competition between claims. In particular, they said that no claim under article 1102 can be made in relation to property that has been transferred or saved as a result of a contractual relationship because that would introduce competition with the regime governing obligations arising from transactions, and no claim can be made where article 1064 applies because it would compete with the regime governing obligations arising as a result of causing harm. I accept this submission, and the evidence of Professor Maggs to that effect.

Mr. Skarga's liability to Sovcomflot and Mr. Izmaylov's liability to NSC

121. Under article 53 of the Civil Code, which the claimants say applies to the members of the management bodies of all legal entities, it is provided that:

> "A person who by virtue of a law or constitutive document of a juridical person acts in its name must operate in the interests of the juridical person represented by him in good faith and reasonably. He shall be obliged at the demand of the founders (or participants) of the juridical person, unless provided

> otherwise by a law or contract, to compensate for losses caused by him to the juridical person".

Article 71 of the Law of Joint Stock Companies provides as follows in relation to those concerned in the management of a Joint Stock Company such as Sovcomflot or NSC:

> "1. The members of the board of directors (or supervisory board), one-person executive body (director, general director), an interim sole executive body, members of the collegial executive body (management board, directorate), and likewise the management organization or manager must, when exercising their rights and performing duties, operate in the interests of the company and exercise their rights and perform duties with respect to the company reasonably and in good faith.
>
> 2. Members of the board of directors (or supervisory board), one-person executive body (director, general director), an interim sole executive body, members of the collegial executive body (management board, directorate), and likewise the management organization or manager shall bear responsibility to the company for losses caused to the company due to their actions (or failure to act), unless other grounds and extent of responsibility have been established by federal laws.
>
> In the board of directors (or supervisory board) and the collegial executive body (management board, directorate) the members who have voted against decision which entailed the causing of losses to the company or who did not take part in the voting shall not bear responsibility. …".

122. Mr. Skarga argued that his liability to Sovcomflot is limited by the Russian Labour Code and by clause 6 of his contract of employment, which I have set out above. Mr. Izmaylov, whose contract of employment included a materially similar provision, advanced similar arguments about his liability to NSC.

123. The essential issue of Russian law is whether Mr. Skarga might be liable to Sovcomflot for loss of profits despite the terms of his employment contract. In my judgment, in fact no such claim arises on the facts on this case because Sovcomflot (as opposed to its subsidiary companies) do not have such claim against Mr. Skarga. Nor, as I see it does NSC have such a claim against Mr. Izmaylov. Nevertheless, since I heard expert evidence and received full submissions about the issues of Russian law, I shall express my conclusions about them as briefly as I can.

124. When Mr. Skarga was first employed by Sovcomflot and entered into his first contract of employment of 15 May 2000, and when Mr. Izmaylov entered into his contract of employment with NSC, the Code of Laws of Labour of 1971 was in force. Article 118 of that Code provided that, in the case of all employees, "Only direct actual damage is taken into account when determining the amount of damage: lost earnings are not taken into account". The wording of clause 6.3 of Mr. Skarga's contract of employment and the corresponding provision of Mr. Izmaylov's contract reflect article 118.

125. A new Russian Labour Code (the "new Labour Code") came into force on 1 February 2002. The general rule for employees is that they are not liable to their employers for loss of profits, and this is stated in article 238: "An employee must compensate an employer for direct actual damage which he has caused. Revenues not received (loss of profit) are not recoverable from the employee."

126. Further, unless certain exceptions apply, an employee's liability is restricted to one month's salary in respect of direct actual damage. Article 241 provides that, "An employee shall be materially liable for damage caused within the limit of his average monthly earnings, …". Article 243 provides that the employee shall be "materially liable in full measure for the damage caused" in some cases, including where damage is caused "as a result of criminal actions of an employee established by a court verdict"; and it also stated that "Material liability in full measure for damage caused to an employer may be established by a contract of employment concluded with the manager of an organisation…".

127. Article 242 of the new Labour Code provided before 30 June 2006 that, "Full material liability of an employee consists in his liability to compensate for damage caused in full measure". This provision was amended with effect from 30 June 2006 so as to provide that, "Full material liability of an employee comprises his duty to compensate in full measure for direct actual damage caused to an employer". Professor Sergeev's opinion was that before the amendment article 242 provided for liability for loss of profit, and liability was confined to direct actual damage only by the amendment. Professor Maggs considered that the amendment simply clarified what was always the meaning and effect of article 242. I prefer the opinion of Professor Maggs: article 242, both before and after the amendment, is, to my mind, naturally understood to be directed to whether liability is limited to a month's earnings. It does not seem to me natural to interpret article 242 as providing that the employer can be compensated for loss of profits despite the limitation in article 238. This view seems to me to be confirmed by the explanation in Mironov, Labor Law of Russia, 2004 edition, which Professor Maggs described as a "standard labour textbook": see chapter 15 para 8.

128. However, the claimants were also able to rely upon article 277 of the Labour Code, which came into force on 1 February 2002. It provides in the case of the manager of an organisation (and there is no dispute that Mr. Skarga and Mr. Izmaylov were covered by the provision) as follows: "The manager of an organisation shall bear full material liability for direct actual damage caused to the organisation. In cases specified by federal laws, the manager of an organisation shall compensate the organisation for losses caused by his culpable actions. In addition, the calculation of losses shall be carried out in accordance with the norms specified by civil legislation." The claimants submitted that, whereas if the case were governed by the first sentence of article 277 the liability of the manager would be in respect of material responsibility for direct actual damage (as other workers are liable for such damage under article 238), the position is different if the case falls under the second sentence because then it is covered by Federal Law. In such cases, the claimants argued, the manager is liable for "losses" caused by his wrongdoing, the liability is not confined to direct actual damage, and there is no proper basis for excluding compensation for financial loss or loss of profit. The "case provided by Federal law" upon which the claimants relied is in article 71 of the Law on Joint Stock Companies, which was in force before as well as after 1 February 2002 and which I have already set out. There

is no dispute that the losses to which article 71 refers and for which the employee is liable include lost profits. Professor Maggs agreed that the Russian wording of the article makes that clear.

129. I should add that Russian lawyers differ about whether Sovcomflot would be entitled to bring a claim against Mr. Skarga without relying upon article 277 of the Labour Code and directly under article 71 of the Civil Code. The potential relevance of this issue is that there are different limitation periods under Russian law for claims brought under the Civil Law (as a claim directly under article 71 would be) and a claim under the Labour Code (as a claim under article 277 of the Labour Code would be, even if the effect of article 277 is to engage article 71). This does not affect whether Mr. Skarga and Mr. Izmaylov might be liable to their employers for loss of profit. On any view, that depends upon the effect of article 71, either because the claim itself is brought under that article or because it is under article 277 of the Labour Code, which is to be taken to refer to article 71.

130. The measure of compensation for liability under article 71 is stated in article 15 of the Civil Code, which I have already set out. The argument of Mr. Skarga and Mr. Izmaylov is that they are entitled to rely upon their contracts of employment to limit liability because article 15 specifically permits this, and that their contracts of employment should be interpreted as excluding liability for loss of profits because the wording of clause 6 of Mr. Skarga's contract and the comparable provision of Mr. Izmaylov's contract reflect that of article 188 of the 1971 Labour Code and of article 238 of the new Labour Code.

131. I am unable to accept this argument. First, as I have said, Mr. Skarga and Mr. Izmaylov rely upon it to restrict their liability for intentional wrongdoing or dishonesty directed against Sovcomflot or NSC, and the relevant provisions of their employment contracts are not to be interpreted as applying in these circumstances. Secondly, article 15 does not, in its general application, allow a contractual provision to exclude liability for intentional breach of contract because article 401(4) of the Civil Code provides that "An agreement concluded in advance for eliminating or limiting liability for the intentional violation of an obligation is void". Although Professor Maggs considered that this applies only to contracts governed by the Civil Code and not to the employment contracts, which are governed by the Labour Codes, this does not mean that article 15 is to be understood to allow contractual exclusions or limitations of liability where there is intentional wrongdoing. Thirdly, I accept the evidence of Professor Sergeev that under article 71 of the Civil Code liability can be excluded only by reference to another law and not by reference to a contractual provision. Since article 71 is a more specific provision and specific norms take precedence over the general ones, liability under article 277 cannot be excluded contractually. Accordingly, while the measure of compensation under article 71 generally is determined by reference to article 15 and article 15 generally allows contractual exclusions of liability, this is displaced by article 71's more specific and narrower regime.

132. I therefore reject the defendants' argument that their contracts of employment would protect them from a claim for lost profits by their employers.

Limitation

133. If, as the defendants submitted, the claims against them are governed by Russian law, they are entitled to rely upon Russian law limitation defences. The Foreign Limitation Periods Act, 1984 (the "1984 Act") provides, in place of the common law rule that limitation periods that barred a remedy are procedural and determined by English law as the lex fori, that generally, and subject to an exception based upon public policy, the limitation rules of the lex causae govern proceedings before the English courts. The Contracts (Applicable Law) Act 1990 is to broadly similar effect in that a law applicable to a contract by virtue of articles 3-6 and 12 of the Rome Convention (to which the 1990 Act gives effect) govern prescription and limitation of actions, subject to a public policy exception in different terms from those of the 1984 Act. Where another law confers a discretion relating to limitation, the English court must so far as practicable exercise the discretion "in the manner in which it is exercised in comparable cases by the courts of that other country": section 1(4) of the 1984 Act.

134. The Russian limitation period governing claims under the Civil Code, including in particular claims under articles 1064 and 1102, are generally stated in articles 196 and 200 of the Code. Article 196 provides that the "general limitation period is established as three years", and article 200 provides that "The running of the period of limitations shall commence from the day when the person knew or should have known about the violation of his right". However, a different period governs claims under article 179 of the Code: article 181 provides for a period of one year from the date when the aggrieved party discovered the circumstances that provides grounds for declaring the transactions invalid. In the case of claims by Mr. Skarga and Mr. Izmaylov in relation to their contracts of employment the relevant limitation period is stated in article 392 of the Labour Code, which provides that: "an employer has the right to take court action in respect of disputes regarding compensation for damage inflicted to the employer, but such action must be taken no later than a year from the date the damage inflicted is discovered". The court may extend the period in exceptional cases, but nothing has been identified in this case that would constitute such exceptional circumstances.

135. The question whether the claims against the claimants were brought within the stipulated periods is primarily a question of fact. It would be for the claimants to prove that they have brought their claims within three years of when they knew or should have known that their rights had been violated or, as the case might be, within a year of discovering the grounds for challenging a contract or the damage inflicted. The burden of proof is upon the claimants because, where, as in this case, a time bar has been pleaded, English law requires the claimants to show that the claim was brought within the stipulated period (Cartledge v E Jopling & Sons Limited, [1963] AC 758, 784), and, even if the burden of proof is to be regarded as a matter of substantive law governed by the lex causae (see above), it has not been pleaded or proved that Russian law differs in this regard from English law and it is presumed not to do so.

136. There are two questions of Russian law to which I should refer. It appeared in the reports of the expert witnesses and their memorandum of points of agreement and differences that they took different views about whether, as a matter of law, the limitation period might run from the date of a sentence of the defendant by a criminal court. Professor Maggs said that a criminal ruling does not, as a matter of Russian

law, affect the limitation period for a civil claim. It initially appeared that Professor Sergeev disagreed and considered that, if a person's actions constituted fraud or another criminal offence, then the limitation period against him began when "a court sentence or a ruling of another authorized agency confirming the fact that the actions … constitute a crime became effective" (although the claimant was entitled to bring a civil claim earlier). He referred to cases in which the approach of the Russian courts was that the victim of a crime had or should have had the requisite knowledge for the limitation period to begin to run only upon a criminal being sentenced.

137. It is not open to the claimants on the pleadings to rely upon such an argument, but in any case, as the evidence developed, it became apparent that Professor Sergeev was not describing a rule of substantive Russian law. I accept Professor Sergeev's evidence in so far as he was describing how in practice Russian courts have decided whether the claimant had or should have had the requisite knowledge. They often conclude, in cases where a defendant's liability arises from a criminal act and he has been convicted and sentenced for a criminal offence, that the period of limitation runs from the date upon which the defendant was sentenced. In his expert report in another case before this court, Professor Sergeev put it as follows:

> "…the need for a relevant criminal finding for the purposes of establishing a civil claim is not a requirement of substantive law. Such a requirement is not identified in any substantive or even procedural law. It derives solely from court practice. A civil cause of action cannot be established in the court practice. It can only arise by virtue of law or regulatory legal acts. Court practice is not a source of law in Russia."

138. Professor Sergeev told me that this remains his view. I do not accept that, as a matter of substantive Russian law, any limitation period for a civil claim runs from the date of a criminal sentence or other decision in criminal proceedings. The practice of the Russian courts is irrelevant for present purposes. It is a matter for the lex fori, in this case English law, to determine how the relevant facts are proved and the standard of proof.

139. Secondly, I have already said that the claimants contend that they could bring claims against Mr. Skarga and Mr. Izmaylov under article 71 of the Civil Code, rather than under article 277 of the Labour Code and so have a longer limitation period for their claims. In view of my other conclusions, nothing turns upon this, but I accept Professor Maggs' evidence that Russian law would not allow the regime of the Labour Code to be circumvented in this way.

Private international law

140. I come to the principles of private international law that determine the issues between the claimants and the defendants about which law is applicable. No question of private international law arises in the part 20 proceedings against Clarkson because no party in those proceedings pleads that any issue is governed by any law other than English law.

141. The claims against Mr. Skarga and Mr. Izmaylov by Sovcomflot and NSC based upon breach of their contracts of employment are governed by Russian law because of the

express terms of the contracts that they should be. The claims against them for breach of their fiduciary duties as directors of Sovcomflot and NSC are also governed by Russian law because that is the place of incorporation of the companies. Further clause 10.2 of Mr. Skarga's contracts of employment provided that "Any disputes that may arise between the parties to this contract are to be resolved by direct negotiations. If the parties fail to reach an agreement by negotiation (amicably), disputes are to be resolved via the courts in accordance with Russian Federation legislation in force". Similarly clause 10.2 of Mr. Izmaylov's contract of employment provided that Russian law governs "Any dispute that may arise between the parties to this contract", and therefore Russian law would govern NSC's pleaded claims against him for dishonestly assisting the brokers to act in breach of their fiduciary duties.

142. Their duties as directors of the other claimant companies are governed by the law of the place of incorporation of the companies, even though this means that different laws govern issues about whether the same or closely related acts give rise to liabilities to different claimants: see Base Metal Trading Ltd. v Shamurin, [2005] 1 WLR 1157. Thus, as far as liability for breach of fiduciary duty is concerned, the claims by Fiona against Mr. Skarga and by Intrigue against Mr. Izmaylov are governed by Liberian law; the liability of Mr. Skarga to FML is governed by English law; the liability of Mr. Skarga to Sovchart is governed by Swiss law; and the liability of Mr. Skarga and Mr. Izmaylov to the other claimants is variously governed by the laws of Liberia, Cyprus and Malta.

143. Mr. Skarga and Mr. Izmaylov dispute that the claimants have any claim against them that is not governed by Russian law. Their arguments are based upon (i) the claimants' pleading, and (ii) the nature of their directorships of subsidiary companies of Sovcomflot and NSC and of the claims against them.

144. The claimants' pleading in the Fiona action (at paragraph 120.1 and elsewhere in the particulars of claim in relation to the SLB transactions and repeated in relation to all transactions for which Fiona gave approval) is that "all commercial decisions in relation to the business of Fiona were taken by Mr. Skarga in his capacity as Director-General of Sovcomflot", and Mr. Dunning argued that therefore it is not open to the claimants to allege that what Mr. Skarga did involved a breach of any duty owed to Fiona or to any company other than Sovcomflot. I do not so understand the claimants' pleading, and the case against Mr. Skarga was not conducted on this confined basis. An allegation that Mr. Skarga was acting in the capacity as Director-General of Sovcomflot does not mean that he was necessarily acting in no other capacity, and, for example, when he was signing the minutes of Fiona's board meetings, he was clearly acting as a director of Fiona. Had I otherwise reached conclusions in the claimants' favour against Mr. Skarga, I would not have upheld this argument based upon the claimants' pleading.

145. However, I do accept Mr. Dunning's submission that, because of the vagueness of the allegations about what rights owed to the various claimants are said to have been breached so as to give rise to harm suffered by them or to profits on the part of the defendants, he has not been able properly to develop the arguments that Mr. Skarga would advance in relation to limitations periods under Russian law. Had my decision depended upon whether Mr. Skarga has a Russian law time-bar defence, I would have required the claimants to explain their case in more detail, and invited further submissions about the defence in light of that explanation.

146. Mr. Bryan advanced a similar argument based upon the claimants' pleading in the Intrigue action. Having alleged duties owed to NSC under his contract of employment and as its President, the claimants pleaded that Mr. Izmaylov was "in breach of his fiduciary and other duties owed to NSC and the relevant ship-purchasing, ship-owning and ship-chartering companies in that" he was involved in the various schemes. It is said that this is naturally understood as referring only to the duties owed to NSC which have previously been set out in the pleading. Again, I do not consider that the pleading should be given this limited interpretation.

147. Undoubtedly, Mr. Skarga was appointed to be a director of Fiona, FML and Sovchart because of his appointment to the office of Director-General of Sovcomflot. Equally, Mr. Izmaylov was appointed as a director of Intrigue because he was the President of NSC. In so far as they acted for these or other subsidiaries of Sovcomflot and NSC respectively, or took or participated in decisions of the subsidiaries, they did so, as it was put by Mr. Bryan, by dint of their positions as Director-General and President. The claimants often relied upon the same allegations of fact in support of their claims of breaches both of duties owed to the parent companies and of duties owed to one or more of the subsidiaries. The defendants argued that in these circumstances the claims cannot be governed by different laws, that the true basis of the claims is that they are for breach of duties owed to the parent companies in respect of what Mr. Skarga and Mr. Izmaylov did as Director-General of Sovcomflot and President of NSC respectively, and that therefore the claims made by all the claimants are governed by Russian law as the law governing whether they acted in accordance with their duties to Sovcomflot and NSC.

148. I am unable to accept that argument. I do not consider that it is open to me to do so because of the decision of the Court of Appeal in the Base Metal Trading case (cit sup). The principle that the law of incorporation of a company determines whether a person has acted in breach of duties owed as a (de jure or shadow) director is not displaced where he owes his directorships to his position with another company, and it applies even though the consequence is that different laws determine whether the same acts give rise to a claim for breach of similar duties owed to different claimants. The question whether Mr. Skarga or Mr. Izmaylov owed any relevant duty to a subsidiary of Sovcomflot or NSC in respect of any act or decision relating to a transaction depends upon the specific facts. I reject the argument that, because of their relationships with the parent companies, all issues about their liability to subsidiary companies are governed by Russian law.

149. I come to consider which law governs issues concerning the other claims against Mr. Skarga and Mr. Izmaylov and the claims against Mr. Nikitin and the Standard Maritime defendants.

150. Staughton LJ observed in Macmillan Inc. v Bishopsgate Trust (No 3), [1996] 1 WLR 387 at p.391H and p.393G that, in cases that involve a foreign element and in which the court must decide what system of law is to be applied to the case as a whole or to a particular issue or particular issues, it is necessary to consider three questions: (i) how should the issue or issues between the parties be characterised; (ii) what connecting factor (or factors) between the issue(s) and a system of law determines which law is applied to determine the issue; and (iii) what system of law does the connecting factor (or do those connecting factors) require be applied. Within a week of the decision of the Court of Appeal in that case, the 1995 Act was enacted, which

stipulates rules for deciding which law is to be applied for "determining issues relating to tort": see section 9(1). Where the statute applies, it answers the first question of Staughton LJ, and provides a statutory test to answer his second question. Section 11 states the "general rule" as follows:

> "(1) The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur.
>
> (2) Where elements of those events occur in different countries, the applicable law under the general rule is to be taken as being –
>
> (a) for a cause of action in respect of personal injury caused to an individual or death resulting from personal injury, the law of the country where the individual was when he sustained the injury;
>
> (b) for a cause of action in respect of damage to property, the law of the country where the property was when it was damaged; and
>
> (c) in any other case, the law of the country in which the most significant element or elements of those events occurred."

151. Section 12 states a secondary rule that may displace the general rule:

> "If it appears, in all the circumstances, from a comparison of –
>
> (a) the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and
>
> (b) the significance of any factors connecting the tort or delict with another country,
>
> that it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue (as the case may be) is the law of that other country.
>
> (2) The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events."

152. The 1995 Act does not define the expressions "tort" and "relating to tort". Section 9(2) of the 1995 Act provides that: "The characterisation for the purposes of private

international law of issues arising in a claim as issues relating to tort or delict is a matter for the courts of the forum". Therefore, the relevant question is whether an issue, not a claim or a cause of action, is one "relating to tort", and the characterisation is "for the purposes of international law". It is not a question of how the claim is formulated in the proceedings or how cause of action is classified in English law. This reflects the established approach of the common law to how the court determines which "connecting factors" between the issues and a system of law are relevant. In Macmillan Inc. v Bishopsgate Trust (No 3), (loc cit) at p.407B Auld LJ said this:

> "Subject to what I shall say in a moment, characterisation or classification is governed by the lex fori. But characterisation or classification of what? It follows from what I have said that the proper approach is to look beyond the formulation of the claim and to identify according to the lex fori the true issue or issues thrown up by the claim and defence. This requires a parallel exercise in classification of the relevant rule of law. However, classification of an issue and rule of law for this purpose, the underlying principle of which is to strive for comity between competing legal systems, should not be constrained by particular notions or distinctions of the domestic law of the lex fori, or that of the competing system of law, which may have no counterpart in the other's system. Nor should the issue be defined too narrowly so that it attracts a particular domestic rule under the lex fori which may not be applicable under the other system:…".

153. What has been called a "broad 'internationalist' view of legal concepts" (per Aikens J in Trafigura Beheer BV v Kookmin Bank Co, [2006] 2 Lloyd's Rep 455 at para 68) is required if the court is to fulfil the "overall aim … to identify the most appropriate law to govern a particular issue": Raiffeisen Zentrale Ostereich AG v Five Star General Trading LLC, [2001] QB 825 at para 25 per Mance LJ. It does not matter that the issues arise in the context of equitable rather than legal claims: see Dicey, Morris & Collins (cit sup) at para 2-035; AG of England & Wales v R, [2002] NZLR 91, 103 per Tipping J. Further, different laws might govern different claims arising from the same facts (see Base Metal Trading Ltd. v Shamurin, (cit sup) at para 57 per Tuckey LJ), and specifically the law governing the liability of the secondary party to breach of fiduciary duty (whether the claim is for dishonest assistance or for knowing receipt) is not necessarily that which governs the relationship between the fiduciary and his principal.

154. There are found in the authorities different formulations of the rule for determining which law governs a claim for dishonestly procuring or assisting a breach of fiduciary duty: see for example: Arab Monetary Fund v Hashim, (29 July 1994); Dubai Aluminium v Salaam, [1999] 1 Ll.L.R. 415; Kuwait Oil Tanker Co v Al Bader, [2000] 2 AER (Comm.) 271; and Grupo Torras v Al Sabah (No 5), [2001] Lloyd's PN 117. They were reviewed by Christopher Clarke J in OJSC Oil Co Yugraneft v Abramovich and ors, [2008] EWHC 2613 (Comm.) who expressed the view at para 223 that, "Dishonest assistance, a form of equitable wrongdoing, is so closely analogous to a claim in tort (as characterised for purely domestic purposes) that it

should, I would have thought, be so characterised for private international law purposes". I agree with the view of Christopher Clarke J (which was not strictly necessary to his decision), and, as I understand the parties' submissions, there is no dispute that claims for dishonest assistance or procurement "relate to tort" and the 1995 Act stipulates the principles for determining which law governs the issues to which they give rise. It also stipulates the criteria for determining the law governing the issues that arise with regard to the claims in conspiracy and, so far as is relevant for present purposes, the claims based upon allegations of bribery. (I do not have to determine any claim that any contract is to be rescinded because it was influenced by bribery. That question might well be determined by a different law from that which governs the issues relating to the claims before me, being determined by the law governing the contract. I am considering the liability of persons said to have paid or received bribes.)

155. The claimants argued, however, that, even if the defendants' liability is governed, as the defendants submitted, by Russian law or by another law other than English, nevertheless English law as the law of the forum governs what remedies are available if liability is established, and therefore, in particular, it determines whether the claimants are entitled to an account of profits if the defendants are liable for what English law would regard as liability for dishonest assistance or bribery. In support of this contention they relied upon the general principle stated in Dicey, Morris & Collins (loc cit) at para 7-006: "The nature of the remedy is to be determined by the lex fori. Thus if the claimant is by the lex causae entitled only to damages but is by English law entitled to specific relief, the latter type of remedy is available in England". The principle was considered by the House of Lords in Harding v Wealands, [2007] 2 AC 1, in which case damages were claimed for personal injuries by a claimant who had been injured in the road accident in New South Wales, Australia, and a preliminary question arose as to whether the assessment of damages was governed by the law of England as lex fori or by the law of New South Wales as lex causae. Lord Hoffmann said (at para 24) that, while the question of whether there was actionable damage so as to determine whether there was an actionable injury is for the lex causae, "whether the claimant is awarded money damages (and if so how much) or, for example, restitution in kind, is a question of remedy".

156. I reject the claimants' submission for two reasons. First, the basis of the principles stated in Dicey, Morris & Collins is the distinction between questions of substantive law which are governed by the lex causae, and questions of procedure, which are governed by the lex fori. This is not affected by the 1995 Act: section 14 provides that section 10 does not affect "any rules of law", and specifically that it did not affect "any rules of evidence, pleading or practice or authorise questions of procedure in any proceedings to be determined otherwise than in accordance with the law of the forum". The well-established rule of English law is that questions about what heads of damage are recoverable are questions of substantive law. This was clearly stated in Boys v Chaplin, [1971] AC 356, at p. 379 per Lord Hodson, p. 393 per Lord Wilberforce and pp. 394-5 per Lord Pearson.

157. Harding v Wealands was concerned with the effect of a New South Wales statute, which imposed restrictions on the amount of compensatory damages that could be recovered for injury in a road traffic accident, and held that the effect of the statute upon the quantum of recoverable damages was governed as a procedural issue by the

lex fori. I cannot accept that the House of Lords intended to qualify the established distinction between questions about whether a type or head of damages is recoverable, which are categorised as questions of substantive law, and questions of the quantification of damages in respect of a recoverable type of damage. It was recognised by Lord Hoffmann (at [2007] 2 AC para 24) that:

> "… it makes no sense simply to say that someone is liable in tort. He must be liable for something and the rules which determine what he is liable for are inseparable from the rules which determine the conduct which gives rise to liability".

158. Secondly, if English law as the lex fori does determine whether a remedy of an account or other remedy is available for a wrong established under a foreign law as the lex causae, this does not mean that, having established liability against a defendant, the court will then determine what remedies would be available on the particular facts under English law. The questions would be what is the nature of the liability under the foreign law, and what remedy or remedies would English law provide for English law liability similar or analogous to the kind of liability established under the foreign law. On the facts of this case, this would require in particular consideration of the nature of liability under article 1064 of the Russian Civil Code, which, as I have said, provides that, "Harm caused to the person or property of a citizen and also harm caused to the property of a legal person shall be subject to compensation in full by the person who has caused the harm …". The nature of this liability is similar to or analogous to English tortious liability giving rise to a claim for compensatory damages. It is nothing to the point that, on the particular facts that gave rise to a liability under article 1064, English law would recognise a cause of action which affords the remedy of an account. Nor is it relevant that the English court came to apply Russian law and so to recognise a liability under article 1064 because questions about that cause of action relate to tort within the meaning of the 1995 Act. The question is what remedy English law provides for liability of the kind that article 1064 defines, and the answer is that in those circumstances English law provides a remedy of compensatory damages and not an account. The remedy of an account reflects the nature of a fiduciary's obligation, and is characteristic of liability associated with breach of fiduciary duty, which is not a feature of liability under article 1064.

159. I come to the question of the law governing liability for knowing receipt. The nature of this cause of action is different from that of dishonest assistance. As it was put in Grupo Torras SA v Al Sabah, (cit sup) at para 122, "One is a receipt-based liability which may on examination prove to be either a vindication of persistent property rights or personal restitutionary claim based on unjust enrichment by subtraction; the other is a fault-based liability as an accessory to a breach of fiduciary duty". Knowing receipt is not a tort or analogous thereto. I do not accept the submission of the Standard Maritime defendants that, because the claims are said to result from conspiracies between Mr. Nikitin and Mr. Skarga and others in the case of the Fiona action and the second Fiona action and between Mr. Nikitin and Mr. Izmaylov and others in the case of the Intrigue action, therefore the issues arising in respect of the knowing receipt claims "relate to tort" and the 1995 Act therefore determines the question which law governs the claims, or rather which law governs the issues to which the claims give rise. All that this shows is that the alleged background to the

knowing receipt claims might give rise to claims in tort. It does not mean that the issues arising in the knowing receipt claims relate to tort.

160. It is said in Dicey, Morris & Collins, The Conflict of Laws, cit sup, at para 34-041 that the conclusion to be drawn from the authorities was that "an equitable claim which is found in an allegation of unlawful or knowing receipt, or any other equitable claim to disgorge an unjust enrichment, will fall within [the Rule governing restitutionary claims]. But a claim which is founded on an allegation of wrongdoing for which compensation is sought will not do so, even if English domestic law would regard the liability as equitable". However, the law governing the obligation to restore a benefit is stated tentatively at para 34R-001:

> "(1) The obligation to restore the benefit of an enrichment obtained at another person's expense is governed by the proper law of the obligation.
>
> (2) The proper law of the obligation is (*semble*) determined as follows:
>
> (a) If the obligation arises in connection with a contract, its proper law is the law applicable to the contract;
>
> (b) If it arises in connection with a transaction concerning an immovable (land), its proper law is the law of the country where the immovable is situated (*lex situs)*
>
> (c) If it arises in any other circumstances, its proper law is the law of the country where the enrichment occurs."

161. If the Rule is intended to be applied rigidly, it is not supported by authority, and a more flexible approach has been preferred in the Scottish case of Baring Bros & Co Ltd. v Cunninghame DC, [1997] CLC 108 and by Christopher Clarke J in Yugraneft v Abramovich, (loc cit) at para 247, who stated the position thus:

> "If there is a contractual or similar relationship between the claimant and the defendant, the law of that relationship is likely to govern. If the parties are complete strangers and the defendant is a recipient from a wrongdoer, the place of receipt is likely to be relevant, although that may well not be so if, for instance, the place of receipt is a transitory home. If the defendant is the primary wrongdoer or the instigator of, or someone vicariously responsible for, the wrongdoing, it is likely to be relevant to examine where the wrongdoing and its effects took place."

162. Citing these authorities, the Standard Maritime defendants against whom the claims of knowing receipt are pursued submitted that the law governing knowing receipt claims is that law of the place with which they have the closest and most real connection. The claimants did not submit that the governing law is determined by applying inflexibly the rule stated by Dicey, Morris & Collins. They submitted that the restitutionary claims for knowing receipt are governed by the law which has the

closest connection with the obligation to restore the unjust enrichment, which in cases in which the obligation arises in connection with a contract is likely to be the law applicable to the contract and otherwise (except where the claim is in respect of real property) the law of the place where the enrichment occurs. Thus, the difference between the parties' formulations of the rule to determine the governing law appears to be that, whereas the Standard Maritime defendants referred to the law with the closest (or closest and most real) connection with the claims, the claimants referred to the closest connection with the obligation to restore the receipt. This distinction does not, as I see it, give rise to a difference of any significance, at least for present purposes, but, if it matter, I would adopt the rather broader formulation of the Standard Maritime defendants. The question which considerations have a particular significance for identifying that connection depends upon the facts of the case.

163. In applying these principles, I shall first consider the claims in the Fiona actions and start with the claims in conspiracy. The defendants first submitted that the thrust of the allegation against them is that the transactions in the various schemes were all undertaken pursuant to a single overarching conspiracy by which bribes were paid or promised by or on behalf of Mr. Nikitin in order to bring about uncommercial transactions which would benefit him and his companies at the expense of the Sovcomflot group. The claims in conspiracy, and the other claims, should all be regarded as manifestations of this single scheme, and they are governed by the law of Russia, where the events most significant to the scheme occurred. It was a conspiracy which originated in Russia, which was targeted at a group controlled by a Russian company, which was for the benefit of a Russian businessman and which depended on and was characterised by the corruption of the Director-General of Sovcomflot, who worked from the group's headquarters in Moscow.

164. In support of this submission, the defendants referred to the approach adopted by Moore-Bick J in Kuwait Oil Tanker Co v Al Bada, unrept, 15 December 1998, who considered a claim of conspiracy to embezzle money from Kuwaiti claimants through various schemes, some of which were carried out in London and through charterparties concluded in London. The position was described by the Court of Appeal, [2000] EWCA Civ 160 at para 173:

> "Briefly stated, the claimants contended that the design underlying the defendants' fraudulent activities was to generate funds outside Kuwait, the primary location chosen to effect such design being London. The moneys were largely obtained through Clarksons in London, Mr. McCoy playing a central role in the events which gave rise to the proceedings; of the 27 charterparties used by the defendants as part of their fraudulent conspiracy, only six were signed in Kuwait and the rest were signed in London; the overt acts of the conspirators in effecting their frauds were substantially committed in London, schemes I, II and III all involving the procurement of Clarksons to remove money from accounts held by them on the claimants' behalf in London, largely in cash or traveller's cheques delivered in London; and the bulk of the known enrichment took place in London rather than Kuwait."

165. Moore-Bick J decided that in substance the tort was committed in Kuwait. He described one of the schemes carried out through London as "another manifestation of the original conspiracy" and did not consider connections with London to be sufficient for the tort to be regarded as committed in England. To my mind, the defendants derive little assistance from the Kuwait Oil Tanker Co case. On any view the enquiry of Moore-Bick J was fact-sensitive and he was applying established principles to the case before him. I do not understand him to have decided that, where defendants collude to carry out a number of wrongful schemes, all the wrongdoing is necessarily governed by the same law. In any case the 1995 Act did not apply in the Kuwait Oil Tanker Co case, and in Morin v Bonhams & Brooks, [2004] 1 Lloyd's Rep 708 Mance L.J. warned against turning too readily to earlier cases when considering the application of the 1995 Act. I accept the claimants' submission that issues arising from the various claims in conspiracy in respect of wrongful acts done pursuant to it might, upon a proper application of the statute, be governed by different laws, and that the proper approach is to consider the claims in respect of each of the schemes separately. Indeed, it might in principle be right to consider separately the application of the 1995 Act to each transaction which is impugned, but in my view that is an unnecessary step on the facts of this case.

166. The first question under the 1995 Act is what law applies if the general rule stated in section 11 is not displaced: that is to say, where did the events constituting the tort occur, and if they occurred in different countries where did the most significant element or elements of the events occur? This requires an analysis of the elements of the tort of conspiracy as a matter of law and, if the elements occurred in different countries, a judgment about the "significance" of the different elements in order to determine in which country there occurred the elements which, in cumulative significance, outweigh the elements that occurred in any other country. In English law the elements of the tort of conspiracy include not only an agreement but "concerted action taken pursuant to agreement": Lonrho Ltd. v Shell Petroleum Co Ltd. (No 2), [1982] AC 173, at p.188F per Lord Diplock. Damage is an element of the tort, and damage comes about not from any agreement of itself but from acts done pursuant to it.

167. As I have said, in my view it is right to consider separately the elements of the tort of conspiracy in relation to each scheme. However, the defendants are able to identify elements relating to the agreement or collusion which are common to all the parts of the claimants' conspiracy claims in so far as they allege that Mr. Skarga was party to the collusion against Sovcomflot. (I leave aside for the time being their secondary case in relation to the commission claims that there was a conspiracy or conspiracies involving Mr. Nikitin in which Mr. Skarga did not participate.) The central thrust of the claimants' allegations in relation to each scheme is that Mr. Nikitin was dishonestly working with Sovcomflot's Director-General, Mr. Skarga, and their Chief Financial Officer, Mr. Borisenko, to secure the group's agreement to transactions and arrangements which favoured him. I conclude that generally Mr. Nikitin would have had any discussions with Mr. Skarga and Mr. Borisenko in Russia, although I accept that on occasions there will have been some discussions outside Russia, such as when Mr. Nikitin and Mr. Skarga were on holiday together in September 2004. Further, in so far as Mr. Skarga or indeed Mr. Borisenko implemented an agreed scheme by ensuring that Sovcomflot or one of the companies in the group entered into the transactions, they generally did so when they were in Russia. For example, all the

meetings of the Sovcomflot Executive Board which decided upon, approved or ratified transactions took place in Russia, and minutes of meetings of the Fiona board were signed in Russia by Mr. Skarga, Mr. Borisenko and others. Mr. Privalov, as the claimants allege, was party to the schemes (other than the Sovcomflot time charters scheme), and, working from London, provided important assistance to implement them, but the defendants pointed out that, according to Mr. Privalov's own evidence, his discussions with Mr. Nikitin, Mr. Skarga and Mr. Borisenko took place sometimes in Russia and on other occasions in London or elsewhere. In any event, it seems to me that, if, as the claimants allege, Mr. Skarga was party to the schemes, Mr. Nikitin's collusion with him as Sovcomflot's most senior executive is of greater significance than Mr. Privalov's relatively junior participation in them, and Mr. Skarga's role in implementing them by way of ensuring that Sovcomflot agreed to transactions designed to benefit Mr. Nikitin and his companies at Sovcomflot's expense was, in terms of identifying the wrongful acts that caused Sovcomflot damage, of greater significance than the arrangements that Mr. Privalov made in the London market in order to implement the transactions. In substance the impact of the financial damage was suffered by Sovcomflot in Russia.

168. Against this background, I should refer to the particular considerations upon which the claimants relied in relation to the schemes in support of their contention that the most significant elements of the wrongdoing occurred in England, or at least outside Russia. These will be explained further when I later deal with the various schemes.

i) In the case of the Sovcomflot Clarkson commissions scheme, the claimants said that (a) Mr. Nikitin made his arrangement with Clarkson in England, and (b) Mr. Privalov and Mr. Gale carried out the transactions under the scheme in London.

ii) In the case of the Tam commissions scheme, the claimants said that the scheme was carried out in England by Mr. Privalov and Mr. Andrew Wettern, an English solicitor and then a partner in the firm of Watson, Farley and Williams ("WFW") in London.

iii) In the case of the hull no 1231 commission scheme, the claimants relied upon the facts that Mr. Privalov conducted negotiations with BCV in England, as well as in Switzerland, and that the agreements by which the scheme was implemented were prepared by Mr. Wettern in England (although the loan agreement was executed in Russia).

iv) The claimants' case is that the arrangement between Mr. Skarga, Mr. Privalov and Mr. Bonehill for the Norstar commissions scheme was made or confirmed at a meeting in Switzerland. They relied, however, upon the fact that Mr. Privalov arranged in England for payments to be made under it and otherwise to carry it out.

v) The claimants recognised with regard to the RCB scheme that some of the relevant events, including discussions between Mr. Cepollina and RCB, meetings with RCB, arrangements with BCV and the formal closing of the agreement to acquire the debt, occurred in Switzerland, and that the Sovcomflot Executive Board meeting of 9 August 2001 took place in Russia. However, they said that the most significant elements of the wrongdoing took

place in England because Lawrence Graham discussed the matter with Mr. Privalov and drew up documentation in England.

vi) In the case of the SLB arrangements scheme, the claimants relied upon the facts that Mr. Privalov negotiated the transactions in London, that Mr. Wettern prepared the documentation in London and that the documentation for the SLB arrangements concluded in November 2002 (to which I shall refer as the "November SLB arrangements") was executed in England. However, the documentation for the "Fili" transactions, and the SLB arrangements concluded in July 2002 (the "July SLB arrangements") was signed in Russia.

vii) In the case of the termination of the SLB arrangements scheme, the claimants observed (a) that Mr. Gale was in England when he reduced the value of the Arbat vessels, and (b) that the documentation was drawn up by Mr. Wettern in England and executed in England by Mr. Wettern and Mr. Privalov.

viii) In the case of the newbuildings scheme, the agreements whereby the Standard Maritime defendants acquired the benefit of the options and shareholdings were drawn up in England and executed in England. The claimants also relied upon the fact that the Supplemental Agreement to which I shall refer was drawn up by Mr. Wettern in England

169. The claimants did not argue that, as far as the evidence goes, any element of the events constituting the wrongs in relation to the Sovcomflot time charters scheme or the "Romea Champion" commission scheme occurred in England. The time charters record that they were made in Switzerland, except in the case of the charters of the "Fili" and the "Azov Sea" which were stated to be made in Finland. The claimants argued that, if the law governing issues about the Sovcomflot time charters scheme were to be determined by the general rule, the law of the country where the most significant elements of the events constituting the tort occurred would be Swiss or Finnish, but that those laws are displaced by English law because of the secondary rule. They said that the most significant elements of the events constituting the "Romea Champion" commission scheme occurred in Switzerland because the scheme was carried out when Sovchart acted in Switzerland on Mr. Skarga's instructions, when Fiona paid money from their Swiss bank account to Sovchart's Swiss bank account, and when the money was then transferred to PNP's Swiss bank account and on to Milmont's Swiss bank account.

170. I consider that some of the matters upon which the claimants relied are not elements of the events that constitute a conspiracy relating to the scheme in question or to a transaction under it, and the conspiracies are the focus of the claimants' allegations. Although lawyers' documentation was required in order to carry out the schemes, I do not regard the drafting work of Lawrence Graham and Mr. Wettern as an event constituting the tort of conspiracy. In the case of the newbuildings scheme, the Supplemental Agreement was drawn up after any tort had been completed. In any event, I would not consider these matters to be significant events for the purpose of deciding where the tort is to be regarded as having occurred. I have explained why I consider the part played in London by Mr. Privalov in carrying out the schemes to be less significant than the events in Russia. The same applies to the part played in Switzerland by Sovchart in carrying out the Sovcomflot time charters scheme and the "Romea Champion" commission scheme.

171. The claimants' arguments are strongest, as it seems to me, in relation to the other commissions schemes, because of the role played by the brokers in London and because Clarkson were engaged to act for Sovcomflot and the Clarkson arrangements with Mr. Gale were made in London. But here too, on balance, I accept the defendants' submission that, if Mr. Skarga was a participant in the schemes, the most significant elements of the conspiracy in relation to them occurred in Russia. It was there that the crucial arrangements in relation to the schemes would have been made between Mr. Nikitin and the senior conspirator in the Sovcomflot organisation, the originating steps to carry them out were taken in Russia, and the events in London flowed from what occurred in Russia. In my judgment, therefore, if the general rule under the 1995 Act is applied to the claims of conspiracy in relation to the various Sovcomflot schemes, the applicable law is Russian.

172. The claimants submitted that, nevertheless, the issues relating to the conspiracy claims are to be determined by English law because the general rule is displaced by the secondary rule in section 12 of the 1995 Act; that is to say, that it is apparent that it is substantially more appropriate for the issues to be determined by English law if the significance of the factors that connect the tort with Russia are compared with the significance of the factors that connect the tort with England. The factors that may be considered in applying the secondary rule are not limited to where events constituting the tort occurred. The claimants relied not only upon the considerations that they invoked in relation to the general rule but also upon the fact that the contracts and arrangements with yards, purchasers of vessels, charterers and other third parties whereby the various schemes were implemented were governed by English law through the parties' express choice and in many cases had English jurisdiction or English or London arbitration provisions.

173. The law indicated by the general rule is not displaced simply because on balance, when all factors relating to a tort are considered, those that connect the tort with a different country prevail. That would emasculate the general rule. The secondary rule is applied only if it indicates that another law is substantially more appropriate. In my judgment, the considerations identified by the claimants, including the terms of the contracts implementing the schemes, are not sufficient to displace the general rule so as to have any issues relating to the conspiracy claims in the Fiona actions determined by English law. On the contrary, when the secondary rule is considered, the defendants for their part are entitled to invoke "factors relating to the parties" (see section 12(2) of the 1995 Act), and so they rely upon the facts that Sovcomflot is the parent company of a nationalised Russian group of strategic importance and that the defendants are for the most part Russian individuals or companies said to be owned or controlled by Russians. These factors seem to me of more importance than the terms of the agreements with third parties through which the schemes were implemented, and, had I not concluded that the general rule requires the application of Russian law, I would have accepted the defendants' submission that the secondary rule applies and that English or any other law is displaced in favour of Russian law.

174. It is true that the schemes said to have been devised by the conspirators were played out on the international stage. They implemented their schemes in different countries according to the business and activity involved. They used companies incorporated in the BVI and elsewhere. They carried on their banking and conducted their financial dealings through Swiss banks. They dealt with sales and purchases of ships

and ship financing transactions through London. Sovcomflot dealt with charters in Switzerland. Because many of the schemes concerned sales and purchases and ship financing, much of the business about which the claimants complain was done through London. Because the schemes concerned shipping, the contractual arrangements by which they were conducted were governed by English law, as is commonly chosen by the parties to contracts of this kind. However, the focus of the conspiracy remained Russian and the collusion was based in Russia although the schemes were played out elsewhere.

175. I come to the claimants' alternative contention about the commissions claims, that there were conspiracies to which Mr. Skarga was not a party. The thrust of those claims is that Mr. Nikitin, with Mr. Privalov's assistance, made agreements with the brokers whereby they made payments to him or his companies at the expense of the Sovcomflot group. Although the claimants' pleadings do not clearly distinguish these alternative contentions about the conspiracies, the shape of the pleadings does not rule the scope of the court's inquiry, and the law applicable to the issues that arise upon the alternative contention require separate consideration. Here any discussions or exchanges between Mr. Nikitin and Mr. Skarga and anything that Mr. Skarga did in Russia to give effect to an arrangement with Mr. Nikitin cannot be invoked by the defendants as being events constituting the tort or factors connecting the tort to Russia. The nature of the alternative contention in relation to the commissions claims is, to put it in general terms, that Mr. Nikitin approached Mr. Privalov and brokers working in the London market because he saw the opportunity to exploit the business that they were handling in London to his advantage and he enticed them, in breach of their duties to their principals, to assist him to exploit it. If that was the nature of the conspiracy, the significant events were Mr. Nikitin's meetings with the brokers and Mr. Privalov in London to establish the arrangements between them and the business conducted in England through the London market in order to give effect to the arrangements. In my judgment, the application of the general rule under the 1995 Act means that issues relating to a conspiracy of this kind in relation to commission schemes are determined by English law. Indeed, Mr. Berry in his closing submissions did not really dispute this.

176. The position about the "Romea Champion" commission scheme is different from that of the other Sovcomflot commissions schemes. There is no evidence about where any events constituting the alleged tort occurred, except that commission was routed to Milmont through payments between Swiss bank accounts. In view of my conclusions of fact, I need not, I think, consider further which law governs this small claim.

177. The 1995 Act also applies to the claims for damages and an account on the basis of the tort of bribery and on the basis of dishonest procurement of or assistance in breaches of fiduciary duty, and the same considerations to which I have referred in relation to the conspiracy claims lead me to similar conclusions in relation to these other claims. In so far as the claims are made on the basis that Mr. Skarga was party to the schemes, issues relating to them are to be determined in accordance with Russian law. I observe that the claimants did not submit that in these circumstances any claim against Mr. Nikitin or the Standard Maritime defendants on the basis of procuring a breach of fiduciary duty on the part of brokers or of Mr. Privalov or of FML because of Mr. Privalov's conduct is to be determined by a different law from

claims put on the basis that they procured a breach of fiduciary duty on the part of Mr. Skarga in relation to the same scheme. I consider that they were right not to argue that such fine distinctions should be made. However, as with the conspiracy claims, the position is different if Mr. Skarga was not party to the schemes, and I consider, for the reasons explained in relation to conspiracy, that in these circumstances the issues are to be determined by English law.

178. In reaching this conclusion, I do not overlook that, in the case of the claims in bribery, the general rule under the 1995 Act requires that consideration be given to where the bribe occurred. Payments were not made to Mr. Privalov or to Mr. Borisenko in Russia. The claimants' case is that Mr. Nikitin arranged for payments for Mr. Privalov's benefit to be made into accounts in the Isle of Man and, in larger amounts, into accounts in Switzerland. They said that Mr. Nikitin and Mr. Skarga arranged for payments for Mr. Borisenko's benefit to an account in Switzerland. As for payments and other benefits for Mr. Skarga, the claimants do not claim to have discovered where payments have been made to him on a comparable scale. The benefits that they claim to have identified are holidays in various countries other than either Russia or England, an educational visit to England for one of Mr. Skarga's children, payments to discharge a credit card account made in Switzerland and a payment said to relate to Russian land purchased by Mrs. Skarga, which was made into an account in Cyprus. None of these considerations materially strengthens the claimants' contention that English law governs issues between the parties. On the contrary, the nature of the bribery allegations made by the claimants to my mind strengthens the defendants' contention that Russian law applies to issues where the 1995 Act determines the governing law. Bribery includes not only payments and the provision of benefits but also the promise of them. The claimants' case is that Mr. Borisenko was bribed by promises made in Russia. They also say that, at least in relation to the SLB arrangements scheme, Mr. Privalov was promised payments by way of bribes when he met Mr. Nikitin and Mr. Skarga in Russia. If Mr. Skarga received significant bribes from Mr. Nikitin, it is likely that they were arranged and promised in Russia.

179. There are claims against Standard Maritime defendants for knowing receipt of sums that they received in relation to RCB scheme, the newbuildings scheme, the Sovcomflot commissions claims, the hull no 1231 commission scheme and the "Romea Champion" commission scheme. The claimants' case is that, upon Mr. Nikitin's directions, various companies, including Standard Maritime defendants, received payments into bank accounts in Switzerland. As I have said, in some circumstances the place where the payment was received is likely to be relevant to determining which law has the closest and most real connection to issues relating to a claim for knowing receipt, and so to determining which law governs them, but when, as is alleged here, payments were made into accounts in a Swiss branch of a Swiss bank in the name of a BVI company owned or said to be owned through bearer shares by a Russian or by Russians, I do not find it easy to determine where the payment was received in any meaningful or substantial sense, and I am unable to accept that this question plays any significant part in deciding which law is most really and closely connected with the claim.

180. I consider that in this case what is more significant is what led to the payments being made in circumstances that justify a claim against the recipient. This approach requires that the governing law should be determined by reference to similar

considerations to those which apply under the 1995 Act. In particular, it means that the important considerations include where any breach of fiduciary duty that caused or allowed the payment to be made took place, and how and where the recipient came to know that the claimants were entitled to the monies paid. In other words, important considerations are that, as the claimants primarily contended, the payments were made because of events in Russia where Mr. Skarga, and also Mr. Borisenko, acted in breach of their fiduciary duties and Mr. Nikitin, through the arrangements that he had made, knew that the payments were made in breach of such duties. I therefore conclude that, in so far as the knowing receipt claims are brought on the basis that the payments were made in circumstances involving dishonesty and breach of duty on the part of Mr. Skarga, their closest and most real connection is with Russian law, and that issues relating to the claims are governed by Russian law. In so far as they relate to a commissions claim made on the alternative basis, they are based upon breaches of fiduciary duties committed by brokers or by Mr. Privalov, both of whom were working from London. Although the claims depend upon Mr. Nikitin knowing of the breaches of duty, I conclude that in these circumstances the closest and most real connection is with English law, and so issues are governed by English law.

181. I reach similar conclusions with regard to the claims in the Intrigue action for similar reasons. The parties' submissions mirrored those in the Fiona actions. I consider that, in so far as the claims are made on basis that Mr. Izmaylov was party to schemes with Mr. Nikitin and others, the issues relating to those claims are governed by Russian law. The collusion between Mr. Nikitin and Mr. Izmaylov, which according to the claimants' primary case is the crucial relationship that involved NSC in the impugned transactions, took place in Russia, and Mr. Izmaylov worked in Russia to give effect to what they had arranged. In so far as commissions claims are pursued on the alternative basis that, notwithstanding there was no relevant breach of duty on the part of Mr. Izmaylov, Mr. Nikitin and the Standard Maritime defendants are liable for their part in schemes involving the brokers, I conclude that the issues between the parties are to be determined in accordance with English law.

Background

182. Before considering the various schemes and the evidence upon which the claimants rely in support of their specific allegations of dishonesty, I shall say something about some more general matters, including:

i) The personalities, relationships and disputes that are the background to this litigation, which according to the defendants explain why the claimants have brought their claims.

ii) The nature and extent of the investigations that the claimants have conducted into the defendants' affairs.

iii) The corporate and management structure of the Sovcomflot group and the NSC group.

iv) The financial position of the Sovcomflot group and their financial and business strategies.

v) The credibility of the evidence of some of the claimants' witnesses.

The defendants' case about why the Fiona actions were brought

183. Mr. Nikitin was born in St Petersburg, attended the Ship Building Institute there in the 1970s and worked in the city between 1978 and 1982 and again from 1987. Between 1982 and 1987 he studied and worked in Moscow, and, when studying for a postgraduate qualification in foreign trade, he met Mr. Malov, and through him Mr. Katkov and Mr. Timchenko.

184. In 1987 Mr. Adolf Smirnov, who was the Deputy General Manager of Kirishinefteorgsintez (which is generally known as "Kinef"), a major Russian refinery and a subsidiary of Surgutneftegaz, one of Russia largest oil and gas producers, was responsible for setting up a trading organisation for Kinef. He established Kirishineftekhimexport (or Kirishi petroleum chemical export), which is also known as and to which I refer as "Kinex", and he recruited Mr. Malov to be Kinex's Deputy General Manager. Kinex were responsible for trading Kinef's oil products and making overseas purchases. In the late 1980s Mr. Timchenko and then Mr. Katkov joined Kinex. According to Mr. Nikitin, around this time Mr. Timchenko established good relations with Mr. Vladimir Putin, who was then the deputy mayor of St Petersburg and who was, of course, to become the President of the Russian Federation and is its Prime Minister. Mr. Putin's deputy was then Mr. Igor Sechin, who was Deputy Chief of the Russian Presidential Administration while Mr. Putin was President and is now First Deputy Prime Minister.

185. Kinex soon became a separate legal entity from Kinef, and in 1991 they moved to their own premises outside Kinef's Kirishi refinery. Kinex was run by Mr. Smirnov, Mr. Timchenko, Mr. Katkov and Mr. Malov (the "Kinex partners"), and proved to be very profitable during the period of "perestroika", particularly after it had expanded into oil trading. Mr. Timchenko was based in Helsinki, working for the Urals Group, and on behalf of the Kinex partners effectively came to control the Urals Group in Scandinavia. After the Russian Federation had been established on 25 December 1991, Mr. Timchenko and his Kinex partners continued to expand Kinex's operations.

186. In 1994 Kinex became a shareholding company, and in 1995 and 1996 Kinex, Kinef and Surgutneftegaz were all privatised, Kinef becoming part of Surgutneftegaz but Kinex remaining independent. When 51% of Kinex was privatised in 1995, the shares were distributed to employees, including the top managers, Mr. Malov, Mr. Katkov, Mr. Timchenko and Mr. Smirnov. They bought more shares when the remaining 49% of the company was sold in 1996. In 1997 Kinex became a joint stock company, but in 1998, following the Russian financial crisis, it went through a bankruptcy process and was replaced by a new company called the Kinex Group, the sole and equal shareholders being the Kinex partners.

187. In 1989 Mr. Nikitin and his father-in-law, a former sea captain, had set up a company based in St Petersburg providing survey and tallying services. It was very successful and Mr. Nikitin prospered. He had made his first $1 million by 1992. In 1992, Mr. Malov on behalf of himself and the other Kinex partners proposed to Mr. Nikitin that together they should develop Kinex's shipping business, and Mr. Nikitin should set up a shipping company which would charter vessels to carry Kinex's cargoes, the profits being shared equally between Mr. Nikitin and the Kinex partners. Accordingly, in 1992 Kirishi Shipping was established, and in 1998 the business was incorporated in

the BVI under the name of PNP. Its offices were in St Petersburg. The beneficial owners of PNP were Mr. Nikitin, Mr. Malov, Mr. Katkov and Mr. Timchenko, who "took care of" Mr. Smirnov's share as well as his own. As Kinex prospered in the 1990s, the business of Kirishi Shipping and then PNP rapidly grew, and by the late 1990s they were handling up to 1 million tons of cargo each month and chartering around 200 vessels per year, including ships of NSC. They chartered on the spot market, but by about 2000 Mr. Nikitin had come to the view that PNP should start to hire vessels on time charters and he discussed this possibility with the Kinex partners.

188. During this period, Mr. Nikitin came to know brokers through whom he chartered vessels for PNP, including Mr. Claudio Cepollina of Italia Chartering srl ("Italia") and Alexia Shipping. He also established relationships with bankers, including Mr. Michael Baum, whom he met as the general manager of a branch of Credit Suisse. When Mr. Baum moved to Wegelin Bank in St Gallen, Switzerland, Mr. Nikitin transferred his private banking to Wegelin, although the shipping business continued to bank with Credit Suisse. Through Mr. Nikitin's introductions Mr. Katkov, Mr. Malov and Mr. Timchenko also opened accounts at Wegelin.

189. Mr. Nikitin also became a partner in the railway activities of Kinex, which later came to be managed through an off-shore company called Nikolas Invest Corporation ("Nikolas"). The profits were shared by Mr. Nikitin, the Kinex partners, and Mr. Aadu Lukas, who had an interest in and exercised some control over the Pakterminal berth in Tallinn, Estonia. In 1999 Kinex began to trade Surgut crude oil (as well as continuing to trade oil products produced by the Kirishi refinery) through a BVI company called Gunvor Energy. Crude oil from the pipeline carrying Surgut crude to the Kirishi refinery was transported by rail for shipment at the Baltic ports. This produced business for both PNP and the railway business in which Mr. Nikitin and his associates had an interest. The ultimate beneficial owners of Gunvor Energy were Mr. Nikitin, Mr. Timchenko, Mr. Katkov, Mr. Malov and Mr. Lukas, and also a Mr. Torbjorn Tornqvist, a friend of Mr. Timchenko.

190. Mr. Timchenko's relations with Mr. Malov and Mr. Katkov deteriorated and in the spring or summer of 2003 the Kinex partners decided to end their collaborative ventures and to go their separate ways. Mr. Nikitin attributed this, at least in part, to Mr. Timchenko's belief that, because he enjoyed a good relationship with President Putin, he did not need to include Mr. Malov and Mr. Katkov in his new enterprises, including the business of Gunvor International which he set up in 2002. Further, Mr. Malov and Mr. Katkov resented that Mr. Tornqvist, whom Mr. Timchenko had introduced into the business, was, as they saw it, improperly exploiting his position. For whatever reason, the collaboration behind Kinex ended in acrimony. Messrs Malov and Katkov planned to disrupt Mr. Timchenko's business by gaining control of the companies that owned the rail link from Kirishi refinery to Estonia, the shares in which were held equally by Mr. Timchenko, Mr. Malov, Mr. Katkov and Mr. Nikitin. When Mr. Timchenko heard of the plan, he sought to acquire Mr. Nikitin's shares, but Mr. Nikitin preferred to sell them to Mr. Malov and Mr. Katkov and in return he acquired their shipping interests. Mr. Nikitin's evidence was that Mr. Timchenko threatened revenge, and I accept that he did make some aggressive threats against Mr. Nikitin.

191. As a result of the division of their business interests in 2003, Mr. Nikitin took control of PNP, and acquired the interests owned by Mr. Malov, Mr. Katkov, Mr. Timchenko

and Mr. Smirnov. PNP continued to operate from the offices in St Petersburg with a staff of about ten people, including a General Manager, who was Mr. Leonid Guskov from about the beginning of 2004, and Mr. Sergei Pavlov, who was mainly responsible for chartering. The staff also included a Mrs. Erastova, who dealt with accounts, and a Ms. Svetlana Malysheva, who now lives in England and still works for Mr. Nikitin.

192. Mr. Nikitin's businesses continued to be enormously profitable. Undoubtedly this was not least because of the profitable arrangements that PNP and other Standard Maritime defendants made with Sovcomflot and, to a lesser extent, with NSC, but this in itself does not mean that the arrangements were improper. There was a remarkable and sustained boom in the shipping market over this period, until it suffered a crash of unprecedented severity in 2009. The strength of the market took by surprise many who were experienced and respected in it, and many commentators were sceptical about whether prices would remain so strong for so long. Those such as Mr. Nikitin who committed themselves to investment in it were able to earn enormous profits.

193. In broad terms, in about 2000, the shipping market began to recover after two decades in which it had generally been depressed. The recovery was checked in 2001, particularly after the attacks in New York and Washington on 11 September 2001, and rates fell in late 2001 and into 2002. They stabilised in 2002, but there is room for debate about when the sustained boom really began. Mr. Colin Pearce, who gave expert evidence for the claimants about chartering rates, said that it did so in around November 2002, after the Turkish government had announced in October 2002 traffic control measures for larger (Suezmax and Aframax) tankers going through the Bosphorus on voyages into and from the Black Sea. Mr. Jens Huttemeier, who gave evidence for the defendants, considered that the market did not really "take off" until the autumn of 2004. It suffices for present purposes to say that between 2002 and the latter part of 2004 many in the shipping industry did not recognise how strong the market was or how sustained its strength would prove to be. For example, in February 2002, Dr Martin Stopford, the Managing Director of Clarkson Research Services Ltd., whose views are held in great respect, attended a banking conference held by Sovcomflot in Krasnogorsk and expressed a distinctly gloomy view of the tanker market, referring to "weak fundamentals" and a heavy order book for tankers with a "weak demand outlook". When he spoke at another such conference in Limassol, Cyprus in May 2004, he considered that the "short term" outlook for tankers was good, but warned "watch out from mid 2005 onwards". There is no dispute that by the autumn of 2004 at the latest the market was extraordinarily buoyant, and between 2005 and 2008 there was strong and sustained upward trend in prices upon which any short-term downward movements had no real impact.

194. Mr. Skarga graduated from the St Petersburg Maritime Academy in 1992 with an engineering degree in marine transport management and joined Kinex. His duties involved him working with Mr. Nikitin upon export operations. Although Mr. Skarga worked from the Kirishi refinery and Mr. Nikitin from St Petersburg, they met frequently and went on business trips together. Through the business relationship, they became friends despite their different ages and circumstances. Mr. Nikitin, then aged 37 or 38 years, was considerably older than Mr. Skarga, who was aged about 21, and he was much richer than Mr. Skarga. During the 1990s Mr. Nikitin would pay

for Mr. Skarga's family holidays and other expenses, such as hospital charges when his daughter was born. There was no suggestion that Mr. Nikitin was motivated to do so by anything other than generosity and friendship.

195. Mr. Nikitin remained a close friend of Mr. Skarga. When Mr. Skarga became Sovcomflot's Director-General in 2000, he was aged 29. Mr. Nikitin continued to provide family holidays for Mr. Skarga, and they still spoke and met frequently. Mr. Nikitin would visit Moscow about once a month and usually met Mr. Skarga, and, when he came to St Petersburg, Mr. Skarga would visit him. They generally spoke by telephone once or twice a week. Mr. Nikitin's evidence was that he regarded Mr. Skarga as a friend rather than as a business associate. I accept that Mr. Nikitin was a genuine friend of Mr. Skarga, but he also recognised that Mr. Skarga was now an extremely useful business contact. He also had considerably more experience of the shipping industry than Mr. Skarga, and was in a position in which he could exert influence over his thinking about how Sovcomflot might develop.

196. Mr. Izmaylov first met Mr. Nikitin in the summer of 2000, when Mr. Izmaylov was Deputy Director-General of Sovcomflot. Mr. Skarga invited Mr. Izmaylov and Mr. Borisenko to a lunch attended by Mr. Nikitin, Mr. Malov and Mr. Katkov. While he was still at Sovcomflot Mr. Izmaylov had lunch with Mr. Nikitin, Mr. Skarga and Mr. Borisenko on at least two other occasions. He did not develop a close relationship with Mr. Nikitin before he joined NSC. When he did so, Mr. Nikitin (in the words of his witness statement of 13 February 2009) "made it [his] business to speak to him as soon as possible".

197. Mr. Skarga was appointed Director-General of Sovcomflot on 6 May 2000 in accordance with a Government Resolution signed by Mr. Putin. He had left Kinex on 24 March 2000 and moved to Moscow to work at the Ministry of Economic Development for a few weeks before taking up his appointment.

198. Mr. Borisenko had been working for Sovcomflot as acting Director-General since November 1999 and had hoped for a permanent appointment. He believed that he had the support of Mr. Sergei Frank, who was then the Minister of Transport and a member of the General Board of Sovcomflot. Mr. Frank was indeed unhappy about Mr. Skarga's appointment, and at a meeting with Mr. Skarga in April 2000 Mr. Frank told him so. He would have preferred Mr. Borisenko to have the position. Mr. Skarga thought that this was because, when Mr. Borisenko had been acting Director-General, Mr. Frank had effectively controlled Sovcomflot and wished to continue to do so. Mr. Frank denied this, and I accept that he simply considered Mr. Borisenko better qualified. Certainly he was much more experienced. Mr. Frank respected the General Board's decision to appoint Mr. Skarga, and consented to it in his capacity of Minister of Transport.

199. Mr. Skarga left Sovcomflot in October 2004 against the background of a dispute about whether Sovcomflot should merge with NSC, a proposal that Mr. Frank supported and that Mr. Skarga and Mr. Izmaylov, as President of NSC, resisted. Mr. Frank is now the Director-General of Sovcomflot, having succeeded Mr. Skarga. He has been involved in the shipping industry since 1989, and in 1995 became Deputy Director of the Department of Maritime Transport for the Ministry of Transport of the Russian Federation. From 1998 until February 2004 he was the Minister of Transport, and in that capacity between November 1998 and June 2003 he served as a

member of the General Board of Sovcomflot. The last meeting of General Board that he attended in that capacity was on 31 July 2002, although he voted by ballot upon decisions of the General Board that are recorded as having been made at a meeting on 28 May 2003. He did not seek re-election to the General Board in 2003, because he perceived a potential conflict of interest with his responsibilities as Minister of Transport. It was suggested to him that his real reason for ceasing to serve on the General Board was that he faced allegations of corruption, but no convincing evidence supported the suggestion and I reject it.

200. Mr. Frank resigned as Minister of Transport in February 2004, and he became the chairman of an operational committee to assist in the merger of the Ministries of Transport, Communications and Railways. In this capacity, he discussed with Mr. German Gref, who was Minister of Economic Development and Trade, the potential benefits of a merger between Sovcomflot and NSC, and, at Mr. Gref's suggestion, he undertook a study of the proposal. When Mr. Skarga and Mr. Izmaylov heard about this, they asked to meet Mr. Gref, Mr. Frank and Mr. Dimitry Kozak, who was then the Chairman of General Board of Sovcomflot, and in April 2004 they made clear their opposition to merger. Mr. Gref suggested that an advisor, such as J P Morgan, should examine various possible strategies for the future of the companies, including that the Sovcomflot group, instead of merging with NSC, might seek to raise $300 million through an Initial Public Offering ("IPO") on the New York Stock Exchange of shares in Fiona, a possible source of funding for Sovcomflot which had been under consideration since before 2002 and a proposal that Mr. Skarga supported. On 10 June 2004 Sovcomflot produced a feasibility study for an IPO, which contemplated changing Fiona's registration from Liberia to Bermuda in order to provide investors with a higher degree of security and selling between 40% and 45% of the shares for some $300 million.

201. In June 2004 Mr. Skarga again met Mr. Frank, who had become an Assistant to Mr. Mikhail Fradkov, the Prime Minister of the Russian Federation. He reiterated his opposition to the merger proposal, and explained his support for an IPO. Mr. Frank told Mr. Skarga that he considered that the IPO proposals undervalued Fiona. According to Mr. Frank, Mr. Skarga indicated that Mr. Frank would be rewarded financially if he supported the IPO. Mr. Frank and Mr. Skarga clearly had quite different views about how Sovcomflot should develop, but I am unable to accept that Mr. Skarga would have made a suggestion of this kind to someone of Mr. Frank's position. There is no support for the evidence of Mr. Frank, whom, for reasons that I shall explain, I do not regard as a reliable witness, and I reject the allegation.

202. At about the end of July or the beginning of August 2004, Mr. Frank recommended to the Ministry of Economy and Trade a merger between Sovcomflot and NSC. In about the middle of September, Mr. Igor Shuvalov, who was then Chief Economic Advisor to the Russian President and was designated to be the new Chairman of Sovcomflot, supported the merger proposal, and decided that Mr. Frank should replace Mr. Skarga as Director-General of Sovcomflot in order to pursue the policy.

203. By about July 2004 it was widely rumoured that Mr. Skarga would be replaced as Director-General of Sovcomflot. He and others knew that his position was under threat. On 2 September 2004 Mr. Frank was re-appointed to the Sovcomflot General Board. At a meeting of the shareholders of Sovcomflot on 4 October 2004, Mr. Skarga's appointment as Director-General was terminated with effect from 7 October

2004, and Mr. Frank was appointed in his place. By a severance agreement dated 13 November 2004 Sovcomflot agreed to pay Mr. Skarga some 24 million roubles (or the equivalent of some $868,000) by way of compensation. Mr. Frank indicated that Mr. Skarga might, if interested, be able to stay with Sovcomflot in some capacity, but Mr. Skarga wished to go into politics. He was appointed as a Senator in the Upper Chamber of the Russian Federation Parliament on 27 October 2004. Mr. Skarga signed a handover document entitled "Act of Transfer and Acceptance", which named Mr. Frank as his successor. No suggestion had been made that Mr. Skarga had been dishonest or corrupt, or had acted against the interests of Sovcomflot. His disagreement with Mr. Frank had, however, been acrimonious.

204. After the Fiona action was brought against Mr. Skarga, he was asked to resign from the Russian Senate and he did so by letter dated 25 September 2006. He left Russia on 17 October 2006 and has not since returned.

205. According to Mr. Nikitin, after the Fiona action had been brought he heard "from sources whom I cannot name (for fear of their safety)" that Mr. Timchenko, together with Mr. Frank and Mr. Sechin, was "behind the criminal and civil action being taken against me". He and Mr. Skarga submitted that the Fiona actions against them, like the criminal proceedings, have been brought because of Mr. Nikitin's dispute with Mr. Timchenko and Mr. Skarga's dispute with Mr. Frank. They said that, even before Mr. Skarga had left Sovcomflot, moves had been made to undermine their positions and to compromise them. They gave evidence that on 22 July 2004 the police conducted armed raids on the offices of Henriot in St Petersburg, of Sovcomflot in Moscow and of NSC in Novorossiysk, and Mr. Skarga's evidence was that, when a few days later he spoke to Mr. Frank about the raids, Mr. Frank obviously knew about them. They maintained that Mr. Katkov and Mr. Malov have not been the target of proceedings, despite them having an interest in some of the transactions of which the claimants complain, because Mr. Frank is on friendly terms with them as well as with Mr. Timchenko. (Mr. Smirnov, who also had some involvement in Mr. Nikitin's business ventures, died in 2004 before these proceedings were brought.)

206. This submission and the evidence upon which the defendants relied were disputed by the claimants. Mr. Frank denied a close relationship with Mr. Katkov, Mr. Malov and Mr. Timchenko. He said that he had met Mr. Katkov only 5 or 6 times since 2000; that he first met Mr. Timchenko in December 2004; and that he is uncertain whether or not he met Mr. Malov before 2005. There is no reliable evidence to the contrary, and I accept this.

207. Mr. Frank also denied any knowledge of police raids. According to Mr. Izmaylov, officials came to NSC's offices demanding on behalf of the tax authorities documents and computers relating to dealings with Henriot, but left when they were told that the demand was illegal. Mr. Nikitin said that he learned what happened at St Petersburg from a member of the staff there, but was uncertain which employee reported it. I cannot accept that he would have forgotten who reported to him a co-ordinated armed police raid. I accept that there was some official demand for information such as described by Mr. Izmaylov, but I reject the more dramatic accounts of Mr. Skarga and Mr. Nikitin.

208. In any event, this question does not affect the issues upon which the claims in these proceedings depend. As Mr. Popplewell submitted, the claimants' motives in bringing and pursuing the proceedings are of no direct relevance to what I have to decide. If the claimants have a claim that is good in law, they are entitled to succeed whatever their motives. The possible relevance of these issues might be that, if the defendants' contentions are well founded, they would support their submissions (i) that the claimants have gone to extreme lengths to find evidence of wrongdoing on their part, and this makes it the more telling that they have put forward little or no evidence that they were involved in bribery or were corrupt; (ii) that Mr. Frank is not a credible witness; and (iii) that the evidence of other witnesses called by the claimants is unreliable because they are likely to have been put under pressure to support the claimants' case. I prefer to rely upon other more direct evidence about how the claimants have sought evidence against the defendants and about the credibility of the witnesses, and I need say no more about the defendants' contentions about the motivation behind the proceedings.

The investigation after Mr. Skarga left Sovcomflot

209. The claims in the Fiona action originate, it seems, in an investigation instigated by Mr. Frank into transactions that Sovcomflot had entered into with Mr. Nikitin and companies associated with him, including the Standard Maritime defendants. Mr. Frank started the investigation shortly after he was appointed as Director-General of Sovcomflot. The defendants say that its history shows that he was determined that, whatever the investigation revealed, Sovcomflot should bring proceedings against Mr. Skarga and Mr. Nikitin.

210. On his account, Mr. Frank was first concerned about the chartering policy adopted by Sovcomflot because of press reports that Sovcomflot and NSC vessels had been chartered at "soft" rates and because major oil companies were not chartering their vessels. He said that his suspicions were reinforced by what he was told by others. In particular, Mr. Sergei Terekhin, who was the First Deputy Director-General of Sovcomflot until in October 2005 he replaced Mr. Izmaylov as President of NSC, suggested that the chartering arrangements with PNP and companies associated with Standard Maritime should be investigated, and also, Mr. Frank believed, that the SLB transactions should be; and, when Mr. van Boetzelaer met him in Moscow in early October 2004, he criticised as "stupid" some of the options to extend hire periods to which Sovcomflot had agreed. Mr. van Boetzelaer also told Mr. Frank that Mr. Nikitin and Mr. Skarga had put him under pressure to allow Mr. John Betty to leave Sovchart and work for Mr. Nikitin, and that Mr. Nikitin had tried to remove from Sovchart's offices their files relating to broking work for his companies.

211. I shall consider the options to which Mr. van Boetzelaer was apparently referring when I examine the Sovcomflot time charters scheme. The other matters which Mr. van Boetzelaer is said to have reported to Mr. Frank seem to me unremarkable. Sovchart had held some files of Henriot and Remmy because they sometimes acted as Sovcomflot's broker when a vessel was chartered and for Henriot or Remmy upon a sub-charter of the same vessel. Mr. Nikitin asked Sovchart for the files relating to the sub-charters so as to arrange for them to be kept separately from the files about the head charters, but Sovchart were concerned that they should have ready access to them in case, for example, the Swiss tax authorities wanted to examine them. The question about where the files might be stored resolved itself because Sovchart ceased

to act for Mr. Nikitin's companies when Mr. Betty left Sovchart to establish his own broking business. He had been their broker while he was at Sovchart, and continued to act for them when he established his own business. I do not consider that Mr. Nikitin's request about the files excites suspicion that he was seeking to conceal the terms of the sub-charters from Sovcomflot, or otherwise indicates wrongdoing on his part. Nor is it odd that Mr. Nikitin should try to assist Mr. Betty when he decided to leave Sovchart in September 2004 and continued to act for Mr. Nikitin and the Standard Maritime companies through his own business.

212. The defendants dispute the evidence about what Mr. Frank was told by Mr. van Boetzelaer and Mr. Terekhin. Mr. Terekhin did not give evidence, and, although the claimants served two witness statements of Mr. van Boetzelaer, he declined to give oral evidence. His statements were in evidence, but much in them is inconsistent with other evidence and I do not regard them as reliable. No evidence significantly corroborates Mr. Frank's account of what he was told by Mr. Terekhin and Mr. Van Boetzelaer, and I do not accept that he was told anything about what Mr. Skarga had done or transactions for which he was responsible or which were concluded while he was in office that lends any support to the allegations against the defendants.

213. For whatever reason, however, in the autumn of 2004, Mr. Frank instructed Mr. Vladimir Mednikov, who was then at the Moscow law firm of Jurinflot, to advise about the chartering arrangements entered into with Mr. Nikitin and companies associated with him. At about the beginning of 2005, Mr. Mednikov joined Sovcomflot and in due course was appointed their Vice-President and Legal Director. At around this time an "Investigation Committee" was established, although, as became apparent through Mr. Frank's cross-examination, in fact the so-called committee comprised only Mr. Mednikov and another lawyer, Mr. Sergei Polevoy.

214. Mr. Frank and the Investigation Committee instructed Sovcomflot's auditors, Messrs Moore Stephens, to prepare a report about the purchase of newbuildings, and about the SLB arrangements made with Standard Maritime defendants in 2002 and their termination in 2004 in order to sell the vessels. No written instructions to Moore Stephens are in evidence, and apparently they were instructed orally.

215. Moore Stephens produced a draft letter dated 29 April 2005 for discussion purposes. In Appendix B to the draft letter, which is entitled "Sale of New Building Contracts to Standard Maritime Holding Corporation" and was concerned with the newbuildings scheme transactions, Moore Stephens concluded that no evidence had come to their notice that indicated improper conduct by the management of Sovcomflot or Fiona in connection with the transactions with Standard Maritime defendants. They observed that the agreements which are said to be the subject of the newbuildings scheme were negotiated and finalised by Mr. Skarga, and that "the arrangements … were not subject to the degree of scrutiny that we would expect of a group the size and prominence of [Sovcomflot]". Moore Stephens also referred in Appendix B to discussions with Mr. Borisenko in the course of the audits in 2003 and 2004 and with Mr. Robert Thompson, who was the Fleet Director at Unicom, and wrote, "From these discussions we were advised that the overall rationale behind the transactions was to develop a relationship with Standard Maritime. In addition to the management of the Standard Maritime's fleet, this relationship was intended to develop into joint projects relating to the ownership and operation of tanker vessels". Mr. Borisenko accepts that he gave this explanation to Moore Stephens, but denied that it was true.

I conclude that the explanation that Mr. Borisenko gave in 2003 and 2004 reflected his true understanding of the strategy that motivated Sovcomflot to enter into the transactions.

216. Moore Stephens reported upon their investigation into the SLB arrangements and their termination (which are said to have been under the SLB arrangements scheme and the termination of the SLB arrangements scheme) in a letter dated 28 July 2005. They concluded, on the basis of the information that they had been given during their audits, that no evidence had come to their notice that indicated improper conduct by the management of Sovcomflot or Fiona in connection with the SLB arrangements. Similarly they said that they had seen no evidence indicating any impropriety in relation to the termination of the arrangements, but they observed that, on the face of it, the Standard Maritime lessors and owners had done very well out of the termination and questioned whether Sovcomflot could have negotiated more favourable terms. They said that the arrangements appeared to have been negotiated and finalised by Mr. Skarga, and that the transactions and their termination were not subjected to the degree of scrutiny that they would have expected.

217. Moore Stephens reported in their letter of 28 July 2005 that they had spoken about the SLB transactions with "Mr. Borisenko (during the Fiona 2002, 2003 and 2004 audits) and senior members of the staff within the Fiona group in order to gain an understanding of the commercial rationale behind the transactions". Mr. Borisenko said in evidence that those to whom they spoke included "many, if not all, members of the Executive Board" and also Mr. Yuri Dobrynin, the head of Sovcomflot's Finance Department, and I accept that evidence. In 2002 Moore Stephens were told that the primary reason for entering into the SLB transactions was to fund the settlement of a debt owed by Megaslot to the Ministry of Finance; that Sovcomflot had entered into a large fleet expansion programme during 2001 and had entered into newbuilding contracts; and that the Arbat vessels that were the subject of the SLB arrangements were due for replacement in Sovcomflot's renewal programme. I conclude that these were indeed Sovcomflot's reasons for making the SLB arrangements, and that what Moore Stephens were told at the time was true.

218. I do not rely upon Moore Stephens' conclusions that there was no evidence of impropriety in relation to these matters. I cannot tell upon what information they formed this view, and I have heard evidence, including evidence from Mr. Nikitin, Mr. Skarga and Mr. Privalov, which was not available to them. Equally and for the same reason, I do not consider that the claimants' case is supported by their observations about the transactions being entered into without the degree of scrutiny that they would have expected. I cannot tell what Moore Stephens meant by that or what evidence that they had to support this opinion, but I do not consider that Mr. Skarga decided to enter into these transactions without other executives being involved and participating in the decisions. The reports of Moore Stephens do, however, make clear what they were told in the course of their audits in 2002 and thereafter by Mr. Borisenko and others about the reason for the SLB arrangements and the arrangements for cooperation in ordering newbuildings that were made between Sovcomflot and Mr. Nikitin and Standard Maritime defendants.

The "Project Sturgeon" investigations

219. At the end of 2004 and the beginning of 2005, Mr. Privalov was in St Moritz with Mr. Nikitin and Mr. Skarga. Mr. Nikitin said that he did not invite Mr. Privalov to join him and he suggested that "maybe [Mr. Privalov] heard about my plan and decided to come there", but I reject that suggestion. They arranged to be there together. Mr. Izmaylov too was in St Moritz at about the same time.

220. In early January 2005 Mr. Skarga signed two documents which were back-dated to a time when he was still the Director-General of Sovcomflot and which he purported to sign on behalf of companies in the Sovcomflot group: the so-called "Supplemental Agreement" and an employment contract between Mr. Privalov and FML. I shall refer to these later in my judgment, and it suffices at this stage to say that Mr. Privalov was contemplating leaving FML and (as I find, if it be disputed) he had so told Mr. Skarga. The back-dated employment contract improved the terms upon which he could leave FML, and in particular it provided that he should be paid a year's salary if he did so and freed him from restrictions about working for a competing business after leaving FML.

221. On 14 January 2005 Mr. Privalov gave one month's notice to terminate his employment with FML. Mr. Privalov had it in mind that he might work for Mr. Nikitin, and, as I conclude, whether or not Mr. Nikitin really contemplated engaging Mr. Privalov or using his services, he allowed Mr. Privalov to believe that he might do so. In the event Mr. Privalov did not, however, in fact end his employment when the notice expired on 13 February 2005.

222. On 14 February 2005 Mr. Frank and Mr. Mednikov met Mr. Privalov in London at the Carlton Towers Hotel over breakfast before the Annual General Meeting of FML that was to be held in London that day. Mr. Borisenko attended at least part of the breakfast meeting. Mr. Frank and Mr. Mednikov asked for Mr. Privalov's laptop, but he refused to let them have it. They questioned him about missing files and about what Mr. Frank called "very strange transactions". The defendants said that Mr. Privalov was subjected to threats, which were described in a letter to Mr. Frank dated 7 April 2005 and written by Clyde & Co, Mr. Privalov's solicitors. They wrote that Mr. Frank and Mr. Mednikov "threatened Mr. Privalov by saying that [they] would employ all possible means in order to implicate Mr. Privalov in a case which [they] intended to bring against, inter alia, the former management if Mr. Privalov left the employment of Fiona Maritime on 14 February 2005. You further mentioned that you would employ the Kroll Detective Agency in order to fabricate the case against Mr. Privalov or even MI6 if that was necessary. You also threatened that you would make the Inland Revenue investigate all Mr. Privalov's expenses until they found something…". The letter described the meeting of over an hour becoming "increasingly hostile and aggressive towards Mr. Privalov". This is consistent with a letter (to which I refer below) dated 21 February 2005 from Mr. Privalov to Mr. Shuvalov, the Chairman of the Sovcomflot General Board, in which he complained of threats made to him. It is also consistent with evidence that Mr. Privalov gave in a witness statement dated 8 July 2005 when a freezing order was first made against him in the Fiona action, in which he specifically referred to a threat by Sovcomflot to retain Kroll Detective Agency to investigate him.

223. In his oral evidence, Mr. Privalov said that he was threatened with an investigation that would cover, for example, his use of company credit cards. Mr. Frank said that he made it clear to Mr. Privalov that there was to be an investigation into serious

concerns about Sovcomflot's business, but denied that the meeting was hostile or aggressive or threatening. He also denied that there was any mention of private investigators, and said that he never had anything to do with Sovcomflot instructing private investigators to look into the affairs of Mr. Privalov or anyone else. I reject Mr. Frank's evidence about the meeting with Mr. Privalov on 14 February 2005. He did threaten to instruct private investigators. He did so because he wanted Mr. Privalov's assistance with an investigation into transactions concluded under Mr. Skarga.

224. After the breakfast meeting, on 14 February 2005, Sovcomflot instructed private investigators called Modus International (Forensic) Ltd. ("Modus"). This was the start of a wide-ranging enquiry conducted under the name of "Project Sturgeon". Mr. Frank said that the investigation was arranged by Sovcomflot's "legal team under Mr. Mednikov", but Mr. Frank was party with Mr. Mednikov to instructing Modus after the meeting with Mr. Privalov. It is clear, despite Mr. Frank's denial, that he met with Modus on 13 March 2005. Other investigators who had also been engaged by Sovcomflot, Hart Security Ltd. ("Hart"), reported that "Modus are attending a meeting with the Chairman of Sovcomflot on Sunday 13 March 2005". This can only refer to a meeting with Mr. Frank, although his official position was not stated accurately. Hart later reported that they were "instructed that, during a meeting with the Director-General, Sovcomflot on Sunday 13th March, they were to expect further taskings relating to Unicom".

225. By a letter dated 21 February 2005 Mr. Privalov confirmed his resignation from FML, and on 21 February 2005 he also wrote to Mr. Shuvalov, sending copies of his letter to Mr. Kozak and to Mr. Skarga, to inform him of his decision to leave Sovcomflot. He wrote "Director-General of [Sovcomflot], Mr. S. O. Frank has implemented mental pressure towards me by threatening me with FSB, British Intelligence MI-6, private detective agency "Kroll International", UK tax institution "Inland Revenue", with a purpose of distortion of information concerning work of former management of OAO Sovcomflot, Chairman of the Board of Directors Mr. D N Kozak and Director-General D Y Skarga", and that he was not willing to "participate in political fights". Mr. Privalov gave evidence that he signed the letter after drinking and under pressure from Mr. Nikitin and Mr. Skarga, but it corroborates the account given in the letter of Clyde & Co and I reject Mr. Privalov's explanation for signing it. At least in broad terms, it fairly described Mr. Privalov's position in early 2005.

226. Shortly after this Mr. Privalov went about, as he put it, "distancing himself" from companies that he had used to receive dishonest payments. He transferred all the funds from Getwire's bank account and arranged for Getwire to be dissolved; and he transferred Shipping Associates into the name of Mr. Bonehill of Norstar. Mr. Bonehill was to be paid some $1.2 million for providing this assistance. On 5 April 2005, Sisterhood transferred to Milmont some $1.9 million.

227. By 7 April 2005 Mr. Privalov had concluded that Sovcomflot, or investigators acting for them, were examining his personal financial arrangements. He had learned of "pretext" calls to banks at which he and his wife had accounts, and his laptop computer (but nothing else) was taken in a burglary on 26 March 2005 of his secure home in London. By their letter dated 7 April 2005 to Mr. Frank, Clyde & Co complained of investigations that they alleged to be unlawful. They referred to telephone calls to the banks and the burglary, and asked whether anyone was or had

been instructed directly or indirectly on behalf of Sovcomflot to investigate Mr. or Mrs. Privalov.

228. By letter dated 3 June 2005 Ince & Co replied to Clyde & Co's letter on behalf of Mr. Frank. Mr. Frank said in evidence that he had instructed Ince & Co first to check "very carefully" whether there was any truth in Clyde & Co's letter. Ince & Co wrote that they had been instructed on behalf of Mr. Frank and that "Our clients" did not know who had made the telephone calls and that they were not made "by any member of this firm, by our clients, or by any agent of our clients". Mr. Frank knew that that was untrue. On 7 April 2005 there had been a meeting at Ince & Co with private investigators. An attendance note of the meeting stated, for example, "Hart were instructed to extend the profile of Mr. Privalov's 'personal banking' matrix comprehensively over the 9 month period preceding the Initial Period", and "Ince was instructed at the meeting to give provenance of Standard Maritime accounts to assist Hart with its profiling and subsequent analysis and investigations". Mr. Frank denied any recollection of the meeting, but after he had completed his evidence there was disclosed a handwritten note of Ince & Co that made it clear that he had attended it. He was fully aware of the activities of the investigators and his evidence to the contrary was dishonest.

229. The Project Sturgeon investigation examined not only Mr. Privalov's affairs but also those of Mr. Skarga, Mr. Nikitin and Mr. Borisenko. At least initially, the objectives of the investigation into Mr. Skarga's affairs included identifying his assets and any possible bank accounts, and at the meeting on 7 April 2005 Hart were instructed to "continue to profile" his various accounts for a period going back to April or May 2004. Similarly attempts were made to investigate accounts associated with Mr. Nikitin. I observe that in a report dated 1 June 2005 Hart reported with regard to Mr. Skarga that, "Contrary to an earlier report, we can now confirm that, as far as we are aware at this point in time, the previous indication that there was a connection between Mr. Skarga and Sisterhood Participation Corporation would appear to be baseless". Nevertheless, in the Fiona action in which Mr. Skarga was joined as a defendant on 31 August 2005, it was said that Sisterhood was a vehicle through which bribes were paid to Mr. Skarga. That allegation is no longer pursued and I am not aware of the basis upon which it could ever properly have been made.

230. On 2 June 2005 Sovcomflot withdrew the instructions of Modus and Hart and, through Richards Butler (rather than Ince & Co), other investigators were instructed. The defendants alleged that the Project Sturgeon investigations involved unlawful and illegal activities in different countries, including the United Kingdom. The claimants denied that they have "instructed [the] investigators to use any unlawful means of obtaining information". I do not need to determine this issue and I am not in a position satisfactorily to investigate it. It is clear, however, that from early 2005, if not earlier, the claimants were conducting a thorough, extensive and expensive investigation in order (among other things) to search out information about any assets that Mr. Skarga and Mr. Nikitin might have and any financial dealings between them. The investigation revealed no evidence of such financial dealings.

Departure of Mr. Izmaylov from NSC and aftermath

231. In 2004 Mr. Izmaylov, like Mr. Skarga, had opposed the merger of Sovcomflot and NSC. He contended that for this reason Mr. Frank arranged for him to be removed as

President of NSC, and then to have his affairs explored by private investigators; and that, as a result, these proceedings have been brought against him, and he has faced criminal proceedings brought by the Russian authorities.

232. Mr. Izmaylov was removed from office at a meeting of NSC's shareholders on 14 October 2005. His dismissal was not related to the allegations made against him in these proceeding, but I am also not persuaded that it was because of his opposition to the proposed merger.

233. By a contract signed by Mr. Izmaylov on 4 March 2005, Intrigue had agreed to buy shares in NSC from Gizelle Management Ltd. ("Gizelle"), a Cypriot company. The consideration, which was to the value of $158 million, was by way of the transfer to NCL Shipping Ltd. ("NCL"), a BVI company, of the shares in Kuzbass Shipping Ltd., which owned the "Kuzbass", and the shares in Kaspiy Shipping Ltd., which owned the "Kaspiy", and of a cash payment in the total of $12,000,000. NSC's Board of Directors had approved the agreement in principle on 25 February 2005. According to the claimants, Mr. Izmaylov signed this contract in defiance of an instruction from the Federal Agency for State Property Management, and at a meeting on 26 May 2005 the Agency had instructed Mr. Izmaylov to consider how the 4 March 2005 agreement might be undone. Mr. Alexander Agaev, who was the Financial Controller of Intrigue until 31 March 2007, had earlier written to NCL and Gizelle on 8 April 2005 asking whether it might be possible "to return the ships back and consider the deal purely on a cash basis". At a meeting on 6 September 2005, the NSC Board approved the proposal that the vessels should be bought back in consideration of Gizelle receiving back shares in NSC. However, Mr. Izmaylov negotiated a draft agreement between NCL, NSC and Intrigue which did not reflect that approval, and did not provide for the unconditional return of the "Kuzbass" and the "Kaspiy". At a meeting on 10 October 2005, the Federal Agency for the State Property directed that the draft should be re-negotiated, but Mr. Izmaylov signed an agreement in the terms of the draft on 12 October 2005. The agreement was subject to the approval of NSC's Board, which was not given.

234. There was no other complaint against Mr. Izmaylov about his management of the company when he was removed as President of NSC. It had been reported to a meeting of the General Board on 2 September 2005 that in the first half of 2005 the net earnings of the NSC group were $161.8 million, some 105% above the net profits for the equivalent period in 2004, and the highest earnings achieved by the group. When he was dismissed, Mr. Izmaylov was paid the equivalent of $220,000 as compensation for the early termination of his employment.

235. In October 2005 Mr. Mednikov instructed Mr. Piers Erskine of Corporate Intelligence Services Ltd. ("CIS") to investigate Mr. Izmaylov's affairs. Mr. Frank denied that he was aware of this, but I reject that evidence. Mr. Frank, together with Mr. Terekhin and Mr. Mednikov, had a meeting about the investigation with Mr. Erskine on 23 February 2006.

236. The Intrigue action was brought in April 2007, but Mr. Izmaylov was not then a defendant, and no allegations were made about the NSC time charter scheme. After the merger of NSC and Sovcomflot had been completed in December 2007, Mr. Izmaylov was joined as a party to the proceedings in April 2008.

The corporate structure and governance of Sovcomflot

237. Mr. Skarga contended that the structure and organisation of the Sovcomflot Group was such that business was concluded by or with the concurrence of the senior executives collectively, and subject to supervision of others. Even if, as the claimants alleged and he disputed, he had planned or sought to favour Mr. Nikitin or other third parties at Sovcomflot's expense, Mr. Skarga argued that he could not have done so. He also said that in fact the transactions about which the claimants complain were supported by experienced executives against whom no allegations of collusion or other wrongdoing are made.

238. The sole shareholder of Sovcomflot at the times relevant to these proceedings was the Russian state, which was represented by the Ministry of Property Relations, who acted in consultation with the Ministry of Transport in some matters. Under governmental regulations the Government issued instructions to the General Board of Sovcomflot about what matters should be included upon the agenda of their meetings and how they should vote upon them. The Ministry of Property Relations and the Ministry of Transport received reports on the company's activities, including financial documents and accounts.

239. Sovcomflot had a General Board and an Executive Board, but other bodies too reviewed the activities of Sovcomflot to protect the shareholders' interests. The shareholders appointed three or four persons to constitute an Audit Committee (sometimes referred to as an Inspection Committee or a Review Committee), which was an internal auditing body. Its function, in the terms of Article 1.2 of its Charter, was "internally [to] supervise the financial and business operations of the company in accordance with the law, and [to] report the results to the General Meeting of Shareholders and Board of Directors of the company". According to Mr. Skarga, it reviewed contracts and decisions made by Sovcomflot, and submitted annual audit reports; and its members regularly attended Sovcomflot's offices and examined documents so as to have detailed information about decisions taken by the Executive Board and transactions which they supported. However, according to the evidence of Mr. Khlyunev, who has been Sovcomflot's Chief Accountant since 2000 and whose evidence about this I accept, the Audit Committee was not concerned with whether the terms of transactions were commercially advantageous, but with such matters as whether administrative costs were properly incurred and whether there had been proper accounting in respect of tax, dividends and the like. He did not recall any of the transactions that are the subject of these proceedings being reviewed by the Audit Committee, and there is no evidence that they did so.

240. Sovcomflot had another external review body called the Accounting Chamber, which was established under Federal Legislation, and inspected Sovcomflot's business by reviewing documents and, less usually, sending auditing personnel to Sovcomflot's offices. (Mr. Skarga complained that the claimants have not made proper disclosure of documents relating to exchanges between the Accounting Chamber and Sovcomflot, but there has been no application for disclosure of such documents, and I am not persuaded that there has been any significant failure to make disclosure in this regard.) The group's accounts were audited on a consolidated basis by Moore Stephens, and Sovcomflot's own accounts were audited by a Russian audit company based in Moscow called Finansovye I Bukhgalterskie Konsultanty ("FBK"). It was not the responsibility of these bodies to review whether transactions entered into by

Sovcomflot were on commercial terms, and they were not in a position to do so. Equally, there is no evidence that I accept that the Ministries which received reports of Sovcomflot's activities were in a position to supervise the business activities in this way.

The Sovcomflot General Board

241. Sovcomflot's General Board had at the relevant time eleven members including, as well as Mr. Skarga as the Director-General, government ministers and other high ranking persons. The Chairman was Mr. Kozak, the Deputy Director of Presidential Administration of the Russian Federation. As I have said, Mr. Frank was a member of the General Board from 1998 until 30 June 2003, but in fact attended no meetings after 31 July 2002 until he was appointed Director-General. The General Board reported to the Ministries of Property and Transport. The Corporate Charter provides that, "Any matters on management by the Company's routine business and affairs shall fall within the competence of meetings of the Board of Directors with the exception of any matters falling within the scope of authority of the General Meeting of Shareholders."

242. Meetings of the General Board were usually held every two months. The General Board reviewed the quarterly, semi-annual and annual reports, which during the relevant period included reports prepared by Mr. Borisenko as the Executive Vice-President and Chief Financial Officer and by Mr. Terekhin as First Deputy Director-General, and also quarterly accounts for the group prepared by Moore Stephens International. For example, at its meeting on 19 February 2004 the General Board had papers about Sovcomflot's financial plans and budget; about "Main Areas of Operating and Financial Activities of [Sovcomflot] for 2004", which provided detailed information about plans to develop the fleet through sales and acquisitions; and about the "Cargo Base Development", which referred to long time charters with, among others, Henriot, and companies with options to extend their charterparties, including Remmy. I infer that the General Board will have received similarly detailed information in respect of the company's planning at other times.

243. Nevertheless, I am not persuaded that the General Board were in a position to assess the commercial merits of the individual transactions of which Sovcomflot complain in these proceedings, or responsible for doing so. They were concerned with the strategic direction taken by Sovcomflot and their general financial and operational progress. Undoubtedly, members of the General Board could have pursued inquiries about individual transactions, but their responsibility was the business strategy adopted by the group and not to investigate whether particular transactions were in the interests of Sovcomflot. This assessment is supported by Mr. Frank's evidence. He said that, while he was aware of some of the impugned transactions, he did not know sufficient detail to appreciate that their terms were not commercial. Thus, for example, he knew that Sovcomflot were entering into chartering arrangements with PNP, but he did not know that Mr. Nikitin had any involvement or interest in other Sovcomflot transactions; and he knew about the newbuilding programme whereby Sovcomflot was modernising the fleet, but not that the Standard Maritime defendants acquired vessels that had been ordered by or in association with Sovcomflot. I accept that evidence.

244. I therefore do not consider that generally it assists the defendants that the General Board did not criticise the transactions with the Standard Maritime defendants and other companies with which Mr. Nikitin was associated. However, I do consider this relevant to one criticism that the claimants make of the SLB arrangements. As I shall explain in more detail, under them Sovcomflot paid for funds at an effective interest rate of between 9.65% and 11.84% pa. This was set out, together with other financial information about the arrangements, in Sovcomflot's Annual Report for 2002, which was presented to the General Board in May 2003. Although Mr. Frank was no longer attending General Board meetings in 2003, I infer that he too received the report because he was still a member of the Board; and in any case the same information was in the Group's consolidated financial statements that were sent to the Ministry of Transport following the General Board's direction on 21 March 2003. The information was also in the report for the first six months of 2004, which was presented to the General Board on 27 November 2004 by Mr. Frank, who was then the Director-General, and Mr. Borisenko. Although Mr. Frank did not, as I understood his evidence, accept that he had read the report that he was presenting, I infer that he must have done so. I see force in the defendants' argument that, had it been the case that Sovcomflot had no need to raise the funds under the SLB arrangements or that the effective interest rate was too high for the decision to raise the funding to be justifiable, this would have attracted criticism from the General Board in 2003 and 2004. In fact it was not questioned.

The Sovcomflot Executive Board

245. The Executive Board is described in the By-Laws of Sovcomflot as "the collegiate Executive Body of the company". Its members were appointed by the General Board, after the Executive Board had made recommendations to the General Board about its own membership. When Mr. Skarga joined Sovcomflot as the Director-General and joined the Executive Board, the other members were, as Mr. Frank and Mr. Borisenko agreed, all "very longstanding and experienced professionals in the shipping industry". In 2000 Mr. Frank had considered that three of them, Mr. Borisenko, Mr. Evgeny Ambrosov and Mr. Terekhin, were better qualified than Mr. Skarga to be appointed as Director-General.

246. The claimants called four members of the Executive Board to give evidence: Mr. Borisenko, Mr. Lipka, and Mr. Khlyunev, all of whom were on the Board throughout the time that Mr. Skarga was the Director-General, and Mr. Sharikov, who served on the Executive Board from 1 January 2002, when he was promoted from being Head of the Commercial Operations Department to be Head of the Fleet Operations Department. I also heard evidence from Mr. Izmaylov, who was Vice-President before he left in 2001 to become the President of NSC. The other members of the Executive Board during Mr. Skarga's time in office were Mr. Terekhin and Mr. Ambrosov, who was a Senior Vice-President, left Sovcomflot in 2002 to become the President of FESCO, and returned to work for Sovcomflot in June 2009.

247. The claimants do not allege corruption, dishonesty or other impropriety against Mr. Ambrosov, Mr. Lipka, Mr. Khlyunev or Mr. Sharikov. In the claimants' closing submissions Mr. Popplewell described as "agnostic" the claimants' position about "the extent to which, if at all, Mr. Terekhin knew of or suspected any of the impropriety", but it has never been suggested that he colluded with Mr. Nikitin or himself participated in anything improper. There is no evidence that he suspected

wrongdoing, and it was not suggested to Mr. Nikitin or Mr. Skarga that Mr. Terekhin had been involved in any of the schemes or aware of them. There is no evidence about why Mr. Ambrosov and Mr. Terekhin did not give evidence, and no reason to think that the claimants could not have adduced evidence from them if they had so wished.

248. Mr. Alexander Porechniy, Sovcomflot's company secretary, generally attended meetings of the Executive Board. He also prepared minutes of the Board meetings. If he did not attend a meeting, Mr. Lipka recorded what was said and gave Mr. Porechniy the information that he needed to prepare minutes. Mr. Porechniy circulated draft minutes to members of the Board who had attended the meeting, and they had the opportunity to suggest corrections to them. Subject to any changes, each person attending a meeting would sign them as an accurate record. As well as recording the resolutions, the minutes set out what was said by the Board Member or other executive who presented each agenda item, noted who had spoken upon each item, and recorded the voting upon each resolution.

249. I consider that the minutes are accurate records of the meetings of the Executive Board. Mr. Dobrynin, who was the Head of Sovcomflot's Finance Department, said at one point in cross-examination that Mr. Porechniy sometimes concocted a false record by reporting that a member spoke when he had not done so. This was denied by both Mr. Lipka and Mr. Khlunyev, both of whom, unlike Mr. Dobrynin, were members of the Executive Board, and Mr. Borisenko said that he had no reason to believe that the minutes did not accurately record who spoke. I reject Mr. Dobrynin's evidence about this.

250. According to the evidence of Mr. Skarga and of Mr. Izmaylov, meetings of the Executive Board were recorded by a tape recorder or similar device. There is no dispute that the meetings of the General Board were so recorded and the meetings of the Executive Board were held in the same room. Mr. Borisenko denied that the meetings of the Executive Board were recorded, and in his witness statements Mr. Porechniy (who did not give oral evidence) gave similar evidence. However, Mr. Lipka, who sometimes took minutes in Mr. Porechniy's absence, recalled that recording devices were used and he remembered occasions when he had handed a tape of a meeting to Mr. Porechniy. I conclude that at least some meetings were recorded. No recordings have been disclosed. They were probably not retained but were made only to assist Mr. Porechniy to write the minutes. This reinforces my view that generally the minutes are likely to be accurate.

251. The Executive Board usually met each month, but it would meet more frequently if the need arose. Meetings would generally last for about 90 minutes. Each member of the Executive Board had one vote upon resolutions, and all votes carried equal weight. Mr. Porechniy collected items for discussion at board meetings from the Director-General and the Departments in Sovcomflot, and some two or three days before the meeting he sent out the agenda with briefing notes, or "spravka", about what was to be discussed. The briefing notes were often supplemented by further notes and written information, for example by way of spreadsheets, which might be sent out in advance or tabled at the meetings. The executive who was to present an agenda item was responsible for ensuring that the necessary information was before the Board.

252. The claimants sought to advance a case that the Executive Board generally had put before it only information designed to promote proposals before the meeting. The briefing notes, unsurprisingly, presented the case for the proposals before the Board. Mr. Skarga accepted that, where a decision had been taken to enter into a transaction and it was then considered at a subsequent board meeting, the authors of briefing notes would "[put] the best ways … to promote the deal", because they or their Department had already concluded that the benefits of the proposal outweighed any disadvantages. This does not mean that the Board accepted the briefing notes uncritically.

253. The claimants also said that the Board simply passed (or "rubber-stamped") proposals without any proper scrutiny or consideration of them. Thus, Mr. Borisenko said that meetings were not called to discuss or debate the merits of particular transactions, but to approve decisions already taken by Mr. Skarga. He referred to "ritualistic referral of transactions to the Executive Board for approval". On the other hand Mr. Izmaylov said that, while he was at Sovcomflot, matters that came before the Executive Board were fully and openly discussed and considered. I prefer the evidence of Mr. Izmaylov, and I reject the picture given in Mr. Borisenko's evidence. As I shall explain, I consider that Mr. Borisenko was a dishonest witness. I conclude that the practice was for the Executive Board to have an informed discussion of the matters before it.

254. In reaching this conclusion, I recognise that there was support for the picture given by Mr. Borisenko in the witness statements of other witnesses. Mr. Sharikov's witness statement stated that, while Mr. Skarga was Director-General, the meetings of the Executive Board were "purely a formality", that there was "no real debate", and that the members could not question a proposal because the information in the briefing notes was inadequate. Mr. Lipka said in his statement that the Executive Board did not enter into "any detailed debate" about transactions. However, their evidence was very different when they were cross-examined, and I consider that their oral evidence is more reliable (upon this and upon other matters). Mr. Lipka gave evidence that board members would ask questions about the proposals that were presented. Mr. Sharikov said that the briefing notes that he presented in relation to charterparties would give the Board key economic information to enable them to assess the merits of a fixture (whether it was still to be concluded or the Executive Board was being asked to endorse a concluded fixture). Mr. Dobrynin confirmed that, when he prepared briefing notes, they gave "a fair and balanced presentation of the facts". The minutes show that often several members of the board contributed to a discussion on an item. Other executives, such as Mr. Dobrynin, were sometimes asked to attend meetings of the Executive Board and contributed to the Board's discussions. This, as I infer, was to ensure that the members were given full and detailed information about what they were considering.

255. The proposals that were put to the Executive Board were almost always approved by them without dissent. (Occasionally the Board did not approve a proposal presented to it. For example, at its meeting on 30 July 2002 the Board did not approve Mr. Skarga's proposal to build river-going steamers and asked him to renegotiate the proposed terms, and in the event the proposal fell through.) That is not remarkable, because generally proposals had been discussed amongst the senior executives before they were formally put before a board meeting. Members of the Executive Board

would be the less likely to vote in favour of a proposal without proper consideration because under the Bylaws and under article 71(2) of the Law on Joint Stock Companies (which I have already set out), and also under the terms of their employment contracts (as I infer, on the basis that the employment contracts of Mr. Skarga and Mr. Borisenko contained such a provision), the members of the Executive Board might be personally liable for losses caused by decisions if they voted in favour of them.

256. There does not appear to be any consistent pattern about which transactions were placed before the Executive Board for approval. For example, as I shall explain, on 28 April 2001 the Executive Board considered and approved a proposal to buy five Aframax vessels in what I shall call the Astros vessels transaction and the Tsuneishi transaction, but the almost contemporaneous purchases in the Hyundai Mipo transaction and the Daewoo transaction were not, as far as appears in the minutes, considered at a formal meeting of the Board. Similarly, I can discern no pattern to which of the time charters entered into with the Standard Maritime defendants were formally considered by the Board. It was not suggested that this was because Mr. Skarga was preventing some transactions from being considered by the Executive Board or that this provides any evidence to support the claimants' allegations.

The Sovcomflot Executives

257. Apart from their formal meetings, members of the Executive Board were in close contact with each other in their day to day business. They all worked at the same offices in Moscow, and on most mornings the more senior executives would meet for less formal discussions for about half an hour or rather longer, unless they were away on business or holiday. These gatherings would be attended by Mr. Skarga, Mr. Borisenko and Mr. Terekhin, and also by Mr. Izmaylov and Mr. Ambrosov while they were still at Sovcomflot. Sometimes other members of the Executive Board, such as Mr. Lipka and Mr. Sharikov, were invited to join the gathering to discuss particular matters. Mr. Borisenko described these discussions as "largely social", but he acknowledged that business was discussed. In my judgment, the more reliable picture of them was given by Mr. Lipka who spoke of the gatherings as essentially business meetings at which the "top managers" would discuss "the strategy of the company as a whole, the programme of the development of the fleet, purely commercial issues".

258. I should say something about some of the executives at Sovcomflot and their responsibilities. Mr. Borisenko was the Chief Financial Officer while Mr. Skarga was in office and was in charge of Sovcomflot's Finance Department, which was in Moscow. He was in a position, as he acknowledged, to raise with the General Board any matters that concerned him about his department or the discharge of his responsibilities. The Group's offices in Cyprus had an accounting role and in particular ensured that accounts were prepared in accordance with international accounting standards, but the Finance Department in Moscow dealt with other financial and cash management functions. It arranged payments for the group and dealt, for example, with paying commissions to brokers upon ship sales, and monitored payments associated with loan agreements, charterparties and shipbuilding contracts. Mr. Borisenko was responsible for preparing, with others, the quarterly, half-yearly and annual accounts, for making recommendations about raising finance and for controlling expenditure and the company's finances generally. Mr. Dobrynin

had been the Head of the Finance Department since October 1999, and he reported to Mr. Borisenko.

259. Mr. Terekhin, the Deputy Director-General, had particular responsibility for commercial and technical matters concerning the deployment of the tanker fleet, including responsibilities for relations with charterers and for modernising the tanker fleet and acquiring newbuildings. He often was appointed to act as Director-General when Mr. Skarga was away. He had joined Sovcomflot at the age of 52 after working for NSC, and he had considerable experience in tanker chartering, ship finance and newbuilding construction. He was entitled to authorise Sovchart to enter into time charters. Mr. Lipka described him as a man who participated actively on the Executive Board, and said he asked "difficult questions and argu[ed] over certain issues and … prove[d] his point, adducing various arguments". He also described Mr. Terekhin as being "well versed in economic and financial issues". In his witness statement, Mr. Sharikov said that Mr. Terekhin had been "marginalised", but when cross-examined he agreed that Mr. Skarga and Mr. Terekhin worked closely together. Despite his attempt to explain this apparent inconsistency by saying that his impression was that Mr. Terekhin had been marginalised especially on "sale and purchase rates", I conclude that Mr. Terekhin was an active and energetic executive who would not have allowed himself to be "marginalised" from important decisions of any kind.

260. On 1 January 2002, Mr. Sharikov was promoted from being the Head of Commercial Operations Department to be Head of the Fleet Operations Department, in succession to Mr. Valeriy Shatov, and he became a member of the Executive Board. He was responsible, according to an informal job description, for "Ensuring implementation of the Fleet Operations Department functions or efficiently managing the fleet from commercial and technical point of view in order to receive maximum available profit and to protect the companies' interests". His duties included: "Control of the timely chartering out of ships by the companies Fiona and Sovchart based on freight rates corresponding to the global market level and on terms not contradicting the company's interests", and "Carrying out broker operations for purchase and sale of ships and financing purchase operations". He had considerable experience of shipping and chartering, having worked for the Sovcomflot group in relation to sales and purchases, ship finance and fleet operations since 1986. As I have said, between April 2003 and September 2004 Mr. Novikov was the Deputy Manager of the Fleet Operations Department.

Fiona Board decisions

261. Some of the transactions that are the subject of claims, in particular those connected with the newbuildings, were authorised or approved by resolutions of the Board of Fiona. There were six members of Fiona's board in 2000 and 2001: Mr. Skarga, Mr. Borisenko, Mr. Terekhin, Mr. Lipka, Mr. Ambrosov and Mr. Izmaylov. Mr. Ambrosov and Mr. Izmaylov were not replaced when they left Sovcomflot, and after 2002 there were four directors. The directors of Fiona never met as a board, but they signed minutes to record decisions that they needed to authorise or to ratify, including decisions relating to the purchases giving rise to the allegations about the newbuildings scheme. The relevant minutes were drafted by WFW, the London solicitors who acted for Sovcomflot group companies, and were sent to Mr. Lipka, who collected signatures of the directors.

262. Mr. Borisenko described it as "a purely administrative function" to obtain the directors' signatures, and said that signing them was "a purely 'mechanical' exercise". He claimed that in practice he did not read the minutes before signing them, but simply asked Mr. Lipka what they were about. Mr. Lipka's evidence was that each of the four directors read the draft resolutions and relevant papers when signing the minutes. He described checking the minutes and said that he signed them only if he believed the transaction in question was in the best interests of the group. I accept the evidence of Mr. Lipka, and reject that of Mr. Borisenko.

The "Principal Directions"

263. Sovcomflot are and at all relevant times were not only nationalised but "a strategically important shareholding company", and therefore had regard to national policies as well as purely commercial objectives when conducting their business. On 24 December 1999, before Mr. Skarga was appointed Director-General, the General Board had approved a document entitled "Principal Directions of Sovcomflot OAO's Development" (the "Principal Directions"), which determined "the principal ways in which the activities of Sovcomflot OAO should be improved in the interests of its owner – the Government of the Russian Federation". They were to be "implemented in close cooperation with, and the direct participation of, the members of Sovcomflot OAO's Board of Directors, who represent the interests of the State in the Company and are senior executives of the Russian Federation". They identified objectives which were to be achieved in two "stages", the second of which was to start in 2002, and they laid down the strategy that the General Board determined Sovcomflot should pursue during the period when Mr. Skarga was Director-General. Mr. Frank confirmed in cross-examination that the policies in the Principal Directions were not revoked at any time before 2005, and indeed for the most part they still remain in force.

264. The stated objectives included some which are, as I see it, important in view of criticisms made of the Sovcomflot's dealings with Mr. Nikitin and the Standard Maritime defendants. They include:

i) the objective of improving Sovcomflot's finances, and in particular to repay loans from foreign banks.

ii) the plan to modernise Sovcomflot's fleet; and

iii) the aim to increase Sovcomflot's presence in the Russian market, in particular as carriers of Russian exports;

265. The Principal Directions stated that the "ratio of borrowed funds to internal funds in the structure of Sovcomflot OAO's book liabilities is too high, leading to the high absolute level of the Company's financial costs and relatively low level of its net profits". One of the tasks specifically identified as requiring immediate attention in the second stage of the programme was stated in these terms: "To organise, with the assistance of the Finance Ministry of the Russian Federation and the Foreign-Trade Bank, the refinancing of the 580-million dollar credit extended by the bank KfW [Kreditanstalt fur Wiederafbau, an East German government-owned development bank] for the construction of 10 long-distance container carriers, and repay money into the federal budget in accordance with an agreed plan". This was a reference to

the so-called Megaslot debt. In 1988 the Sovcomflot group had bought ten container ships from East German yards. They were acquired by ten separate ship-owning companies in the Sovcomflot group called Megaslot Shipping Company Ltd. I–X, the 3rd to 10th claimants in the Fiona action ("the Megaslot Companies"), and finance was provided by the German government-owned development bank, KfW. The vessels were chartered at low rates to a German Liner company, DXR Senator (and they were sometimes referred to as the "Senator" vessels).

266. Sovcomflot had difficulty in financing the loan by KfW. After the crisis in 1998, when the Russian state defaulted on its sovereign debt, payments by Russian commercial banks were suspended and the rouble was devalued, the Russian Ministry of Finance took over the loan as part of the Paris Club restructuring of Russian state debts.

267. On 30 October 2000 Megaslot entered into an agreement to repay the Ministry of Finance the total debt of $571.5 million (plus interest, commission and expenses) in 30 equal six-monthly instalments or ahead of schedule, and they could do so by assigning debt instruments to the Ministry. Megaslot's obligations were guaranteed by Sovcomflot. On 15 November 2000 Megaslot agreed with Vnesheconom Bank ("VEB") that VEB should be Sovcomflot's agent to acquire bonds for repaying the debt, and that they would deposit funds with VEB for this purpose. In 2000 $50 million was deposited with VEB and a further $105 million was deposited in 2001. The $155 million was used to purchase bonds with a nominal value of US$285.5 million, and on 26 July 2001 the bonds were transferred to the Ministry of Finance in settlement of $262 million of the debt.

268. At the end of 2001 Sovcomflot's balance sheet consisted mainly of vessels (which were valued at $1,079 million: they had also paid $205 million for vessels under construction, for which a further $477 million was still to be paid) and cash for operations in the sum of $137 million. It was largely funded by liabilities to shareholders comprising $390 million of equity from the Russian government, loans from western banks secured on vessels amounting to $639 million and the outstanding Megaslot debt, which still stood at about $332 million with a further $28 million of interest due to accrue in September 2002. The secured debt was in line with that of other international shipping companies, but, because of the Megaslot debt, the total debt ratio of 69% was high. Sovcomflot's objective remained to redeem the balance of the Megaslot debt in 2002, and they were able to do so at a discount of about 50%. On 23 September 2002 the outstanding $360.3 million was repaid at a cost of $180.5 million through the purchase of bonds.

269. At the end of 1999, the Sovcomflot fleet comprised 77 vessels, including tankers, bulk carriers and two passenger vessels. The fleet was aging, and some vessels needed to be replaced.

270. The tanker fleet comprised these 34 vessels:

- 6 "Tromso" vessels, of 155,000 tonnes dwt, which had been built in South Korea in 1991 and 1992. They were designed to carry crude oil, and were generally chartered on the spot market for Atlantic voyages to carry oil from North Sea and West African ports to the east coast of America and the Gulf of Mexico.

- 7 Ore, Bulk, Oil ("OBO") carriers, of 96,000 tonnes dwt, which also had been built in South Korea and entered into service in about 1991 or 1992.

- 8 "Arbat" tankers, of 47,000 tonnes dwt, which had been built in 2001 and 2002. They were designed to carry dark and light petroleum products. Since April 1999 they had exported 490,000 tonnes of Russian oil under a contract with Rosnyeft-Sakhalinmornyeftegaz (Russian-Oil, Sakhalin Offshore Oil & Gas).

- 8 "Barents Sea" tankers, of 47,000 tonnes dwt, which had been built in Croatia in 1998 or 1999. They were designed to carry petroleum products and chemical cargoes.

- 3 "Liepaya" cargo carriers with a deadweight of 46,800 tonnes, which had been built in Poland in the mid-1980s. They were built to carry dark and light petroleum products, but one of them, the MV "Liepaya", had been modernised to carry chemicals.

- The MV "Zina", which was of 29,500 tonnes dwt and had been built in Bulgaria in 1989. She was designed to carry petroleum products.

- The MV "Kapitan Sokolov", an OBO vessel of 54,000 dwt, built in Sweden in 1983. She could carry dark petroleum products but had been employed in transporting dry bulk cargoes under voyage charters across the Atlantic.

271. The 41 bulk carriers included:

- The 10 "Senator" container ships of 47,120 dwt.

- The "Kapitan Betkher", a bulk carrier of 36,600 dwt, which had been built in South Korea in 1985 and was designed to lift bulk cargoes.

- 12 "Sokol" multi-purpose vessels, of 9,300 tonnes dwt, built in Japan between 1987 and 1993, and designed to carry containers, timber, and general cargoes. These vessels had ice-class status and could operate in fairly difficult ice conditions.

- 10 "Socofl" timber carriers with a deadweight of 6,200 tonnes, built in Japan between 1990 and 1992.

- 8 "Uglegorsk" vessels, which were small multi-purpose ships of 4,160 dwt. They had been built in Turkey in 1991-1992 and had ice-class status.

272. The two passenger ships, the "Maxim Gorky" and the "Astor", were chartered to German tour operators, Phoenix Reisen and Transocean Tours.

273. The Principal Directions recognised that, without a programme of modernisation, Sovcomflot could not exploit the new markets that were opening for Russian oil and oil-related products. They said that Sovcomflot could not develop until certain "principal problems" had been resolved and observed that "[Sovcomflot's] fleet was mainly formed under a shipbuilding programme that was implemented in the late 80s and early 90s, aimed at meeting the needs of shipping companies and foreign-trade organisations of the former USSR. As a result the fleet includes more than 10 different types and sizes of ship, leading to a fairly complex and inefficient structure for effecting commercial and technical operation… The fleet includes obsolete and inefficient ships that have no realistic prospects of operating in the market". An objective for the "second stage" of the plans in the Principal Directions", starting in 2002, was "to build up and renovate industrial assets", and among the "specific tasks" that required immediate attention was "To sell on the market, in order to optimise the structure of the fleet, 12 obsolete and inefficient ships with a total deadweight tonnage of 200,000 tonnes, and use the proceeds from the sale of the ships to repay bank credits and effect advance payments under contracts for the construction of 2-3 ice-class tankers, each with a deadweight tonnage of 100-140,000 tonnes".

274. A fleet renewal programme was implemented while Mr. Skarga was Director-General, in accordance with the Principal Directions and with the approval of the General Board. This involved the sale of older vessels and the acquisition of newbuildings. By the end of 2004 the fleet was reduced to 45 vessels. It was reported in the Sovcomflot's Annual Report for the year ended 31 December 2004 that, "The average age of the cargo fleet is 7.51 years and the average age of 1 tonne deadweight of the fleet is 5.22 years, which makes the fleet one of the youngest in the world for age of tanker fleet".

275. More specifically, Sovcomflot needed to acquire ice-class vessels. A new terminal for oil products opened at Primorsk in December 2001, and ice-class vessels were required in order reliably to service the Primorsk trade during the winter months. Sovcomflot also needed ice-class vessels in order to participate in Russian plans to exploit the gas and oil resources of Sakhalin Island off the coast of Siberia and to supply them to the Far East market.

276. The Principal Directions also stated that:

> "For a range of objective and subjective reasons, Sovcomflot OAO has failed to consolidate its position in the Russian transport-services market. The 490,000 tonnes of crude oil exported in 1999 under a long term contract with Rosnyeft-Sakhalimornyeftegaz cannot be viewed as volumes that match the technical capacity of Sovcomflot OAO".

277. Among the problems that were listed was "Low proportion of Russian foreign-trade cargoes in volume transportation", and there was identified as a "task" to "Expand participation in the shipping of foreign-trade cargoes. Establish long-term contractual relations with Russian cargo owners". The measures to be taken included, "Develop and introduce new, long-term forms of cooperation with clients, and win its own

niches on the Russian transport-services market". The tasks that required immediate attention in the "second stage" included these: "To determine, within the framework of fleet specialisation, the following principal lines of activity: exporting transport services relating to shipment of oil, petroleum products, containers and passengers; servicing Russian domestic trade in the shipping of crude oil, containers, general cargoes and bulk cargoes"; and "To expand collaboration with Russian ship owning companies with respect to devising a coordinated market policy and development strategy, the joint operations of ships and lines, the creation of chartering associations etc …". The Principal Directions also stated, "The paramount objective will remain to expand the Company's participation in the shipping of Russian foreign-trade cargoes. In this process, new and innovative forms of cooperation with potential clients will need to be developed, on the basis of an analysis of the structure and basic terms of delivery of Russian foreign trade, that ensure guaranteed volumes of freight for the Company's fleet".

278. This policy was reflected in Sovcomflot's Corporate Charter (also referred to as the By-Laws), which was approved by the General Meeting of the Shareholders on 14 January 2000. Section 7 was headed "Objectives and Purposes of the Company", and it provided that:

> "The principal objectives of the Company's activities are: … The development of the Company as a substantial national carrier, occupying a leading position in Russian shipping and strategic segments of the Russian carriage of goods business, being competitive on the international market; Establishment of the Company as a model participant in Russian shipping, as a centre of leading commercial experience, training of qualified management, a source of stable employment, a consumer of products and services of domestic companies."

279. On 10 July 2002 the Ministry of Property Relations approved amendments to Sovcomflot's By-Laws, but the objectives still emphasised that Sovcomflot should carry Russian cargo, develop as an agent for Russian trade and expand business with Russian companies. Section 4, headed "Purpose and Activities", provided:

> "The principal purposes of the Company's activities shall be: … to develop the Company as the largest national carrier which leads in the Russian sphere of shipping and strategic segments of the Russian freight base and is able to meet competition at any international market; to ensure that the Company play a role of a system-forming factor in the Russian sphere of shipping, a centre of advanced trade experience or training of qualified staff, a stable source of jobs and a customer of products and services of domestic enterprises; …".

280. Mr. Frank, as Minister of Transport, was keen that Sovcomflot, and other Russian carriers, should develop business with Russian energy companies and carry more Russian oil and products than they had done, and encouraged Sovcomflot's business with large Russian oil trading companies such as Sibneft, Lukoil and Surgutneftegas. After Mr. Frank was appointed Director-General of Sovcomflot in October 2004, he

continued this policy. For example, in a press statement released by Sovcomflot and dated 27 April 2005, which referred to a joint project with Stena Bulk, it was said:

> "It is our direct obligation, as a major Russian ship-owner, to support the developing energy sector of Russia and to concentrate on export transportation of Russian oil. Project "B-Maks" contemplates the reduction of the transportation costs for our clients with the simultaneous increase in safety in the Baltic region. We are pleased of such interrelation."

281. In accordance with this policy, before Mr. Skarga was appointed Director-General, Sovcomflot had already taken steps to build a business relationship with Surgutneftegas and Kinex. In early 2000 Mr. Frank and Mr. Borisenko had had a meeting at the Ministry of Transport with Mr. Vladimir Bogdanov, a director of Surgutneftegas. They met again in Siberia in April 2000, and, although Mr. Frank insisted in his evidence that this was not the main purpose of the meeting, their discussions covered Surgutneftegas' use of Russian ocean carriers, such as Sovcomflot. Surgutneftegas introduced Sovcomflot to Mr. Katkov and another representative of Kinex, who were visiting Surgutneftgas, and as a result in April 2000 Sovcomflot sent a delegation, including Mr. Borisenko and Mr. Terekhin, to Kinex to discuss developing future business with them. They met, amongst others, Mr. Nikitin, who told Mr. Borisenko that PNP were involved in chartering tonnage to carry Kinex's products. Again on 25 June 2000 Mr. Frank, Mr. Skarga and Mr. Borisenko met with Mr. Malov, Mr. Katkov and Mr. Nikitin at the Olympic Penta Hotel in Moscow, and they had further discussions about developing business and about Sovcomflot chartering ships for Kinex's trade.

282. Mr. Frank was dismissive of the importance to Sovcomflot of Kinex's business, describing them as "not strategically important" and "relatively small to medium", but they were not so perceived by Sovcomflot at the time. Indeed, when Mr. Frank was asked why he, as a Minister of State, had attended the meeting in June 2000, he agreed that Kinex and PNP were "quite big operators", albeit "not the biggest ones". I conclude that Sovcomflot went to some lengths in 2000 to develop a business relationship with Kinex and PNP. This was seen as an important part of their strategy to build up relationships with Russian business and in particular to expand their presence around St Petersburg and at the new Primorsk terminal. It did not reflect an initiative of Mr. Skarga's own when he joined Sovcomflot, and it was not pursued because of any association that Mr. Skarga had with Kinex or with Mr. Nikitin. The first steps had been taken when Mr. Borisenko was acting Director-General.

283. In 2000 Sovcomflot opened an office in St Petersburg. Mr. Skarga said that the purpose was to develop the business with Kinex, and that the head of the office was a former employee of Kinex, a Mr. Nemenko. No doubt the new office encouraged business with Kinex, but Mr. Frank explained and I accept that Sovcomflot wished to have an office close to the Admiralty Shipyard, from whom Sovcomflot ordered new tankers in 2001, and to the new oil terminal at Primorsk, which was about to open.

Evidence of Mr. Privalov and Mr. Borisenko

284. The two main witnesses of fact called by the claimants to give evidence in the Fiona actions were Mr. Borisenko and Mr. Privalov. Mr. Borisenko came to London to

give evidence and was examined over some 7 to 8 days. As I have said, Mr. Privalov was not permitted to leave Russia and was examined over a video link from Moscow over some 7 days. They both gave evidence that they had been bribed by Mr. Nikitin to take part with Mr. Skarga in schemes to defraud Sovcomflot for the benefit of Mr. Nikitin and the Standard Maritime defendants and other companies associated with Mr. Nikitin. In 2005 they entered into settlements agreements with Sovcomflot, but Mr. Privalov faces criminal proceedings in Russia.

285. I have concluded that neither was an honest witness and that I cannot rely upon their evidence in so far as it supports the claimants' contentions, unless it is corroborated. Mr. Privalov also gave evidence about the claims in the Intrigue action, and I regard that evidence as equally unreliable.

286. It is, to my mind, relevant when assessing the evidence of Mr. Privalov that, before Mr. Skarga joined Sovcomflot and before Mr. Nikitin had any dealings with him, he had been engaged in skilfully defrauding the Sovcomflot group for his own benefit. He did not need any assistance from anyone at Sovcomflot's Moscow office to do so. Three frauds illustrate what he did, but it is likely that he was involved in other frauds, because Mr. Privalov accepted that many payments into his account with RBS in the Isle of Man were in respect of secret profits or secret commissions.

287. In 1999 Mr. Privalov diverted an "address commission" payment to the account of one of his companies, Montrose. In 1994, the Presnya Shipping Company Ltd. ("Presnya"), Poliyanka Maritime Company Ltd. ("Poliyanka") and Sokolniki Shipping Company Ltd. ("Sokolniki"), who are the 15th, 16th and 17th claimants in the Fiona action, entered into a $50 million loan agreement with a syndicate of banks whereby borrowing secured on the vessels "Presnya", Poliyanka" and "Sokolniki" was to be refinanced. The syndicate was led by Société Générale and included Orix Europe Ltd. ("Orix") acting on behalf of Guest Shipping SA. In February 1999, Mr. Privalov arranged for the loan from Orix to be repaid and the rest of the borrowing refinanced. Mr. Wettern was retained to draw up the necessary documentation, and it was signed on 25 March 1999. Mr. Privalov reached an agreement with Orix that they should pay an "address commission" of $70,000 to a company associated with Fiona called Fiona General Management Ltd. ("FGML"). This was kept secret from the Sovcomflot group.

288. On 1 April 1999 the "address commission" was paid into the account of WFW for deposit in the name of FGML, and on 12 April 1999, Privalov instructed Mr. Wettern to transfer the money to the account of Montrose at the RBS in the Isle of Man, and the sum of $70,138.08 (which was $70,000 plus interest) was then transferred into one of Mr. Privalov's personal bank accounts. Mr. Privalov admitted that he had not told anyone at Sovcomflot that he had done so.

289. In 1999 Mr. Privalov also fraudulently obtained an "arrangement fee" when he negotiated refinance in respect of the vessels "Fili", "Uglegorsk" and "Sokol 7" by way of a $17.5 million loan from BCV. BCV initially proposed an arrangement fee of 0.375% of the amount financed, which would have been $65,625. Mr. Privalov however reported to Sovcomflot on 20 October 1999 that an arrangement fee of 0.9375% was required. On 4 November 1999 Mr. Privalov sent BCV a term sheet stating that the fee would only be 0.375%. On 1 December 1999 loan documentation was executed, including a letter about the arrangement fee referring to a fee of

$75,000. (The evidence does not explain the increase from $65,625.) On 12 January 2000 Mr. Privalov arranged for Fiona's bank to send $131,250 to WFW's client account. On 17 January 2000 he arranged for Mr. Wettern to pay $75,000 to BCV and to remit the remaining $56,250 to Montrose's account.

290. Mr. Privalov prepared on the FML computer system an amended version of the letter referring to a fee of $131,250, and on 7 February 2000 he sent a copy of it by fax to FGML in Cyprus. In order to conceal the discrepancy from Sovcomflot, Mr. Privalov instructed Mr. Wettern to omit the amount of the arrangement fee from the loan documentation, and it simply referred to an arrangement fee "in an amount previously agreed".

291. Mr. Borisenko accepted that Sovcomflot's procedures required him to provide the necessary authorisations for the payments, but he said that he did not notice the discrepancies in the figures and that he knew nothing about commissions being diverted. Mr. Izmaylov said that Mr. Borisenko would always pursue any opportunity to refinance borrowings even if the benefit was "very marginal", and it was suggested that Mr. Borisenko knew what Mr. Privalov was doing. There is no proper evidence to support this suggestion against Mr. Borisenko and I reject it.

292. In the summer of 2000 Mr. Privalov negotiated loan agreements with two syndicates, led by the Hamburgische Landesbank ("HLB") and by Crédit Agricole Indosuez ("CAI"), to refinance borrowings relating to the Senator vessels owned by the Megaslot companies. Mr. Privalov took the opportunity to defraud the Sovcomflot group in two ways. First, he over-stated the fees to be paid by Sovcomflot. On 9 May 2000 he told them in a letter to Mr. Borisenko that the refinancing fee would be 0.975%, which would have amounted to $828,750 for the loan from each bank. The loan agreements executed on 19 June 2000 and 5 July 2000 referred not to the amount of the refinancing fee but to the fee "previously" or "separately" agreed. In fact the total fees were only 0.75%, or $637,500, for each loan. Mr. Privalov also negotiated with HLB and CAI that they should pay substantial "address commissions". On 29 September 2000 the loans were drawn down by the Megaslot companies, and "address commissions" of $127,500 from each of HLB and CAI were paid into WFW's client account. On 3 October 2000, Mr. Privalov instructed Mr. Wettern to pay this money to Montrose. He arranged for Mr. Wettern to be paid $20,000 for his part in this transaction.

293. As I have said, from early 2005 Sovcomflot engaged private investigators to gather information about Mr. Privalov. On 29 June 2005 the Fiona action was brought Mr. Privalov, and a freezing order was made against him. On 31 August 2005 Mr. Skarga, Mr. Nikitin and many of the Standard Maritime defendants were joined as defendants. The proceedings against Mr. Privalov were resolved by the Privalov settlement agreement made on 6 October 2005 and a consent order for a stay of proceedings against him made in the Fiona action on 11 October 2005. By the Privalov settlement agreement (which was recorded in the schedule to the order) Mr. Privalov represented that he had received some $800,000 from companies or entities that he believed were controlled by Mr. Nikitin or Standard Maritime in relation to the newbuildings scheme, the SLB arrangements scheme and the termination of the SLB arrangements scheme, and had also received some amount not exceeding $5 million by way of secret and unauthorised payments from third parties. The stay of the Fiona action against him was conditional upon Mr. Privalov giving information to

Sovcomflot and also fulfilling his agreement to pay them $2 million, and otherwise the claimants are entitled to pursue claims against him.

294. At that time Mr. Privalov was living in England, and in 2006 he was in touch with Mr. Nikitin. Mr. Privalov and his lawyer from Clyde & Co met with Mr. Nikitin and his lawyers from Lawrence Graham on 12 July 2006 at Lawrence Graham's offices. At the meeting Mr. Privalov denied that he had been paid bribes by Mr. Nikitin and said that there would have been no point in bribing him, and that the "financial inducements" referred to in the Privalov settlement agreement had been payments for services that he had provided to Mr. Nikitin.

295. As I have said, the Russian authorities brought criminal proceedings against Mr. Privalov, and on 21 December 2006 he was arrested at Zurich airport on an international arrest warrant issued at the request of the Russian Prosecutor General's Office. He was detained in custody in Switzerland until 30 June 2008. He resisted extradition to Russia, but was unsuccessful. After he had been extradited, he remained in prison in Russia until 10 October 2008. He was then released subject to a condition that he should not leave Moscow.

296. Mr. Privalov is now engaged by Sovcomflot as a consultant under a contract dated 13 April 2009. It is one of his duties under the contract to "assist and co-operate with [Sovcomflot] in connection with the preparation and hearing of [Sovcomflot's] case in the High Court of England". There are other reasons for him to support the claimants' case. In the settlement agreement, he agreed to pay only $2 million, but his liability to Sovcomflot is undoubtedly much more than that. He has not reached any agreement to settle the claims against him in the Intrigue action. When he was resisting extradition, he stated in support of an application to the European Court of Human Rights ("ECHR") dated 23 January 2007 that the criminal proceedings in Russia were aimed "at bringing Mr. Privalov to Russia in order to "motivate" (or rather pressurise) him to give testimony in the disfavour of Messrs Nikitin and Skarga both in the Russian criminal proceedings and the English civil proceedings. It is no concern of the Russian Federation to conduct fair criminal proceedings against [Mr. Privalov], but rather to obtain, thanks to Russian criminal proceedings, information, "confessions" and documents which may be useful to Sovcomflot in the English civil proceedings and Russian criminal proceedings against other persons". His time in custody must have been particularly difficult because in 2002 he had a thyroidectomy and he needs daily hormone replacement medication. In evidence to the ECHR his medical adviser said that without the medication he would fall into a coma and die. The pressure of the criminal proceedings is, I do not doubt, an incentive to Mr. Privalov to assist the claimants. The Russian Federation are the sole shareholder in Sovcomflot, and on 13 May 2009 the General Prosecutor stated to the Federation Council of the Russian Federation that he was assisting Sovcomflot with these proceedings and that "… we are working very closely in this direction with the management of Sovcomflot".

297. Mr. Privalov accepted that he had been dishonest in his dealings with Sovcomflot and with regard to his involvement in the transactions that give rise to these proceedings, and in the explanations that he has given for them. He said, however, that in February 2009 he decided to give a truthful account. I do not accept that: on the contrary, in his witness statement of 12 February 2009 Mr. Privalov stated that Mr. Skarga and Mr. Nikitin had engaged in dishonest schemes which had not previously been alleged,

and his evidence about them has been shown to have been wrong. In particular, he was making up new allegations of dishonesty in order the support the claimants' case against Mr. Skarga. As a result, for example, in the second Fiona action the claimants alleged that the arrangement giving rise to the Norstar commissions scheme was made at a dinner in Geneva attended by Mr. Skarga, Mr. Bonehill and Mr. Privalov "In or around October 2001", and that the hull no 1231 commission scheme came about from instructions given to Mr. Privalov by Mr. Skarga and Mr. Nikitin at a meeting in St Petersburg "in or around April or May 2001". As I shall explain, those accounts are untruthful and the meetings that he described did not take place.

298. In the claimants' final submissions, Mr. Popplewell did not argue that Mr. Privalov was an entirely reliable or even an entirely truthful witness. He accepted that his evidence should be treated with caution, that there were inconsistencies in his recollection about matters and also that he "down-played" his role in events in order to minimise his culpability. Mr. Popplewell submitted, however, that Mr. Privalov's evidence as a whole and taken generally is credible. I disagree and conclude that I cannot place any reliance upon his evidence. In cross-examination he deliberately gave accounts that were entirely fictitious: by way of example only, I refer to his account of paying for a watercolour of the "Queen Mary" and his evidence about Mr. Gale reducing the values of the Arbat vessels, to both of which I shall refer later.

299. Although Mr. Borisenko, on his own account, received large sums to assist in defrauding Sovcomflot, he is still employed by them and has been treated extraordinarily generously by them and in particular by Mr. Frank. The defendants said that in return he has given untruthful evidence against Mr. Skarga and Mr. Nikitin. I accept that submission.

300. Sovcomflot and Fiona entered into a settlement agreement dated 6 October 2005 with Mr. Borisenko. It was signed on behalf of Sovcomflot and Fiona by Mr. Mednikov, but reached through Mr. Frank. By a recital to it, Mr. Borisenko represented that he controlled a company called Laverne Associates SA ("Laverne"), which had an account with Wegelin, that Laverne received into the account a payment of $444,000 from Sisterhood on 17 January 2003 and $300,000 from Milmont on 14 January 2004, and that Wegelin held for Laverne cash and other assets to a total value of about $1,070,000. Mr. Borisenko agreed to have the assets of Laverne paid to Ince & Co as Fiona's solicitors and, as and when Fiona requested it, to provide an affidavit or witness statement giving "a full and frank account of the operation and dealings of Laverne". Fiona and Sovcomflot agreed that, provided Laverne's assets were handed over, they would not sue Mr. Borisenko "in respect of any claims which they may have or might have in the future in respect of or arising out of or connected with the operation of Laverne and its receipt of the … monies from Sisterhood and Milmont".

301. According to Mr. Frank, in late September 2005 Mr. Mednikov reported to him that Mr. Privalov had admitted passing money from a "secret account" to Mr. Borisenko at Mr. Nikitin's request, and Mr. Borisenko accepted that he had been paid money by Mr. Privalov and Mr. Nikitin. He said, according to Mr. Frank, that "at an early stage of Skarga's period of office", when he expressed unhappiness about his bonuses, Mr. Skarga "indicated that he would arrange for bonuses to be paid from an external source", and he has accepted the payments because "he had felt that he would have had problems" otherwise. A few days later, Mr. Frank made an offer that Sovcomflot would not proceed against Mr. Borisenko if he repaid what he had received. He

explained that he thought that Mr. Borisenko would provide the claimants with valuable information and evidence, and that he regarded Mr. Borisenko as weak and naïve, rather than fundamentally dishonest.

302. On his own account, Mr. Frank reached the settlement with Mr. Borisenko without asking or being told how much money he had been paid and without asking what Mr. Borisenko had done for it. On 6 October 2005, the same day as the settlement agreement, Mr. Mednikov instructed private investigators to conduct an investigation into Mr. Borisenko's affairs, although Mr. Frank denied that he knew this. On any view, therefore, shortly after proceedings were brought against Mr. Skarga and Mr. Nikitin, through Mr. Frank Sovcomflot and Fiona reached a settlement with Mr. Borisenko while Sovcomflot were still investigating what he had done. Mr. Frank concluded it without consulting others within Sovcomflot apart from Mr. Mednikov, although he did briefly mention to the Chairman, Mr. Shuvalov, that Mr. Borisenko had been receiving payments. Nevertheless, Mr. Borisenko remained as Sovcomflot's Chief Financial Officer.

303. I do not accept Mr. Frank's evidence about how the settlement was reached with Mr. Borisenko. First, I find it incredible that Mr. Mednikov, who had been closely involved with Mr. Frank in reaching the settlement agreement, instructed the investigators without discussing with Mr. Frank what he was doing or even telling him what he had done. Secondly, I reject Mr. Frank's evidence that Mr. Borisenko spoke of receiving payments after expressing unhappiness about the bonuses that he had been paid, and conclude that this was dishonest evidence given by Mr. Frank in order to support Mr. Borisenko's account (which I do not accept, for reasons that I explain later) that Mr. Skarga was involved in arranging the payments that he was to receive.

304. Mr. Berry submitted that I should also reject the evidence that in October 2005 Mr. Borisenko said that he had received any payment from Mr. Nikitin. A draft of the settlement agreement dated on 5 October 2005 recited that the only payments made to Laverne were in the total amount of $1.04 million from Sisterhood, and there was no reference to any other payments or to Mr. Nikitin or any company associated with him. (As I shall explain, in 2003 and 2004 three large payments were made to Laverne which amounted in total to over $1 million: as well as the payments of $444,000 in January 2003 and of $300,000, there was a further payment of $300,000 in February 2003.) The final version of the agreement of 6 October 2004 referred to a payment by Milmont, but did not otherwise refer (directly or indirectly) to Mr. Nikitin. Mr. Frank's evidence about how much Mr. Borisenko said he had been paid was confused and contradictory. He first said that he had been told that Mr. Borisenko had been paid $1 million. In cross-examination he said that he had been told that Mr. Borisenko had been paid a total of $2 million, the additional $1 million being paid by Mr. Nikitin, but I reject that evidence. Indeed, as I understood him, he retracted it in re-examination. It is clear that Mr. Borisenko had revealed by the time that the settlement agreement was concluded that Milmont had transferred money to Laverne, but I do not consider that there is reliable evidence that he told Mr. Frank that he associated that with a payment that Mr. Nikitin was making to him. In determining what payments were made to Mr. Borisenko and who was involved in making them, I cannot rely upon Mr. Frank's evidence about what Mr. Borisenko said in 2005.

305. On 25 October 2005 Mr. Frank and Mr. Borisenko attended a meeting of Sovcomflot's General Board. They reported on the activities of Sovcomflot and the group for the first six months of 2005, and the Board, having noted their report, agreed that the members of the Executive Board, including Mr. Borisenko, should be awarded a bonus of one month's salary. At the end of the meeting, the minutes record this: "The Board of Directors noted the information from S. O. Frank, General Director, on the progress of efforts to protect the interests of OAO Sovcomflot group of companies in their relationship with the Standard Maritime group of companies and recommended the General Director and the Board of Management to continue these efforts". According to Mr. Frank, when he made this report to the General Board, he told them about "the Standard Maritime things and this unpleasant news about Mr. Borisenko", and he presented to the meeting the settlement agreement that had been reached with Mr. Borisenko.

306. The defendants submitted that I should reject the evidence that the General Board was informed of the settlement with Mr. Borisenko. They pointed out that it was concealed from Mr. Marios Orphanos, the Group Chief Accountant, that settlement moneys had been received from Mr. Borisenko, and as a result proper disclosure about it was not made in the Group's accounts. On his own account, Mr. Frank did not tell the Board about the payments or the settlement agreement until after they had decided to award a bonus to Mr. Borisenko (and the rest of the Executive Board.) Further, Mr. Frank's evidence about the report that he made to the General Board was inconsistent. At first he said that he made a presentation with "charts on the screen", but he also said that "Originally there was no intention to discuss it". If that was so, charts for a presentation would not have been prepared.

307. I cannot tell from the evidence before me what, if anything, the General Board were told about the payments received by Laverne and the settlement with Mr. Borisenko, but undoubtedly Mr. Frank was determined from the time when he first learned of the payments to Laverne at the end of September 2005 to ensure that proceedings were not brought against Mr. Borisenko and that he was not dismissed from his position. Mr. Borisenko remained the Chief Financial Officer until in the summer of 2007, by an agreement dated 23 July 2007, he was appointed Chairman of Sovcomflot (Cyprus) Ltd. for an initial minimum period of 12 months from 1 September 2007. Since September 2008 he has been a Senior Adviser to Mr. Frank. Rather than being dismissed after admitting the secret payments, Mr. Borisenko has been paid extremely well by Sovcomflot. He was paid some 10 million roubles in 2005, some 16 million roubles in 2006 and some 23 million roubles in 2007, in total payments approaching the equivalent of $1.9 million. No criminal or disciplinary proceedings have been brought against him.

308. I conclude that Mr. Borisenko was dishonest in his witness statements and in his oral evidence, giving accounts designed to support the claimants' case against Mr. Skarga and Mr. Nikitin. Mr. Popplewell accepted that Mr. Borisenko, like Mr. Privalov, had reason to minimise his guilt and not fully to disclose his involvement in fraudulent schemes, but his dishonest evidence went further than this.

309. I shall explain later why I conclude, in particular, that he lied about his role in the impugned transactions, and about Mr. Skarga arranging secret payments for him. It is convenient here to mention two matters, in themselves not central to the claims in these proceedings, which illustrate that Mr. Privalov and Mr. Borisenko were not only

willing to lie in their evidence, but had together concocted untruthful evidence and sought to support each other in their dishonest accounts.

310. By April 2003 Mr. Privalov controlled an account with Wegelin Bank in the name of Sisterhood and Mr. Borisenko controlled the account there in the name of Laverne. Between 23 April 2003 and 14 February 2005 funds in the two accounts were used to make a series of simultaneous and similar investments. Thus, for example, on 23 April 2003, $104,783.05 was invested from each account in shares in BNG and $55,941.04 was invested in shares in Alfa-Russia Finance. The obvious explanation is that Mr. Borisenko and Mr. Privalov were pursuing an investment strategy together, and that they started to do so shortly after they had both visited Zurich on 16 April 2003. However, Mr. Borisenko denied this: he said that Mr. Baum made the investments under a general discretion to invest for Laverne that Mr. Borisenko had given when he opened the account. This is inconsistent with the documents. Mr. Borisenko had given Mr. Baum written authority in December 2002 to effect investments by way of time deposits, but no other written authority to invest. Mr. Borisenko, as I understood his evidence, said that Mr. Baum had been given a more general authorisation orally, and that from time to time he spoke to Mr. Baum and indicated what investments he should make. I find it implausible that a bank would buy and sell shares without the protection of some more formal arrangement, and Mr. Borisenko's evidence does not in any case credibly explain the similarity between the investments made from the Laverne account and from the Sisterhood account.

311. Mr. Privalov also gave evidence in a witness statement dated 28 September 2009 that he had given Mr. Baum some general authority to invest the funds from Sisterhood's account in shares, and told him that he would like to invest in the "same shares as his other Russian clients". When he was cross-examined, he said that he particularly asked Mr. Baum to follow Mr. Borisenko's investment decisions. This did not explain why the pattern of investments was similar from when the first investments were made from the Laverne account, and, as I conclude, illustrates Mr. Privalov dishonestly supporting Mr. Borisenko's evidence.

312. Secondly, I refer to evidence about a payment on 14 September 2004 of $3,600 from the account of Laverne at Wegelin to that of Sisterhood. Mr. Borisenko's first explanation for this payment was given in a witness statement dated 10 June 2009: that, when he was in London in the summer of 2004, he bought a watercolour of the "Queen Mary" for £2,000, and since the gallery would not accept payment by credit card, he borrowed money from Mr. Privalov and instructed Wegelin to transfer funds from the Laverne account to Mr. Privalov's account to reimburse him. Documents subsequently disclosed by Wegelin showed that the gallery was paid directly from the Laverne account, and Mr. Borisenko accepted in a further witness statement made on 28 September 2009 that his first explanation for transfer was wrong. He said that Mr. Privalov used to lend him funds when he travelled to London and the transfer of $3,600 from the Laverne account was by way of repayment of such a loan. Mr. Privalov, however, gave a vivid account of visiting the gallery and paying for the picture. He apparently recalled the account originally given by Mr. Borisenko, but was unaware, or had forgotten, that Mr. Borisenko had retracted it. The true nature and purpose of the payment remains obscure and is probably of no significance. However, Mr. Borisenko and Mr. Privalov together concocted untruthful evidence about it.

The Background to the Intrigue action

313. I can set out the necessary background to the Intrigue action relatively briefly. NSC, which had been a state-owned enterprise during the Soviet era, were partly privatised in 1992 and were later reorganised as a joint stock company. 51% of the shares were owned by the Russian state through the Ministry of State Property. The Ministry of Transport also had some influence over NSC, in that it had the right to make proposals to the Ministry of Property about NSC's strategic decisions, about appointments of NSC's President and about dismissing executives. NSC were Russia's second largest shipping company until they merged with Sovcomflot in December 2007. Their head offices were at Novorossiysk, the main Russian port on the Black Sea.

314. Like Sovcomflot, NSC were managed by a General Board and an Executive Board. The General Board were responsible for strategic decisions, in accordance with any decisions taken at a General Meeting of shareholders, and for controlling the activities and decisions taken by the Executive Board. They had the power to appoint or remove members of the Executive Board. At the relevant time, the majority of the General Board were representatives of the Russian State. When Mr. Izmaylov joined NSC in November 2001, the Chairman was the Deputy Minister of Transport, Mr. Vladimir Yakunin. Mr. Alexander Misharin replaced him in 2005. The Executive Board were responsible for the management of NSC, subject to the strategic decisions taken by the General Board.

315. Like Sovcomflot, NSC had a Revision or Audit Committee of five members appointed by the Government, who provided internal supervision of the financial and business operations of the company and reported the results of its audit to shareholders of the General Board. More specifically, it was responsible for inspecting financial documents and reviewing documents and for reviewing whether decisions taken by the General and Executive Boards were proper.

316. Mr. Izmaylov was appointed to be acting President of NSC in November 2001, and he was appointed as President, in succession to Mr. Leonid Loza, at a meeting of the shareholders on 25 January 2002. The First Vice-President of NSC was then Mr. Vladimir Sakovich, who was responsible for the commercial management of the fleet, including for chartering the vessels. Another Vice-President was Mr. Oskirko and his responsibilities included finance and planning. He handled NSC's sales and purchases, and negotiated prices and also commission arrangements. Commission agreements were signed by him or by Mr. Agaev. Mr. Oskirko resigned from NSC in December 2003 with effect from 6 January 2004, but returned to the company in December 2005, after Mr. Izmaylov had left NSC. When Mr. Oskirko left NSC in early 2004, his responsibilities in relation to budgetary and financial matters were taken over by Ms. Zhanna Spasova. Mr. Sergei Senshin was the Head of the Commercial Fleet Operations Department (which was sometimes known as "DKEF") until November 2003, when Mr. Gennady Vyvorotnyuk became acting Head and then took over as a permanent appointment in June 2004.

317. Mr. Oskirko, Mr. Sakovich, Mr. Vyvorotnyuk and Ms. Spasova gave oral evidence for the claimants in the Intrigue action. Mr. Bryan accepted that Mr. Sakovich, Mr. Vyvorotnyuk and Ms. Spasova were essentially truthful witnesses, but submitted that Mr. Oskirko gave dishonest and untruthful evidence. I agree with that assessment of

the witnesses. I conclude that, for example, Mr. Oskirko gave false evidence that Mr. Mikhaylyuk told him that he had been threatened by Mr. Izmaylov that he would be dismissed if he did not arrange for two vessels to be chartered to the Standard Maritime defendants. Further, in his witness statement of 28 November 2008 Mr. Oskirko said that, when he sought to pay a lower commission than Mr. Sawyer proposed, Mr. Izmaylov told him not to waste his time because he had "signed an agreement giving Mr. Sawyer 0.3 per cent". In fact, he himself had signed the agreement for Mr. Sawyer's commission before Mr. Izmaylov counter-signed it, and his explanation for not mentioning this in his witness statement was unconvincing: "maybe … I was not asked specifically this question". In the end he was constrained to accept that most likely Mr. Izmaylov told him to agree to Mr. Sawyer's proposed commission when Mr. Sawyer made it clear that he would not accept a reduction. There was no satisfactory explanation for the picture given in Mr. Oskirko's original witness statement.

The hull no 1231 commissions scheme

318. I come to consider the various schemes that the claimants allege were conducted by the defendants. The thrust of the claimants' case is not that individual transactions and schemes can be demonstrated clearly and uncontrovertibly to be corrupt by examining the evidence relating to them in isolation. It is that the overall pattern of the transactions with Mr. Nikitin and companies whom he represented, and the defendants' conduct in relation to them demonstrates that they were corrupt, when it is considered together with (i) evidence that Mr. Nikitin bribed Mr. Privalov and Mr. Borisenko; (ii) evidence of him bribing Mr. Skarga and Mr. Izmaylov and (iii) evidence of other dishonest and improper conduct on the part of the defendants, including evidence about them creating fraudulent and back-dated documents and evidence of them destroying or removing records in order to prevent or impede any investigation of what they had done. It is necessary to examine the evidence in relation to each scheme separately, but I do not overlook and I accept Mr. Popplewell's submission that what matter are the proper conclusions to be drawn from the evidence taken as a whole.

319. It is convenient first to consider the small claim in respect of the hull no 1231 commission scheme. The claimants allege that Mr. Nikitin and Mr. Skarga were party with Mr. Privalov to a scheme to divert $105,000 to Milmont. The essential facts about the underlying transaction are not in dispute, and the issue is whether Mr. Nikitin and Mr. Skarga were party to the fraudulent aspect of it, or whether Mr. Privalov was acting by himself and for himself.

320. On 22 May 2001 Sovcomflot agreed to purchase for $42.5 million from Aframax Tankers AS a vessel being constructed by Tsuneishi, which was then known as hull no 1231 and later named the "Petropavlovsk". The deal was broked through Mr. Cepollina. The ship was to be bought by Fiona's subsidiary, Glefi Shipping XXXI Company Ltd. ("Glefi XXXI"), a Liberian company and the 10th claimant in the second Fiona action. Glefi XXXI needed to borrow $30 million for the final instalment of the purchase price. Mr. Privalov's evidence in his witness statement of 12 February 2009 was that he was instructed by Mr. Nikitin and Mr. Skarga at a meeting in St Petersburg in April or May 2001 to arrange a loan from a bank who would agree to pay an address commission of about 3/8% of the loan amount to a

nominee. The claimants' case is that they were planning to divert this as Mr. Nikitin directed so that he could profit from it.

321. Mr. Privalov spoke to Mr. Regis Caze and Mr. Harry Bruder of BCV about providing finance on this basis. In due course BCV, through Mr. Bruder, agreed to do so, and on 8 June 2001 BCV wrote by fax to Mr. Privalov that, "further to our meeting earlier this week … we have been able to fine tune our proposed Term Sheet ...". He sent an indicative term sheet that, he said, "includes what we have discussed and with regards pricing is in line with what we think could be achievable on the syndication market …". The term sheet provided for an "Arrangement Fee" in the following terms: "85 bps flat on the Facility Amount, due on acceptance of this offer but payable on the date of signing the Loan Agreement".

322. The proposal was presented to the Executive Board of Sovcomflot on 8 June 2001 by Mr. Borisenko. The Executive Board had before it a briefing note prepared by Mr. Dobrynin and Ms. Alexandra Matveeva of the Fleet Operations Department, which included in the summary of the main terms, "Arrangement commission – 0.85% of the amount of credit (US$255,000)". Mr. Privalov sent to Mr. Borisenko on 12 June 2001 a copy of BCV's term sheet and asked for authority to accept the terms offered. Mr. Privalov signed the term sheet and returned it to BCV. Presumably he had been authorised to do so, but there is no direct evidence about who gave him that authority. Mr. Borisenko's evidence is that he would have referred the request for authorisation to Mr. Dobrynin or someone else in the Finance Department, and I accept that.

323. In June 2001 Mr. Wettern of WFW was instructed by Mr. Privalov to prepare documentation for the transaction and in due course he was also instructed upon the transaction by BCV. On Thursday, 29 November 2001, he sent an e-mail entitled "Monday's Signing" to Mr. Caze, and it was copied to Mr. Privalov. It reads as follows: "Please see attached two fee letters to be provided, namely 1. Borrower's letter covering the full fee of 0.85%; and 2. Arranger's letter covering the address fee of 0.35% of the total fee amount. I am sending to you Regis separately the letter that you are to provide to" Landesbank Hessen-Thuringen ("LHT"), a German bank who were to participate with BCV in the lending. Mr. Caze was to provide a separate "Participation Fee" letter to LHT, since they were aware only of a fee 0.50% and not of the scheme to generate the additional 0.35% "address commission". By the "Participation Fee" letter, BCV agreed to pay LHT an arrangement fee of 0.50% of the $15 million that they agreed to lend.

324. On 3 December 2001, the Loan Agreement was concluded between Glefi XXXI (as borrower), BCV and LHT (as lenders), BCV as agent and BCV as security trustee. It was governed by English law and there was a provision for exclusive English jurisdiction. The Loan Agreement simply stated about arrangement fees that Glefi should pay to BCV an arrangement fee "in an amount previously agreed". Mr. Skarga attended the closing of the transaction in St Petersburg.

325. On 6 December 2001, Mr. Wettern sent an e-mail to Mr. Caze, which was copied to Mr. Privalov, in these terms:

> "Following our discussion, please see attached: Fee letter that the borrower will send you, agreeing to pay a fee of 0.85%, and Address commission letter that you will send back to the

> borrower, agreeing to pay the 0.35% address commission to the borrower or to its order. I propose that both letters should be dated on the date of signing the loan agreement, but with the stipulation that the payments must be made within five banking days thereafter. Please arrange for an exchange of these between yourself and Yuri. As I have explained, you will then receive a payment instruction from the borrower stipulating where the address commission is to be paid, together with a copy of the Power of Attorney under which it is signed".

Mr. Privalov faxed to Mr. Caze a signed copy of the "Fee Letter" from Glefi XXXI to BCV, and a copy was sent to Mr. Borisenko. It referred to the Loan Agreement, and continued, "This letter constitutes our commitment to payment to you an arrangement fee of US$255,000, which is equal to 0.85% of the amount of the Total Commitments of US$30,000,000". The "Address Commission Letter" from BCV to Glefi XXXI referred to their agreement to pay this fee, and continued, "This letter confirms our agreement to pay to you or to your order an address fee equal to 0.35% of the amount of the Total Commitments, subject to our receipt from you of the total amount of the arrangement fee due to us".

326. BCV debited $255,000 from Fiona's account, and on 11 December 2001 Milmont received into their account at Wegelin a payment of $104,993, which was described as "Transfer from: Banque Cantonale Vaudoise, Lausanne. Reimbursement of costs and fees related to shipping market analysis loan facility relating to Tsuneishi Hull 1231/106.000 dwt oil tanker. US105,000.00/foreign bank charges". According to Mr. Privalov, he was instructed by Mr. Skarga and Mr. Nikitin that the 0.35% "address commission" should be paid to Milmont and he instructed BCV accordingly, providing them with details of Milmont's bank account.

327. Mr. Nikitin's explanation for this payment into Milmont's account is that Mr. Privalov had asked to be allowed to deposit in an off-shore account of Mr. Nikitin's some business receipts that he expected, because he had not yet arranged to open an off-shore account of his own into which they could be paid, and Mr. Nikitin allowed Mr. Privalov to use the Milmont account for this money, and to keep the money there until he asked for it. This is one aspect of a complicated and important dispute between the parties about these and other monies which were also paid into the Milmont account and about payments to the accounts of Sisterhood and Laverne. I shall consider this later. I say here only that I reject Mr. Nikitin's explanation for that payment of this money from the hull no 1231 commission scheme into the Milmont account.

328. Mr. Skarga denied that he had any involvement with or knowledge of the address commission paid by BCV. He was a member of the Executive Board that approved the financing arrangement on 8 June 2001. He said that he did so in the belief that an arrangement fee of 0.85% was to be paid, and he had no reason to think that this information was misleading. He could not recall whether he attended the closing of the Loan Agreement on 3 December 2001, but this is not significant because the payment of an address commission was kept secret from LHT and so it would not have been mentioned on that occasion. The only evidence that Mr. Skarga knew about the address commission was that of Mr. Privalov about a meeting in St Petersburg in April or May 2001. It is not corroborated and I reject it. The

documents about Mr. Privalov's expenses showed that he was not then in St Petersburg. When Mr. Privalov was asked about these documents in cross-examination, he replied that he did not know when the meeting took place. In fact, the documents show that he did not go to St Petersburg before July 2001, by which time the scheme for BCV to pay an address commission had already been put into operation. Mr. Privalov's evidence that he had been at a meeting with Mr. Skarga at which the scheme was planned was untruthful. As his previous frauds against Sovcomflot in 1999 and 2000 show, Mr. Privalov was capable of operating a scheme of this kind without Mr. Skarga or anyone else in Sovcomflot suggesting it or participating in it. In my judgment, nothing about how the hull commission no 1231 scheme itself worked and no credible evidence about it support the claimants' case that Mr. Skarga was party to it.

The schemes involving collusion with brokers for sales and purchases

329. I come to the Sovcomflot Clarkson commissions scheme, the Norstar commissions scheme, the NSC Clarkson commissions scheme and the Galbraith's commissions scheme. Here (as with the hull no 1231 commission scheme) the claimants' primary case is that the schemes included Mr. Skarga (in the case of the Sovcomflot commissions schemes) or Mr. Izmaylov (in the case of the NSC commissions schemes), who colluded with Mr. Nikitin and the brokers, and, as the claimants say is to be inferred, were rewarded by Mr. Nikitin for doing so. They have a secondary case against Mr. Nikitin and the Standard Maritime defendants that they are liable even if the cases against Mr. Skarga and Mr. Izmaylov are not established.

330. The claimants alleged that in all these schemes Mr. Privalov approached a broker and an arrangement was reached that the broker should conduct on an exclusive basis a part of the business of the claimant group: in the case of the Sovcomflot Clarkson commissions scheme, the exclusive business was both sales and purchases of vessels; Norstar were given exclusive rights to handle the sales of a number of Sovcomflot vessels; NSC gave Clarkson exclusive rights in respect of vessel purchases; and they gave Galbraith's exclusive rights in respect of ship sales (although they did also handle some other business for NSC). The brokers, with the assistance of Mr. Privalov and in accordance with the directions of Mr. Nikitin, paid large sums to Milmont, Horber, RTB, Pollak and Amon (to whom together I shall refer as the "recipient companies"), and, as the claimants allege, Mr. Nikitin and the recipient companies provided nothing of value to Sovcomflot or to NSC in return; and the brokers funded these payments at the expense of the claimants. Where they were acting upon the purchase of ships, the brokers arranged for the sellers to pay address commissions, but did not account for them to their principals or disclose them but used the money to fund payments to the recipient companies. Where they were acting upon the sale of ships, the brokers increased the commissions that they would otherwise have charged their principals for this purpose.

331. The claimants' primary case is that Mr. Skarga and Mr. Izmaylov ensured that the brokers were appointed and continued to be employed, and that the transactions which they introduced were concluded without the level of brokers' commissions and other commissions arrangements being questioned. Mr. Privalov is said to have liaised between the brokers and Mr. Nikitin in order to protect Mr. Nikitin's interests, and

was also the primary link between the brokers and the Sovcomflot group in the schemes concerning their business.

332. Mr. Nikitin and the Standard Maritime defendants contend that their arrangements with the brokers were proper, and that they were paid for introducing business and for contributing to bringing about the transactions. They deny knowing of any impropriety or dishonesty on the part of Mr. Privalov or the brokers or anyone else. Mr. Skarga and Mr. Izmaylov deny that were party to the schemes or knew of Mr. Nikitin's arrangements with the brokers or the payments made by the brokers under them.

Duties of brokers

333. There is, and could be, no dispute that if the brokers, when acting for buyers, negotiated for and received money from shipyards or other sellers of vessels or financiers which was paid by way of address commissions and did not account to their principals for it, they would have been in breach of their fiduciary duties. There was an issue between the parties about whether the brokers were obliged to disclose to their principals payments that they made to the recipient companies from commissions that they were paid when acting for the sellers.

334. In Marcan Shipping London Ltd. v Polish SS Co (The "Manifest Lipkowy"), [1988] 2 Lloyd's Rep 171, at 172-3, Evans J explained the usual practice about the payment of commissions upon ship sales, which practice, as I conclude from the evidence before me, still prevails, at least in the London market with which I am concerned. Evans J was concerned with brokers' commissions: he was not concerned with address commissions paid by a seller for a buyer or his manager because the buyer placed an order for a vessel. Evans J, having observed that shipbrokers are rewarded only where negotiations lead to a successful deal, said that:

> "The usual practice is for the amount of the commission to be agreed between the sellers and brokers with whom they are dealing, the amount being a total figure "for division" between all the brokers involved. Thus, if both parties are represented by brokers, the buyer's broker will indicate the amount which he claims for himself (including in this amount any payment which he may have agreed to make to another broker, or brokers, e.g. for introducing the buyer's business to him) and the seller's broker will then negotiate with the seller a figure for total commission, including his own and, likewise, that of any other intermediaries to whom he may be responsible. The buyer, therefore, pays the amount of the offer and no more, even to his own broker, unless there is some further agreement between them. The seller, on the other hand, receives only the net amount after deducting total commission, and the amount of commission is of particular importance to him. Sellers often try to reduce the total amount by negotiation with their own broker, and they can, if they so wish, discover the number and identities of the other brokers between whom the total commission will be divided. The amount of commission therefore forms part of the sale negotiations which the brokers

> are conducting on behalf of and with their principals, but it is unusual for the agreed terms to be included in the sale contract itself."

335. The claimants submitted that, when a broker acts for a seller, he negotiates on his own behalf the commission or other remuneration that he is to receive, but acts as agent for his principal in negotiating and agreeing the amount of commission or other remuneration to be paid to any other person. They cited the observation of Evans J that "The amount of the commissions … forms part of the sale negotiations which the [sellers'] brokers are conducting on behalf of and with their principals…". The principal, they said, is entitled to assume that his broker negotiates to be paid recompense that he is to keep for himself as his own reward for acting for the principal, and to be told if he is being charged for recompense for others. This is because, subject to negotiating his own reward, a broker is obliged to keep the expenses incurred upon the sale, including expenses incurred by way of commissions, as low as he reasonably can without compromising the prospects of the transaction being successfully concluded; or at least he is obliged to use reasonable skill and care to do so. Further, if any other person is to be remunerated from commissions, he is also obliged to disclose to his principal the fact and amount of any payment, even if the broker is to fund it from his own money. This was said to be because, although commissions are paid by the buyer, the level of commissions affects how much is paid to the seller, who is the broker's principal. In any case it is generally part of the duty of loyalty that a broker or other agent owes to his principal that he must not act for the benefit of a third party without the informed consent of his principal: Bristol and West Building Society v Mathew, [1998] 1 Ch 1 at p.18.

336. The defendants disputed that brokers have these duties. It would not, they submitted, reflect market practice to impose them on brokers. They said that it is conventional and proper for a broker, whether acting for buyer or seller, to use the services of a sub-broker, and in these circumstances he might well be obliged to remunerate the sub-broker from what he is paid. Equally, where he has been introduced to the business by a third party, he might be obliged, or choose, to pay a commission for the introduction. The defendants argued that the broker is free to do so (unless his principal has stipulated otherwise), provided that the payment is not made at his principal's expense but from the broker's own resources, whether from his remuneration for the transaction in question or for other funds of his own, and that he is not obliged to inform his principal of payments of this kind.

337. When they were defending the claim brought against them by Sovcomflot, Clarkson adopted a similar position to the defendants, and pleaded that "Normally, the seller will agree a total commission with the broker, which may include sums to be paid to third parties in connection with the transaction. Unless specifically asked by the seller, the broker will not provide any details to the seller of those third parties (or even their existence) or the payments intended to be made to them". This position reflected Clarkson's response to a request made in March 2005 by Ince & Co on behalf of Sovcomflot for information about how Clarkson's commissions upon Sovcomflot's business were charged and divided. Mr. Fulford-Smith, who was then the Chief Executive Officer of Clarkson plc, replied on 25 April 2005 that:

> "…it is not usual market practice for brokers to disclose the identity of those to whom commission payments will be, or

> have been, made (and the amounts of any such payments). Moreover, during the course of these particular transactions your clients did not seek to impose on us a requirement setting aside the usual market practice. Consequently, no information about commission payments, other than the gross commission payable to us, was sought by, or provided to, your clients (this will account for their inability to trace any relevant documents on their files). Not only is such information commercially sensitive, it is often governed by specific restrictions on its disclosure. As a result, although in accordance with my promise to reveal what commission was for Clarksons, we are not in a position to accede to your request to provide you with details of to whom commission payments were made and their amount. However, should your clients wish us to do so, we will seek authorisation from third parties to provide to you details of their participation in the commission arrangements."

338. Nevertheless, at the trial, after they had settled the claims of Sovcomflot and NSC and were defending the part 20 claims, Clarkson put in cross-examination to Mr. Simon Day, who was called as an expert witness by Mr. Nikitin and the Standard Maritime defendants, that the position described by Mr. Fulford-Smith applies only to payments to other brokers, and that a broker may not without the consent of his principal pay commissions to other persons from his remuneration for a transaction.

339. I heard expert evidence about the duties that a broker of the sale or purchase of a ship owes to his principal from Mr. Day and from Mr. Felix Pierot, who was called by Clarkson. Both have long experience as ship brokers. Mr. Pierot is a director and president of Jacq. Pierot Jr. & Sons of New York, which specialises in the sale and purchase of dry cargo ships, tankers and other vessels and also arranges contracts for the construction of new vessels and sales of obsolete vessels for demolition. He has worked as a sale and purchase broker for over 33 years in New York, London and Madrid. Mr. Day has worked in the shipping industry for more than 35 years. Before 1986 he was involved with charterparty broking and since then he has worked extensively in sale and purchase broking. Between 1997 and 2002 he worked for Larsson Shipping, and he then became the chairman of Jubilee Ships (UK) Ltd. The Jubilee shipping group owns or has an interest in some 24 vessels, many of which are on long term charter to BP.

340. Mr. Day was an impressive witness and he explained his views clearly and with apt illustrations. I preferred his evidence to that of Mr. Pierot. I do not doubt Mr. Pierot's honesty, and, although he has worked mainly in the New York rather than the London market, I do not consider that significantly affected the value of his evidence. However, he had formed such strong, apparently passionate, views about the facts and merits of the case that he seemed unable or unwilling to disentangle from them the questions which were properly for an expert witness or to make an objective and dispassionate assessment of them. I was not assisted by Mr. Pierot's evidence.

341. Mr. Day's evidence was that, when vessels are bought and sold, it is not uncommon for more than one broker to be involved for each party. It is also not uncommon for a broker to be introduced to a transaction by an agent, who is conventionally paid by the broker, even if he plays little or no part in the transaction thereafter and even if the

broker already knew the party for whom he was to act. No distinction is drawn in this regard introductions made by another broker and intrductions made by other people. Sometimes the broker pays to the person who has introduced the business more than he keeps for himself by way of commission. A person receiving an introductory commission will not usually be concerned to know how the broker funds what he is paid, and the broker does not normally inform his principal that he is paying for an introduction to the transaction. It is to be expected that those engaged in the shipping industry know that such payments are made, and Mr. Day considered that "a broker is, in accordance with ordinary market practice, entitled to make a payment to someone who he reasonably believes is entitled to a commission unless he is told otherwise or otherwise knows that it is a payment to which his principal would object (for example, a broker would know that a principal would object to a payment being made to an employee of the principal)". I accept that evidence about the position where a broker makes a payment for an introduction to business, whether or not the introduction is made by another broker.

342. I do not need to consider the position where a broker, whether acting for a buyer or a seller, engages the services of a sub-broker to assist with negotiations or to bring about a transaction. That would raise questions about when a broker, or other agent, is entitled to delegate to another the performance of his responsibilities to his principal. The defendants' argument is that the brokers made payments for Mr. Nikitin to the recipient companies because Mr. Nikitin introduced them to the business that they handled for Sovcomflot and NSC, and Mr. Nikitin also, as I shall explain later, gave evidence about providing the brokers with ideas or information. It is not said that he had any part in broking or negotiating any sales or purchases. Mr. Nikitin and the Standard Maritime defendants plead that market practice is that "An intermediary, who introduces a principal to a shipbroker, who is able to effect the transactions for which the principal required the broker's services, may reasonably expect to be paid a commission for the introduction": para 23A2A of their defence in the Fiona action.

343. Leaving aside the position about commissions paid to sub-brokers, when a principal engages a broker he is taken to have agreed that the broker may incur and pay out of his remuneration expenses such as are usually incurred or paid in the market, and is taken to have understood that the commission that he agreed with the broker might cover such usual expenses. Unless the principal has requested him to do so, the broker is not obliged to inform the principal of them. I therefore accept, in light of Mr. Day's evidence, that in the shipping market a broker acting for a seller is not generally in breach of duty to his principal if he pays a third party a commission of a usual kind for introducing him to a transaction and he does not disclose the payment to his principal. In normal circumstances, he is entitled to take it that the principal has consented to him making a payment of this kind without specifically informing the principal of it, and to have recognised that the commission that he has agreed to pay the broker might cover such outgoings. As Mr. Day acknowledged, the position would be otherwise if the broker knew that the principal would object to the payment, or, I would add, thought that the principal might do so, or if the broker had reasonable grounds for thinking this. Subject to this, I accept that the market recognises that brokers make payments of this kind. The question whether a particular payment is by way of an introductory commission of a usual kind described by Mr. Day depends upon the circumstances of the case. If the payment is not or if the broker does or

should recognise that the principal would or might object to the payment of this kind, the broker is obliged to disclose the payment to his principal because the principal cannot be taken to have consented to it.

The Sovcomflot Clarkson commissions scheme

Sovcomflot look for new brokers

344. When Mr. Skarga became Director-General of Sovcomflot in May 2000, Sovcomflot employed the services of several different brokers, but they bought and sold vessels mainly through Sovchart, and the managing director of Sovchart, Mr. Prezanti, handled this business. Mr. Prezanti used the services of a broker called Mr. Dick Bergstrom, who traded as Shipcraft, and he sometimes instructed Arrow Shipbrokers to provide valuations. At a meeting on 20 August 2000 of Sovcomflot's Executive Board, concern was expressed about Mr. Prezanti's work. He was suspended and then dismissed by Sovchart in the autumn of 2000. According to Mr. Borisenko, Mr. Skarga decided that Mr. Prezanti should be dismissed, but in any case the decision was discussed by the Executive Board and Mr. Skarga was not acting alone. Mr. van Boetzelaer was appointed as managing director of Sovchart in place of Mr. Prezanti.

345. There were sensible reasons that Sovcomflot should change their broking arrangements. Mr. Bergstrom, who operated from a flat in Moscow, was not well placed to handle a major fleet renewal programme such as Sovcomflot planned. After Mr. Prezanti was dismissed, Sovcomflot therefore no longer used Sovchart as their brokers for sales and purchases. Mr. van Boetzelaer tried to interest Sovcomflot in giving Sovchart instructions to sell some vessels in late 2000 and early 2001, but, after Mr. Prezanti had been dismissed, Sovcomflot used Sovchart only as chartering brokers.

346. Accordingly, Sovcomflot went about finding new brokers for their sale and purchase business. Mr. Nikitin became aware of this from Mr. Skarga. He suggested that Sovcomflot might consider using Simpson Spence & Young ("SSY"), and he also told Mr. Skarga of two other firms whom he used for broking chartering fixtures: Alexia Shipping of Helsinki, where Mr. Mikko Jahonen worked, and Italia, where Mr. Carlo Cepollina and his brother Mr. Claudio Cepollina were brokers. Mr. Skarga had known Italia from when he worked for Kinex, and because Sovcomflot had sometimes used them as brokers.

347. Mr. Skarga and others at Sovcomflot had meetings in Moscow with a number of brokers to assess whether they would be suitable for their business, and he and Mr. Borisenko came to London between 29 October and 2 November 2000 to meet others. Before coming to London, Mr. Skarga and Mr. Borisenko went to Cyprus between 24 and 27 October 2000 because two of Sovcomflot's Cypriot subsidiaries, Unicom and FGML, were being merged. Mr. Privalov's evidence was that he met Mr. Skarga and Mr. Borisenko in Cyprus "towards the end of the year, possible late October/early November 2000", and they had a general discussion about re-structuring of the fleet, and about how to improve Sovcomflot's finances and commercial position. He said that they also discussed a proposal that Sovcomflot should sell three tankers, the "Liepaya", the "Limbhazi" and the "Rikhard Zorge", in order to acquire more modern

vessels. The defendants denied that Mr. Privalov met Mr. Skarga or Mr. Borisenko in Cyprus, and the documentary evidence shows that Mr. Privalov was in Cyprus only between 16 and 21 October 2000, and not when Mr. Skarga and Mr. Borisenko were there. I reject Mr. Privalov's evidence about these discussions.

348. However, Mr. Privalov did assist to make arrangements for the visit of Mr. Skarga and Mr. Borisenko to London. Mr. Lyashenko advised him of brokers who might be suitable to work for Sovcomflot, including, according to Mr. Privalov, Arrow Shipbrokers and Mr. Richard Gale of Clarkson. In fact, Mr. Skarga and Mr. Borisenko did not meet Clarkson on this visit. There were meetings with Howe Robinson, Arrow Shipbrokers, Braemar and SSY, and Mr. Borisenko and Mr. Privalov attended at least some of them with Mr. Skarga.

349. Mr. Borisenko denied that he was involved in Sovcomflot's sale and purchase transactions, and denied that on this visit he met any brokers to consider them for Sovcomflot's purchase and sale business. I consider that his evidence gave a false picture of his involvement. Mr. Borisenko agreed that he discussed the Megaslot vessels over lunch with Howe Robinson, although he had little recollection of the conversation. SSY prepared a presentation for "Sovcomflot and Fiona – Mr. Dmitri Skarga, Mr. Igor Borisenko, Mr. Yuri Privalov". Further, on another visit to London in late 2000 or early 2001 Mr. Borisenko attended a presentation by Clarkson, when they were, as I shall explain, seeking to win Sovcomflot's business. This is reflected in an e-mail sent to Mr. Privalov in May 2001 by a Mr. Tom Cutler, who had worked for Clarkson and who referred to making a presentation at a meeting organised by Mr. Gale to Mr. Skarga, Mr. Borisenko and Mr. Privalov. Mr. Borisenko said that the meeting with Clarkson was "not my business in reality", that he was "not paying attention to those meetings at all" and that he had no recollection of it. He was attempting to give the impression that Mr. Skarga alone was responsible for the decision to engage Clarkson as Sovcomflot's brokers for sale and purchase business, and so to implicate him in Mr. Nikitin's arrangement with Clarkson, but I do not consider his evidence to be reliable. Similarly, in his witness statement of 11 June 2009 Mr. Privalov denied that he attended the meeting with SSY, but, when he was shown in cross-examination the documentary evidence about SSY's presentation, he accepted that he did so.

350. The claimants submitted that Mr. Skarga made no real attempt when he came to London in October and November 2000 to find a suitable broker for Sovcomflot's sale and purchase business, and that the purpose of the meetings was only for Mr. Skarga to familiarise himself with the shipping market on a general level. Of course, these meetings were by way of first introductions to the brokers, and the documentary evidence about the meeting with SSY shows that they made a presentation about chartering rates. Mr. Skarga agreed that the "approach was a general one" and the visit to London was the occasion for a "kind of a roadshow of brokers". Sovcomflot did not reveal to brokers much about the potential business that they might be placing. In the event, Sovcomflot were not sufficiently impressed by any of the brokers that they met on their first trip to enter into discussions about a broking relationship with them. But I accept Mr. Skarga's evidence that he and Mr. Borisenko were genuinely looking for potential brokers for Sovcomflot's sale and purchase business and in particular for the fleet modernisation programme that was planned. (The claimants submitted that Mr. Skarga would have had no reason to meet

brokers for this purpose because in cross-examination they elicited an answer from him that he considered that Mr. Cepollina would have been suitable. Mr. Skarga did not mean that Mr. Cepollina would have been ideal for all this business. For example, Mr. Skarga explained that Unicom did not agree with Mr. Cepollina's preference for Chinese yards.)

351. At about this time, towards the end of 2000 and in early 2001, Mr. Privalov began to have some involvement with Sovcomflot's ship sales and purchases. Before Mr. Skarga had joined Sovcomflot, Sovcomflot had decided to sell the "Liepaya", the "Limbhazi" and the "Rikhard Zorge". In November 2000 Mr. Cepollina told Mr. Skarga that a client of his might be interested in buying them, and Mr. Skarga asked Mr. Privalov to handle the enquiry. On 29 November 2000, the General Board gave approval to a proposal by Mr. Skarga and Mr. Terekhin that these tankers (and a fourth tanker) be sold as part of the fleet modernisation programme, agreements for their sale were reached, the vessels were delivered in early 2001 (or at least in the first quarter of the year) and the Executive Board resolved to approve the sales on 7 February 2001. In 2000 Mr. Privalov was also concerned with a proposal to order six container vessels to be built at Hanjin Heavy Industry in Korea and time chartered to Hanjin Shipping, but in fact the project was abandoned at about the end of 2000. (The claimants observed that, since Clarkson were apparently involved with this proposal, Mr. Privalov was working with Clarkson before November 2000. To my mind the evidence is too obscure to draw any firm conclusion about this.) The claimants submitted that Mr. Skarga alone decided to involve Mr. Privalov in ship sales and purchases, but I accept Mr. Skarga's evidence that he acted with the concurrence and upon the advice of Mr. Borisenko.

352. Therefore, as I find, the background to the arrangement reached between Clarkson and Mr. Nikitin was that (i) Sovcomflot were looking for suitable brokers to handle their sale and purchase business; (ii) Mr. Nikitin heard about this from Mr. Skarga and suggested some brokers whom Sovcomflot might use; (iii) Mr. Skarga was taking a lead in the search, but he was not acting alone and in particular Mr. Borisenko was closely involved in it; and (iv) Sovcomflot were starting to use Mr. Privalov to assist with the sale and purchase of vessels.

353. There was some difference in the evidence about when and where Mr. Nikitin and Mr. Privalov first met. Mr. Privalov said that on Mr. Skarga's instructions he met Mr. Nikitin in "early autumn, possibly September 2000" at a dinner at Scott's Restaurant in London, which was also attended by Mr. Skarga and Mr. Claudio Cepollina. Although Mr. Nikitin said in his witness statement dated 13 February 2009 that he could not remember his first meeting with Mr. Privalov, he later recalled meeting him at the Square restaurant in London over a meal with Mr. Pavlov. He said that neither Mr. Skarga nor Mr. Cepollina was present at the restaurant, but that he and Mr. Privalov had a meeting with Mr. Cepollina the following day. The difference between the witnesses about this is not important and I cannot resolve it. On any view before the end of 2000 Mr. Privalov had met Mr. Nikitin in London.

The parties' contentions about the Clarkson arrangement

354. Clarkson began to act as Sovcomflot brokers in early 2001. There is no dispute that at about that time they entered into an understanding with Mr. Nikitin that they would make payments to him or upon his instructions in respect of the business that they

conducted for Sovcomflot. There are differences between the parties about how the understanding, to which I shall refer as the "Clarkson arrangement", came about.

355. It is the claimants' case that the Clarkson arrangement was made in or about December 2000 or early January 2001 when Mr. Skarga and Mr. Nikitin, through Mr. Privalov, entered into an arrangement that Clarkson would be instructed by companies in the Sovcomflot group to act as their brokers in return for Clarkson ensuring that substantial sums were paid to Mr. Nikitin or in accordance with his directions. Thus, Clarkson were retained as the Sovcomflot Group's brokers for their sales and purchases, and Clarkson paid to the recipient companies sums amounting typically, but not always, to 1.5% of the price both (i) when Sovcomflot sold vessels, the payments for Mr. Nikitin coming, according to the claimants, from Clarkson charging Sovcomflot inflated commissions; and (ii) when Sovcomflot bought newbuildings, the payments being funded, it is said, from address commissions that the yards paid on the understanding that the purchasers would receive them; and (iii) in one case, when Sovcomflot bought two second-hand vessels.

356. Mr. Privalov's evidence was that he identified Mr. Gale as a potential broker for Sovcomflot, having been introduced to him by Mr. Lyashenko some months earlier. When Mr. Privalov was asked to assist with the sale of the "Liepaya" and the two other vessels, at Mr. Lyashenko's suggestion he asked Mr. Gale to investigate the market for potential purchasers. This is reflected in an e-mail from Mr. Privalov to Mr. Gale on 2 January 2001 in which he provided Mr. Gale with details of the vessels' itineraries. After that, according to Mr. Privalov, Mr. Gale "began pushing to get some of Sovcomflot's business", and was involved with the proposal to have container vessels built by Hanjin Heavy Industry. Accordingly, when Mr. Nikitin and Mr. Skarga told him to ask Clarkson whether they would be prepared to generate commissions "for a third party" when conducting Sovcomflot's business, Mr. Privalov spoke to Mr. Gale. As instructed, he told Mr. Gale at a meeting over coffee that, if Clarkson wanted business from Sovcomflot, they would have to pay commissions to a third party: his evidence was that he probably did not identify Mr. Nikitin initially. He said that this conversation "Would be January/February, something like this". After about two weeks Mr. Gale agreed to the proposal, and so the Clarkson arrangement came about. However, according to Mr. Privalov at this initial stage nothing was said about the payments being funded by diverting what sellers intended to pay as address commissions, and he did not realise that this was being done until later in 2001, after the Clarkson arrangement had been put into operation, he saw correspondence between Clarkson and a shipyard which revealed this.

357. According to Mr. Privalov, Mr. Gale did not meet Mr. Nikitin until after the Clarkson arrangement had been operating for several months. At Mr. Nikitin's request, he arranged a meeting for them to be introduced over lunch or tea at the Ritz, and at the meeting Mr. Nikitin expressed satisfaction with the deals that had been done by Clarkson.

358. According to Mr. Nikitin, he did not need Mr. Privalov to introduce him to Mr. Gale. He had known Mr. Gale since the mid 1990s, and his arrangement with Clarkson came about as follows. In 2000 he and Mr. Skarga had had discussions about which brokers might be suitable to handle Sovcomflot's business, and initially he had suggested SSY, Italia and Alexia Shipping. In his witness statement of 13 February

2009 he said that Clarkson and SSY were "the biggest brokers I had some connection with", he knew that Clarkson had a good reputation as brokers in the sale and purchase market and he realised that he might make money from introducing them to Sovcomflot. In about late 2000 he met Mr. Gale at (as he believed) the Ritz Hotel in London, and, at that meeting or in other discussions shortly thereafter, he explained that he had good contacts with Russian shipowners and could introduce their newbuilding business to Clarkson. According to Mr. Nikitin, therefore, Mr. Privalov had no part in introducing Mr. Gale to him or in bringing about the arrangement whereby Clarkson paid him in relation to Sovcomflot's business.

359. Mr. Nikitin's evidence was that he asked whether Clarkson would pay commissions for the business introduced and Mr. Gale indicated that they would do so. I shall return to Mr. Nikitin's evidence about what arrangement he reached with Mr. Gale when I consider the part 20 claim that he and Milmont bring against Clarkson.

360. Mr. Nikitin and the Standard Maritime defendants present the Clarkson arrangement as a straightforward understanding that Clarkson were to pay to companies nominated by Mr. Nikitin introductory commissions from what they earned from business that he introduced to them, under which they did in fact make such payments. It continued for some years, but initially Mr. Nikitin did not expect that there would be more than a few transactions. From his discussions with Mr. Skarga, Mr. Nikitin knew how Sovcomflot were thinking of developing their fleet, and indeed on occasions, through conversations with Mr. Skarga, Mr. Nikitin prompted or guided Sovcomflot's thinking. He was therefore in a position to suggest to Mr. Gale proposals that he might suitably put to Sovcomflot, and, if they were accepted, Mr. Gale recognised Mr. Nikitin's contribution towards obtaining business for Clarkson. Mr. Nikitin denied that he ever contemplated that Clarkson would increase the commissions that they charged Sovcomflot in order to remunerate him: his understanding, he said, was that total commissions on ship sale and purchase transactions were commonly around 3%, and generally Clarkson's commissions were not above that level. If Mr. Privalov, Mr. Gale or Clarkson were guilty of deceit or other impropriety in their dealings with buyers, sellers or yards, that was outside the Clarkson Agreement and done without Mr. Nikitin's involvement, encouragement or knowledge.

361. Mr. Skarga's case is that Clarkson came to be Sovcomflot's main brokers for the fleet renewal programme, and they introduced to Sovcomflot valuable ideas about how the tanker fleet might be restructured and modernised. In the autumn of 2000, after SSY had failed to impress him, Mr. Nikitin suggested that Sovcomflot might engage Clarkson, and in particular he mentioned Mr. Gale. Mr. Skarga asked Mr. Privalov to have Clarkson evaluate the Sovcomflot fleet and to consider using their broking services for ship sales and purchases. Mr. Privalov and Mr. Nikitin never discussed the Clarkson arrangement with him, and he did not know of it or that Mr. Nikitin or his companies had any financial arrangement with Clarkson or Mr. Gale.

362. Mr. Skarga's evidence was that he first met Mr. Gale and other employees of Clarkson in the spring of 2001 when he and Mr. Borisenko attended a presentation at Clarkson's offices in London, and they later met Mr. Gale with Mr. Privalov at FML's offices and had a general discussion about the market for selling and buying vessels. Clarkson's standing in the market impressed him, and they satisfied him that they had good relations with major shipyards. In 2001 Mr. Privalov increasingly assumed responsibility for managing Sovcomflot's sale and purchase transactions,

and through him Sovcomflot began to use Clarkson as their brokers, but there was no agreement that Clarkson should be appointed as Sovcomflot's exclusive brokers for sales or purchases or for any other purpose. In fact, they used Norstar as their brokers for some sales.

363. Clarkson's case is that Mr. Nikitin never provided any ideas or other service for the payments that were made to Milmont and the other recipient companies, and that there was no agreement with Mr. Nikitin to pay him (or others upon his instructions). They paid the recipient companies simply because they understood from Mr. Privalov that otherwise they would not receive further instructions for Sovcomflot's business and they were anxious to retain it. Clarkson also adopted the claimants' contention that the payments were made in the course of a dishonest and unlawful conspiracy in which Mr. Skarga, Mr. Privalov and Clarkson were bribed or otherwise prevailed upon to act in breach of their duties to the claimants, and that therefore the arrangements whereby payments were made to the recipient companies were illegal. They did not call any evidence from any witness with contemporaneous knowledge of the Clarkson arrangement.

364. The issues between the parties and differences between the accounts given by the witnesses about how the Clarkson arrangement was made therefore include (i) whether Mr. Skarga was party to making it; and (ii) whether Mr. Privalov made the Clarkson arrangement with Mr. Gale, and introduced Mr. Gale to Mr. Nikitin.

365. The only evidence that Mr. Skarga was party to making the Clarkson agreement was given by Mr. Privalov, and I do not regard it as credible. Mr. Privalov was generally an unreliable witness, and his accounts about when and how the Clarkson arrangement was made have been inconsistent. In 2006 he told Ince & Co that he learned of the Clarkson arrangement only in about May 2001. Mr. Privalov said in cross-examination that this was not dishonest but that he was "down-playing [his] role". To my mind this account is so different from his evidence at the trial that one of his versions of events must have been deliberately untrue. In his witness statement of 12 February 2009 he described a meeting at which Mr. Skarga and Mr. Nikitin instructed him to approach Clarkson to propose what was essentially the Clarkson arrangement, clearly implying that he first heard about the proposal at that meeting: he could not recall whether the meeting was in Moscow or London. In cross-examination he said that he first learned about a proposal to "generate commissions" for payment to a third party at an earlier discussion in London with Mr. Skarga alone. I cannot accept that there was any such discussion, or that Mr. Privalov believed that there had been. If there had been, he would have mentioned it before his cross-examination. He was giving false evidence in order to implicate Mr. Skarga in the Sovcomflot Clarkson commissions scheme.

366. Mr. Privalov also gave the only direct evidence that he introduced Mr. Gale to Mr. Nikitin and was involved in bringing about the Clarkson arrangement. His various accounts about this too have been inconsistent. Mr. Nikitin's evidence was that he learned that Mr. Privalov was aware of the Clarkson arrangement only when Mr. Privalov mentioned it "at some point around the summer of 2001", when, as he recalled, Mr. Privalov said that Mr. Gale had told him of it. The claimants submitted that I should reject Mr. Nikitin's evidence about this and accept that Mr. Privalov was involved with the Clarkson arrangement from the start and helped to bring it about. They put forward three main arguments.

367. First, the claimants said that Mr. Nikitin's account of the origins of the Clarkson arrangement is unconvincing. He would have had no reason to consider Mr. Gale a suitable broker to introduce or to recommend to Sovcomflot. As he acknowledged, he had had no professional dealings with Mr. Gale, but nevertheless he said that he considered that Mr. Gale was "a reliable and trustworthy broker" on the basis of discussions with him and because he understood that he was a director of Clarkson. (In fact, Mr. Gale was not appointed to Clarkson's board until 11 February 2004.) Moreover, if, as Mr. Nikitin said, he knew Mr. Gale and had a high regard for him, he had no credible explanation that he did not recommend him to Mr. Skarga from the start. As I have said, in his first discussions about brokers with Mr. Skarga, he recommended SSY, Italia and Alexia Shipping, although his contact with SSY, Mr. Mike Ashford, was at least primarily a chartering broker, and Italia and Alexia Shipping were much smaller companies than Clarkson. I agree that Mr. Nikitin does not appear to have had convincing reasons for recommending Mr. Gale to Sovcomflot, but that does not mean that he did not make the introduction. When Sovcomflot had been unimpressed by his earlier suggestions, Mr. Nikitin would have had every reason to make another introduction in the hope that would be more successful and that he might earn introductory commissions, even if he did not actually know much about the brokers or have any very substantial reason for the recommendation.

368. Secondly, Mr. Nikitin's account about his exchange with Mr. Privalov when he was told that Mr. Privalov was aware of the Clarkson arrangement was in some ways surprising. According to the pleading of Mr. Nikitin and Milmont in the part 20 claims in the Fiona action, Mr. Gale had agreed that the Clarkson arrangement should remain confidential "save to the extent required by law". Therefore, according to Mr. Nikitin, Mr. Privalov had apparently learned about it from Mr. Gale although Mr. Gale had agreed with Mr. Nikitin not to speak about it. Nevertheless, on his account, neither was Mr. Nikitin interested whether others at Sovcomflot had been told about the arrangement nor did he ask Mr. Privalov to treat what he knew as confidential. It is, to my mind, curious that Mr. Nikitin would have been so unconcerned about whether Sovcomflot had learned of his arrangement with Clarkson, which was already proving very profitable to him. Mr. Privalov, for his part, is not said to have enquired of Mr. Nikitin why he was being paid. In fact, I conclude that Mr. Privalov knew of the arrangement before the summer of 2001. In March and April 2001 Mr. Privalov had been engaged with Mr. Gale in negotiations which were to generate funds to pay Mr. Nikitin, and I conclude that by then at the latest he probably knew that Clarkson had agreed to pay Mr. Nikitin (or to make payments to his order) in respect of business that they conducted for Sovcomflot. However, even if Mr. Privalov knew of the arrangement earlier than his conversation with Mr. Nikitin might indicate and even if Mr. Nikitin did not learn about Mr. Privalov's involvement with Mr. Gale in the circumstances that he described, this does not necessarily mean that Mr. Privalov was party to introducing Mr. Gale to Mr. Nikitin and making the Clarkson arrangement.

369. Thirdly, and importantly, the claimants submitted that two draft letters prepared by Mr. Wettern corroborate Mr. Privalov's evidence that, having introduced Mr. Gale and Mr. Nikitin, he was party to the Clarkson arrangements from the start. The Clarkson arrangement was not recorded in any written agreement when it was made, but in early 2001 Mr. Wettern drafted two forms of letter which, as the claimants

contend, were designed to provide an explanation for payments made by Clarkson in accordance with it. Mr. Richard Latham, an IT manager employed by WFW, provided evidence (in the form of a witness statement) that the two documents, which were stored on WFW's Document Management System in electronic files, were created on 2 and 18 January 2001, and I infer that the drafts were prepared by Mr. Wettern on those dates. Both drafts bore the date "[ ] January 2001". Because of the importance that the claimants attach to them, I shall set them out.

370. The draft of 2 January 2001 was of a letter from Clarkson to FML, which read as follows:

> "We are writing to you following our discussions about the continuation of Clarkson as brokers for the Fiona Group. We well appreciate that, when ordering new ships or arranging for sale or purchase of secondhand ships, there may be commercial requirements for the Fiona group to have two prices, a "headline" price and a net price actually payable or receivable by the Fiona Group as purchasers or sellers. In these circumstances, we are willing to act as intermediary on behalf of the Fiona Group, to collect and then to distribute an address commission for the benefit of the Fiona Group. We would achieve this by receiving a total commission payment equal to the aggregate of:
>
> (a) our own broker's commission, as agreed with the Fiona Group from time to time; plus
>
> (b) the address commission.
>
> You will indicate to us in relation to each transaction how much address commission should be recoverable out of that particular transaction. We will then pay over to such bank account as may be nominated by an authorised representative of the Fiona Group from time to time the address commission that we have collected and which we are liable to account for."

371. The draft of 18 January 2001 was of a letter from FML to Clarkson prepared for counter-signature by Clarkson, and read as follows:

> "We write to you following our discussions together about the continuation of Clarksons as brokers for the Fiona Group. As we have explained to you, for commercial reasons the Fiona Group wishes to move away from the industry practice of there being "address commissions" included within the contract, either when ordering new ships or when arranging for sale or purchase of secondhand ships. Instead, in relation to projects in which you will act as broker for the Fiona Group, we request you please to confirm that you will agree instead to a method by which the commission due to Clarksons on any contract, either for ordering a new vessel or for arranging sale or

> purchase of a secondhand ship, will be agreed by us in each particular case, and that, out of the commission you receive, you will then pay to a company to be nominated within the Fiona Group the proportion of the commission which you collect that we have agreed on behalf of the Group will be retroceded back. As indicated, this arrangement will need to be agreed on a case-by-case basis, so that we agree in each case what the percentage division of Clarksons' headline commission will be. Please confirm your agreement to this arrangement in principle by countersigning this letter."

372. According to Mr. Privalov, he instructed Mr. Wettern to prepare the drafts, and he did so because, when he first suggested the Clarkson arrangement to him, Mr. Gale was concerned "how it would appear if Clarkson paid a commission to a third party unconnected with Sovcomflot". Having discussed this concern by telephone with Mr. Skarga and Mr. Nikitin, Mr. Privalov sought advice from Mr. Wettern, and as a result Mr. Wettern prepared the drafts. Mr. Privalov said that he discussed them by telephone with Mr. Nikitin and Mr. Skarga, but there is no record of them receiving copies of the drafts by e-mail or otherwise. Mr. Privalov recalled that Mr. Nikitin and Mr. Skarga rejected the drafts. In his witness statement of 12 February 2009, Mr. Privalov said that he did not recall why they were rejected, but, when he was cross-examined by Clarkson, he explained that the reason was to avoid leaving "some kind of trace" of the discussions on FML's files.

373. I should make clear that, although the draft letters refer to address commissions, the claimants did not allege that Mr. Nikitin knew that Clarkson were to generate funds from retaining or diverting address commissions. They plead that it is not their case that he knew "of the manner in which Clarkson procured the increase in gross purchase price or reduction in net purchase price": see the part 18 further information dated 1 February 2008, response 60. On Mr. Privalov's account, Mr. Gale was in communication with him and not with Mr. Nikitin, and so Mr. Nikitin would not have known that funds to pay him were to be generated in this way. As Mr. Privalov put it in cross-examination, "I was under the impression ... that it was up to [Clarkson] … how they arrange it with the shipyards". Moreover, Mr. Privalov accepted that he did not think that Mr. Skarga knew that Clarkson were receiving what the sellers paid as address commissions.

374. I accept that Mr. Wettern drafted these letters in response to instructions from Mr. Privalov. There is no suggestion that Mr. Wettern dealt with anyone else about them. I do not otherwise regard Mr. Privalov's evidence about them as reliable. Nevertheless, the draft letters show that Mr. Privalov knew by the beginning of January 2001 that Clarkson were at least likely to be engaged as Sovcomflot's brokers. Moreover, if, as the claimants allege, the drafts were directed to the Clarkson arrangement, they also support their contention that Mr. Privalov knew of the arrangement. He was going about arranging misleading correspondence in order to implement it and to disguise it.

375. Mr. Nikitin and the Standard Maritime defendants, however, disputed that the draft letters were concerned with the Clarkson arrangement. They pointed out that there

is an unexplained interval of 16 days between the two drafts. More importantly, according to Mr. Privalov Mr. Gale agreed to the arrangement only in February 2001, some time after the drafts were prepared. He also said that he was not initially aware that Clarkson had it in mind to divert address commissions paid by sellers. In any case, the draft letter of 18 January 2001 would not provide an explanation for payments to the recipient companies. It sought to explain payments to a company in the "Fiona Group". Accordingly the defendants submitted that in view of their wording the drafts do not corroborate Mr. Privalov's evidence that their purpose was to provide Clarkson with a justification for operating the Clarkson arrangement.

376. I see force in these arguments. The defendants went on to suggest that Mr. Privalov's purpose in having the letters drafted was to prepare the ground for a fraudulent scheme similar to those that he had previously carried out with Mr. Wettern's assistance in 1999 and 2000, but that is speculation and seems to me improbable.

377. There is no satisfactory explanation for these draft letters, and their purpose, to my mind, remains obscure. I do not accept the claimants' submission that they demonstrate that by the beginning of January 2001 Mr. Privalov was party to the Clarkson arrangement. I conclude that, as I shall explain, Mr. Privalov was assisting Clarkson to generate funds to implement the arrangement from the time of the first transactions that were broked by Clarkson, but there is no convincing corroboration of Mr. Privalov's evidence that he introduced Mr. Gale to Mr. Nikitin. I regard it as improbable that, as Mr. Privalov stated, Mr. Nikitin did not even meet Mr. Gale until the autumn of 2001 despite the large sums that Clarkson were paying for him. There is no proper reason to reject Mr. Nikitin's account that he approached Mr. Gale independently of Mr. Privalov and proposed the Clarkson arrangement, and I accept that part of Mr. Nikitin's evidence and I reject Mr. Privalov's evidence about how the Clarkson arrangement was made.

378. I next explain how the Clarkson commissions scheme operated, and therefore (i) I describe the first transactions which were concluded by about the middle of 2001 and resulted in payments of some $19 million for the recipient companies, and other transactions that illustrate how Clarkson conducted Sovcomflot's business; (ii) I examine how Mr. Privalov exploited (or further exploited) for his own profit the sales and purchases which Clarkson broked; (iii) I consider the documentation which was created to support the Clarkson arrangement or to disguise it and the payments to the recipient companies; (iv) I consider the evidence that Mr. Skarga was involved in or knew of the Clarkson arrangement; and (v) I explain how the Clarkson arrangement developed to include business that Clarkson did for the NSC group as well as for the Sovcomflot group.

379. The sale and purchase agreements that were negotiated through Clarkson and also those negotiated through Norstar and Galbraith's were, in the vast majority of cases if not invariably, governed by English law and often contained provisions for English arbitration.

The first transactions

380. From early in 2001 Mr. Privalov had assumed responsibility for the day-to-day management of Sovcomflot's sale and purchase transactions. There was good reason that Sovcomflot should give him this responsibility. He had acquired much experience in the market and in ship finance, and he was clearly shrewd. He was based in London and had been for many years, and so had more familiarity with, and more immediate access to, the London market than those based in Moscow and than Sovchart in Geneva.

381. The transactions concluded by the middle of 2001, which led to the recipient companies being paid some $19 million, were these:

i) The "Genmar" transaction, as a result of which the recipient companies were paid some $4.9 million.

ii) The "Astro vessels" transaction, as a result of which the recipient companies were paid $1.38 million.

iii) The "Tsuneishi" transaction, which led to the recipient companies being paid $1.242 million.

iv) The "Hyundai Mipo" transaction, which led to the recipient companies being paid $1.87 million.

v) The "Daewoo" transaction, which led to the recipient companies being paid some $3 million.

vi) The "Athenian" transaction, as a result of which the recipient companies were paid $6.7 million.

The Genmar transaction

382. The first transaction which Clarkson conducted for Sovcomflot was the sale of their seven OBO carriers: "SCF Trader", "SCF Challenger", "SCF Endurance", "SCF Champion", "SCF Spirit", "SCF Star" and "SCF Trust". They were sold by the 30th to 36th claimants in the Fiona action. On 18 January 2001 Mr. Gale reported to Mr. Privalov that General Marine Corporation ("Genmar") had expressed interest in purchasing the vessels. Mr. Privalov said that this was an unsolicited approach, but I accept Mr. Nikitin's evidence that it followed conversations that he had had with Mr. Gale. He had told Mr. Gale that, as he had learned from Mr. Skarga, Sovcomflot were interested in selling the vessels, and agreed to recommend that Clarkson should handle the sales. Mr. Nikitin explained that the focus of Mr. Gale's approach to Sovcomflot for their business had been to try to interest them in buying container vessels. In order to demonstrate to Clarkson that he had influence with Sovcomflot, he told them that he had recommended Mr. Cepollina to them for the sale of the "Liepaya" and the other tankers, and he also advised them that Sovcomflot would be interested in finding buyers for the OBO ships.

383. Mr. Gale first reported to Mr. Privalov that Genmar had indicated that they would pay $196 million for the seven vessels, with payments of commissions of 1% to Clarkson

and of 2% to "New York for division". On 25 January 2001 Mr. Privalov replied that Sovcomflot had decided not to sell the vessels "for the time being".

384. According to Mr. Privalov's evidence, Mr. Skarga told him of this decision, and he was also told by Mr. Nikitin that the proposal would not generate enough money for him. Mr. Nikitin indicated that he should receive commissions of at least 2%. Mr. Privalov reported to Mr. Gale that, if he wanted the business, the "third party" mentioned in their earlier discussions would expect to be paid at least 2% commission. Mr. Privalov's evidence about this is not corroborated, and I do not consider it reliable.

385. On 1 February 2001 Mr. Gale reported to Mr. Privalov, and recommended, an improved offer for the vessels of $210 million net of commissions, subject to the success of an initial public offer ("IPO") whereby Genmar were raising finance. Mr. Gale wrote, "The ships are considered about 28 million each gross, perhaps a bit more but in order to pay net figure you require, then has to go to the market". Mr. Privalov accepted, as I understood his evidence in cross-examination, that he had told Mr. Gale that Sovcomflot required $210 million for the seven vessels. Mr. Privalov had further discussions with Mr. Gale about the commissions that Mr. Nikitin required, and Mr. Gale eventually indicated that he would pay them at the rate of 2%.

386. On or about 27 March 2001, Genmar offered to buy the vessels for $203 million in cash less 4% commissions, which was the equivalent of a net price of $194.88 million in total or $27.84 million per vessel, subject to the successful completion of Genmar's IPO by 15 May 2001. This offer was seen by Mr. Privalov (as is evidenced by his manuscript notes on a copy of it), but on 28 March 2001 Mr. Privalov sent an e-mail to Mr. Borisenko in which he reported an offer from Genmar in these terms: "7 OBOs en bloc at $27.8 mill net each with delivery in early May". He gave no credible explanation for reducing the net amount that Genmar were offering, and I cannot infer the reason for this.

387. On 9 April 2001 Mr. Gale sent to Mr. Privalov an e-mail seeking authority to sell the ships for $214.5 million, with 4% "total commission for division". On 11 April 2001 Mr. Gale sent Mr. Privalov an e-mail that the buyers were insisting on increasing the commissions "at their end", that the total commissions would have to be at the rate of 4 1/3%, and that Sovcomflot should "take this into account when you arrive at the final price". He continued, "Furthermore, I have to advise you that for the purpose of the IPO, no commissions can appear in the MOA". According to Mr. Privalov, after he had initially instructed Mr. Gale to provide for enough commission to pay Mr. Nikitin at least 2% of the sale price, Mr. Nikitin required a higher payment, and Mr. Gale was disguising the true reason for the increase in correspondence which was to be kept on Clarkson's files. In fact Pollak, the company that Mr. Nikitin nominated to be paid the commissions, was paid 2 1/3% of the sale price, and, whatever the precise the sequence of events, Mr. Gale increased the commissions charged to Sovcomflot in order to meet Mr. Nikitin's demands. I accept Mr. Privalov's evidence that he (Mr. Privalov) knew the reason that the commissions were increased.

388. After further negotiations, on 28 April 2001 a sale was agreed at a price of $212.5 million, including 4 1/3% commission. On 7 May 2001 conditional contracts were concluded and on 15 June 2001 they became unconditional after Genmar's IPO was

successful. The total commissions were $9.208 million, of which some $4.958 million, or 2 1/3% of the sale value, was paid to Pollak and some $1,373 million was for Clarkson.

389. On 27 June 2001, Mr. Gale sent to Mr. Privalov what he described as the "final agreement" for the sale. It referred to the price as "USD212,500,000 en bloc in cash less 4-1/3 pcnt total commission for division including address commission to Buyers". On the same day Mr. Privalov sent a version of it to Mr. Skarga, describing it as a "recap" of the agreement of 15 June 2001. He had amended it to read: "USD212,500,000 en bloc, in cash less 4-1/3 pcnt total commission for division including 3 1/2 address commission to Buyers". The statement that "address commission" of 3.5% would be paid to Genmar was deliberately misleading. Mr. Borisenko, rather than Mr. Skarga, passed the e-mail to Mr. Dobrynin with an instruction to implement the agreement. (It read, as translated by Mr. Borisenko in the course of his cross-examination, "Put under control and secure the cooperation of the interested departments".)

390. Although the usual procedure would have been for the sellers' brokers to distribute the commissions to those entitled to receive them, Clarkson did not pay Pollak directly. They paid the address commissions to the buyers' nominees, Aylesbury Maritime, and remitted the rest, apart from their own share of $1.373 million, to the buyers' brokers, M J Gruber of New York. M J Gruber paid the greater part of this to Pollak against invoices sent to them in Pollak's name.

391. In my judgment, the history of this transaction shows that:

i) The rate of commissions paid by Sovcomflot was increased because Clarkson needed to pay Mr. Nikitin, and otherwise the prices received by the 30th to 36th claimants would have been correspondingly higher;

ii) The explanation that Clarkson gave Sovcomflot for the level of commissions was untruthful, and Mr. Privalov was party to the misrepresentation; and

iii) Clarkson disguised the payment to the recipient company, Pollak, by routing it through M J Gruber.

392. I also conclude, despite Mr. Nikitin's evidence to the contrary, that:

i) Mr. Nikitin insisted upon receiving a higher rate of commission than the 2% that Mr. Gale originally planned. Pollak were paid some $1.75 million more than 1.5% of the sale price, the level of payment that had been discussed between Mr. Nikitin and Mr. Gale when the Clarkson arrangement was made. Mr. Nikitin said that Clarkson decided how much to pay Pollak without him prompting them, and he suggested in his evidence that Clarkson paid generously in order to encourage him to introduce more business. I do not accept that Mr. Gale would have volunteered so large an amount, and in particular that he would have decided on his own to increase the payment to 2 1/3%, an increase that required him to invent the fiction that the buyers had changed their requirements.

ii) Mr. Nikitin knew that the money was paid to Pollak through M J Gruber because Clarkson wished to conceal that they were paying his company. Mr. Nikitin said that he left it to Clarkson to decide how to make the payment, that their decision about routing the payment as they did was not explained to him, and that he took it that they, as leading brokers, knew "how to do it properly". However, the only conceivable reason that Clarkson paid Pollak indirectly was to disguise the recipient, and they would have had no reason to do so if they considered it a proper payment. Mr. Nikitin is an acute businessman and he must have realised this.

393. There is no credible evidence that Mr. Skarga was aware of any of these matters.

The Astro vessels transaction

394. By two Memoranda of Agreement dated 3 May 2001 Fiona agreed to buy for $46 million each from Ocean King Shipping and Trading Inc, a company in the Angelicoussis group, two Aframax vessels built in 1999 at the Daewoo Yard, the "Astro Maria" and the "Astro Saturn" (to which I shall refer as the "Astro vessels"). They were bought in the names of Rosfjord Shipping Co Ltd. and Glefi Shipping XXX Company Ltd., the 51st and 52nd claimants in the Fiona action, in accordance with resolutions dated 9 August 2001.

395. By an e-mail to Mr. Privalov on 19 January 2001 Mr. Gale suggested that Sovcomflot "try USD 48 million each" to buy three vessels, including the Astro vessels. On 7 March 2001, as I interpret the fragments of the e-mails that are in evidence, Mr. Gale reported to Mr. Privalov that the Angelicoussis group were "aiming USD47 mil each" for the two vessels and suggested an offer of $44.5 million. On 17 April 2001 Mr. Gale reported to Mr. Privalov that Mr. John Angelicoussis was "looking for at least 90 million net" for a sale of the two vessels together, and he suggested an offer "at $90 million less buyers address [commissions]".

396. In the exchanges that led to the sale, Mr. Gale acted for Sovcomflot, taking his instructions from Mr. Privalov, and Mr. Fulford-Smith liaised with the Angelicoussis group through Mr. Stelios Hadjigeorgiou of their brokers, Agelef Shipping Co (London) Ltd. On 19 April 2001 Mr. Angelicoussis indicated that he "was looking for at least 90 million net" of commissions for the two vessels "with a view to doing a quick clean deal with no subject on either side". Mr. Privalov responded that he had "authority for 90.5 gross" on the basis that any "subject" could be lifted shortly, but Mr. Gale advised that an offer at that level "really won't be enough". On 20 April 2001 Mr. Gale made an offer on behalf of Fiona to pay $90.5 million less 2% total commissions. The sellers responded that they would accept $92.6 million, gross of commissions. On 23 April 2001 Mr. Gale sent to Mr. Fulford-Smith an offer on behalf of Fiona to pay $92 million with total commissions of 2% "of which 1.5pct is buyers adress (sic) comms", which meant that the sellers would receive $90.16 million net of commissions. This offer was accepted.

397. There is no dispute that Mr. Skarga authorised Mr. Privalov to conduct these negotiations and specifically to make the offers of $90.5 million gross on 19 April 2001 and $92 million gross on 23 April 2001. Mr. Skarga said that he did so in accordance with "consultations and discussions with the fellow directors", and in particular he discussed the negotiations with Mr. Sharikov. I accept that there was

some discussion about negotiations and sales of the vessels, but I cannot tell how detailed they were. The claimants submitted that, when he authorised Mr. Privalov to offer a price, Mr. Skarga must have specified whether it was gross or net of address commissions. Mr. Skarga's evidence is that, although he was familiar in general terms with the practice of buyers receiving address commissions, Sovcomflot were not interested in asking for them when conducting negotiations, and they regarded them as a distraction from the essential decision about the price which ultimately had to be paid. I accept that, when giving instructions to Mr. Privalov, Mr. Skarga did not refer to address commissions, and Mr. Privalov understood that Sovcomflot were not expecting to receive any. Mr. Privalov said in cross-examination that Mr. Skarga did not know that Clarkson told sellers that Sovcomflot wanted to be paid address commissions. I understood that this was his evidence both with regard to orders placed by Sovcomflot with yards for newbuildings and about purchases of second hand vessels.

398. On 24 April 2001 Mr. Gale sent Mr. Privalov a recap of the agreement, having first sent a draft to Mr. Fulford-Smith with a request that he "glance through it". Mr. Privalov sent it to Mr. Skarga. It simply referred to a price of $92 million without mentioning address or other commissions. In other communications with Moscow Mr. Privalov avoided any mention of the address commissions. In an e-mail on 23 April 2001 addressed to Mr. Borisenko and Ms. Matveeva he wrote, "As discussed with Mr. Borisenko, here is short description of two Aframax vessels" and after describing the vessels he wrote "both vessels fixed on [subjects] at USD46 mil each". Again there was no reference to the commissions. Clearly this was deliberate, and the address commissions of $1.38 million were concealed from Sovcomflot.

399. At a meeting on 28 April 2001 Sovcomflot's Executive Board unanimously decided to approve the purchase of five Aframax vessels, the Astro vessels and three tankers from the Tsuneishi yard, hulls nos 1246, 1247 and 1231. The briefing note supporting the proposal stated that the purpose was to replace the OBO vessels, "the commercial and technical operation of which is already starting to pose specific problems related chiefly to the attitude of freighters to the concept of combined vessels and related to the increased operating costs as they become older". The only details about the purchase of the Astro vessels were that "terms were agreed for the purchase of two Greek-owned Aframax-type tankers built in 1999". The note did not refer to address or any other commissions.

400. After the purchase was completed, on 11 October 2001 the sellers paid Clarkson $1.84 million and on 12 October 2001 Clarkson paid Milmont $1.38 million, or 1.5% of the price.

401. Mr. Nikitin's account in his witness statement was that he introduced this business to Clarkson, although he could not recall how that came about. In cross-examination he said that he told Clarkson that Sovcomflot would be looking to replace their OBO vessels with Aframaxes. Nothing corroborates this, and Mr. Nikitin's evidence was so vague and inconsistent that I cannot accept that he played any real part in introducing the business.

402. I conclude with regard to this transaction that:

i) Mr. Privalov and Mr. Gale arranged that the sellers should pay address commissions, and concealed them from Sovcomflot.

ii) Their purpose was to generate funds to pay Milmont 1.5% of the purchase price and the money was in fact paid to Milmont.

iii) As a result, the prices that Fiona agreed to pay under the memoranda of agreement and that the purchasing companies agreed to pay were correspondingly increased.

iv) There is no evidence that I accept that Mr. Skarga had any part in making these arrangements or was aware of the address commissions.

v) There is no evidence that I accept that Mr. Nikitin introduced the business to Clarkson or played any part in the transaction.

The Tsuneishi transaction

403. I come next to three transactions in which Sovcomflot bought newbuildings from Tsuneishi, Hyundai Mipo and Daewoo. The transactions were essentially similar, and the contracts for the vessels were all signed when Mr. Skarga, Mr. Privalov and Mr. Gale went to Japan and Korea in June 2001.

404. In the Tsuneishi transaction, Sovcomflot bought for $41.4 million each two newbuildings under an agreement reached in a letter of intent dated 27 April 2001 and contracts dated 15 June 2001 between Mitsubishi Corporation, acting for Tsuneishi, and two Liberian subsidiaries of Fiona, Big Shipping Company, the 59th claimant in the Fiona action, and Romantic Navigation Inc, the 60th claimant in the Fiona action, the buyers of hulls nos 1246 and 1247 respectively. Milmont received a payment representing 1.5% of the purchase price, a total of $1,242,000, and Clarkson kept for themselves commissions of 1%.

405. On 5 March 2001 Mr. Gale sent Mr. Privalov a report about the availability of newbuild Aframax vessels from Tsuneishi, and Mr. Privalov sent it to Mr. Skarga. Mr. Skarga instructed Mr. Privalov to approach Tsuneishi about buying two Euro-version Aframax vessels for $40 million with "discount for heavy prepayment". Tsuneishi responded with an offer to sell them for $41.5 million per vessel.

406. In this and other transactions, Mr. Nicholas Wood acted as the yard's broker, and negotiated with Mr. Gale. Mr. Wood was a broker with Clarkson and became Head of their newbuilding team before he left in September 2009 to become a partner in R S Platou. On 26 March 2001, in an exchange of e-mails between Mr. Gale and Mr. Wood, Mr. Gale suggested that Sovcomflot should offer to place a firm order for four vessels at $40 million each, and asked Mr. Wood to "make suggstd offer with 2pct and will persuade to come up on the money". Mr. Wood pointed out that the proposal, taking into account commissions, which he assumed to be "one us, one them", put forward a lower price than had originally been indicated to Tsuneishi. In the evening of 26 March 2001 Mr. Gale sought Mr. Privalov's approval to propose an order of four vessels at a price of $40 million each "less 2 pct commission including address commission". On 27 March 2001, Mr. Privalov responded, having spoken to Mr. Gale, with an e-mail that read, "as discussed, pls prepare revised draft counter

offer". Mr. Gale then sent Mr. Wood a counter-offer which proposed a price of $40.6 million per vessel "less 2.5 pcnt commission including address commission". Thus, the price was $600,000 more than the original proposal, and the commissions that Tsuneishi were to pay were ½% more.

407. Mr. Privalov's evidence was that the commissions were increased to 2.5% in order to respond to a demand by Mr. Nikitin and Mr. Skarga to increase the payment to be made under the Clarkson arrangement. This is not corroborated and I do not accept this. However, I do accept that Clarkson were increasing the commissions in order to generate sufficient funds to pay Mr. Nikitin and that this was why the price offered was increased. I also accept that Mr. Gale changed the terms of his earlier draft on instructions from Mr. Privalov and Mr. Privalov knew that the proposed commissions were increased in order to pay Mr. Nikitin, and that this was why a higher price was offered.

408. On 28 March 2001 Mr. Gale confirmed to Mr. Privalov that he had made an offer of $40.6 million per vessel, but he did not refer to address or other commissions. Mr. Wood confirmed to Mr. Gale that he had passed the offer on to Tsuneishi. Shortly afterwards Mr. Wood, having spoken to Tsuneishi, told Mr. Gale that:

> "We should get a counter but it might be a close run thing as [Mr] Sato [of Tsuneishi] was not very impressed by the offer. The main problems/comments are:
>
> ...
>
> 4. Price – not encouraged by the price – although better than what had originally been requested but with 1.5% address need to be prepared to pay well over US$41mill as the address is an extra US$600,000!"

409. On 29 March 2001, Mr. Wood sent directly to Mr. Privalov a counter-proposal that the price per vessel be $41.8 million "including 1.5% address commission". Mr. Wood commented that, "we have absorbed half of address commission which is a substantial price deduction on our part in comparison with our previous indication". When Mr. Privalov reported this offer to Mr. Skarga in writing, he did not mention commissions, and referred to the price as $41.8 million "per vessel (price reduced 200K)". He suggested that Sovcomflot offer to pay an initial instalment of 40% in exchange for a reduction in the price. This suggestion was adopted, and Mr. Gale made a revised offer at the same price of $40.6 million, on the basis that it should be paid in three instalments of 40%, 10% and 50% (rather than five instalments of 20%, 10%, 10%, 10% and 50%). On 3 April 2001, Tsuneishi responded in these terms (as Mr. Wood informed Mr. Gale by e-mail): "Price – US$41million – this includes our 1% and 1.5% address (note this is a reduction by US$800,000 per vessel reflecting the upfront payment)".

410. The negotiations were delayed while Tsuneishi considered when they could commit themselves to deliver the vessels. After further exchanges the parties agreed prices of $41.4 million each for two vessels, on the basis that their specifications should be lower than originally contemplated. Tsuneishi agreed to pay 2.5% commissions, and

they had been given to understand that this included 1.5% address commissions for Sovcomflot.

411. On 25 April 2001 Mr. Privalov sent to Mr. Skarga and Mr. Borisenko a recap of the agreement with Tsuneishi, which referred to a price of $41.4 million per vessel, without mentioning commissions. Similarly, on 26 April 2001 Mr. Privalov provided to Mr. Skarga and Mr. Borisenko a draft letter of intent which again did not mention commissions; on 25 April 2001 Mr. Wood had initially sent the draft letter of intent to Tsuneishi referring to "2.5 pcnt commission for division including Buyer's address commission", but shortly thereafter he provided another draft. He said that he had "also sent a copy of this draft to the buyers for their comments" and asked Tsuneishi to "please note that we have deliberately not included the commission in this draft as the buyers do not want to have reference to the commissions in the [letter of intent]. Trust that this is okay".

412. On 27 April 2001 Mr. Privalov signed a letter of intent committing Fiona to buy the vessels. As I have mentioned, at a meeting on 28 April 2001 the Executive Board of Sovcomflot unanimously agreed to buy five Aframax vessels, including hulls nos 1246 and 1247 from Tsuneishi.

413. After the letter of intent had been signed, Clarkson had to make arrangements for the commissions to be paid. Their position was not straightforward. On 14 May 2001, Mitsubishi Corporation, Tsuneishi's agents, asked Mr. Wood, "please let us know to whom the return comm shall be paid from us. To avoid the interference from Japanese Tax Authority, we prefer to pay the return comm to the buying company itself. Please check if this is acceptable for Fiona". The same day, Tsuneishi sent Mr. Wood a draft of a commissions agreement between themselves and Clarkson and recorded their understanding that address commissions would be paid "to the buyer immediately after receipt of the delivery payment". Mr. Wood explained to Mr. Gale that "the Japanese Tax authorities are very concerned about payments to public officials and are worried that commission is diverted through commission to public officials. Therefore the Japanese want to pay the address commission directly to the Buying company ... rather than to Fiona. They are also not keen to have all the comms paid to us for division as this is not sufficiently transparent for the Japanese authorities. How do the buyers want the address paid? If they insist on payment through us I will push it". The problem for Mr. Gale and Mr. Wood was, of course, that the address commissions were not to be paid to the buying companies, Fiona or Sovcomflot, although Tsuneishi understood that they would be.

414. Mr. Wood wrote to Mr. Gale again on 16 May 2001, asking "to whom/how does Yuri want address comms paid? Assume it is best to have paid to us for division? Can you confirm please?" In accordance, as I infer, with Mr. Gale's reply, Mr. Wood responded to Tsuneishi:

> "In terms of the address commission, the buyers would like all commissions – including ours – to be covered by a single commission agreement with Clarksons. We will collect all the commissions on behalf of the buying companies and will distribute to the buying companies against their invoices. This is the way that the buyers want it and trust that this can be arranged."

415. Tsuneishi were still concerned about the Japanese authorities, and Mr. Ishii of Tsuneishi suggested that Clarkson might enter into a separate agreement with Tsuneishi about the 2.5% commissions. He commented:

> "Since 2.5% comm. is rather big, to avoid the interference by Japanese Tax Authority, this kind of documents might be necessary".

416. By commission agreements for each vessel dated 15 June 2001, Tsuneishi agreed to pay commissions to Clarkson. Mr. Fulford-Smith signed them on Clarkson's behalf, apparently because Mr. Wood did not have authority to do so. They stated the amount of the commissions, but not the proportion of the purchase price that they represented either directly or by referring to the purchase price, and the agreements did not indicate that the commissions included address commissions or were otherwise for division or were anything other than commissions payment to Clarkson "in consideration of the broker's efforts for the execution of the contract for construction and sale".

417. In due course, each of the instalments under the newbuilding contracts was paid by the Big Shipping Company and by Romantic Navigation Inc, and corresponding payments of 2% of each instalment were made by Tsuneishi to Clarkson, and then of 1.5% of each instalment by Clarkson to Milmont. In total, for the two vessels, Clarkson received $2,070,000 from Tsuneishi, and paid $1,242,000 of this to Milmont.

The Hyundai Mipo transaction

418. In the Hyundai Mipo transaction, Sovcomflot bought for $31.2 million each four 1A Product Tanker newbuildings under a letter of intent signed on or about 3 May 2001 and contracts dated 18 June 2001 between Hyundai Corp and Hyundai Mipo Dockyard Co Ltd. ("Hyundai Mipo") and four Liberian subsidiaries of Fiona, namely Integrity Maritime Inc, Scorpio Tankers Inc, Star Carriers Inc. and Wonderful Transport Co, the buyers of hulls 0125, 0126, 0127 and 0128 respectively and the 26th, 61st, 62nd and 63rd claimants in the Fiona action.

419. In late July 2000, Mr. Wood of Clarkson had approached three shipyards including Hyundai Mipo about building ice-class 1A product tankers for Fiona, and by 22 September 2000 Mr. Borisenko had received a report from Mr. Privalov about their response. In January 2001 Mr. Gale informed Mr. Privalov about what product carriers there were on the market. On 7 March 2001, Mr. Gale reported to Mr. Privalov about the availability of newbuild product tankers of 35,000 dwt and 45,000 dwt, including tankers constructed by Hyundai Mipo. According to Mr. Privalov, Mr. Skarga had expressed interest in Sovcomflot acquiring vessels of this kind.

420. Negotiations with Hyundai Mipo were started, and on 18 April 2001 Hyundai Mipo submitted a formal proposal to Mr. Gale for "shipbuilding of 4 units x 47k dwt product tanks for Fiona" at a price of $30.6 million per vessel. On 18 April 2001, Mr. Gale sent a counter-offer to Hyundai Mipo offering a price of $28 million per vessel and suggesting commissions of 2.5%: "commission under separate agreement 2.5ttl

here for division". Mr. Privalov said that he had already agreed with Mr. Gale what the commissions should be and how they should be divided, and I accept that evidence. On the same day, Mr. Gale and Mr. Privalov exchanged e-mails confirming Clarkson's authority to make the offer to Hyundai Mipo, without referring to commissions.

421. On 20 April 2001, Hyundai Mipo proposed to Mr. Gale a price of $31.25 million per vessel, including 2.5% commissions. The gross price was $650,000 more than originally proposed, but the net price that Hyundai Mipo would receive was slightly lower, $30,468,750. When on 20 April 2001 the counter-offer was reported by Mr. Gale to Mr. Privalov, and then by Mr. Privalov to Mr. Skarga, commissions were not mentioned.

422. On 23 April 2001 Mr. Skarga wrote that Mr. Privalov should try to start negotiations by offering a price of $29 million, but in fact Mr. Privalov initially responded with an offer from Fiona of $30 million per vessel, with commissions of 2.5%. The claimants submitted that this indicates that Mr. Skarga knew that Hyundai Mipo's offer of $31.25 million included address commissions of 2.5%, and that his instructions were to respond with a net price of $29 million. Mr. Privalov was not, they argued, ignoring Mr. Skarga's instructions, but he understood that Mr. Skarga was giving him instructions about the net offer that Fiona should make. They relied upon this to support their contention that Mr. Skarga knew about how Clarkson generated funds to pay Mr. Nikitin. I reject this speculation: the wording of Mr. Skarga's communication ("try to start [from] 29 mio because Korean [won] went down 25%") indicates that he had in mind a counter-proposal that was optimistically low, and Mr. Privalov could have been confident that his higher offer would be approved. In fact, his counter-proposal was a price of more than $29 million net. Mr. Skarga's message was in the nature of advice rather than an instruction.

423. In an e-mail of 25 April 2001 from Mr. Wood to Hyundai Mipo, Sovcomflot increased their offer. On the face of the e-mail, they offered $30.5 million less 2% commission, but it appears from the e-mail read as a whole and later exchanges they intended to offer $30.7 million. The e-mail read: "As per telcon, we are authorised to improve the buyers' last counter to US$30.5million less total 2 pcnt commission otherwise as per buyers last proposal … As you can see the total commission has been reduced by 0.5% which is a gesture from Clarkson to try to get this deal done and to extend the relationship with Mipo with this deal. It has proved to be impossible to get the buyers to reduce their address commission and although they are there to improve a little more, it will need a contribution from each of the parties in order to close the gap and do the deal ...". According to Mr. Privalov, Mr. Nikitin had been asked to accept less than 1.5%, but declined to do so, but I do not regard this as reliable evidence. What is clear is that Clarkson were not able to negotiate enough total commissions to pay Mr. Nikitin 1.5% without reducing their own remuneration.

424. On 30 April 2001, Mr. Wood sent Mr. Gale a further offer from Hyundai Mipo, and observed that "they have come into line on the price although they have been unable to give us what we wanted on the deliveries". They agreed to accept a price of $30.7 million, and stated that the "price includes 2% commission": Mr. Wood specifically drew this to Mr. Gale's attention: "note this proposal includes commission!". Mr. Gale sent the offer to Mr. Privalov, but as usual he omitted the reference to

commissions, and Mr. Privalov sent this version of the offer to Mr. Skarga and Mr. Borisenko.

425. This offer was accepted, and a letter of intent between Fiona and Hyundai Mipo was signed on about 3 May 2001. Neither this nor the final contracts referred to commissions. As in the Tsuneishi transaction, a separate commission agreement was entered into for each of the four sale contracts and was signed for Clarkson by Mr. Fulford-Smith, and each referred only to the monetary amount of commissions to be paid and not to the proportion of the price that they represented or to the price itself.

426. As Hyundai Mipo received the instalments of the price for each vessel, they paid Clarkson commission of 2%. Clarkson paid to Horber a share of the first instalments (representing 0.3% of the price) and they paid to Milmont a share of the later instalments (representing 1.2% of the price). Therefore in total $1,872,000 was paid to the recipient companies. Clarkson kept for themselves commissions of $624,000, or 0.5% of the total price.

The Daewoo Transaction

427. The pattern of the Daewoo transaction was similar. On 26 and 27 April 2001 Mr. Gale informed Mr. Privalov of an opportunity to have three Aframax vessels built at the Daewoo yard and negotiations led to the Daewoo transaction, in which Sovcomflot bought three newbuildings under an agreement made in a letter of intent signed by Fiona and Daewoo and dated 3 May 2001 and in three contracts dated 20 June 2001. Daewoo sold hull no 5230 to Universal Navigation Co Ltd., the 23rd claimant in the Fiona action, for $43,265,400; hull no 5231 to Progress Shipping Company, the 22nd claimant in the Fiona action, for $43,565,000; and hull no 5232 to Oriental Carriers Company, the 64th claimant in the Fiona action, for $43,140,400.

428. Horber received the equivalent of 0.3% of the prices, which was paid in respect of the first instalments paid to Daewoo, and Milmont received the equivalent of 1.2% of the purchase prices. A total of $1,948,817.79 was therefore paid as Mr. Nikitin directed. (I ignore minor discrepancies, which, as I infer, are attributable to bank charges or some similar explanation.) Clarkson retained commissions of 1% or $1,299,218. As with the Tsuneishi transaction, a separate commission agreement was entered into in respect of each of the three sale contracts between Clarkson and Daewoo. They referred only to the monetary amounts to be paid and not to the proportion of the price that they represented or to the price itself. The amounts in fact represented 2.5% of the price. (This is apparent from the commission agreement relating to hull no 5232 that is in evidence. I infer that the other two agreements were similar in this respect.)

429. On 30 April 2001 Mr. Gale sent to Mr. Privalov a draft letter of intent to be signed by Fiona and Daewoo. He wrote “This is what we would like to send to the shipyard, but I guess there are certain things to be left out/amended”. The draft included a provision that the contract price included 2% commission for address and brokerage. On 1 May 2001 Mr. Privalov sent to Mr. Skarga and Mr. Borisenko a version of the letter of intent that omitted that provision and it was also omitted from the version that was in fact signed by Mr. Privalov on behalf of FML as agents for Fiona and by Daewoo.

430. The letter of intent (which was subject to the approval of the buyers' board of directors) stated that the price of each of the three vessels should be $43.5 million. In a letter dated 11 May 2001 from Clarkson to Daewoo, it was recorded that the parties had agreed to vary the terms of their agreement and the price of two of the vessels had been reduced and the prices were to be $43,250,000, $43,500,000 and $43,000,000. In the contracts of 20 June 2001 the parties agreed to rather higher prices. Daewoo paid commissions of 2.5%, not of 2% as contemplated in the draft letter of intent. Although there is no evidence about when the increased commissions were agreed, I infer that this was the reason for the increase in the prices that the buyers agreed. I also infer that Daewoo understood that they were paying address commissions of 1.5%. This is reflected in Clarkson's internal documentation which initially recorded that this amount was due to Fiona.

431. I conclude in relation to the Tsuneishi transaction, the Hyundai Mipo transaction and the Daewoo transaction that:

i) Clarkson negotiated prices that included address commissions which they intended should not be received by, or disclosed to, the buyers, but which they intended that they should use to make payments in accordance with the Clarkson arrangement.

ii) Clarkson disguised from the yards that the address commissions were not being paid to the buyers.

iii) By March 2001 Mr. Privalov knew that Clarkson were increasing the commissions (including address commissions) to be paid by the yards upon purchases in order to provide funds for payments under the Clarkson arrangements and that as a result the Sovcomflot companies paid considerably higher prices for the vessels.

iv) Clarkson and Mr. Privalov colluded to avoid any reference to commissions in their communications and other documents that might be seen by Sovcomflot, including by Mr. Skarga.

432. Mr. Nikitin gave no credible evidence that he had done anything to bring about these transactions. I infer that he did nothing.

<u>The Athenian transaction and the Tam commissions</u>

433. By a re-sale agreement dated 16 May 2001, Sovcomflot agreed through Clarkson to buy from Athenian Sea Carriers Ltd. ("Athenian") six Suezmax vessels, which were being built for Athenian by HHI in Korea. Sovcomflot effectively paid $56.2 million for each vessel, but the net price received by Athenian was $53.4 million per vessel. Thus, there was a difference of $2.8 million per vessel, or $16.8 million in total, between what Sovcomflot paid and what Athenian received. Of this, $8.4 million represented the buyers' reserves, which had been deposited to cover the cost of any extras ordered during construction. The other $8.4 million comprised (i) $1 million paid to the sellers' brokers; (ii) $700,000 that was retained by Clarkson as their own commissions; (iii) $1.2 million which represented address commissions (the so-called "Tam commissions") that were payable by HHI to Athenian because under the construction agreements HHI agreed to pay address commissions of $600,000 per

vessel in three equal instalments to Rody Maritime SA ("Rody"), a nominee of Athenian, and the final instalments, $1.2 million in total, were still to be paid when Sovcomflot agreed to buy the vessels; and (iv) $5.5 million that was paid on 22 June 2001 by Clarkson to RTB Overseas Ltd. ("RTB"), a company which was, according to Mr. Nikitin and as I accept, "in some way associated" with Mr. Claudio Cepollina. The claimants contend that:

i) The $5.5 million was paid to RTB as part of the Sovcomflot Clarkson commissions scheme, and the payment was funded by sums paid by Athenian by way of commissions

ii) The $1.2 million was diverted to Milmont under the Tam commissions scheme. There is no dispute that the $1.2 million was in fact paid into Milmont's account at Wegelin between August 2001 and January 2002.

434. Mr. Gale mentioned the vessels to Mr. Privalov in e-mail of 15 January 2001, and again in about March 2001 when a proposed sale to other potential purchasers, Neptune Orient Lines, appeared to be falling though. Mr. Privalov responded that Sovcomflot were interested in acquiring the vessels, but that they wanted to pay less than $55 million for each. Mr. Nikitin's evidence was that he had told Mr. Gale that Sovcomflot might be interested in buying new non-ice class Suezmaxes, and I accept that, but he did not give Mr. Gale any more specific information that was relevant to the purchase.

435. According to Mr. Privalov, Mr. Nikitin told him that his commission should be about 1.5% to 2% of the price, but Mr. Gale advised that Athenian were looking to be paid $54 million net for each vessel, and it would be difficult to keep the gross price below $55 million and pay Mr. Nikitin more than 1.5%. Mr. Nikitin insisted to Mr. Privalov that he should be paid 1.5%, and Mr. Privalov reported this to Mr. Gale. This evidence is not corroborated and I do not accept it.

436. By 13 March 2001 Mr. Gale had opened negotiations to acquire the vessels and reported in an e-mail to Mr. Privalov that he had told Athenian that Fiona "indicate[d] firm" that they would pay an average of $53.33 million for the vessels (the precise price for each depending on her delivery date) less 2% commissions "for division", including commissions for "Buyers/Clarkson". The net average price was therefore $52.267 million. Thus, from the start of the negotiations the proposal contemplated 2% commissions "for division", and this, as I find, was designed to cover both what Clarkson were to keep and what they were to pay under the Clarkson arrangement.

437. Negotiations continued during March and April 2001. On 16 May 2001 Mr. Gale sent Mr. Privalov an e-mail about the price. It referred to a "headline price" of $54.8 million, and Athenian were also to be paid $1.4 million per vessel for the buyers' reserves fund, which was held by the HHI for repayment upon delivery of the vessels to the extent that it had not been spent on extras. When explaining the total price of $56.2 million, Mr. Gale included an item of $10.3 million for "sellers' profit". This incorporated $1.4 million that was not to be paid to Athenian but covered commissions, including what was to be paid under the Clarkson arrangement. Nothing about commissions was said either in Mr. Gale's e-mail or the re-sale agreement itself which was concluded on 16 May 2001. The parties to the re-sale agreement were six (presumably one-ship) selling companies and Athenian as their

guarantor and six one-ship buying companies, the 53rd to 58th claimants in the Fiona action, and Fiona as their guarantor.

438. Clarkson understood that the details of the transaction, and in particular the commission arrangements, were to be kept confidential. This is reflected in the correspondence in March and April 2001. For example:

i) Mr. Richard Coleman, the Clarkson broker who was liaising with the sellers and their broker, Mr. Vlahoulis of Vakis Vlahoulis SA, wrote on 20 March 2001, "As you are aware there is a bit of paranoia about secrecy, including, on a "need to know basis" within the organisation." He requested that correspondence be directed to Mr. Privalov, who would send "contracts/specs to whoever needs them …". He finished his message, "Please let me know what is arranged - tks yr patience and please eat this message after reading".

ii) Holman Fenwick & Willan ("HFW"), who were acting for the sellers and Athenian, prepared an initial draft of a re-sale agreement that provided that Fiona should be responsible for payment of commissions and specified the amount and to whom they were to be paid. This was sent to WFW on 22 March 2001. In an e-mail of 28 March 2001 Mr. Gale commented to Mr. Privalov of the proposal that Fiona should be responsible for the payment of commissions, "No way – sellers to pay commissions as customary. Very important". On 3 April 2001, Fiona required that the buyers should not be responsible for paying any commissions and that the sellers should pay 2% commissions to Clarkson under a separate agreement. There was to be no reference to commissions in other contracts.

iii) In an e-mail dated 26 April 2001, Mr. Gale asked Mr. Coleman to explain to the sellers' brokers that "we are in a sensitive area over commissions … The buyers are insisting on 2 pct. … Commission must not appear any more in our exchanges, simply gross figures, but the Russians are working backwards to see what net figures they will pay".

iv) On 30 April 2001, Mr. Coleman passed on Fiona's offer to Mr. Vlahoulis, noting "Price USDlrs 53.400.000 cash net each vsl to sellers. This to represent USDlrs 54.600.000 gross to cover necessary commissions which to be paid on closing to H. Clarkson with the cash flow. (Commission agreement by way of private side letter Sellers/H.C)". The deal was agreed upon this basis, and on 1 May 2001 Mr. Coleman sent Mr. Vlahoulis a recap in similar terms. Mr. Coleman sent Mr. Vlahoulis a message on 3 May 2001 stating, "Please note that the commission is to be kept separate and confidential and confirm that the total is USDlrs 7.200.000 with USDlrs 1.000.000 your side. We will draft a commission agreement and send to you for approval".

v) The formal recap sent on 1 May 2001 referred to the price simply as "USDlrs 54.600.000, private side letter sellers/[Clarkson]".

439. Mr. Skarga received reports from Mr. Privalov as the negotiations proceeded. The only direct evidence that he was aware of the arrangements about commissions was that of Mr. Privalov. The claimants argued, however, that it is to be inferred that Mr. Skarga was aware that price was gross of commissions and of the net price that the

sellers were to receive. They referred to an exchange between Mr. Privalov and Mr. Skarga when on 19 April 2001 Mr. Privalov wrote that, "there is a feeling that Athenian would take 54 million basis their terms", but that he could not "get any encouragement" that they would accept a lower price. On 20 April 2001 Mr. Skarga encouraged him to try to achieve a lower price. The claimants submitted that, in order so to reply, Mr. Skarga must have understood the "terms" to which Mr. Privalov was referring. In my judgment, this reads too much into the exchange. Mr. Skarga's response is no more than an encouragement to negotiate the lowest price that could be achieved and did not indicate that Mr. Skarga knew the details of the negotiations. In fact, Mr. Privalov's e-mail of 19 April 2001 was prompted by a message from Mr. Gale that, while it was thought that Athenian would accept a price of $53 million "net basis his terms", there was no "encouragement" to think that they would accept a lower price. On any view, Mr. Privalov's communication with Mr. Skarga did not convey the full picture. As I understood his answers in cross-examination, Mr. Privalov explained this on the basis that Mr. Skarga knew the arrangements about commissions, and therefore understood from his message that the sellers would receive less than $54 million, but I was not convinced by this evidence. Mr. Privalov was sending Mr. Skarga a message that was misleading on its face, and nothing corroborates his evidence that Mr. Skarga understood it in that way that he described.

440. The General Board gave their approval to the transaction on 16 May 2001, but, as far as appears in the evidence, the Executive Board did not formally consider it. Presumably this was thought unnecessary in view of the decision of the General Board. In any case, there is no evidence that the transaction was hidden from the members of the Executive Board by Mr. Skarga or anyone else. Mr. Borisenko was aware of the negotiations: on 14 May 2001 Mr. Privalov reported on progress by e-mail to him as well as to Mr. Skarga. I infer that other members of the Executive Board too knew about them.

441. Athenian agreed to transfer to the buyers the Tam commissions, Rody's entitlement to the final instalments of the address commissions from HHI, in return for a further $200,000 upon the price of each vessel. This is reflected in an e-mail of 25 April 2001 from Mr. Gale to Mr. Privalov: "You also pay another $200,000 now which you get back on payment of 10pct on Keel Laying". HFW's original draft of the re-sale agreement had included references to this, but the final version of the agreement of 16 May 2001 did not refer to the address commissions or their transfer as a term of the sale and purchase of the vessels. Instead this arrangement was recorded in a separate letter agreement from Rody to Tam.

442. Mr. Privalov had been aware that the Tam commissions were to be transferred under the re-sale agreement since 28 March 2001 (if not earlier), as is apparent from an exchange of e-mails that he had with Mr. Gale. The first draft of the letter agreement, which was prepared by HFW and sent to WFW on 16 May 2001, contemplated that the commissions should be paid to Caviar Estates SA of Liberia, a company acquired by Mr. Wettern on about 15 May 2001. However, after Mr. Privalov had seen the drafts, on 17 May 2001 Mr. Wettern went about acquiring Tam Enterprises Inc. ("Tam"), another Liberian company, and Tam were used to receive the payments. Mr. Nikitin and the Standard Maritime defendants invited me to speculate about the reason for this, but there is no reason to doubt Mr. Privalov's

simple explanation that the name of Caviar Estates seemed to him inappropriate, and I accept it.

443. On 19 June 2001, HFW sent WFW a further draft of (inter alia) the letter agreement, which provided that the commissions should be transferred to Tam. As appears from Mr. Wettern's handwritten notes on the draft, he amended this to provide that Tam might direct payment to a nominee, and the letter agreement was concluded in this amended form on 20 June 2001. This change allowed Tam to give instructions for payment to Milmont.

444. On 5 July 2001 Mr. Wettern sent to Mr. Privalov by fax the final version of the letter agreement under cover of a note which was headed "commission agreement" and was in the following terms:

> "As per your request, I attach the letter from Rody to Tam, agreeing to transfer the remaining $200,000 address commission for each vessel to Tam. The original is on its way to you by bike, so you can forward that to Dmitri Skarga. You have already a copy of the underlying HHI/Rody agreement. You will need to liaise with Athenian about the payment arrangements".

445. There is no documentary evidence that in fact Mr. Privalov sent Mr. Skarga this or any version of the letter agreement, and I do not accept that he did so. Mr. Skarga denied that he knew of it or of the arrangements about the Tam commissions. On 25 June 2001 Mr. Privalov had instructed WFW to send Sovcomflot documents relating to the transactions, but the letter agreement was not included among them.

446. On 31 July 2001 Mr. Wettern sent to Athenian instructions that the commission payments should be made to Milmont's bank account with Wegelin and provided details of the account. $200,000 was paid into Milmont's account on 8 or 9 August 2001, $200,000 was paid on 23 November 2001 and $800,000 was paid on 11 January 2002. Mr. Nikitin's explanation for these sums being paid into Milmont's account is the same as for the hull no 1231 address commission: that he allowed Mr. Privalov to use the account to deposit funds, but that he knew nothing about the payments themselves. I shall consider this explanation later.

447. The claimants' pleaded case is that "At a meeting on or around 31 July 2001 Mr. Privalov was orally instructed by Mr. Skarga that the commission payments due to Tam should be paid as Mr. Nikitin directed", and he had contacted Mr. Nikitin, who instructed him to pay the money "to Milmont, whose account details Mr. Nikitin provided to Mr. Privalov". This is generally supported by Mr. Privalov's evidence, although he did not specifically state the date of the meeting. However, according to Mr. Privalov, the scheme to divert the Tam commissions was first planned at an earlier meeting in Russia (as Mr. Privalov believed) that he had had with Mr. Nikitin and Mr. Skarga sometime in April or May 2001. He said that Mr. Skarga suggested the scheme, and that, although Mr. Nikitin was not immediately interested, Mr. Skarga insisted upon it provided it proved possible to avoid reference to the Tam commissions in the re-sale agreement. Mr. Wettern advised that this could be done, and was instructed to draft the necessary documents accordingly.

448. The defendants denied that there were was any such meeting and that they were party to any such plan, and they argued that the documents show that Mr. Privalov had set about planning to divert the Tam commissions before any such meeting could have taken place. The claimants, on the other hand, submitted that the documents corroborate Mr. Privalov's account because they show that the parties went about removing references to the Tam commissions from the draft contracts after the meeting took place.

449. If the meeting described by Mr. Privalov took place, it must have been between 10 and 12 May 2001. The documents about travel and expenses show that he was in Moscow between these dates and not in Moscow on other dates in April or May 2001. In fact, the opportunity for such a meeting was narrower because Mr. Skarga's evidence, which I accept, was that he was away from Moscow between 11 and 13 May 2001. Subject to the arguments about the drafting of the documents about the Tam commissions payments to which I shall refer, nothing corroborates Mr. Privalov's evidence that the meeting took place. The claimants referred to an e-mail from Mr. Gale to his colleague at Clarkson, Mr. Toby Broke-Smith, which suggested that by some time on 11 May 2001 Mr. Privalov had been told that "unless he can get deposits up before the end of May they will not go ahead with any of the newbuilding enquiries until the IPO is complete, with the possible exception of Athenian)…". There is no reason to think that this refers to a discussion with Mr. Skarga (rather than, say, with Mr. Borisenko), and it does not support Mr. Privalov's account of a meeting with Mr. Skarga.

450. The claimants submitted that, after he returned from Moscow on 12 May 2001, Mr. Privalov immediately went about making the changes to the contractual documents necessary to implement the scheme. As I have said, the first version of the draft re-sale agreement dated 22 March 2001, had been sent by HFW to WFW. It had been put on to WFW's system on about 25 April 2001, but no work had been done on it before Mr. Privalov went to Moscow. On 14 May 2001 HFW produced a further draft of the agreement, which referred to the Tam commissions. These references were removed from the draft agreement by 16 May 2001 after discussions between the parties. The claimants are therefore justified in their submission that the references were removed after Mr. Privalov's visit to Moscow, but this is not remarkable. It was only then that there were discussions about the draft originally put forward by HFW.

451. On 27 March 2001 WFW had written to Mr. Privalov with their comments upon HFW's draft, and on 28 March 2001 Mr. Gale had written to Mr. Privalov about it. Mr. Gale commented about the Tam commissions, "[You] get commission of 200k but not address". Mr. Privalov responded that "Commission of 200k to us is OK. Otherwise as discussed please make it clear that the existing commissions/allowances should not affect anyhow our future obligations to the yard". Later that day, after discussions with Mr. Privalov, Mr. Gale sent him a further e-mail, listing points to be covered in any offer. They included that, "All references to commissions to be deleted from any Underlying Agreement/Shipbuilding Contract/Novation Agreement and all such agreements to be settled directly between Hyundai and Athenian/Rodin (sic)". Mr. Gale said that this should be discussed with WFW. This was also reflected in a draft counter-offer sent by Mr. Gale to Mr. Privalov on 30 March 2001. The claimants' contended that these documents reflected a suggestion by Mr. Gale

that the Tam commissions should not be transferred to Sovcomflot, but Athenian or Rody should remain entitled to receive the last instalments of them. In support of this submission they observed that Mr. Gale made a similar suggestion about the buyers' reserve, another point that he suggested should be discussed with WFW.

452. I am not persuaded by the claimants' contention about this. The implication of the argument is that, after the first exchange of e-mails on 28 March 2001, in which Mr. Gale and Mr. Privalov contemplated that the Tam commissions should be paid to Sovcomflot, Mr. Gale proposed that they should not be. There is no evidence that he did so. Mr. Privalov's evidence was to the contrary. He agreed that, from the time of these exchanges on 28 and 30 March 2001, he and Mr. Gale agreed that references to the Tam commissions should be removed from the contractual documentation. His explanation was that he was "acting under instructions and this commission theft was undertaken by Mr. Skarga and Mr. Nikitin". This is, of course, inconsistent with his other evidence that the scheme was first planned in April or May 2001.

453. The allegation that Mr. Skarga was party to the arrangement to divert the Tam commissions depended entirely upon the evidence of Mr. Privalov. In my judgment, it was not corroborated and was inconsistent, and I do not accept it. I shall consider the claimants' contention that Mr. Nikitin was party to the arrangement when I examine the issue about the payments into the Milmont account and the payments from it to Sisterhood.

454. On 20 June 2001 Clarkson invoiced the sellers under the Athenian transaction for "lumpsum commission as agreed" in the sum of $7.2 million. On 21 June 2001 RTB invoiced Clarkson for payment of $5.5 million, and on 22 June 2001 Clarkson paid them that amount. On 3 July 2001 RTB paid $2,250,000 to Milmont and $3 million to Pollak. On the same day $200,000 was paid into Mr. Privalov's bank account with RBS in the Isle of Man. As I explain later in my judgment, I conclude that RTB transferred the $200,000 to Mr. Privalov's account and did so upon Mr. Nikitin's directions. Thus, RTB retained only $50,000 of the $5.5 million. The claimants contended that the payments were routed through RTB so that Clarkson could record that they were paying another broker and not Milmont and Pollak, and this was also a convenient device for paying Mr. Privalov. RTB kept $50,000 to reward Mr. Cepollina for allowing RTB to be used for this purpose.

455. It was contemplated in early June 2001, as I infer, that the $5.5 million should be paid to Italia rather than RTB. A letter dated 31 May 2001 (to which I shall refer later) said that Clarkson had had discussions with Italia about the Athenian transaction, and Mr. Gale wrote on RTB's invoice, "Payment due to Italia Chartering as agreed". According to Mr. Privalov, Mr. Nikitin had originally told him that Italia would be invoicing Clarkson and he so advised Mr. Gale when they were travelling to Japan and Korea with Mr. Skarga for the signing ceremonies for the contracts to buy the newbuildings from Tsuneishi, Hyundai Mipo and Daewoo. Later, when Mr. Gale told him that Clarkson were ready to pay the $5.5 million upon receipt of an invoice, Mr. Nikitin instructed that the payment was to be made to RTB and provided Mr. Privalov with account payment details, which Mr. Privalov passed on to Mr. Gale.

456. Mr. Nikitin accepted that he arranged that Clarkson should pay to RTB the remuneration that he was to receive in respect of the Athenian transaction. In his witness statement of 13 February 2009 Mr. Nikitin said that Mr. Claudio Cepollina or

his brother "may have had some involvement in the Athenian transaction". In his oral evidence, he explained the payment as an "account balancing exercise" through which RTB or Mr. Cepollina could keep some of the money to discharge debts owed to them; and the remainder might be divided by RTB, who paid some of it to Pollak, which as I have said was then owned by Mr. Nikitin, Mr. Katkov and Mr. Malov. He wanted to allow the "partners" to benefit from the transaction, again as part of an "account balancing exercise".

457. I cannot accept those explanations. There is no evidence that Mr. Cepollina or Italia or RTB had any significant involvement with the Athenian transaction. Mr. Carlo Cepollina (who worked with his brother Claudio) sent Mr. Privalov an e-mail on 23 April 2001 suggesting that one of the hulls might be available for $65 million and an e-mail on 14 May 2001 suggesting that Italia might be able to exploit an opportunity to replace Neptune Orient Lines in a re-sale of the vessels. These communications demonstrate that Italia knew nothing of the negotiations which were in fact taking place. Mr. Nikitin's evidence about an "account balancing exercise" was quite unconvincing, and provided no credible explanation for paying such large sums through RTB.

458. It is impossible to discern any explanation for the division of the $5.5 million between Milmont and Pollak. In his witness statement Mr. Nikitin appeared to suggest that he simply decided that Mr. Malov and Mr. Katkov should share the benefit of the transaction, but in his oral evidence he spoke of balancing accounts. I cannot accept either explanation. But, whatever the reason for the separate payments to Milmont and Pollak, I conclude that Mr. Nikitin arranged for the payment to be made by Clarkson to RTB and paid on by RTB to Milmont and Pollak because he wanted to disguise that these companies were benefiting from the Athenian transaction.

Continuing operation of Clarkson arrangement

459. After the first transactions in 2001, Clarkson continued to act for Sovcomflot on sales and purchases of vessels. As well as the 17 vessels purchased in 2001, the claim in the Fiona action relates to the purchase of 18 newbuildings in 2003 and 2004, and as well as the 7 vessels sold in the Genmar transaction, it concerns sales of two vessels in 2002, of 18 vessels in seven transactions in 2003 and of four vessels in two separate transactions in 2004. In the case of some sales, Mr. Gale suggested the transaction to Mr. Privalov, and in other cases Mr. Privalov was approached by Mr. Bonehill of Norstar (whose involvement with sales of Sovcomflot vessels I shall explain further later) and then Mr. Privalov involved Clarkson in the transaction. Payments to the recipient companies under the Clarkson arrangement were made in respect of all the sales and purchases. As I have said, in 2001 some payments were made to Horber, but from late 2001 or early 2002 they were all made to Milmont.

460. From September 2001 Clarkson made payments to companies associated with Mr. Privalov in respect of Sovcomflot's business. On 5 September 2001 Clarkson paid $205,554.60 to Montrose and $44,445.40 to Continental. Mr. Privalov transferred these sums to his personal account with RBS's Isle of Man branch.

461. A spreadsheet which, I conclude, was created on about 25 June 2001, shows how Clarkson treated the payments for their internal accounting purposes. It listed the vessels bought and sold in the Genmar, Astros, Tsuneishi, Hyundai Mipo, Daewoo,

and Athenian transactions, and the commission payments that Clarkson had expected to have received by 1 September as their own remuneration. The total commissions were some $3.047 million, and $250,000 was "allocated" from the commissions for the Tsuneishi, Hyundai Mipo and Daewoo transactions to pay Mr. Privalov.

462. Mr. Privalov's evidence was that in June 2001 he asked, and Mr. Gale agreed, that he should receive payment from Clarkson as a reward for promoting Clarkson as Sovcomflot's brokers. (Mr. Privalov believes that he made this request when he and Mr. Gale were returning from the signing ceremonies with Tsuneishi, Hyundai Mipo and Daewoo.) Shortly afterwards Mr. Gale suggested that Mr. Privalov be paid $250,000 and Mr. Privalov was content with that amount. His evidence is to some degree corroborated by the spreadsheet, and I accept it. I also accept that, although the first payment was funded from the commissions for the newbuilding orders, it was understood that the payments covered all the Sovcomflot transactions in which Clarkson had been involved.

463. Later, Mr. Privalov suggested to Mr. Gale that Clarkson should pay him commissions on future business. Mr. Gale agreed to pay commissions of 0.25% on future transactions, and thereafter Clarkson made payments for Mr. Privalov in relation to transactions that they handled for Sovcomflot and also for NSC. Mr. Privalov had them made to Shipping Associates, and he also had payments made to that company in relation to sales that were handled by Norstar and Galbraith's.

464. There is some mystery about Shipping Associates and its purpose. It was established in January 2002, and there is no reason to reject Mr. Privalov's evidence that he established it. It did not first receive payments from Clarkson until mid 2002. In his witness statement in the Intrigue action dated 2 December 2008 Mr. Privalov said that the company was used by himself, Mr. Lyashenko and Mr. Bonehill, and that, with regard to payments from Galbraith's, "After a short while, although not from the outset, Mr. Bonehill became involved in relation to the payments …". This was said to be because Mr. Rokison wished to make the payments to a company with which a broker was involved and, as Mr. Privalov put it, "Mr. Bonehill was therefore notionally standing behind Shipping Associates as far as Galbraith's (and also Clarkson) were concerned". He explained that he received only half of the money paid to Shipping Associates by Galbraith's, and the rest went to Mr. Lyashenko and Mr. Bonehill.

465. On the other hand, in his witness statement in the Fiona action dated 12 February 2009 Mr. Privalov stated that Mr. Bonehill was not involved in Shipping Associates until Mr. Privalov transferred the company into his name in 2005. I am unable to accept that. There is in evidence a letter dated 1 July 2002 to Clarkson signed by "Christopher Courtney on behalf of Shipping Associates Inc". Courtney is Mr. Bonehill's middle name and the letter was probably signed by him. There is also a letter dated 11 August 2004 to Clarkson signed by Shipping Associates' nominee directors which refers to "your commission sharing agreement with Mr. Christopher Bonehill dated 1st July 2002", which Mr. Bonehill is said to have undertaken to keep confidential. Mr. Privalov's evidence was that these letters were concocted by Mr. Gale simply to disguise that payments were being made to Mr. Privalov, but this seems an inadequate explanation, particularly in view of Mr. Privalov's evidence in his other witness statement in the Intrigue action. I am unable to tell quite what the purpose of Shipping Associates was and who had an interest in it, but I accept the

submission of Mr. Nikitin and the Standard Maritime defendants that it might not have originally been established to receive commissions for Mr. Privalov. I cannot regard it simply as a vehicle for Mr. Privalov.

Clarkson transactions for Sovcomflot in 2002

466. Clarkson broked only two transactions for Sovcomflot in 2002: the sale of the "Kapitan Betkher" and the sale of the "Zina". The "Kapitan Betkher" was sold by Hope Victory Shipping Company Ltd. ("Hope Victory"), the 37th claimant in the Fiona action, to Thoresen & Co (Bangkok) Ltd. ("Thoresen") for $5.7 million less 3% commission pursuant to a memorandum of agreement dated 26 April 2002. Clarkson arranged to make out of the commission a payment to Mr. Nikitin's order amounting to 2% of the sale price. Mr. Gale was concerned to find a way of doing so covertly. On 25 April 2002 he sent his colleague, Mr. Broke-Smith, an e-mail marked "top Secret", in which he asked Mr. Broke-Smith to find out whether "Mat", that is to say, Mr. Gruber, the New York broker who had been involved in the Genmar transaction, would agree to commissions being channelled through his company. He explained that Mr. Bonehill had declined to help. The purpose was "so RFS [Mr. Richard Fulford-Smith] doesn't find out", and Mr. Gale added that "Certain parties will be very pleased". In fact, this proposal did not go ahead, whether because Mr. Broke-Smith declined to approach Mr. Gruber or because Mr. Gruber would not help or for some other reason. In the event, Clarkson simply presented an invoice dated 14 May 2002 for the 3% commission to Hope Victory, and Mr. Gale produced an invoice dated 11 July 2002 from Milmont for "introductory commissions" for $114,000, which sum was paid into Milmont's account at Wegelin. This was the first invoice in which a payment to Milmont or any other recipient company was so described, and, as I shall explain, some invoices produced by Mr. Gale are back-dated. In this case, the date is the more questionable because a similar invoice from Shipping Associates relating to the sale of the "Zina" was, deliberately or by mistake, also dated 11 July 2002 although Shipping Associates' invoice must have been produced later.

467. The "Zina" was sold by Zina Shipping Corporation, the 38th claimant in the Fiona action, to a nominee of Allseas Marine Inc. ("Allseas") for $7.1 million less 3% commission pursuant to a memorandum of agreement dated 18 December 2002. Allseas were, as far as appears from the documents in evidence, first reported to be interested in buying the "Zina" in an e-mail dated 22 October 2002 from Mr. Claudio Cepollina to Mr. Privalov. Mr. Privalov passed this information to Mr. Gale, who discovered that Allseas were a Greek owner whom Clarkson's Greek office, Clarkson Hellas, might approach. Clarkson Hellas did indeed become involved in broking the transaction and terms were agreed on 17 December 2002. Mr. Skarga authorised Mr. Privalov to pay commissions of 3.25%, but in fact Clarkson charged commissions of 3% and retained 0.375% for themselves, paid 0.375% to Clarkson Hellas, paid 0.5% to Shipping Associates and paid 1.75% to Milmont. As I have said, Clarkson produced an invoice for Shipping Associates for introductory commission upon the sale of the "Zina", which bore the date 11 July 2002, a date which would be much too early for any invoice relating to the sale of the "Zina". The invoice produced for Milmont's payment was dated 30 January 2003. The invoices of both Milmont and Shipping Associates were for "introductory commissions", but there is no evidence that Mr. Nikitin contributed anything to bringing about this sale or that of the "Kapitan Betkher", and I conclude that he did not do so.

468. The claimants submitted that the history of the sale of the "Zina" shows that Mr. Skarga was concerned to ensure that Mr. Privalov handled all sale and purchase transactions. On 5 June 2002 Mr. van Boetzelaer advised Mr. Skarga that Intermarine Services SA ("Intermarine") were interested in buying the "Zina". They were aware that Sovcomflot were looking for a price "above 8 million" and wished to inspect the vessel. Mr. Skarga agreed to the inspection, but he told Mr. van Boetzelaer that "the sale should be done via Fiona". When Mr. van Boetzelaer reported in an e-mail of 3 July 2002 that he had had further discussions with Intermarine, Mr. Skarga warned him against depressing the market for the ship. In August 2002, Mr. Skarga again insisted that any interested parties should contact him directly, rather than have discussions with Mr. van Boetzelaer. As the claimants submitted, Mr. Skarga rebuffed the attempts of Mr. van Boetzelaer to become involved in the sale. I do not find this in any way suspicious. Mr. van Boetzelaer was trying to handle this business for Sovchart, and Mr. Skarga resisted his efforts, as he similarly resisted later attempts of Sovchart to become involved in sale and purchase broking. There is no reason that he should not have done so. It had been decided that purchases and sales should be broked through London, and there is no evidence that any other executive in Sovcomflot disagreed with this decision.

Sale transactions involving Norstar

469. Sovcomflot paid commissions to both Clarkson and Norstar upon sales of 14 vessels in 2003 and a further vessel in 2004. The claimants say that, in many of these cases, Norstar had found the buyer and effectively broked the sale, with Clarkson playing no real broking role and being paid commissions only so that they would pass some of the money on to Milmont; and in other cases, Norstar had no real broking role and were paid commissions only because, as I shall explain, they too had entered into an arrangement with Mr. Nikitin similar to the Clarkson arrangement. Thus, the claimants allege Sovcomflot paid commissions on these sales to two brokers because of their corrupt relationship with Mr. Nikitin. The sales on which both brokers received commissions were those of the "St Petersburg Mariner", the "Moscow Mariner", the "SCI Gaurav", the "Mekhanik Kurako", the "Lesozavodsk", the "Socofl Stream", the "Socofl Tide", the "MSC Atlantic", the "MSC Nederland", the "MSC Jordan", the "MSC Suez", the "Baykal Senator", the "Berlin Senator, the "SCI Vaibhav", and the "Nikolay Malakhov".

470. The sales of the "St Petersburg Mariner" and the "Moscow Mariner", two of the Senator ships, illustrate the complaint about Clarkson unjustifiably receiving commissions. The "St Petersburg Mariner" was sold by Megaslot V Shipping Co Ltd., the 7th claimant in the Fiona action, for $21.5 million under a memorandum of agreement dated 3 April 2003, and the "Moscow Mariner" was sold by Megaslot IV Shipping Co. Ltd., the 6th claimant in the Fiona action for $21.55 million under a memorandum of agreement dated 24 April 2003. The memoranda did not refer to commissions, but Clarkson charged commissions of 3% on both sales. They retained 0.375%, and distributed 1.75% to Milmont, 0.125% to Shipping Associates and 0.75% to Norstar.

471. By an e-mail dated 25 March 2003 Norstar had advised Mr. Privalov of an offer from Zim-Ofer Shipbrokers to buy two or more Senator vessels, and this led to the sales, which had been concluded by 25 April 2003 at the latest. On 15 May 2003 the Executive Board of Sovcomflot approved the sales. (The briefing note for the Board

said that the vessels "will be sold" for $21.5 million and $21.55 million, and the minutes of the meeting recorded that, when Mr. Skarga presented the matter, "it was suggested that the vessels should be sold". I do not accept that Mr. Skarga was misleading the Board or that the sales had been kept secret until then. For example, on 25 April 2003 Mr. Privalov had sent a copy of the memorandum of agreement for the sale of the "Moscow Mariner" to Mr. Borisenko and Unicom as well as Mr. Skarga.)

472. Clarkson had no part in the sales before they were concluded. They were first involved when on 25 April 2003 Mr. Privalov sent Mr. Gale a copy of the memorandum of agreement for the sale of the "St Petersburg Mariner". Norstar continued to broke the sales after the agreements had been reached. On 15 May 2003 Norstar provided to Mr. Gale copies of the signed memoranda of agreement, and on 15 May 2003 and 19 May 2003 Mr. Gale sent e-mails to Mr. Privalov which were, as the claimants submitted and as I accept, designed to give the false impression that Clarkson had brought about the sales. On 15 May 2003 Mr. Gale referred to the sales being concluded "following our intervention", and on 19 May 2003 he referred to "our various telephone conversations" (on 24 April 2003 in the case of the "Moscow Mariner" and on 29 April 2003 in the case of the "St Petersburg Mariner") "wherein we advised you that Buyers had lifted their board approval". These sales were broked by Norstar, and Mr. Gale deliberately wrote misleading documents to create a false record that would explain why Clarkson were being paid commissions.

473. There were other sales in which Norstar largely broked the deal, but commissions were paid to Clarkson, and they distributed most of what they received, paying a large part of it to Milmont. Although the documentary evidence about them is incomplete and sometimes Mr. Gale might have had some minor part in bringing the sales to a successful conclusion, I conclude that this was essentially the position with regard to these sales:

i) The "SCI Gaurav" was sold to a company to be nominated by Ofer Maritime Ltd. in the Ofer Brothers Group. Norstar introduced the sale to FML, and Clarkson only dealt with some administrative matters after the deal had been reached. Clarkson charged the seller, Megaslot VI Shipping Company Limited**,** the 8th claimant in the Fiona action, 3% commission, amounting to $645,000. They passed to Milmont $430,000 (or 2% of the sale price), to Norstar $107,000 (or 0.5% of the sale price) and to Shipping Associates $26,875 (or 0.125% of the sale price). Clarkson kept only $80,635, the equivalent of a commission of 0.375% of the sale price.

ii) The "Mekhanik Kurako" was sold to Thomas Jacobsen & Co (who ultimately nominated Jaco Stove Shipping Ltd. as the buyers) under a memorandum of agreement dated 4 June 2003. The sale was largely negotiated by Norstar as the buyers' brokers directly with FML, and Clarkson were involved with minor and administrative matters after the agreement had substantially been reached. Clarkson charged the seller, Mekhanik Kurako Shipping Co Ltd., the 39th claimant in the Fiona action, commission of $150,000, or 3% of the sale price. They kept $18,750 (or 0.375%). They paid $100,000 (2%) to Milmont, $25,000 (0.5%) to Norstar, and $6,250 (0.125%) to Shipping Associates.

iii) By three memoranda of agreement dated 21 August 2003, the "Lesozavodsk", the "Socofl Stream" and the "Socofl Tide" were sold by Socofl Honesty Shipping Inc, Socofl Stream Shipping Inc. and Socofl Tide Shipping Inc, the 40th, 41st and 43rd claimants in the Fiona action, for a price of $3.75 million each to an Italian company called Navigazione Due Golfi (or their nominees). Again, the documents that survive and are in evidence suggest, and I conclude, that these sales were substantively concluded between Norstar and FML. On each of the Clarkson's internal fixture slips, the "Sellers' Broker" was recorded as "H. Clarkson/Fiona Maritime Agencies" and the "Buyers' Broker" as "H. Clarkson/Norstar Shipping, Monaco". For each of the sales, the commissions charged to the purchasers by Clarkson were 2%, amounting to $75,000. Clarkson passed $37,500 (1%) to Milmont, $18,750 (0.5%) to Norstar, and $4,687.50 (0.125%) to Shipping Associates. Clarkson kept $14,062.50 (0.375%).

474. I also illustrate sale transactions where Clarkson found the buyers, but both they and Norstar were paid commissions. By four memoranda of agreement dated 29 July 2003, the "MSC Atlantic", the "MSC Nederland", the "MSC Jordan" and the "MSC Suez" were sold by Megaslot II Shipping Co Ltd., Megaslot VII Shipping Co Ltd., Megaslot X Shipping Co Ltd., and Megaslot IX Shipping Co Ltd., the 4th, 9th, 12th and 11th claimants in the Fiona action respectively, to companies nominated by a Greek company, Niki Shipping Company Inc. By three memoranda of agreement dated 5 September 2003, the "Baykal Senator" the "Berlin Senator" and the "SCI Vaibhav" were sold by Megaslot I Shipping Co Ltd., Megaslot III Shipping Co Ltd and Megaslot VIII Shipping Co Ltd., the 3rd, 5th and 10th claimants in the Fiona action respectively, to companies nominated by Mediterranean Shipping Company. Norstar were paid commissions. The commissions charged by Clarkson on the sales was 3%, of which 2% was paid to Milmont, and the remaining 1% of the commissions was paid, on all the sales other than of the "SCI Vaibhav", as to 0.25% to Norstar, as to 0.1875% to Shipping Associates and as to 0.5625% to Clarkson. As for the "SCI Vaibhav", Norstar were paid 0.5%, Shipping Associates were paid 0.125% and Clarkson retained 0.375%. (The different distribution of commissions is not explained by the evidence.)

475. I conclude that Norstar played no part in broking at least many of these sales. For example, on 12 August 2003 Mr. Bonehill enquired of Mr. Gale about the sale of the "MSC Atlantic" and her three sisterships, and wrote, "Apparently one of these ships has just delivered. We need to send you an invoice for 0.25 pct. Please advise of name of ship, price and when she delivered?". Had he played any part in broking the sale, clearly he would have had this information. Similarly, when Mr. Gale informed Mr. Bonehill that he should invoice to be paid upon the sale of three of the vessels, on 26 August 2003 Norstar asked for the names of the selling companies.

476. On the sale of the "Nikolay Malakov" by Nikolay Malakhov Shipping Co Ltd., the 50th claimant in the Fiona action, the commission paid was 2.5%, and Milmont was paid only 1.25% of this. The remainder was distributed as to 0.5% to Norstar and as to 1.875% to Shipping Associates, with Clarkson retaining 0.5625%. There is no evidence about what Clarkson and Norstar contributed to the sale and it is unclear whether payment reflect their roles in broking it.

477. I accept Mr. Privalov's evidence that Clarkson had no significant role in broking the sale of the eight vessels to which I have referred, and he included them in the transactions so that they could receive funds for transfer to Mr. Nikitin's order. I recognise that Norstar too (as I shall describe) had an arrangement whereby they paid commission to Milmont, but the sales which they handled and the sums that they passed to Milmont were relatively small compared with much of Clarkson's business: the most that they paid Milmont on any sale was $40,000, less than 10% of what Milmont were paid on the sale of the "SCI Gaurav". I accept Mr. Privalov's evidence that he preferred to involve Clarkson in major transactions because they had proved that they could operate the Clarkson arrangement successfully. I also accept (if it be disputed) the claimants' submission that Mr. Nikitin played no part in bringing about these sales.

Clarkson purchase transactions in 2003/2004

478. Clarksons acted as brokers for Sovcomflot upon the purchase of 18 newbuildings in 2003 and 2004: the HHI hulls nos 1562 and 1563, nos 1585 and 1586, nos 1602 and 1603 and nos 1758 and 1759, the Daewoo hulls nos 5272, 5273, 7274 and 5275 and nos 2241 and 2242 and the STX Shipbuilding hulls nos 2014, 2015, 2016 and 2017. The transactions with HHI and Daewoo are the subject of the newbuildings scheme, and I describe them later. The purchases from STX Shipbuilding were of 46,500 dwt tankers of ice-class 1A for $40 million, and the purchasers were the 72nd, 73rd, 74th and 75th claimants in the Fiona action, Kenjami Transports Inc, Machanter Shipping Corp, Duport Marine Services Inc. and Carrier Tanker Inc.

479. Clarkson arranged for the yards to pay address commissions of 1.5% upon the orders but did not account for this to the purchasers and never intended to do so. They paid to Milmont upon each purchase at least 1.5% of the price, and from what they retained having paid Milmont, Clarkson made payments to Shipping Associates. As a result, in many cases Clarkson's commissions were no more than 0.375% of the price, and they were never more than 0.75%.

480. I need not describe the commission arrangements for these purchases in detail, but I refer to two matters. First, upon the purchases of HHI hulls nos 1602 and 1603, Milmont were paid $2,471,000 or 2.605% of the price. The vessels were being bought in connection with the Sakhalin I project, and the orders were placed with HHI because the prospective charterers had included them on a shortlist of possible builders. Mr. Privalov said that therefore it was "artificial" to involve a broker at all in placing the orders and the claimants submitted that Clarkson were therefore required by Mr. Skarga and Mr. Nikitin to arrange large payments to Milmont in order to earn their own commissions of 0.5%. This argument rests upon unsupported evidence from Mr. Privalov, which I regard as unreliable and speculative. I cannot say why the payments to Milmont were so high in the case of hulls nos 1602 and 1603, but I reject any suggestion that it is curious or suspicious that Sovcomflot used brokers to negotiate with the yard, and that they instructed Clarkson to handle the purchases.

481. Secondly, I refer to the purchase from HHI of hulls nos 1562, 1563, 1564 and 1565. Clarkson were driven to agree to commission arrangements which meant that, after paying Milmont and Shipping Associates, they would keep only 0.375%. They improved their position a little by arranging that they should be paid an additional

lump sum of $50,000, which they had managed to present to HHI as a form of address commission. When HHI were concerned, therefore, to ensure that they should recover address commissions if purchase agreements did not proceed to delivery, Clarksons faced the position that HHI expected that these sums of $50,000 would be repaid. This problem for Clarksons is reflected in an e-mail which Mr. Wood sent to Mr. Gale on 12 February 2003 and read: "Trapped in our own web!! … The problem is that as we told them that the US$ 50,000 was address, under the words of the commission agreements this would need to be returned in the event of cancellation!" Mr. Wood acknowledged when he was cross-examined that this problem had arisen because he had misled HHI, his own principals, about why the additional amount of $50,000 were being paid.

482. I should add that the arrangements about repayment of the commissions were concluded between HHI and Clarkson in March 2003, some two weeks or more after the contracts for the construction of the vessels. Mr. Gale and Mr. Wood went to some lengths to create a chain of back-dated exchanges between HHI and Clarkson beginning on 3 March 2003, the date of the contracts for the construction of hulls nos 1564, 1565, 1585 and 1586. Thus, for example, on 17 March 2003 Mr. Wood wrote to Mr. Gale advising that he had received a letter in the chain of correspondence from HHI and asked "Would you like me to wait a day before sending the reply from the buyers", in order to give the appearance of a genuine exchange. I am unable to discern why Clarkson needed to create this fiction. The defendants suggested to Mr. Wood that this exemplifies a "fairly standard practice in the ship broking arena" to back-date correspondence, but I accept Mr. Wood's response that there is no such practice in relation to properly conducted transactions.

The Clarkson Documentation

483. Between 2001 and 2004 there were produced various kinds of documents about the payments made by Clarkson under the Clarkson arrangement that misrepresented and were designed to disguise the true nature of the payments. Clarkson and the claimants submitted that the very fact that they were produced is evidence that no genuine and legitimate agreement between Clarkson and Mr. Nikitin justified the payments. An honest arrangement, they argued, would have been openly reflected in documents between the parties, but in fact no contemporaneous exchanges or other documents reflect anything done by Mr. Nikitin that might provide an honest explanation for the payments. I describe six categories of documents: (i) the "summer 2001 correspondence", (ii) invoices, (iii) Clarkson's internal documentation, (iv) the "confirmation letters", (v) the "general instruction" letter and (vi) the "2004 letters".

484. The summer 2001 correspondence: in the summer of 2001 Mr. Privalov and Mr. Gale created letters about the earliest transactions in which Clarkson were involved. By two letters from Clarksons to FML marked for Mr. Privalov's attention and dated 31 May 2001, Mr. Gale purported to seek confirmation that FML had no objection to Alexia Shipping being involved in ordering vessels from Daewoo and Hyundai Mipo and "other transactions to be advised you from time to time", and confirmation that they had no objection to Italia being involved in the Astro vessels and Tsuneishi transactions, in the agreement with Athenian and in "other transactions to be advised to you from time to time". By undated replies, Mr. Privalov advised that FML had no objection.

485. By another letter dated 31 May 2001 Mr. Gale stated that Clarkson had received an invoice from Milmont "relating to commissions due to" Italia, and sought confirmation that they should pay it and any further invoices relating to the purchases of the Astro vessels and the newbuildings ordered from Tsuneishi. Mr. Privalov provided the confirmation sought in a letter dated 31 May 2001. By a letter dated 8 August 2001 Mr. Gale stated that Clarkson had received an invoice from Horber, and sought (or purported to seek) advice that it was for monies due to Alexia Shipping in connection with transactions involving buyers represented by FML, and confirmation that it should be paid. Mr. Privalov so confirmed in a letter dated 8 August 2001.

486. There were also letters dated 8 August 2001 about the payment of $250,000 to be made to Mr. Privalov's companies. In one of them Mr. Gale said that Clarkson had received an invoice from Continental for commission due to Italia and sought confirmation that Clarkson should pay the invoice "in connection with the purchase of [the Astro vessels] and the two newbuildings at Tsuneishi". In a second letter Mr. Gale sought such confirmation in relation to an invoice from Montrose in relation to "payments due to [Alexia Shipping] in connection with various transactions involving Buyers represented by your company". By replies dated 8 August 2001, Mr. Privalov gave the confirmation sought in these letters.

487. The letters were deceptive. Alexia Shipping and Italia had not been involved in the transactions. The letters created the impression that the payments to Horber and Milmont and to Mr. Privalov's companies, Continental and Montrose, were earned by recognised brokers. The issue between the parties about this correspondence is whether it was created to justify the payments both to Horber and Milmont and to Mr. Privalov's companies, Continental and Montrose, or whether, as Mr. Berry submitted, the purpose was to justify only the payments to Mr. Privalov's companies, the letters about Horber and Milmont being concocted in order to make the other letters about Continental and Montrose the more convincing. This in turn leads to an issue about when the letters dated 31 May 2001 were created because on their face the earliest letters concerned only payments to Horber and Milmont.

488. In his witness statement of 12 February 2009 Mr. Privalov stated that all the letters were produced to him by Mr. Gale in around August 2001. I conclude that the letter dated 31 May 2001 in which Clarkson said that they had received an invoice from Milmont was indeed created in around August 2001. Milmont's first invoice was dated 23 July 2001 and Horber's first invoice was dated 8 August 2001, and it is likely that the two letters stating that invoices had been received from those two companies were presented by Mr. Gale together. I attach no significance to this letter being wrongly dated. It is likely to have been a mistake, the date of 31 May 2001 deriving from the other letters which were so dated (whether correctly or not).

489. I conclude that the other two letters dated 31 May 2001 were created at around the end of May. First, they were created on Clarkson's IT systems and the metadata from the electronic files in which they are now stored shows that they were created by a "Clarkson user" and saved on the internal hard drive of a computer or computers. The metadata also indicates that the two letters were created in May 2001, although this evidence is not conclusive in that it depends upon the accuracy of the clocks of the relevant computer (or computers) because there was no independent timing information from a network or document management system. Secondly, the letter relating to Italia would not have referred to the Athenian transaction if, when it was

written, it was known that the payments were to be channelled through RTB. Thirdly, in an e-mail to Mr. Coleman of Clarkson, Mr. Gale advised on 21 June 2001, when asked about Clarkson's authority to pay RTB in relation to the Athenian transaction, that there was "on file" a letter that "remuneration is due on certain transactions to a third corporate party". It is likely that he was referring to the letter of 31 May 2001. Mr. Privalov asked for payment from Clarkson and Mr. Gale agreed to his request only in June 2001, after the first letters were produced, and I reject the defendants' submission that the letters were created to justify the payments to Mr. Privalov's companies.

490. I accept the argument of the claimants and Clarkson that, if Mr. Gale had regarded the payments to Milmont as proper, he would have had no reason to pretend that payments were being made to Alexia Shipping and Italia. Neither Mr. Nikitin nor Mr. Skarga was involved in preparing these letters, but I conclude that Mr. Gale created them because he considered that otherwise the propriety of the payments to the recipient companies might have been questioned. He considered that, if they appeared to be made to other brokers, this was less likely, or that they could be more easily explained if they were challenged. This was also why other payments were artificially channelled through brokers: in the case of the Genmar transaction through M J Gruber, and in the case of the Athenian transaction through RTB. This device, however, required the co-operation of another broker, and the e-mail to Mr. Broke-Smith of 25 April 2002 shows that Clarkson could not readily find this help. Without it, Mr. Gale resorted to creating these letters to give an impression that the payments were made in connection with broking the transactions.

491. Invoices: Mr. Gale was concerned that Clarkson should have invoices for the payments under the Clarkson arrangement in order to further the impression that the payments were legitimate, and he used them to reinforce the pretence that they were made for the services of other brokers. Mr. Gale decided upon the form of invoice against which Clarkson paid under the Clarkson arrangement and himself produced invoices in the names of the companies to whom they were to be made. The payments were described as being for commission "as agreed". At some stage, Mr. Gale provided a template for the invoices, and persons working for Mr. Nikitin or his companies produced them in St Petersburg.

492. It was submitted on behalf of Clarkson that the very fact that Mr. Gale, and not the recipient companies, first produced such invoices itself suggests that there were not genuine commercial dealings between the parties. I am not persuaded of that. Clarkson knew when they received commissions from the yards and when they should pay under the Clarkson arrangement. I do not find it odd that Clarkson then produced pro-forma invoices against which to pay what had fallen due.

493. Mr. Gale annotated invoices from the recipient companies and also invoices from Mr. Privalov's companies to reinforce the fiction that he and Mr. Privalov had concocted in the summer 2001 correspondence. Mr. Gale wrote in manuscript on an invoice from Milmont dated 23 July 2001 for $124,200 in relation to the first instalments for the purchases of Tsuneishi hulls nos 1246 and 1247 that it was received "by courier from Italia Chartering as agreed". He also wrote "Tsuneishi, Italia Chartering" on an invoice from Continental dated 10 August 2001 for $44,445.40. He wrote similar notes on invoices relating to the Hyundai Mipo and the Daewoo transactions referring to Alexia Shipping: "General Authority from Fiona. Payment to Alexia, Helsinki,

Finland nominee as agreed" on Horber's Hyundai Mipo invoice and "Alexia payment as agreed with Fiona" on their Daewoo invoice. On an invoice from Milmont dated 10 August 2001 for $1.38 million, Mr. Gale wrote "We agreed 2% total inc 1½% address, o.s. to [Clarkson]" and "Italia Chartering".

494. Clarkson's internal records: Mr. Gale had to make adjustments to how the payments under the Clarkson arrangement were recorded in Clarkson's internal systems. Under the systems operated by Clarkson at the relevant times, the broker responsible for a transaction would complete in manuscript a "fixture slip", which stated the basic details of the transaction, including the amount and timings of commission payments and any payments to be made by Clarkson to others. This was used to enter the transaction into a computer system called "CLASH", which would generate a "fixture acceptance form" for Clarkson's Sale and Purchase Division and their Finance Department.

495. It is sufficient to illustrate with one example how Mr. Gale arranged to provide within this system for the payments under the Clarkson arrangement and also the payments for Mr. Privalov. On 25 June 2001 Mr. Wood had completed an internal Clarkson fixture slip for the Tsuneishi transaction. It recorded what commission was to be paid and what payments Clarkson were to make from it. He wrote that Clarkson were to be paid commission of 2.5%, of which 1% was due to Clarkson and 1.5% was "due to Fiona Trust + Holdings Corporation", which, as I conclude, reflected his understanding that there was an address commission of 1.5% to be paid to the buyers. A second, amended, version of the slip was later written in which the details about the address commission were changed and it was said to be "due to Buyers' nom[inee] tba Fiona".

496. Clarkson's internal records about this transaction also reflect alterations made to provide a false explanation for the funds used for the payments to Mr. Privalov. On an amended version of the internal Clarkson fixture slip, there were noted the net amounts that Clarkson would retain after accounting for what had been allocated to Continental and Montrose. The difference between commission of 1% and the amended (or net) amounts falsely was attributed in the fixture acceptance forms produced by the CLASH system to a "buyers' retention fund".

497. The "confirmation" letters: Clarkson produced letters (the "confirmation letters") in which they stated that they would pay Milmont introductory commissions in relation to transactions identified in the letters. According to Mr. Nikitin, Clarkson produced them at his request because, as there were more transactions covered by the Clarkson arrangement than he had anticipated when the arrangement was made, he wanted a record of what he was to be paid (or what was to be paid to his order) and when payments were due. Clarkson and the claimants submitted that the confirmation letters were another device designed to justify the improper payments to the recipient companies.

498. There were nine such letters dated 20 July 2001, addressed to Milmont and signed by Mr. Gale on behalf of Clarkson, one for each of the newbuildings ordered from Tsuneishi, Hyundai Mipo and Daewoo. Their wordings were similar: having identified the relevant shipbuilding contract, they said, "Please be advised that we confirm your entitlement to the following introductory Commissions, remuneration is based on a percentage of the value of each transaction, and will be paid in accordance

with your agreement and instructions. Payment will be effected as soon as possible after Payment is received by, and subject to, receipt by us …". The letters said that payment would be remitted to Milmont's account at Wegelin, and listed dates upon which monies were said to be due to Milmont. All the letters were addressed to Milmont and referred to payments to Milmont, although in the case of the Hyundai Mipo transaction and the Daewoo transaction the commissions on first instalments of the price were in fact paid by Clarkson to Horber.

499. On 13 February 2002 Mr. Gale sent an e-mail to Mr. Gruber at M J Gruber with the request for a letter on M J Gruber's headed paper that was said to be "wanted by the owners of Pollak". The letter was to confirm payments made to Pollak in respect of the sale to Genmar "pursuant to a commission sharing agreement", and Mr. Gale provided a draft. Mr. Gruber was asked to keep the request private. He provided a letter in the terms requested, although, of course, M J Gruber had no such agreement (or any agreement) with Pollak.

500. Mr. Gale wrote other letters, which were dated 14 February 2002. One addressed to Milmont concerned the purchase of the Astro vessels, and stated that "Pursuant to a commission sharing agreement, we confirm that we have made the following payments, as agreed, to you…". Another letter addressed to Milmont about the Tsuneishi transaction and two addressed to Horber about Hyundai Mipo and Daewoo transactions were similarly worded except that they confirmed both payments that had been made and that further instalments were to be made concurrently with staged payments under the shipbuilding contracts. Unlike the confirmation letters, none of these letters of February 2002 referred to Clarkson making payments by way of introductory commissions.

501. At some time after February 2002 Mr. Gale produced further letters which were similar to the confirmation letters dated 20 July 2001. They referred to transactions entered into by Sovcomflot and to Clarkson paying introductory commissions upon the business. As I shall explain, Mr. Gale and Mr. Nikitin extended the Clarkson arrangement to cover transactions made by NSC as well as transactions entered into by Sovcomflot, and Mr. Gale also produced similar confirmation letters about vessels bought by NSC. They included four letters dated 22 April 2002 relating to the purchase by NSC of four vessels from Hyundai Mipo on 14 May 2002. These must have been back-dated because they bore a date before the purchase agreements had been made.

502. On 22 April 2003 Mr. Gale wrote a letter to Milmont in which he confirmed their "entitlement to the following introductory Commissions" and listed nine recent transactions, and stated that Milmont would be paid in respect of them. He produced other similar letters bearing various dates in 2003 and 2004.

503. Finally, Mr. Gale produced another form of letter dated 14 July 2005 to RTB in which they stated that, "In accordance with our February 2001 agreement we confirm we paid you a lumpsum of US$5,500,000 lumpsum (sic) in full and final settlement of our obligations to you covering this transaction".

504. According to Mr. Privalov's evidence, the letters dated 20 July 2001 were prepared some time after February 2002 and were back-dated. I conclude that they were not produced until October 2002 at the earliest. Mr. Gale back-dated them in order to

create a record that indicated that in 2001 the payments for Mr. Nikitin were regarded as being by way of introductory commissions. In fact, it is likely that the first letters that so described the payments for Mr. Nikitin were produced in 2003. This is why the letters dated 20 July 2001 concern transactions that had already been the subject of letters dated 14 February 2002. It is possible that the payments were first described as introductory commissions in the invoice of 11 July 2002 upon the sale of the "Kapitan Betkher", but, as I have explained, I think it probable that the invoice too was back-dated for the same reason.

505. In his witness statement dated 13 February 2009 Mr. Nikitin said that that he had no reason to think that the letters of 20 July 2001 were not prepared by Mr. Gale on that date. He said that Mr. Gale handed him the letters when they met, but that later, when he checked them, he realised that there were not letters relating to some early transactions and asked Mr. Gale to produce letters about them. Mr. Gale produced the letters of 14 February 2002.

506. When he was cross-examined, Mr. Nikitin speculated that there might have been letters dated February 2002 relating to the same transactions because some letters dated 20 July 2001 had been misplaced. I reject that explanation. There are letters of 14 February 2002 in relation to all the purchases covered by letters dated 20 July 2001. If, as he said, Mr. Nikitin checked the 20 July 2001 letters, they had not all been misplaced. In any case, the letters of 20 July 2001 were written on notepaper which, as was explained by Mr. Michael Cahill, who is the Group Financial Controller of Clarkson plc, bore the number of a fax line which was not installed until around December 2001, and the number was first printed on Clarkson's notepaper at some time between October 2002 and January 2003.

507. Mr. Nikitin was not party to producing the confirmation letters, but he gave false evidence about when he received the letters of 20 July 2001 and why further letters dated 14 February 2002 were produced. In cross-examination Mr. Nikitin said that Mr. Gale thereafter provided him with batches of confirmation letters from time to time. Mr. Nikitin and the Standard Maritime defendants disclosed copies of the confirmation letters in these proceedings, and I accept that at some point Mr. Gale provided copies of them to Mr. Nikitin, but it is impossible to say when he first was provided with copies of them. However, if they had been received by way of correspondence sent in the normal course of business, they would have been sent by post, fax or e-mail, and they were not.

508. I conclude that Mr. Gale did not produce confirmation letters referring to Milmont being entitled to "introductory commission" until 2003. They were produced in order to provide a consistent explanation for the payments under the Clarkson arrangement and were back-dated in order to give the impression that the payments had been referred to as introductory commission in 2001. They were produced by Mr. Gale to enable him to justify Clarkson making the payments and to continue to operate the Clarkson arrangement, and I conclude that Mr. Nikitin knew that this was their only purpose. He did not suggest any other credible reason for having confirmation letters concerning transactions already covered by the letters of 14 February 2002.

509. Clarkson submitted that it is to be inferred that Mr. Gale created the confirmation letters covertly and then suppressed them from others at Clarkson. The basis for this submission is that, as I accept, no hard copies of the letters were found on Clarkson's

files. I am not persuaded by this submission. It became apparent that an electronic copy of at least one of the letters of 20 July 2001 was found by Clarkson during the proceedings and other confirmation letters were also found on Clarkson's document management system. The evidence about what documents Clarkson generally kept only in electronic form and what documents would properly have been filed by them in hard copy is not sufficiently reliable to support Clarkson's argument.

510. The "general instruction" letter: Mr. Gale prepared a further letter (referred to as a "general instruction" letter) about the payments made by Clarkson. It was dated 7 July 2004 and addressed to FML, and Mr. Privalov countersigned it. It referred to "various transactions in which [FML] has been and will be involved as Brokers and Consultants" and Clarkson's understanding that Milmont and Shipping Associates would be entitled to participate in commissions and would be paid "appropriate compensation"; and said that the basis of remuneration would be "as agreed from time to time". According to Mr. Privalov, this letter was one of two produced in draft by Mr. Gale in the autumn of 2004, and the other letter, which is not in evidence, referred to Mr. Skarga authorising payments. Mr. Nikitin said that they should be destroyed, and Mr. Privalov instructed Mr. Gale accordingly. Mr. Nikitin denied the discussion and any knowledge of the letter. The purpose of the general letter is obscure, and nothing corroborates Mr. Privalov's evidence about his discussion with Mr. Nikitin or about a letter referring to Mr. Skarga. I reject Mr. Privalov's evidence, but in any case I would not have considered that this account supports the contentions of Clarkson or the claimants.

511. The 2004 letters: Further correspondence purporting to set out the nature of the Clarkson agreement was created in 2004, and it was back-dated to February and March 2001. The claimants and Clarkson submitted that it represents a further attempt to concoct a false justification for the payments to the recipient companies, and that Mr. Nikitin was party to it. Mr. Nikitin and the Standard Maritime defendants said that it essentially sets out the terms of the Clarkson arrangement that were in fact agreed in early 2001. Because of the importance that the parties attach to this correspondence, not least in relation to the part 20 claims against Clarkson, I shall set out the four letters. Those from Milmont were signed by a Ms. Francesco Bernasconi, who is described as signing as their attorney in fact. The letter from Clarkson was signed by Mr. Gale.

512. There was a letter from Milmont to Clarkson dated 12 February 2001 in the following terms:

> "We have advised you that as an independent consultant, we are able to provide you on an ongoing basis, our ideas, which we anticipate will allow your company, and may indeed already have allowed your company to participate in the development of Russian controlled shipping companies and their subsidiaries.
>
> We therefore agree that we will provide this service on the basis that we receive a commission for introducing our ideas, of which you will be advised/have been advised. We make no claim for commission on business we have not discussed. You will receive our ideas relating to the buying and selling

> activities of Sovcomflot and/or Fiona Trust and Holdings, or any of their Single Purpose Buying or Selling Companies, also relating to buying and selling activities of Novorossiysk Shipping, Novoship and/or Intrigue, or any of their Single Purpose Buying or Selling Companies. There may be other Companies and opportunities, including Chartering, which we may advise you in due course, on which basis we again may mutually agree specific arrangements on a case by case basis.
>
> Our normal commission for such business resulting from our services to you is 1.5% on the gross value of the transaction, whether Buying or Selling, however this may be varied from time to time by mutual agreement, but we are anxious that Clarksons receive standard rates of commission for all business transacted.
>
> We request that all such payments be made to Milmont Finance Ltd., or such other Companies we may nominate from time to time, including Horber Financial SA and RTB Overseas Ltd. You will be invoiced for our introductory commission and we would ask you to make prompt payment when requested.
>
> We hereby assure you, that there are no Government Officials of any affiliation or nationality involved with this Company, nor any Officers, agents or Employees of any Company to which our information refers involved with this company, and on which basis we will be remunerated.
>
> Owing to the rather delicate nature of our exchanges, it would be appreciated that no reference is ever made to its source, and this agreement is kept entirely confidential between us, although we appreciate it must be shown to proper parties legally entitled to see it under English Law. The name of this Company or any other Company nominated by us to receive introductory Commissions, must not be disclosed to any third party without our express permission, unless you are required to do so under English Law.
>
> For the purposes of clarification, when we make any statement relating to this Company, such undertakings and statements are and will be true of any company nominated by this Company.
>
> We would be grateful, for your confirmation of receipt of this letter, in due course."

513. There was a letter dated 20 February 2001, which purported to be a response from Clarkson to Milmont to the letter of 12 February 2001 and was as follows:

> "Thank you for your letter of 12 February 2001.

> We are pleased that we are able to have made contact, and regularised, our relationship which has been growing in its scope, and we might add our thanks for the most valuable assistance we have received from you which has already resulted in productive, discussions with the entities you mention.
>
> We look forward to keeping in touch with Mr. Yuri Nikitin, whom our Mr. Richard Gale has known since the early nineties, and their meetings and telephone conversations have proved a most valuable and productive source of ideas.
>
> We do appreciate, as per our discussion with Mr. Nikitin, that owing to the sensitivity of the ideas exchanged, we should be very careful with our records of communications, and keep them absolutely confidential. Thus most if not all exchanges will be in face to face meetings and by telephone.
>
> On this basis we are more than pleased with our arrangement.
>
> We must clarify certain aspects.
>
> You have advised us that we can expect Invoices for introductory commissions both from yourselves, and also Horber Financial SA of Panama and RTB Overseas Ltd. of BVI.
>
> Formally we must ask you to confirm that you are responsible for the disbursement of funds, and that no party to whom we make payment, will disburse any proceeds, to any party or parties benefiting from same, who may liable to UK Taxes. Furthermore you undertake to advise us if there is any change in this status.
>
> Some shipyards are beginning to insist, and we believe will formally insist in due course, that in the event that a Builder is obliged to refund any or all instalments received from Buyers, they will repay to the Buyers the net amount received under the shipbuilding contract, and will look to us to compensate (refund to) them commissions we have received. We would ask you under our agreement, to refund to us any such amounts disbursed to you.

514. A letter from Milmont to Clarkson bearing the date 28 February 2001 read as follows:

> "Your letter of 20 February has been received, and is acknowledged.

> Please maintain contact with Mr. Yuri Nikitin. As you have stated, the ideas exchanged are of course extremely confidential, and communications should be maintained on their present basis, as stated in your letter.
>
> For the sake of clarity, we confirm that no beneficiary of this or any Company nominated by us, including RTB Overseas of BVI, and Horber Financial SA, of Panama is a Company, entity or individual liable on these payments, to Tax in the UK, and we undertake to advise you if this changes.
>
> You have explained the reason, for a potential claim against ourselves or any other Company nominated by us, for repayment of our introductory commissions, in the event of a refund by the Yard to the Buyer. We agree to refund amounts to you or the shipyard, as they fall due under the stated circumstances."

515. Finally a letter from Milmont to Clarkson bearing the date 14 March 2001 read:

> "You have again expressed your concern relating to the issue of UK Taxation.
>
> We hereby advise you that Mr. Yuri Nikitin will take personal care that in any case of disbursement of the assets of Milmont or other accounts previously mentioned, or advised to you in the future, in writing, there will be no entity or person subject to UK Taxation."

516. Mr. Nikitin said, and it is not disputed, that the letters were created "at the end of 2004". By the time that they were prepared, Mr. Skarga had probably already been replaced as Director-General of Sovcomflot, and, if he had not already been replaced, Clarkson realised that he would not remain Director-General for long. On 14 September 2004 Mr. Gale wrote that "Moscow is in turmoil with changes all over the place and they will change the President of Sovcomflot…".

517. According to Mr. Nikitin, Mr. Gale presented him with draft letters and asked Mr. Nikitin to assist to create an exchange of correspondence, because Clarkson wished to have on file correspondence reflecting the Clarkson arrangement, confirming that no commission had been paid to anyone subject to United Kingdom taxation and agreeing that commission should be repaid if a sale or purchase agreement was rescinded. Mr. Nikitin did not need such letters for his own purposes, he said, since Clarkson had already provided the confirmation letters, and, because he found Clarkson's request for back-dated correspondence "somewhat strange", he arranged to meet Mr. Gale with another senior director of Clarkson to confirm that more correspondence was needed and that "there was nothing wrong in producing it". Mr.

Nikitin met Mr. Fulford-Smith, the Chief Executive Officer of Clarkson, and his concerns were, he said, allayed. Clarkson gave him drafts of the letters that they wanted from Milmont. When he returned to St Petersburg, he gave them to "someone in [his] office", and they were signed on behalf of Milmont.

518. I accept that the letters were probably drafted by Clarkson and that they were created upon Clarkson's initiative. I also accept that Mr. Fulford-Smith, if he was not actually party with Mr. Gale to producing them, at least concurred in having them produced. Indeed, it is pleaded in Clarkson's defence that he approved the wording of the letter dated 12 February 2001 and suggested the letter of 20 February 2001. I cannot, however, accept Mr. Nikitin's evidence that he did not think that it would be deceptive to back-date the correspondence since they reflected an agreement that had in fact been made; and that his initial concerns about being party to back-dated correspondence were answered by reassurances from Mr. Fulford-Smith. His own evidence was that in fact Clarkson gave him no explanation about why the correspondence should be dated in 2001, and so he cannot have been told anything that might have allayed his concerns.

519. I conclude that Mr. Nikitin was party to a plan with Clarkson to create a deception that the arrangements had been documented in 2001. Indeed, through his solicitor, Mr. Lax of Lawrence Graham, he presented the letter dated 12 February 2001 as a genuine and properly dated document when he was responding to an application for a freezing order in these proceedings. Mr. Nikitin must have known that this was false evidence and he was content for the correspondence to be misleadingly presented. (I need hardly add that there is no suggestion that Mr. Lax was party to any impropriety, or that Lawrence Graham were.)

Spreadsheets for Mr. Nikitin's commissions

520. There is no dispute that in late 2003 and early 2004 Mr. Privalov prepared spreadsheets that set out the payments that had been made to the recipient companies by Clarkson and also by Norstar, Galbraith's and Mr. Sawyer. He provided them to Mr. Nikitin by sending them to Ms. Malysheva, Mr. Nikitin's assistant, and, in one case, to Mr. Nikitin's own e-mail address. There are issues between the claimants and Mr. Nikitin and the Standard Maritime defendants about when Mr. Privalov first provided spreadsheets of this kind, why he started to do so and whether he provided to Mr. Nikitin a particular spreadsheet (to which I shall refer as the "2001/2002 spreadsheet"), which was in a different format from the later spreadsheets that are in evidence.

521. The 2001/2002 spreadsheet was maintained in electronic form and its metadata shows that the first version of it was created by a "Clarksons user" on 1 May 2001. The metadata also shows that the electronic version was last saved on 26 February 2002 and that it was last printed on 24 July 2001. For the most part, the spreadsheet records uncontroversial information about payments made or to be made under some of Sovcomflot's sale and purchase transactions. At the end there is further information about Sovcomflot's sales and purchases in the period to February 2002 that included details of payments under the Clarkson arrangement in respect of the Genmar transaction, the Astro vessels transaction, the Athenian transaction, the newbuilding purchases and the sale of the "Makarov" through Norstar. It lists the payment in columns under the headings "CC", Pollak, Horber and Milmont. "CC"

were the initials of Claudio Cepollina and the $5.5 million payment to RTB was recorded under that heading. Among the payments to Milmont there were recorded six payments of $200,000 each in relation to the six vessels bought in the Athenian transaction, referring, of course, to the Tam commissions, and a payment of $105,000, the address commission from the Tsuneishi hull no 1231 refinancing arrangements.

522. It is not apparent from the 2001/2002 spreadsheet itself whether it set out a list of payments which had already been made, or of payments that were to be made, or both. On the one hand, the last transaction listed was the sale of the "Makarov" in February 2002, which might have been added shortly before the document was last saved on the system on 26 February 2002. On the other hand, the spreadsheet does not record accurately when the payments of $200,000 in respect of the Tam commissions were in fact made. It listed them as being made in six different months between July 2001 and August 2002, whereas in fact, as I have said, the $1,200,000 was paid in three instalments between August 2001 and January 2002. Further, the payment listed under RTB is the whole of the $5.5 million transferred to RTB and not only the $5.25 passed on to Pollak and Milmont. To my mind this uncertainty is not important. I do not accept, as Mr. Berry suggested, that it in some way undermines the evidential significance of the 2001/2002 spreadsheet. Most importantly, the fact remains that it records the hull no 1231 commission and the Tam commissions as payments to Milmont.

523. According to Mr. Privalov's witness statement of 12 February 2009, he received the original version of the spreadsheet from Mr. Nikitin and added information to it. He continued to maintain spreadsheets until 2004, and Ms. Malysheva would e-mail them to him and he would update them. In his later statement of 28 September 2009 he said that in fact the initial spreadsheet was provided to him by Mr. Gale (not Mr. Nikitin) on a floppy disk. In his oral evidence he said that he received it from Mr. Gale by e-mail, and that he provided a version of it to Mr. Nikitin in hard copy at a meeting "probably in London".

524. Mr. Nikitin denied that he had seen any documents in the form of the 2001/2002 spreadsheet, and it was submitted by Mr. Berry that Mr. Privalov maintained these spreadsheets for his own purposes. Mr. Nikitin's evidence at trial was that he first received spreadsheets from Mr. Privalov in "around summer 2002". This account was first given in a statement dated 13 November 2009, which was served only a few days before he gave evidence. In his earlier witness statements he had said that Mr. Privalov had volunteered to keep records of his commissions (not that he had been instructed to do so) "in around the summer of 2001". When he was cross-examined about this change in his account, he said that his recollection was triggered by seeing later spreadsheets, and that they reminded him that spreadsheets had first been prepared in his office and, when at some time in 2002 his office was having difficulty in breaking down a lump sum, Mr. Privalov assumed the responsibility of keeping them.

525. This led to an issue about whether the metadata relating to the later spreadsheets demonstrated that the original author of spreadsheets in this form was Mr. Privalov, which would refute Mr. Nikitin's account that they were originally produced in his office. I was not assisted by this debate. There was no expert evidence that assisted to resolve it. Although the metadata of the spreadsheets in this form records that the original author was Mr. Privalov, I am not persuaded on the evidence before me that

this conclusively resolves the question. I cannot say, for example, whether Mr. Privalov might have saved a version of the spreadsheet that was e-mailed to him, and as a result came to be recorded as the author. In any case, it would not fundamentally contradict Mr. Nikitin's account if his office worked upon a form of spreadsheet that was originally provided (perhaps without significant content) by Mr. Privalov.

526. There are, however, other reasons that I am unable to accept Mr. Nikitin's evidence about the 2001/2002 spreadsheet or to accept the submission that it might be a document created for Mr. Privalov's own purposes. I found vague and unconvincing his explanation for retracting his original account that Mr. Privalov had volunteered to keep records in 2001. I conclude that he probably realised that the 2001/2002 spreadsheet referred to the payments to Milmont of the hull no 1231 commission and the Tam commissions and he wanted to provide an explanation for the spreadsheet that was consistent with his evidence that he did not know about these payments However, there would be no cogent reason that Mr. Privalov should have kept a record of this kind for his own purposes, without including in it the payments to his own companies. The inconsistencies between Mr. Privalov's original and later accounts were relatively minor, and it seems to me probable that the spreadsheet was, as he said, prepared for Mr. Nikitin and provided to him.

527. However, in the end, the importance of the 2001/2002 spreadsheet does not depend entirely upon whether it was provided to Mr. Nikitin. On any view, a spreadsheet prepared by Mr. Privalov in 2001 or early 2002 included the hull no 1231 commission and Tam commissions as monies paid or payable to Mr. Nikitin.

528. It is not clear from the evidence when the later form of spreadsheets was first produced and first provided to Mr. Nikitin. It appears from a fragment of some electronic data that they were being produced by August 2002. I accept that they lend support to the claimants' submission that Mr. Nikitin relied upon Mr. Privalov to liaise with Mr. Gale, and that he had played a central role in the Sovcomflot Clarkson commissions scheme. There is no evidence of direct e-mail contact between Mr. Nikitin and Mr. Gale or anyone else at Clarkson until after Mr. Privalov left FMA in 2005.

529. Mr. Privalov did not provide copies of these spreadsheets to Mr. Skarga, but Mr. Privalov claimed to have shown him some of them, and specifically to recall doing so in a car when driving to Domodedovo airport, Moscow, possibly in the winter of 2003. He recalled that Mr. Skarga commented upon how little Mr. Nikitin was paid upon the sales of the Uglegorsk vessels that were handled by Norstar. Mr. Privalov did not give this account before his witness statement of 28 September 2009, and I reject it. Had this important evidence been truthful, Mr. Privalov would have given it in an earlier statement.

Mr. Skarga's involvement with and knowledge of Clarkson arrangement

530. The claimants' case is that Mr. Skarga was party to the Clarkson arrangement, and more specifically that "before or during December 2000 or early January 2001" (as it is pleaded at paragraph 79A17(1) of the particulars of claim in the Fiona action) he agreed with Mr. Nikitin that, subject to Clarkson's agreement, the Clarkson arrangement would be put in place and Sovcomflot would instruct Clarkson as their brokers when selling and buying vessels. I have rejected Mr. Privalov's evidence

about how the Clarkson arrangement was made, and I also reject his other evidence that Mr. Skarga discussed the scheme or that he knew of it. For example, in the course of cross-examination he said that Mr. Privalov had a further discussion, a "tete-a-tete", with Mr. Skarga about the scheme in London at the end of 2000, or "possibly in the late autumn". In fact, Mr. Skarga was not, as I conclude from the documents about travel expenses, in London at the end of 2000. In any case, had there been such a meeting Mr. Privalov would have mentioned it before he was cross-examined.

531. I observe that, even on Mr. Privalov's account, Mr. Skarga did not speak to Mr. Gale about the Clarkson arrangement or the payments under it. Mr. Privalov said that he arranged for Mr. Skarga and Mr. Gale to meet over coffee in about March 2001, and they discussed Sovcomflot's plans for selling vessels and buying newbuildings. According to Mr. Privalov, he instructed Mr. Gale that commission payments were not to be mentioned at the meeting. He did not tell Mr. Gale that Mr. Skarga knew of the Clarkson arrangement, although he recalled that "Mr. Gale was under the impression that I wasn't acting on my own initiative as far as these commissions are concerned; I had some, sort of, instructions from above me". Mr. Privalov explained that he did not want Mr. Skarga to be embarrassed, but I find that explanation unconvincing. If Mr. Skarga knew of the Clarkson arrangement, there was every reason for Mr. Gale to have assured him when they met that he would play his part in it.

532. In my judgment, the success of the Clarkson arrangement did not depend upon Mr. Skarga, or anyone else at Sovcomflot in Moscow, being party to it (and I have also concluded that the comparable schemes involving NSC were operated without anyone in Novorossiysk being party to them). Negotiations for purchases and sales were conducted through Mr. Privalov, and Mr. Skarga did not directly participate in them.

533. The claimants argued that the scheme could not have worked without Mr. Skarga's support because it involved using funds paid by the yards or other sellers as address commissions, and, if Mr. Skarga had not been party to the scheme, he would have asked about whether Sovcomflot were to receive address commissions when he was liaising with and instructing Mr. Privalov in the course of negotiations. Even if he had not in fact done so, it is submitted, the parties to the scheme could not have operated it as they did on the assumption that Mr. Skarga would not ask whether the terms upon which vessels were being acquired provided for address commissions.

534. I am not convinced by this argument for the reasons to which I have already alluded when considering the Tam commissions scheme. Mr. Skarga's evidence was that Sovcomflot did not look for address commissions, but preferred simply to negotiate for an acceptable "headline" price. None of the witnesses for the claimants gave contrary evidence or suggested that historically Sovcomflot had ever taken address commissions. (I do not overlook that the SLB arrangements included payments of address commissions. It was not argued by the claimants that this supported their argument that Mr. Skarga would have enquired about address commissions when Sovcomflot was purchasing ships.) Other executives at Sovcomflot, including the experienced and questioning Mr. Terekhin, considered the purchases that they were making and the prices that they were paying, and they did not suggest that Sovcomflot should be negotiating for address commissions. I accept Mr. Skarga's evidence that

"Sovcomflot don't needed address commission and that is why we even never raised this question".

535. This conclusion is supported by the evidence of the brokers who gave evidence. Mr. Pierot agreed that it would be absurd to suggest that a buyer who had not been asked for address commission should think about including it in an offer. Mr. Day said that address commission would not arise for discussion unless the buyer asked for it. Mr. Wood said that it was paid only at the request of the buyer (and agreed in cross-examination, despite a sentence in his witness statement that might have been understood otherwise, that this applied to Russian buyers as well as others).

536. It was therefore unlikely that Mr. Skarga would have raised the question of whether Sovcomflot should be paid address commissions or seek to negotiate for an address commission upon the purchases, and still less likely that Mr. Privalov could not have handled the matter if the suggestion had been raised. After all, he had successfully operated frauds by diverting address commissions before Mr. Skarga had joined Sovcomflot.

537. I add that, even on Mr. Privalov's account, Mr. Skarga did not know that Clarkson were receiving address commissions without passing them on to Sovcomflot, and therefore did not know that it might create difficulties for the Clarkson arrangement if he suggested that Sovcomflot ask for an address commission. Nevertheless, as far as the evidence goes, he never suggested that Mr. Privalov should negotiate for Sovcomflot to be paid one.

538. The claimants argued that the scheme could not have been operated successfully without Mr. Skarga being party to it because of the risk that the yards' representatives might have referred to the address commissions at signing or naming ceremonies or on other occasions which he attended. However, ceremonies were attended by other senior officials of Sovcomflot, including members of the General Board and, for example, Mr. Sharikov and Mr. Dobrynin, who were not alleged to have been party to the scheme. There is no reason to think that in fact address commissions were ever discussed in Mr. Skarga's presence on these or other occasions. I observe that Mr. Wood warned Daewoo in an e-mail of 25 November 2003 that "It is important that … no serious business is discussed without Mr. Privalov being present as Mr. Skarga is not always involved in day to day management of projects".

539. I also conclude that it was not necessary for Mr. Skarga to be party to the scheme in order for sufficient funds to be generated by way of commissions upon sales. Mr. Borisenko and Mr. Dobrynin were responsible for Sovcomflot making payments of that kind, and in practice commission payments were normally authorised by Mr. Dobrynin. Mr. Privalov arranged for commissions to be paid from the proceeds of sale, and Mr. Dobrynin reconciled the payments with what Mr. Privalov had agreed.

540. In the case of the Genmar transaction Mr. Privalov sent Mr. Skarga on 15 June 2001 a "recap" e-mail that referred to commission of 4⅓% but misleadingly stated that it included 3.5% address commission. Generally, as I infer, Mr. Skarga, like other executives, could have discerned the commissions paid to Clarkson from the profit calculations that they received. For example, on 15 May 2002, after the "Kapitan Betkher" was delivered, Mr. Sharikov sent Mr. Skarga information about the price, net proceeds and predicted profit, and the attached calculations showed that Clarkson

were being paid commission of 3%. On 28 January 2003 Mr. Skarga, at Mr. Privalov's request, authorised the payment of an invoice dated 19 January 2003 from Clarkson for commission on the sale of the "Zina" in the sum of $230,750, which stated a rate of commission of 3.25%. Mr. Skarga therefore had available to him information from which he could have seen the levels of commissions, but it was not presented to him in a form that would have drawn them to his attention.

541. In any case, I am not persuaded that the levels of commissions paid by Sovcomflot on the sales through Clarkson were so high that Mr. Skarga would be expected to have questioned them, or that it is suspicious that he did not do so. I do not consider that his failure to challenge the commission payments indicates that he was party to the Sovcomflot Clarkson commissions scheme. Nor am I persuaded by the claimants' argument that those operating the scheme needed to have Mr. Skarga as a party to it so that he could defend the level of commissions charged by Clarkson if it was challenged by others, the more so since payment of commissions fell within the responsibilities of Mr. Borisenko. Mr. Day (whose evidence I prefer to that of Mr. Pierot) said that it was not uncommon for total of commissions (other than address commissions) paid upon ship sales to be between 3% and 5% of the price. He estimated from a limited examination of sales of second-hand ships in which he had been involved that they were of this order in about a third of transactions. Mr. Day accepted that individual brokers would not generally expect to be paid commissions of more than 1% on sale and purchase transactions, but, of course, they might seek to negotiate a higher rate with their principals.

542. Profit calculations in relation to sales were, as Mr. Sharikov confirmed, circulated widely within Sovcomflot. They were made by Mr. Sharikov or someone in his Fleet Operations Department. Sovcomflot have not disclosed profit calculations for most of the sales conducted through Clarkson, but I infer that the levels of commissions paid on sales will have been known among Sovcomflot executives. They excited no relevant comment or criticism from executives with more experience than Mr. Skarga. Mr. Sharikov said that, while commissions of 3% would be very high in a seller's market, they might be paid if it was a buyer's market, and his evidence was that he never told anyone "at the top level" (which expression would clearly include Mr. Skarga) that he considered the commissions levels to be high. Mr. Orphanos accepted that commissions of 3% were in line with what Sovcomflot had paid "in previous years".

543. Mr. Popplewell submitted that there are other reasons to suppose that Mr. Skarga was party to the Sovcomflot Clarkson commissions scheme. He was responsible, it is said, for appointing Clarkson as Sovcomflot's brokers in place of Mr. Prezanti and for giving Mr. Privalov responsibility for their sales and purchases, and it was as a result of this that Mr. Gale and Mr. Privalov were in a position to operate the scheme. As I have said, I do not accept that these decisions were taken by Mr. Skarga alone, and I conclude that they were taken with at least the concurrence of others. In any case, to my mind this would provide no real evidence that Mr. Skarga was involved in the Clarkson arrangement and the Sovcomflot Clarkson commissions scheme or that he knew of them.

544. Next, it is said that Mr. Privalov and Mr. Gale would not have risked operating the scheme without Mr. Skarga's support. I am not convinced by that argument. Mr. Privalov had previously defrauded Sovcomflot, and, even while operating the scheme,

he and Mr. Gale also operated their secret deal whereby Clarkson made payments to Mr. Privalov's companies. In June 2003 Mr. Privalov paid from his own RBS account and the Getwire account to buy Mr. Gale a car, and there is no suggestion that he discussed doing so with either Mr. Nikitin or Mr. Skarga. In my judgment Mr. Privalov was independent, wily and bold enough to operate the scheme without Mr. Skarga being aware of it.

545. Mr. Popplewell also argued that, if Mr. Skarga had not been party to the scheme, Mr. Nikitin would have insisted that Mr. Privalov and Mr. Gale should undertake to keep his commissions confidential. However, it would have been obvious to those participating in the scheme that they should not be discussed. If Mr. Nikitin had been concerned that he needed a specific undertaking of this kind in order to prevent Mr. Privalov and Mr. Gale mentioning the payments to senior Sovcomflot executives who were not party to the scheme, he would have required it whether or not Mr. Skarga knew about them. On the claimants' own case, Mr. Borisenko, Mr. Privalov's "line manager", knew nothing of the scheme until 2002, but this did not lead Mr. Nikitin to require specific undertakings.

546. According to Mr. Nikitin and Mr. Skarga, Mr. Skarga remained unaware of the payments made under the Clarkson arrangement until after he had left Sovcomflot and the Fiona action had been brought. Mr. Skarga said that he learned about the payments by Clarkson only when the claimants made allegations about them in the course of these proceedings. They first did so by draft pleadings served in April 2006, although the pleadings were not formally amended to introduce allegations about Sovcomflot's Clarkson commissions scheme until May 2007.

547. Mr. Skarga said that he did not ask Mr. Nikitin about the allegations, although the payments were said in the draft pleading to be some $39 million, because he considered that it was no concern to him what relationship or arrangements Mr. Nikitin had with Clarkson. Mr. Nikitin's evidence was that Mr. Skarga only had asked him whether the allegations were true and that he (Mr. Nikitin) had acknowledged receiving introductory commissions. They both said that Mr. Skarga showed no interest in the allegations, and did not, for example, ask how much Clarkson had paid or anything about the arrangement under which the payments were made. Mr. Dunning pointed out that it was not clear whether they were giving evidence about a time when Mr. Skarga was living in Mr. Nikitin's house in England or about an earlier time when Mr. Skarga was in Russia and they might have communicated by telephone. Nevertheless, Mr. Skarga's evidence was not that he thought it impolitic to discuss the allegations from Russia, but that they were of no interest to him.

548. I cannot accept that evidence. It beggars belief that, if these allegations were news to Mr. Skarga, he would not have been interested in them. Mr. Nikitin and Mr. Skarga were giving dishonest evidence about this. This might have been because Mr. Skarga knew of the payments earlier than he admitted, but equally Mr. Nikitin and Mr. Skarga might have been concerned that their discussions could prejudice Mr. Nikitin's answer to this part of the claim. Indeed, it would perhaps have been remarkable if they had not been reticent in their evidence about any discussions that they had when the allegation was introduced into the proceedings (although no objection was pressed that their discussion were covered by privilege). I do not consider that this by itself is

a compelling reason to think that Mr. Skarga was party to the Sovcomflot Clarkson commissions scheme.

549. In my judgment, there is no convincing evidence that Mr. Skarga was party to or knew of the Clarkson commission scheme, and no compelling reason to think that he was. I shall consider later in my judgment the claimants' alternative contention that they nevertheless have claims against Mr. Nikitin and the recipient companies.

The part 20 claim in the Fiona action

550. It is convenient next to consider the claims brought in the Fiona action by Mr. Nikitin and Milmont against Clarkson under part 20 of the CPR because they arise from the Clarkson arrangement. Their case is that under the arrangement it was agreed between Mr. Nikitin and Mr. Gale acting on behalf of Clarkson that Clarkson would pay commissions to Milmont or another company nominated by Mr. Nikitin, and, as I have explained, Clarkson provided in relation to purchases of vessels by Sovcomflot confirmation letters in which they stated specific amounts that they would pay by way of commissions to Milmont. The prices for newbuildings were paid to the yards in instalments, and Clarkson as brokers were paid commissions as each instalment of the sale price was paid. The confirmation letters reflected those staged payments. Mr. Nikitin and Milmont claim that in turn Clarkson were to pay an instalment of commission under the Clarkson arrangement as and when they received a commission payment from the yard. In the case of 14 vessels purchased by Sovcomflot (and 17 vessels purchased by NSC, which are the subject of the part 20 proceedings in the Intrigue action) Clarkson provided a confirmation letter and paid Milmont for one or more instalment of their commissions, but by letter dated 31 May 2006 from Messrs Norton Rose, who were then their solicitors, Clarkson advised Milmont that they were ceasing to pay them. Clarkson have not made payments that they stated in the confirmation letters would be made.

551. Mr. Nikitin and Milmont claim to be entitled to be paid $8,760,900 by Clarkson in respect of purchases of these vessels by Sovcomflot companies: three vessels, hulls nos 1757, 1758 and 1759, bought from HHI each for $49.5 million; a further vessel, hull no 1603, bought from HHI for $47.42 million; three vessels, hulls nos 5272, 5273 and 5274, and a further vessel, hull no 5275, bought from Daewoo for $57.9 million each and for $58.9 million respectively; two further vessels, hulls nos 2241 and 2242, bought from Daewoo for $160 million and $162 million respectively; and four vessels, hulls nos 2014, 2015, 2016 and 2017, bought from STX Shipbuilding company of South Korea for $40.58 million each. Clarkson produced confirmation letters for these purchases dated between 15 July 2003 and 27 October 2004.

552. All those letters relating to transactions which are the subject of the part 20 claim were in the form of the (back-dated) letters of 20 July 2001. They were dated 2003 and 2004, and there is no reason to think that these particular letters were back-dated. The relevance of the fact that earlier letters were given false dates is that it lends support to Clarkson's submission that Mr. Nikitin was aware that those earlier letters were not genuine documents and were not intended to give rise to any liability, but they were created in order to provide a fictitious justification for the payments to Milmont; and that he knew that the purpose of the later letters was similar.

553. The formulation of the part 20 claims (in both the Fiona actions and the Intrigue action) developed in the course of the trial. At the start of the trial, Mr. Nikitin and Milmont both claimed liquidated amounts, which represented the total of the commissions said to be due in respect of the 14 vessels. During the trial, they amended their part 20 claims to plead a claim for a reasonable sum by way of introductory commissions. In the course of the closing submissions Mr. Berry applied for permission to make further amendments to the part 20 claims. Mr. Nikitin and Milmont no longer pursue claims for a reasonable sum, but seek to make, in the alternative to the claims in debt in respect of liquidated sums, a claim by Mr. Nikitin for an order that Clarkson pay to Milmont the liquidated sum. Clarkson did not resist the application to introduce this new claim, although they did oppose other parts of the proposed amendments, and I said that I would rule upon the applications in this judgment. I shall return to this.

554. Behind the different formulations of the claim, the substance of what Mr. Nikitin and Milmont say is this: that, when Mr. Nikitin and Mr. Gale made the Clarkson arrangement, they made a legally binding contract whereby it was agreed that Clarkson would make payments in accordance with directions of Mr. Nikitin; and that, as far as concerns the purchases that are the subject of the part 20 claims, in the event the directions that Mr. Nikitin gave (or is to be taken to have given because he did not object to the confirmation letters addressed to Milmont) were that the money to be paid under the Clarkson arrangement should be paid to Milmont. Thus, Mr. Nikitin and Milmont contended that the effect of the confirmation letters was, in the words of the pleading, that they "quantified and crystallised" the payments to be made by Clarkson to fulfil their obligations in respect of the relevant purchases under the Clarkson arrangement: that is to say, Clarkson exercised a discretion that they had under the Clarkson arrangement to determine what was to be paid, and by the letters they determined Mr. Nikitin's and Milmont's entitlement. Alternatively, they put their case on the basis that, by the confirmation letter relating to the particular purchase, Clarkson offered to make the payments stated in it, and the offer was accepted because no objection was taken to what the letters stated and the first payments which they promised were accepted.

555. The main issues that arise in relation to the part 20 claims are these:

i) Whether, by the Clarkson arrangement, Clarkson entered into any contractual agreement with Mr. Nikitin or any company associated with him.

ii) If so, whether it gives rise to any obligation upon Clarkson to make payments in respect of the purchases.

iii) Whether by the confirmation letters Clarkson entered into any contractual commitment.

iv) Whether, if Clarkson did enter into any contractual commitment, it is illegal and unenforceable.

556. I am unable to accept that the Clarkson arrangement was of contractual effect. First, even on Mr. Nikitin's account, Clarkson did not enter into any commitment to make payments that could have been intended to be contractually binding. Secondly, I

cannot in any case accept that the Clarkson arrangement was a genuine arrangement that the parties intended and Mr. Nikitin understood to constitute a contract.

557. Mr. Nikitin and Milmont plead that it was agreed that "Clarkson would pay Milmont (or such other company nominated by Mr. Nikitin) commission of around 1.5% (or such other percentage as Clarkson considered appropriate …) of the gross value of transactions in respect of which (i) Clarkson acted as shipbroker; and (ii) Mr. Nikitin had introduced the business to Clarkson": see para 2 of the part 20 particulars of claim. They also assert that it was implied "as a matter of necessity and/or in order to give the agreement business efficacy that such percentage would be objectively reasonable and/or that Clarkson would act reasonably in their consideration of what was appropriate". Mr. Nikitin's evidence in his witness statement of 13 February 2009 about how much was to be paid was not that it simply depended upon how much Clarkson thought appropriate. He said that he and Mr. Gale agreed that Clarkson would pay around 1.5% of the transaction value for business that Mr. Nikitin introduced, but that if Clarkson thought that an introduction did not merit as much as that, he said that he "would be prepared to agree" another amount. However, in cross-examination he said that it was for Clarkson to decide on a case by case basis what they should pay because "they knew better the practice and how to do it properly"; and so the agreement did not contemplate that Mr. Nikitin should have to agree to the amount of commissions, even if they were for less than 1.5% of the transaction value. Further, and importantly, Mr. Nikitin said that he was not entitled to be paid for all business in which Clarkson acted for Sovcomflot, but Clarkson were to decide whether he had had any "input in putting the particular piece of business in question their way". As I understood his evidence, Clarkson might decide in a particular case that they should not make any payment for Mr. Nikitin. He said in cross-examination that it was up to them to decide whether they believed that he was entitled to the commission. His evidence did not support any case that Clarkson were obliged to pay a reasonable sum, nor that Clarkson made any commitment at all to him.

558. Mr. Berry sought to overcome this difficulty by submitting that, since the arrangement was that Clarkson should have discretion about whether to make a payment and if so what payment they should make in respect of any transaction, the law will require them to exercise their discretion reasonably. He referred to the judgment of Leggatt LJ in Abu Dhabi National Tanker Co v Product Star Shipping Co Ltd., [1993] 1 Lloyd's Rep 397 at p. 404: "Where A and B contract with each other to confer a discretion on A, that does not render B subject to A's uninhibited whim. In my judgment, the authorities show that not only must the discretion be exercised honestly and in good faith, but, having regard to the provision of the contract by which it is conferred, it must not be exercised arbitrarily, capriciously or unreasonably." I do not consider that the principle described by Leggatt LJ has any application here. The question is not whether there were to be implied into a contract between Clarkson and Mr. Nikitin any constraints upon how Clarkson could exercise a power or discretion that the contract allowed them. The question is whether Clarkson and Mr. Nikitin entered into any contractual arrangement at all. Mr. Nikitin's evidence was that Mr. Gale did not give any commitment on behalf of Clarkson other than that Clarkson would consider whether they should make a payment and if so how much, and no other evidence suggests that they undertook anything more. I do not consider that, in the circumstances of this case, such a commitment would have been understood by

the parties to have been intended to be legally binding or that, in giving it, Clarkson are to be taken to have evinced any intention that it should be contractual.

559. In any case, even if Mr. Nikitin's evidence is to be understood to support the contention that Clarkson entered into some contractual commitment, I should not accept that they did so. The case that is advanced by him and Milmont about the commitment is inconsistent and lacks coherence. The parties' conduct in relation to it does not support the case that Mr. Nikitin and Milmont seek to advance. The agreement for which they contend would not have made any commercial sense for Clarkson. Mr. Nikitin was party to creating fictitious documentation and misleading devices to explain the payments made by Clarkson, which would have been unnecessary if he had reached a genuine agreement with them.

560. Mr. Nikitin and Milmont have not advanced a coherent case about what Clarkson arrangement was made or about what was Clarkson's commitment under it. In the part 20 claim, they plead that the terms of the arrangement are "substantially set out and evidenced in the letter from Milmont to Clarkson dated 12 February 2001": para 1 of the part 20 particulars of claim. That letter does not, however, describe an arrangement in the terms that they go on to plead or as described by Mr. Nikitin in his evidence.

561. First, the letter described an arrangement under which Milmont agreed to provide ideas to Clarkson "as an independent consultant" and would be paid for "introducing our ideas". It did not describe an arrangement whereby they would be paid for introducing business to Clarkson, as is pleaded both in the part 20 claim and also in the defence of Mr. Nikitin and the Standard Maritime defendants (including Milmont) in the Fiona action, where it is said (at para 23A.1(4) that "Milmont (or another nominated company) would receive an amount of commission in respect of business introduced to Clarkson by Mr. Nikitin". As I have said, the payments were, however, not described as introductory commissions until 2002 at the earliest. Mr. Nikitin's evidence was that he was not paid simply because he "had put Clarkson and Sovcomflot in touch with each other", but when he had some "input" into a transaction. In cross-examination he referred to being paid where he had provided information.

562. Secondly, the letter of 12 February 2001 described an arrangement by which Milmont's "normal commission for such business resulting from our services" might be varied by mutual agreement. It did not describe an arrangement that Clarkson should pay when and in an amount that they considered appropriate, which is the agreement that Mr. Nikitin and Milmont allege to have been made.

563. Further, the letter stated that Milmont were anxious that Clarkson would receive "standard rates" of commission, and initially it was the pleaded case of Mr. Nikitin and Milmont that the Clarkson arrangement provided that Clarkson were to charge Sovcomflot only a standard rate of commission. In cross-examination, however, Mr. Nikitin said that Mr. Gale had not agreed to this, and the pleading was amended to allege that Mr. Gale agreed that Sovcomflot were to be charged "commission for division", and that it should be "a normal level for such type of transactions": para 3b of the part 20 particulars of claim. This was not stated in the letter of 12 February 2001, in which Milmont simply said that they were anxious that Clarkson should receive "standard rates of commission for all business transacted".

564. The pleaded case that Mr. Nikitin and Mr. Gale entered into an agreement in the terms set out in the letter of 12 February 2001 has been discredited. If the parties had entered into an arrangement of the kind that Mr. Nikitin and Milmont assert, it would be expected that contemporaneous exchanges between the parties to it and other documentation would have reflected it. There is no such contemporaneous documentation, and this, as I infer, was because it was not an arrangement to which Clarkson were committed, but a private and secret understanding between Mr. Gale and Mr. Nikitin.

565. Further, the pattern of the payments made by Clarkson is not that that would have been expected under the arrangement that Mr. Nikitin described or one which would make any commercial sense from Clarkson's point of view. Mr. Nikitin contributed little or nothing to the business that Sovcomflot did through Clarkson. No document indicates that he suggested any of the transactions for which Clarkson earned commission. The most that he claimed to have done was to indicate in general terms Sovcomflot's thinking: for example, in the case of the Genmar purchase, he claimed to have told Mr. Gale that Sovcomflot had it in mind to sell the OBO vessels; in the case of the Tsuneishi transaction, that Sovcomflot were thinking about buying Aframax vessels; and in the case of the Athenian transaction, that Sovcomflot were looking for new ice-class Suezmax vessels. In the case of most transactions, including all those to which the part 20 claim in the Fiona action relates, there is no credible evidence that Mr. Nikitin had, as he put it, any "input" at all. As Mr. John Odgers, who represented Clarkson, observed, it is difficult to see what Mr. Nikitin could conceivably have contributed to Sovcomflot's orders of further Aframax or Suezmax vessels from yards with which they and Clarkson had already dealt.

566. Nevertheless, Clarkson made payments to Milmont or another company nominated by Mr. Nikitin for all the Clarkson business that they handled, apart only for the sale in 2004 of two Tromso vessels, which were sold, as I shall explain, together with the Arbat vessels which were the subject of the SLB arrangements and sold by the Standard Maritime defendants that owned them. There was no reason for Clarkson to make any payments under the Clarkson arrangement that Mr. Nikitin described, and Clarkson could not have thought otherwise. However, not only did they make payments, but they paid on average more than 1.5% of the value of the transactions. The total value of the transactions in which Clarkson acted as brokers for Sovcomflot was some $2.35 billion, and Clarkson paid for Mr. Nikitin some $40 million, or over $4 million in excess of 1.5% of their value. In contrast, the amount that Clarkson kept by way of commission from these transactions was some $12.7 million, or $16.6 million if the amounts that Clarkson paid to Mr. Privalov's companies are included. There was no sensible and proper commercial reason for Clarkson to have paid so much under the arrangement that Mr. Nikitin described. According to Mr. Nikitin, he could not recall Clarkson ever suggesting that he should be paid less than in fact they paid, and Mr. Gale did not tell him why the payments were sometimes for more than 1.5% of the value of transactions.

567. It was submitted by Mr. Berry that I should accept Mr. Nikitin's account of the arrangement because no witness from Clarkson claimed to have any direct knowledge of the reason that Clarkson made payments to Milmont and other nominated companies. I do not accept that submission. Mr. Gale was engaged in various devices in order to prevent it appearing from Clarkson's records that they were

making these payments. The very fact that Mr. Gale resorted to these devices supports the conclusion that it was not an arrangement of a kind which the parties intended should be binding upon Clarkson. Mr. Nikitin was party to some of those devices, including the 2004 letters. He cannot have thought that, if there was a legally binding agreement that Clarkson should make payments to Milmont or others, there would be any need for or purpose in such subterfuges.

568. This is not to say that everyone within Clarkson other than Mr. Gale was unaware of the payments to the recipient companies. As Mr. Berry observed, the documents allowing payments to be made were endorsed by others, including Mr. Broke-Smith and, apparently, Mr. Fulford-Smith. It is not clear how much others were aware about why the payments were being made, but, as I have said, Mr. Fulford-Smith at least concurred in the 2004 letters being created. The point does not depend upon how many people within the Clarkson organisation were aware of the payments and knew something about the Clarkson arrangement. The point is that Mr. Gale felt the need to disguise the nature of the payments.

569. Clarkson have another argument. Even if they entered into a contractual obligation under the Clarkson arrangement whereby they were to make payments where Mr. Nikitin had introduced the business to them, he and Milmont have not established that he introduced any of the transactions to which the claim relates. Indeed, in the part 20 proceedings Mr. Nikitin and Milmont do not plead that Mr. Nikitin did introduce the relevant business to Clarkson.

570. The part 20 claim therefore depends upon the arguments based on the confirmation letters. I am unable to accept that, by providing the letters, Clarkson somehow entered into a commitment arising from the Clarkson arrangement itself to pay the sums stated in the letters: that they "quantified and crystallised the amount payable" under it in respect of a particular transaction. First, if the Clarkson arrangement was not contractual and there was no contractual obligation to be quantified or crystallised, I do not consider that there is any legal basis for an argument that the confirmation letters made the Clarkson arrangement itself contractually binding. The only legal basis upon which Mr. Berry suggested that this was the effect of the letters was that they created an estoppel whereby Clarkson were precluded for denying the circumstances that would create a contractual obligation. Even if the letters can be interpreted as making the representations necessary to provide a basis for an argument along these lines, there is no evidence that Mr. Nikitin or Milmont relied upon the letters and they do not assert that they did so. For the reasons that I have explained, I am unable to accept that Mr. Nikitin ever thought that the confirmation letters had any purpose other than to provide Mr. Gale with a justification for having Clarkson make payments for him.

571. For similar reasons, I reject the argument that, even if the Clarkson arrangement was not of contractual effect, the confirmation letters constituted an offer to make payments to Milmont that was accepted. The letters do not purport to be contractual offers, and Mr. Nikitin and Milmont neither acted so as to accept any offers nor provided any consideration under an agreement such as that for which they contend.

572. I therefore reject the part 20 claim in the Fiona action. I would, in any case, have accepted Clarkson's submission that the claim should not be enforced because, as I shall explain, I conclude that the payments were made under the Clarkson

arrangement to Milmont and others because Mr. Nikitin was dishonestly participating in the brokers' and Mr. Privalov's breach of their fiduciary duties. The court will not assist a person to recover a benefit from his own wrongdoing: Stone & Rolls Ltd. v Moore Stephens, [2009] UKHL 39 at para 26 per Lord Phillips.

573. I return to the application of Mr. Nikitin and Milmont to amend their pleaded case. The purpose of the amendment would be to enable Milmont to bring a claim under the Clarkson arrangement. On the face of it, the arrangement was between Mr. Nikitin and Mr. Gale acting for Clarkson, and, even if the arrangement created an enforceable contract, Milmont would not have any claim under it. The proposed amendment sought to overcome this difficulty by pleading that Mr. Nikitin made the arrangement as agent for Milmont, as well as on his own behalf, and by asserting that Milmont are entitled to enforce Clarkson's obligation to pay them under the arrangement because of the Contracts (Right of Third Parties) Act 1999 (the "1999 Act"). I consider that there is no proper basis for these contentions, and I refuse the application to make the amendments to assert them. There is no evidence that Mr. Nikitin acted on behalf of Milmont or any other recipient company when making the arrangement with Mr. Gale and he did not claim to have done so. In order to bring a claim under the 1999 Act, Milmont would have to establish that they were expressly identified in the Clarkson arrangement by name, as a member of a class or as answering a particular description: see section 1(3). There is no evidence that they were.

The Norstar commissions scheme

574. Sovcomflot had, for some time before 2001, contemplated selling their Uglegorsk vessels, which were old and relatively small. At a meeting of the Executive Board on 7 February 2001, Mr. Ambrosov was charged with making arrangements to sell them and also the "Byelorussia", a ro-ro vessel. During the summer of 2001, if not earlier, Clarkson looked for buyers for them, but without success. Mr. Gale told Mr. Privalov that they were not the appropriate brokers to handle the sales. The claimants plead (at para 27 of the particulars of claim in the second Fiona action) that "In or around August or early September 2001" Mr. Skarga instructed Mr. Privalov of an intention to sell the Uglegorsk vessels, but, as I conclude, Mr. Privalov must have been aware of Sovcomflot's intention earlier than that.

575. By September 2001 Norstar were trying to market at least two of the ships, the "Makarov" and the "Uglegorsk". Between February 2002 and July 2003 Norstar acted as brokers upon the sale of seven Uglegorsk vessels and the "Byelorussia". The "Makarov" was sold under a memorandum of agreement dated 12 February 2002, the other six Uglegorsk vessels were sold under memoranda of agreement dated between 4 November 2002 and 10 March 2003 and the "Byelorussia" was sold under a memorandum dated 10 July 2003. In total Sovcomflot were paid $17.11 million for the vessels. Norstar were paid by or on behalf of the selling companies total commissions of $434,075 on the sales, and from this they paid $238,396.50 to Milmont, who were paid between 1% and 2% of the sale price of each vessel.

576. The claimants' case is that Norstar had entered into an understanding (the "Norstar arrangement") with Mr. Nikitin which was similar to the Clarkson arrangement, and that they made payments on this business to Milmont in accordance with his

instructions. They also say that Mr. Skarga knew of and was party to the Norstar arrangement. At the start of the trial their case was that the Norstar arrangement was made at a meeting between Mr. Skarga, Mr. Privalov and Mr. Bonehill at the Lipp Brasserie in Geneva that took place "in around October 2001". After Mr. Privalov's evidence, they amended their case to allege that Mr. Privalov and Mr. Bonehill made the Norstar arrangement in or around October 2001 and that Mr. Privalov was acting on Mr. Skarga's instructions; and that the arrangement was discussed by Mr. Skarga, Mr. Privalov and Mr. Bonehill at a dinner at the Lipp Brasserie, when Mr. Skarga confirmed the arrangement. They were unable to say when the discussion took place.

577. The claimants contended that the scheme operated as follows: Mr. Nikitin would tell Mr. Privalov, either by telephone or at a meeting with him and Mr. Skarga, how much he was to be paid, and Mr. Bonehill, through Norstar, would include that amount in his invoice to the selling company and pay it into Milmont's account. When Norstar rendered their invoices for commissions that were at a level that was sufficient to cover what they were to pass to Milmont, Mr. Privalov sought and obtained Mr. Skarga's authority to pay it.

578. Mr. Privalov's evidence was that Mr. Skarga asked him to find a broker to handle the sales of the Uglegorsk vessels, and, upon the suggestion of Mr. Lyashenko, he approached Mr. Bonehill. According to Mr. Privalov, he told Mr. Bonehill that he would not be instructed to handle the sales unless he agreed to make payments for Mr. Nikitin's benefit, and Mr. Bonehill agreed to this at a meeting with Mr. Skarga and Mr. Bonehill at the Lipp Brasserie. Mr. Bonehill accepted that he should pay Mr. Nikitin, but he stipulated that the amount that Norstar should pay should depend upon the particular transaction. Mr. Privalov initially said in his witness statement of 12 February 2009 that the meeting was in around October 2001. In a witness statement dated 28 September 2009 he said that it could well have been earlier than October 2001, but that he believed that it was not later. In cross-examination he said that the meeting was later than "around October 2001". In fact, as the documents show, Mr. Skarga was not in Geneva between September and November 2001.

579. Mr. Privalov said that Mr. Bonehill also agreed that Norstar would pay him on the business "a proportion of their commission (generally equivalent to 0.25% of the sale price", and that he arranged for this to be paid to Shipping Associates. I accept that Mr. Privalov made some arrangement for Shipping Associates to be paid on this business, although the details of the arrangement are obscure and there is little documentary record of such payments. However, on 21 March 2002, after the sale of the "Makarov" in February 2002 for $2,025,000, Norstar paid to Shipping Associates' account at Credit Suisse $20,245. I infer that this represented 1% of the sale price, net of charges. Although this is inconsistent with Mr. Privalov's evidence about how much he was generally paid, in my judgment the records of this payment corroborates that Mr. Bonehill agreed to pay him. (It is perhaps curious that Mr. Privalov directed the payments to Shipping Associates if Mr. Bonehill himself had an interest in the company, but this was not explored when Mr. Privalov was cross-examined.)

580. Mr. Nikitin's evidence was that Mr. Bonehill knew him, and some time in 2001 he approached Mr. Nikitin about whether Norstar could obtain business from Sovcomflot. When Mr. Nikitin heard that Sovcomflot were having difficulty in selling the Uglegorsk vessels, he suggested to Mr. Privalov that Sovcomflot might sell them through Norstar, and he introduced Mr. Privalov to Mr. Bonehill. (In his

witness statement, Mr. Nikitin said that he provided Mr. Privalov with Mr. Bonehill's contact details, but in his oral evidence he said that he provided Mr. Privalov's details to Mr. Bonehill. The claimants drew attention to this discrepancy, but I cannot regard this inconsistency about how an introduction was arranged some 8 or 9 years ago as significant to the credibility of Mr. Nikitin's account or to any other issue.) Mr. Nikitin said that Mr. Bonehill volunteered to pay him introductory commissions, and paid him for each transaction an amount that he considered to be appropriate. They had no agreement about how much he should be paid and did not even discuss this. Mr. Nikitin said that Mr. Privalov did not contribute anything to bringing about his arrangement with Mr. Bonehill, although he was aware of it, and that Mr. Skarga did not know of the arrangement.

581. Mr. Skarga too said that he knew nothing of any arrangement that Mr. Bonehill had with Mr. Nikitin, and was not involved in Norstar being asked to handle Sovcomflot's business. He met Mr. Bonehill only once, in the winter of 2002-2003, when at the Lipp Brasserie in Geneva they discussed a yacht which had been presented to Mr. Putin and was being managed by Unicom.

582. The essential issues between the parties about the Norstar arrangement therefore mirror those about the Clarkson arrangement: (i) was Mr. Skarga party to it? and (ii) was Mr. Nikitin introduced to Norstar by Mr. Privalov and how did his arrangement with Mr. Bonehill come about?

583. The case that Mr. Skarga was party to the Norstar arrangement depends upon Mr. Privalov's evidence, which has been inconsistent and is unconvincing. I reject his evidence and the various arguments advanced by the claimants in support of their contention about Mr. Skarga's involvement.

584. First, they submitted that Mr. Privalov would not have arranged for Norstar rather than Clarkson to handle these sales unless he had been instructed to do so by Mr. Skarga. I do not accept this. The Executive Board had decided that the ships should be sold, and Clarkson had not succeeded in finding buyers for them. I see no reason to suppose that, even if Mr. Skarga had been party to the Clarkson arrangement, he would have insisted that they should be sold through Clarkson unless a comparable arrangement could be made with another broker, and no reason that Mr. Privalov should not have had a free hand to arrange for the disposal of these obsolete vessels, which were clearly of little value, as he saw fit and to appoint a broker for this purpose.

585. Nor am I persuaded by the claimants' argument based upon Mr. Nikitin's evidence that he did not require Mr. Privalov and Mr. Bonehill to keep the Norstar arrangement confidential. They submitted that he would have required secrecy unless Mr. Skarga was already aware of it. If there were force in this argument, Mr. Nikitin would have been concerned about others at Sovcomflot hearing of the arrangement, even if Mr. Skarga was aware of it. As with the Clarkson arrangement, Mr. Nikitin could expect that the others involved in the Norstar arrangement would understand that they should keep the arrangement confidential, without him giving the specific instructions to do so.

586. The claimants also relied upon an e-mail dated 30 December 2002 sent to Mr. Privalov authorising the payment of commission of 3% on the sale of the

"Uglegorsk". In his witness statement dated 29 May 2009 Mr. Skarga said that he believed that he had not sent the e-mail because he was away from the office at the time and because "the e-mail is not in my usual style". The e-mail, although dated 30 December 2002, was not in fact sent until 20 January 2003. I conclude from the evidence of Mr. James Menzies, an expert witness about computing matters, in a report dated 10 July 2009 that in fact the e-mail was sent from Mr. Skarga's computer and was probably written off-line and sent when the computer was again connected to Sovcomflot's server. I am not persuaded that it necessarily follows that Mr. Skarga sent this e-mail, but, even if for some reason he did authorise the payment on this occasion, I am not persuaded (despite Mr. Privalov's evidence to the contrary) that generally he authorised Norstar's commissions payments. There would have been no reason for him to do so even if he knew of the Norstar arrangement. According to the evidence of Mr. Sharikov and Mr. Borisenko, it was largely a routine matter to authorise such payments, and Mr. Borisenko said that it was normal for him to refer requests for authorisation to Mr. Dobrynin. These sales and the amount of the commissions were relatively small, and there is no credible evidence that the normal procedures were not followed.

587. The claimants submitted that I should accept Mr. Privalov's account that he arranged for Norstar to handle these sales, and that I should reject Mr. Nikitin's claim that he introduced Norstar to Sovcomflot. Neither account was given by an honest witness, but the claimants argued that there are other reasons to accept Mr. Privalov's account. First, Mr. Nikitin's evidence about how he came to know Mr. Bonehill is vague and unconvincing, because Mr. Bonehill was a sale and purchase broker and Mr. Nikitin had not been involved in business of this kind. On the other hand, Mr. Privalov might well have been introduced to Mr. Bonehill by Mr. Lyashenko, who, according to Mr. Privalov, worked for Norstar after leaving FESCO. Further, an e-mail dated 14 September 2001 from Mr. Lyashenko (or at least from his company, FESCO UK) shows that he and Mr. Privalov were in communication about selling the Uglegorsk ships. Whether, as Mr. Skarga said, this was sent after discussions that he had had with Fesco in which they expressed interest in the ships and he had referred them to Mr. Privalov, or it was sent after Mr. Privalov had approached Mr. Lyashenko about brokers who might handle the sales, it does at least support Mr. Privalov's evidence that he spoke to Mr. Lyashenko about selling the ships, and to that extent provides some support for his evidence that Mr. Lyashenko suggested Norstar as suitable brokers. Thirdly, Mr. Privalov's account explains why Norstar made payments to Shipping Associates. Fourthly, the claimants observed that Mr. Nikitin claimed only to have introduced Mr. Bonehill to Sovcomflot. He did not say that he provided Norstar with ideas about Sovcomflot's requirements. The claimants argued that in these circumstances it is improbable that Mr. Bonehill would have been left to assess how much he should pay to Mr. Nikitin "for the transaction in question", as Mr. Nikitin claimed. There would have been no possible reason to adjust the amount of commissions.

588. I am persuaded by the claimants' submissions and conclude that Mr. Privalov introduced Sovcomflot's business to Norstar.

589. I therefore conclude with regard to the Norstar commissions scheme that:

i) There is no credible evidence that Mr. Skarga was party to making (or confirming) the Norstar arrangement or that he knew of it.

ii) Mr. Privalov introduced Sovcomflot's business to Norstar, and Mr. Nikitin played no part in doing so.

590. I shall also consider later the defendants' arguments (i) that the claims are time-barred, and (ii) that no claim can be brought in respect of the sale of four of the vessels, the "Makarov", the ""Kurilsk", the "Novikovo" and the "Nevelsk" because the companies that sold these vessels are not party to the second Fiona action.

The NSC Clarkson and Galbraith's commissions schemes

591. The claimants do not allege that Mr. Izmaylov was corrupt while he was at Sovcomflot, or was party to or knew of any of the schemes to which Mr. Skarga is said to have been party. Before he moved to NSC, he did not have a close relationship with Mr. Nikitin or any substantial or relevant dealings with him. In the summer of 2001, Mr. Skarga recommended to Mr. Frank, in his capacity as Minister of Transport, that Mr. Izmaylov should be appointed President of NSC, and he also made the same recommendation to Mr. Yakunin. However, as Mr. Frank explained, it was not an appointment that Mr. Skarga could in any way have influenced because it was "the matter of the Government". Still less could Mr. Nikitin have brought it about. The claimants' case, however, is that by December 2001, before he was formally appointed as NSC's President, Mr. Izmaylov had entered into a corrupt relationship with Mr. Nikitin and Mr. Privalov, and had set about arranging for NSC to appoint new brokers with a view to them making arrangements similar to the Clarkson arrangement in order to benefit Mr. Nikitin. They say that:

i) Mr. Izmaylov was party to the NSC Clarkson commissions scheme, by which Mr. Nikitin, Mr. Gale and Mr. Privalov arranged that the Clarkson arrangement should be operated in relation to vessels purchased by NSC; that between May 2002 and April 2005 Clarkson handled as NSC's brokers the purchases of 28 newbuildings and two second-hand vessels; and that in accordance with the arrangement Clarkson made payments to Milmont on the business. Clarkson received on the 30 purchases total commissions of $28,841,198, and they paid $17,340,919 to Milmont and also $3,252,568 to Shipping Associates, retaining for themselves $8,247,493.

ii) Mr. Izmaylov agreed to the Galbraith's commissions scheme whereby he arranged with Mr. Rokison that NSC should use Galbraith's as their brokers to sell vessels, and that Galbraith's entered into an arrangement with Mr. Nikitin to make payments from their commissions to his order. Galbraith's also had an arrangement with Mr. Privalov to make payments to Shipping Associates. Between April 2002 and April 2005 NSC sold 37 vessels through Galbraith's, and Galbraith's also negotiated refinancing arrangements for four newbuildings that NSC had bought and acted as NSC's brokers upon the purchase in March 2005 of the "Four Stream". Galbraith's were paid in total $16,996,463 by way of commissions, and they paid $7,329,052 to Amon, the company nominated by Mr. Nikitin to receive payments, $4,335,720 to other brokers and $1,186,222 to Shipping Associates, keeping for themselves $4,145,469.

592. In May 2002 Mr. Sawyer, who traded as Marine and Finance, was retained by NSC as a financial advisor to arrange finance for their newbuildings programme and for re-financing existing debt. The claimants' pleaded case (at para 10D(4) of the particulars of claim in the Intrigue action) is that Mr. Izmaylov arranged his appointment "on terms that NSC or its subsidiaries would pay Mr. Sawyer 0.30% commission of the amount of all debt arranged by him" and "Mr. Sawyer would be required to pay 50% of that commission to Mr. Nikitin or his companies". Between December 2002 and October 2005 NSC paid him commissions totalling some $3.077 million, and, I infer, he paid some $1.538 million to Amon. (The total amount paid to Amon is a matter of inference in the absence of documents relating to any sums transferred to Amon in respect of commissions earned by Mr. Sawyer in 2005, but I understand that it not controversial. The exact figure is, in any case, not important.)

NSC's appointment of new brokers

593. Before Mr. Izmaylov was appointed President of NSC, North South International Ltd. ("North South") were their consultants and under a consultancy agreement with Intrigue dated 1 June 1998 had wide responsibilities, including for providing advice on acquisitions and sales of vessels, for providing assistance in negotiating and for reviewing the terms of acquisitions and sales, and for providing support in obtaining loans and financing arrangements. Mr. Sondre Tveitan provided North South's financial advice, and Mr. Arjun Batra was responsible for providing on North South's behalf services relating to ship acquisitions and sales, sometimes engaging for this purpose the services of brokers, such as Arrow and Braemar. Their appointment was terminated by NSC by three months' notice given in a letter dated 15 January 2002.

594. When Mr. Izmaylov moved to NSC to take up his position as President in November 2001, the company was about to undertake a major programme to modernise the fleet over five years. This had been approved by NSC's General Board before Mr. Izmaylov had been appointed. Mr. Izmaylov questioned whether North South should continue to handle NSC's acquisitions and sales. He asked Mr. Oskirko to consider how to go about finding a suitable replacement, but Mr. Oskirko apparently did nothing. Mr. Izmaylov was busy with other matters immediately after his appointment and he did not press Mr. Oskirko about this.

595. According to Mr. Izmaylov, he considered that North South were not suitable brokers to undertake the programme because they were too small and appeared not to have a wide network of connections in the shipping world. He wanted to replace them with major brokers who had a greater market presence. He thought that Mr. Batra had "no obvious track record" as NSC's broker upon acquisitions and sales. As for their work as financial consultants, NSC's funding from banks appeared to him more expensive than Sovcomflot's finance. He thought that Mr. Tveitan's financial "knowledge seemed superficial" and that he did not understand "Russian business and Novoship's position in the financial markets", and he was unimpressed when Mr. Tveitan represented NSC's interests in meetings with banks and financial institutions. His view about Mr. Tveitan's ability and suitability to act for NSC was confirmed when in December 2001 and January 2002 Mr. Izmaylov and Mr. Oskirko went with Mr. Batra and Mr. Tveitan for a series of meetings with banks and financial institutions in Holland and Norway.

596. Thus, within some two months of Mr. Izmaylov moving to NSC, the decision had been taken to replace their established consultants. The claimants said that Mr. Izmaylov was responsible for dismissing North South, that he had no proper reason for doing so, that he did not properly investigate who should replace them, and that he chose brokers because they were willing to pay Mr. Nikitin on their business with NSC.

597. I accept that Mr. Izmaylov went about replacing North South before he knew much about them and their work. For example, he did not know that North South sometimes used Arrow and Braemar to handle NSC business or that Mr. Batra was the managing director of Drewry Consultants. The trip to Holland and Norway was not an ideal opportunity to form a view about North South's ability as financial consultants. It was, as Mr. Izmaylov described it, simply "an acquaintance trip to our bankers". In any case, already before the trip Mr. Izmaylov had started to go about finding new brokers, and he told Mr. Oskirko that he was considering whether to replace Mr. Tveitan before he had met him. I am not, however, persuaded that Mr. Izmaylov had dishonest or improper motives in making these changes.

598. In about November 2001, Mr. Nikitin had telephoned Mr. Izmaylov. They had some discussion about NSC's proposals to renew their fleet, and in the course of their conversation, Mr. Izmaylov voiced his doubts about whether NSC's brokers were large enough and suitable to undertake the programme. Mr. Nikitin saw an opportunity to expand the Clarkson arrangement to cover NSC's sales and purchases as well as Sovcomflot's. Mr. Izmaylov and Mr. Oskirko came to London between 4 and 11 December 2001 to visit NOUK before they went on to Holland and Norway to visit bankers with North South. Mr. Nikitin had told Mr. Izmaylov that he would introduce him to brokers, and contacted him in London to arrange that he and Mr. Nikitin should meet at the Ritz Hotel with Mr. Rokison of Galbraith's over breakfast and with Mr. Gale over lunch. He suggested that NSC might divide their business between two brokers, giving Clarkson responsibility for purchases, particularly of newbuildings, and using Galbraith's to handle sales. These meetings were not included in the draft schedule prepared for Mr. Izmaylov's trip. This, I infer, was because they were arranged only at the last minute, and it does not, to my mind, justify the inference suggested by the claimants that Mr. Izmaylov was concealing them from NSC. Nor do I find it curious that before the trip Mr. Izmaylov did not tell other directors that he might be meeting brokers whom NSC might engage: his conversation with Mr. Nikitin was too vague to call for discussion. It is not clear why Mr. Izmaylov attended the meetings without Mr. Oskirko. Mr. Oskirko was probably, but not certainly, in London, but there is no evidence from Mr. Oskirko or any other witness or from the documents about whether he had other commitments.

599. The claimants' case is that, at his meeting with Mr. Rokison, Mr. Izmaylov agreed that NSC should appoint Galbraith's to handle on an exclusive basis all of NSC's ship sales. I do not accept that Mr. Izmaylov committed NSC to use Galbraith's services, either exclusively or at all. Mr. Rokison reported to the board of Galbraith's on 11 December 2001 that NSC "seemed to want Galbraith's as their sole broker". He did not state that they had agreed that they should be, and, if an agreement about this had been reached, Mr. Rokison would have reported accordingly. Similarly, I accept that, at the meeting with Mr. Gale, Mr. Izmaylov discussed the possibility of Clarkson acting as NSC's brokers without committing NSC to anything. When he

returned to Russia, Mr. Izmaylov discussed his meetings with NSC's executives, and proposed that NSC use Clarkson and Galbraith's as their brokers for sales and purchases.

600. NSC started to instruct Galbraith's upon their sales. I accept Mr. Oskirko's evidence that Mr. Izmaylov told him to do so, and on 24 December 2001 he said in an e-mail to NOUK that Mr. Izmaylov had requested them to appoint Mr. Rokison to handle sales of NSC's ships, and that Mr. Batra had been told not to become involved in negotiations for ship sales or purchases. Mr. Rokison reported to the Galbraith's board in January 2002 that NSC had offered them exclusive brokerage on the sale of four ships. In the event, from early 2002 NSC used only Galbraith's to sell ships, but this was not, as Mr. Izmaylov explained and I accept, because they had any exclusivity agreement, but simply because NSC were satisfied with their services. Similarly, NSC began to use Clarkson for ship purchases, particularly of newbuildings, and in practice NSC used only Clarkson as their purchasing brokers except for the purchase in 2005 of the "Four Stream", which was handled by Galbraith's.

601. Clarkson and Galbraith's were therefore appointed brokers without NSC interviewing other brokers or going through any such competitive procedure. However, Mr. Izmaylov's evidence was that their appointment was discussed within the management of NSC, including Mr. Sakovich and Mr. Oskirko. Mr. Oskirko denied this, and said that, when he questioned whether NSC should have exclusive arrangements with brokers, Mr. Izmaylov shouted at him on front of colleagues. Mr. Izmaylov disputed this, and I was unconvinced by Mr. Oskirko's evidence. I prefer Mr. Izmaylov's evidence that other executives concurred in his decision that NSC's business should be placed with Clarkson and Galbraith's.

602. According to Mr. Privalov, Mr. Izmaylov's meetings with Mr. Gale and Mr. Rokison were arranged after Mr. Nikitin and Mr. Skarga had approached him and told that they wanted to extend from Sovcomflot to NSC the scheme to make money from commissions paid on sale and purchase transactions. They claimed to have influence over how NSC were to be run and to have been instrumental in Mr. Izmaylov being appointed as President. Mr. Privalov said that he spoke to Mr. Gale about including NSC's business in the Clarkson arrangement and, after speaking to others at Clarkson, Mr. Gale agreed to this. Mr. Privalov had further meetings with Mr. Gale and Mr. Fulford-Smith to discuss NSC's business before Mr. Izmaylov met Mr. Gale. Mr. Privalov said that he also sought Mr. Lyashenko's advice about a sales broker who, like Clarkson, would be willing to make payments to a third party on business that they broked, and Mr. Lyashenko suggested Mr. Rokison and met him to discuss the proposal. Mr. Rokison was interested to meet Mr. Privalov, and they discussed whether Galbraith's would handle NSC's business on the basis that they made payments to both Mr. Nikitin and Shipping Associates. It was only after he had had these preparatory discussions, according to Mr. Privalov, that Mr. Rokison met Mr. Nikitin.

603. An essential dispute between the claimants and the defendants about this part of the case is whether Mr. Skarga was party to extending the Clarkson arrangement to NSC's business. It is common ground that Mr. Nikitin already knew Mr. Gale, and Mr. Nikitin agreed that, after he had sought his advice from Mr. Privalov about who might be a broker suitable to handle NSC's sales, Mr. Privalov identified Mr.

Rokison. Mr. Nikitin said that he advocated that the Clarkson arrangement be extended to NSC's business in relation to newbuildings, but he thought it sensible to have a separate but similar arrangement with different brokers for sales of NSC vessels. When he asked Mr. Privalov to suggest a sales broker, Mr. Privalov agreed to speak to Mr. Rokison, and reported that Mr. Rokison would like to discuss the proposed arrangement with Mr. Nikitin. Mr. Nikitin said that at a meeting at the Ritz Hotel he explained to Mr. Rokison that he had good relations with Russian owners and could introduce business to Galbraith's, and he asked whether Galbraith's would pay an introductory commission. He spoke of payments of 1.5% of the price paid for the sale as a "target", but it was for Galbraith's to decide what they should pay on each transaction. He asked Mr. Rokison to keep details of the arrangement confidential.

604. I reject Mr. Privalov's evidence that Mr. Skarga approached him with Mr. Nikitin about extending the Clarkson arrangement to NSC business. It is not corroborated and I conclude that again Mr. Privalov was giving untruthful evidence in order to implicate Mr. Skarga in corrupt dealings. The claimants argued that Mr. Nikitin would not have approached Mr. Privalov only to suggest a sales broker for NSC who would pay him if (as he said) he knew Norstar and Mr. Bonehill. I am not impressed by that argument. Mr. Izmaylov had said that he was looking for a major broker because he considered North South to be too small for the sales necessary for the NSC's fleet renewal plans. Norstar could not be so described. It so happened, as Mr. Popplewell pointed out, that the first two vessels that NSC sold through Galbraith's were Uglegorsk vessels (the "Nikolay Kantemir" and the "Novokubansk") of the kind that Norstar were selling for Sovcomflot, but NSC were not looking for brokers just for those sales.

605. There is no dispute that Mr. Privalov arranged that Galbraith's, like Clarkson, should make payments to Shipping Associates in respect of NSC's business. Mr. Nikitin did not know about this, as Mr. Privalov acknowledged. The agreement between Galbraith's and Shipping Associates was recorded in a document entitled "Introductory Agreement" dated 1 August 2003. Further Mr. Rokison has admitted that he personally was rewarded by Mr. Privalov in return for agreeing to this arrangement. He was paid £19,350 towards the purchase of a Saab motor car, and also $103,000 paid into an offshore bank account. These payments were described by Privalov as "a share of the Shipping Associates monies", and were said to have been made "in return for Galbraith's making and continuing to make the payments to Shipping Associates". There is no suggestion that Mr. Nikitin knew of them.

606. I therefore conclude that, soon after he was appointed President of NSC, Mr. Izmaylov decided that North South should be replaced as NSC's brokers for sales and purchases of vessels. Mr. Nikitin learned of this, and exploited the opportunity by introducing Mr. Izmaylov to Clarkson and Galbraith's. Mr. Izmaylov was impressed by Mr. Gale and Mr. Rokison, and at his suggestion and with the concurrence of other executives, NSC began to instruct Galbraith's, particularly upon sales. Clarkson made proposals to NSC about what vessels they might buy. I do not consider that anything in this indicates corruption on Mr. Izmaylov's part. In reaching this conclusion I have it in mind that Mr. Izmaylov also decided that Mr. Sawyer should be appointed to be NSC's financial consultants in place of North South, and that the claimants alleged that this reinforces their contention that Mr.

Izmaylov's decision to replace them as NSC's shipbrokers was not a proper one. I shall consider the evidence about Mr. Sawyer's appointment later, but this does not affect my conclusion about the appointment by NSC of Clarkson and Galbraith's.

NSC Clarkson commissions scheme

607. I do not need to refer to all the acquisitions which Clarkson handled for NSC. Clarkson arranged to have sufficient funds to make payments to Milmont and to Shipping Associates by the same device as when they handled purchases for Sovcomflot, that is to say by negotiating terms with the yards which provided enough address and other commissions to cover the payments. As I have explained, Clarkson wrote similar confirmation letters to Milmont about what "introductory commissions" they were to be paid, and payments to be made to Milmont for NSC's purchases were included in the spreadsheets that Mr. Privalov provided for Mr. Nikitin. In their internal documentation Clarkson described the payments to Milmont and Shipping Associates as "due to buyer". Mr. Privalov worked closely with Mr. Gale upon the purchases, although he had no position with NSC and NSC had not asked for his assistance. Mr. Izmaylov denied that he knew of Mr. Privalov's involvement and there is no evidence that he did.

608. I can illustrate how the Clarkson arrangement operated in relation to NSC's newbuilding purchases by referring to selected transactions. The first newbuilding purchases in which Clarkson acted for NSC were from Hyundai Mipo, from whom by memoranda of agreement dated 14 May 2002 NSC bought two Handymax product tankers, the "Rudy" (hull no 0201) and the "Kasbek" (hull no 0202), for $27 million per vessel, and by memoranda of agreement dated 5 July 2002 NSC bought two further similar vessels, the "Pamir" (hull no 0203) and the "Ebrus" (hull no 0204), for the same price. The purchasers were Seagull Shipping Ltd., Jupiter Shipping Ltd., Cora Navigation Ltd. and Nitara Carriers Ltd., respectively the 3rd, 4th, 5th and 6th claimants in the Intrigue action.

609. In the negotiations for these purchases, Mr. Wood acted for Hyundai Mipo. He described the dealings with Hyundai Mipo as "start[ing] out as a Fiona transaction", which he realised was to be concluded by NSC only when discussions were at an advanced stage. He said that Mr. Privalov was much involved in this and subsequent transactions, and, because of this and because of the history of the dealings with Hyundai Mipo, he understood that Sovcomflot and NSC were in some way connected.

610. On about 26 February 2002, at Mr. Privalov's request Mr. Gale approached Hyundai Mipo about whether they were interested in building two vessels, with options for two more, for Fiona "or their nominee". Mr. Wood and Mr. Gale, acting for the NSC purchasers but receiving directions from Mr. Privalov, then entered into negotiations about prices and commissions. By 18 March 2002, as is apparent from an e-mail internal to Clarkson which was sent by Mr. Gale, Mr. Privalov had told Mr. Bae of Hyundai Mipo that the first two vessels were for NSC "unofficially at this stage", and on 21 March 2002 Mr. Wood, when putting forward an offer to Hyundai Mipo, wrote "As we have discussed, the intention was always that the firm vessels would be for the account of Novoship (which is now effectively controlled by Sovcomflot/Fiona)". Mr. Wood first proposed a price of $26.15 million, with commissions of 3%, of which 2% was to be address commission. On 20 March 2002, Mr. Wood reported Hyundai Mipo's response to the proposed commissions: that their head office were "saying that

they would prefer the brokers to cut commission rather than do $27 mill less 3[% commission] … Certainly clear from this that $26.5 mil on these payment terms not [possible]." In fact on 27 March 2002 Clarkson and Hyundai Mipo agreed upon a price of $27 million: Hyundai Mipo were to pay commissions of 3%, of which they understood 2% was by way of address commission. NSC were never told about the address commissions. I infer that the price of $27 million had been agreed in order to ensure that the commissions were sufficient to cover the payments that were to be made to Milmont and Shipping Associates and that otherwise a lower price for the vessels would have been agreed.

611. Mr. Privalov continued to play an active part in the negotiations over the 7 weeks or so before the contracts were signed. On 4 April 2002 Mr. Gale wrote to Mr. Bae of Hyundai Mipo to apologise for delay in signing a letter of intent, explaining that Clarkson were relying upon Mr. Privalov's advice and guidance rather than "constant direct communication with Mr. Izmaylov". Further, when NSC sent a preliminary specification that caused Hyundai Mipo concern, Mr. Gale referred the problem to Mr. Privalov. As is clear from an e-mail sent by Mr. Gale to Mr. Wood on 30 April 2002, Mr. Privalov also advised that NSC would like to use their own form of contract.

612. Mr. Izmaylov denied that he had any dealings with Mr. Privalov in relation to this transaction or other purchases, and he did not know that Mr. Privalov was involved in the negotiations. Mr. Privalov too said that he did not discuss any of NSC's purchases (or sales) with Mr. Izmaylov. Nothing in the documents suggests otherwise. It is not clear from the evidence how or with whom Mr. Privalov dealt with the various problems raised by Clarkson, or why he was involved in the negotiations as he was, but there is no reason to reject Mr. Izmaylov's evidence about this.

613. When the contracts were signed on 14 May 2002, Hyundai Mipo also signed a commissions agreement with Clarkson, and Clarkson's fixture slip referred to the commissions of 3% as representing 0.5% for themselves and 2.5% that was "due to buyer". As I have said, confirmation letters to Milmont, which refer to "introductory Commissions", about paying them in respect of these purchases were back-dated to 22 April 2002, before the contracts to buy the vessels were made. I have concluded that they were in fact not written before 2003.

614. I refer next to the purchases in July 2003 by NSC from HHI of four vessels, the "NS Challenger", the "NS Concord", the "NS Concept" and the "NS Champion", respectively hulls nos 1628 and 1629 and nos 1635 and 1636, which illustrate a similar pattern of operation by Clarkson. Mr. Wood dealt with the yard on the basis that they were to pay 2.5% of the price by way of commissions including address commissions, and Mr. Gale dealt with NSC, in communications with Mr. Izmaylov and Mr. Oskirko, without mentioning commissions and therefore implicitly on the basis that no address commissions were to be paid. On 16 June 2003 HHI and Intrigue signed a letter of intent which did not refer to commission payments. HHI advised that they could offer to supply two further vessels, and Mr. Gale sent this information to Mr. Privalov as an offer to "Sovcomflot/Novoship", but to Mr. Oskirko as an offer to NSC. In early July 2003 it was agreed in principle that NSC should buy four vessels. On 7 July 2003 Mr. Wood sent Mr. Gale an e-mail in which he recorded that NSC had agreed a price of $36,846,770 for each.

615. However, Clarkson had to ensure that HHI paid "address commission" without NSC being aware of this. HHI for their part required protection against the risk that the contracts did not proceed to delivery. At the same time, as Mr. Gale observed in an e-mail to Mr. Wood on 9 July 2003, Mr. Privalov did not "want to be seen to be involved towards HHI on behalf of Intrigue". When he was cross-examined about this, Mr. Wood was unable to give any satisfactory explanation about why, if, as he understood, Mr. Privalov was in a position to act for NSC companies, this should not have been made known to HHI or anyone else. However, Mr. Gale and Mr. Wood secured Mr. Fulford-Smith's agreement that Clarkson should give HHI an indemnity to repay address commissions, provided that in turn Clarkson were given an indemnity by Mr. Privalov in the name of FML as agents only. Accordingly, on 24 July 2003 Mr. Privalov provided to Clarkson an indemnity signed on behalf of FML "as agents only" in respect of any repayment of commissions that they had to make to HHI in connection with these vessels.

616. Mr. Privalov had no authority or proper reason to give an indemnity on behalf of FML in respect of NSC's contracts with HHI. In his witness statement dated 12 February 2009 in the Intrigue action, he said that he thought that it must have been given by mistake, and that he did not recall being asked either by Mr. Nikitin or by Mr. Gale to provide it. In his oral evidence, when cross-examined on behalf of Clarkson and shown that Mr. Gale's e-mails in which he wrote of Mr. Privalov not wanting to be seen to be acting on behalf of NSC, Mr. Privalov said that he had signed the indemnity because he thought that he had no alternative and that Mr. Nikitin had agreed to reimburse FML if Clarkson called upon the indemnity. Mr. Nikitin denied this and denied knowing about the indemnity. Mr. Privalov gave accounts about this which were inconsistent and not corroborated. There is no independent evidence about the circumstances in which the indemnity was given and I cannot rely upon Mr. Privalov's evidence. The claimants and Clarkson have not shown that Mr. Nikitin knew about the indemnity that Mr. Privalov provided to Clarkson.

617. Finally, I refer to the purchase from Brodotrogir (or shipyard Trogir) in Croatia of four product carriers, which Intrigue agreed to buy under shipbuilding contracts dated 25 July 2003 for the "NS Silver" and the "NS Stella" and dated 11 December 2003 for the "NS Stream" and the "NS Spirit". The negotiations for the purchases were conducted directly between the yard and NSC, but by e-mail dated 5 April 2003 Mr. Gale instructed Mr. Wood that Mr. Privalov required him to attend upon discussions "to listen to what [Mr. Izmaylov] says and make "non-committal noises" about finding him what he wants"; and that he was not "to stir up too much with Yards until [Mr. Privalov] finds out what Moscow will authorise". I cannot tell from the evidence why Mr. Privalov was involved with the purchases at all or why he required Clarkson to attend the meeting. On 19 November 2003 Clarkson sought commissions of 1% from Trogir on the basis that they had advised the yard that NSC required product carriers and they paid two thirds of what they received to Milmont and a sixth of it to Shipping Associates.

618. I cannot discern from the evidence why Mr. Privalov took such an active role in the purchases that NSC made through Clarkson, but there is no evidence that Mr. Izmaylov or any other executive of NSC knew that he was doing so or regarded his activities as suspicious or as giving them grounds to think that Clarkson were not conducting themselves properly and honestly as their brokers. Mr. Privalov said that

he had no discussions with Mr. Izmaylov about NSC's acquisitions, or indeed about their sales of vessels. I do not consider that there is any evidence from the way in which the vessels were purchased that supported the contention that Mr. Izmaylov was colluding with Clarkson, or with Mr. Privalov, or with Mr. Nikitin.

619. There is no credible evidence that Mr. Nikitin produced for Clarkson any significant information about what vessels NSC would be interested in acquiring or otherwise played any part in bringing about the purchases.

The Intrigue part 20 claim

620. The part 20 claim in the Intrigue action is similar to that in the Fiona action. It is for $6,786,688, which Mr. Nikitin and Milmont say Clarkson are obliged to pay in respect of the purchases of 18 vessels: two Trogir vessels, hulls nos 313 and 314, six HHI vessels, hulls nos 1688, 1689, 1712, 1713, 1796 and 1797, four SAS vessels, hulls nos 467, 468, 469 and 470, four Samsung vessels, hulls nos 1615, 1616, 1617 and 1618, and two Samho vessels, hulls nos S-304 and S-305 They relied upon confirmation letters from Clarkson dated between 5 November 2003 and 12 May 2005. I reject the claim for the same reasons that I reject the part 20 claim in the Fiona action. I add only that my conclusion is further reinforced by Mr. Izmaylov's evidence, which I accept, that Clarkson knew from NSC what ships they were interested in acquiring. They needed no ideas, information or other "input" from Mr. Nikitin. The only contribution that Mr. Nikitin said that he made was that he told Clarkson that NSC were interested in buying product carriers and Aframaxes, which I would have regarded as insignificant, but I do not accept that he provided even that information.

The Galbraith's commissions scheme

621. Galbraith's acted as NSC's brokers upon the sale of 38 vessels, upon the purchase of the "Four Stream" and in negotiations to re-finance the purchase of four vessels. In respect of at least some of the sales, Galbraith's entered into memoranda of agreement with NSC whereby NSC appointed Galbraith's to be their exclusive brokers to assist in the sale of a vessel for them and on their behalf, and Galbraith's undertook to "arrange [their] best services for sale of [NSC's] vessel when required so [sic] for and on behalf of [NSC]".

622. I can explain how Mr. Rokison conducted these sales as NSC's broker and how he generated funds to make payments to Amon by describing some illustrative transactions. There is no evidence that anyone else at Galbraith's acted improperly.

Refinancing the Aframax vessels

623. The first negotiations that Galbraith's conducted for NSC concerned the purchase by Intrigue of four Aframax vessels, hulls nos S182, S183 from Samho and hulls nos 1466 and 1467 from HHI. (In this passage of my judgment I shall together refer to Samho and HHI as "the yards") The purpose, or at least the ostensible purpose, was to negotiate a reduction in the price in return for accelerating the payment schedules. The claimants contended that the true purpose was to generate commissions for Mr. Nikitin and also to test whether Mr. Rokison could produce commissions for him as

Mr. Gale was doing. Galbraith's did arrange for the yards to pay address commissions, and they diverted them to Amon.

624. By February 2002 Mr. Rokison had been instructed to negotiate new terms with the yards. On 20 February 2002 the yards' brokers, Nissho Iwai Europe PLC ("Nissho"), indicated that HHI and Samho would pay address commissions of 2% of the prices upon delivery to Intrigue or their nominee. After some exchanges on 26 March 2002 Mr. Rokison wrote to Nissho that Galbraith's had instructions from "the contracting party" to put forward a proposal which included that the yards should pay address commissions to Intrigue or their nominee of $230,000 per vessel.

625. On 4 April 2002 Mr. Rokison had sent a fax to Mr. Privalov at the Hotel le Richemonde in Geneva. (This was referred to during the trial as the "Hotel le Richemonde fax"). He reported that the yards had agreed to a proposal to amend the contract prices and pay an address commission to Galbraith's "for division", and explained that they required a letter of nomination signed by the President of NSC appointing Galbraith's to sign the commission agreement. He wrote "We have prepared the below letter of nomination which makes no reference to any commission agreement, which if buyers approve, we will send to the builders for their comment". It is apparent from this fax and the attached letter of nomination that Mr. Rokison intended that NSC and Intrigue should not know about the commission agreement, and Mr. Privalov must have realised this. Mr. Privalov told Mr. Rokison that any reference to commissions should be removed from the letter. Mr. Rokison then prepared further versions of his fax of 4 April 2002 accordingly, and (as I infer, although the documents in evidence do not specifically demonstrate this) in due course an amended version was sent to Mr. Izmaylov.

626. Mr. Privalov's evidence was that he took instructions from Mr. Nikitin about the original Hotel le Richemonde fax before arranging that references to commissions be removed. I do not accept that: Mr. Privalov was well practised in devices of this kind, and did not need to consult Mr. Nikitin. At one time the claimants' pleaded case was that "It is to be inferred that Mr. Rokison prepared this further version of the fax, omitting all references to commission, after discussions with Mr. Privalov for Mr. Privalov to forward to Mr. Izmaylov for NSC's records": see para 37(9)(C) of the particulars of claim in the Intrigue action). This allegation was rightly abandoned. There is no evidence that Mr. Izmaylov was party to creating any documents designed to mislead others at NSC with regard to commission payments (or in any other way). On the contrary, according to Mr. Privalov's evidence, the purpose of the Hotel le Richemonde fax was that Mr. Izmaylov and "everyone … in Novoship" should remain unaware of the commissions that were being paid.

627. On 18 April 2002 the Executive Board of Intrigue authorised that Galbraith's be appointed "to act as agent to negotiate where appropriate amendment agreements to the contract and any and all associated agreements as may be deemed necessary". On 3 May 2002 amendments to the shipbuilding contracts between NSC and the yards were concluded. NSC agreed to make an extra stage payment of $4 million on 10 May 2002 in consideration of a reduction of $171,000 in the price of each Samho vessels and of $170,000 in the price of each HHI vessels. The yards paid an address commission of $230,000 upon each contract.

628. The claimants observed that the Executive Board authorised Galbraith's to negotiate "associated agreements", and suggested that, because Mr. Izmaylov did not identify in cross-examination what other "associated agreement" there might have been, he was evasive and defensive in his evidence, and that the inference was that the expression was intended to cover commission agreements. I decline to draw any such inference, and I disagree with this description of Mr. Izmaylov's evidence. He was, after all, being cross-examined about the details of the minutes of a meeting that had been held many years earlier, which he had read quickly after being assured by Mr. Oskirko that they were in order.

629. The minutes recorded that the new arrangements represented "a substantial saving for the Company". Mr. Izmaylov said in cross-examination that the purpose of the refinancing transaction was "to make some kind of savings on the contract". The claimants argued that in fact it was of no benefit to NSC: because they did not receive the address commissions, they saved only $170,000 or $171,000 on each vessel and in return they agreed to pay $4 million as an additional early instalment against a reduction in the final instalment. The economics of the transaction depended upon NSC having a low cost of borrowing. Mr. Oskirko prepared a spreadsheet that showed that a small increase in their interest rates would have meant that the revised arrangements were less favourable to NSC than the original agreements had been (even leaving aside any associated expenses such as lawyers' fees). I do not consider that this provides any convincing evidence that Mr. Izmaylov was corrupt or allowed Galbraith's to negotiate the arrangements only because he knew that Mr. Nikitin would profit from them. Whatever the calculations which led NSC to support this refinancing, they persuaded the Executive Board of NSC, who together approved the transaction. Mr. Izmaylov shared the views of others against whom no allegation of impropriety is made. The document authorising Galbraith's to negotiate amendments was signed by Mr. Oskirko and Mr. Sakovich as well as Mr. Izmaylov, and the refinancing agreements with the yards had been signed by Mr. Sakovich and his signature was witnessed by Mr. Oskirko. After all, as I have observed when explaining Mr. Privalov's fraud in 1999 in respect of the arrangement fee when the "Fili" and other vessels were refinanced, when he was at Sovcomflot Mr. Izmaylov had seen that Mr. Borisenko did not miss an opportunity to refinance borrowings even if the potential benefit was small.

630. On 5 April 2002 Mr. Rokison sent Nissho proposed wording for the nomination letter whereby NSC or Intrigue were to nominate Galbraith's to receive the address commissions, observing that it should not directly refer to a "commission agreement". On 12 April 2002 Nissho wrote that, unless the nomination letter did refer to the commission agreement, HHI required Galbraith's letter of undertaking that they were authorised to sign the agreement and to indemnify HHI against any harm in respect of the commission payments. Mr. Rokison agreed to this, and in due course on 5 May 2002 Mr. Rokison on behalf of Galbraith's sent to Nissho letters of undertaking in which they stated that they had been authorised by NSC and Intrigue to sign the commission agreement and to receive the commission payments of $230,000 for each vessel. In fact they had not been so authorised. By agreements dated 11 June 2002 Amon indemnified Galbraith's in respect of the commission payments.

631. The total commissions received by Galbraith's in respect of the renegotiation of each of the four contracts were $230,000. They paid $192,500 of each of the commissions to Amon.

632. I conclude that this transaction shows that Mr. Rokison was acting in breach of his duties to NSC and dishonestly. In particular, he deliberately removed the references to commissions from the draft in the Hotel le Richemonde, he arranged for Galbraith's to have control over the commissions and he arranged for the address commissions, and further amounts, to be paid to Amon. Mr. Privalov was party to his dishonesty.

633. I also conclude that Mr. Nikitin knew that these arrangements were dishonest. He accepted that he arranged for Amon's nominee directors to sign the counter-indemnities to Galbraith's, and there was, to my mind, no proper reason to do so. In cross-examination he said that he "didn't just pay any attention" to the documents and that he "didn't address my mind to any of the things". I am unable to accept this explanation. He is too shrewd for that to be credible.

634. The claimants also submitted that Mr. Izmaylov knew that the arrangements were not to the benefit of NSC and were designed to benefit Mr. Nikitin and Amon. I reject this contention.

Sales through Galbraith's

635. Mr. Rokison was also dishonest with NSC when acting as their broker on sales, in order to generate commissions to fund payments to Amon and to disguise what he was doing. This can be illustrated by describing three transactions.

636. When broking the sale of Hyundai Mipo hull no 0201 by Swan Navigation Ltd. ("Swan"), the 2nd claimant in the Intrigue action, in August 2003, Mr. Rokison agreed with the brokers of the buyers, Marcoussi Shipping Co Ltd. ("Marcoussi"), that they and Galbraith's should share equally commissions of 1% in total. However, on 8 October 2003 in an e-mail to Mr. Oskirko, referring to discussions with Mr. Oskirko and Mr. Izmaylov, he represented that Galbraith's were unable to reduce the total commission to less than 2.5% because they needed to cover commission of the buyers' brokers and an address commission. Although he referred to a conversation with Mr. Izmaylov, this does not, to my mind, indicate that Mr. Izmaylov was privy to Mr. Rokison's deceit any more than it suggests that Mr. Oskirko was. In further e-mails dated 16 and 21 October 2003 Mr. Rokison essentially repeated to Mr. Oskirko the representation that the total commissions could not be less than 2.5% because of the commission of the buyers' brokers and address commission. In fact, there was no address commission and Galbraith's had arranged to pay Marcoussi commission of only 0.5%. They paid 1.5% to Amon and 0.17% from the remaining 0.5% to Shipping Associates. Swan therefore paid an additional $413,331.60 by way of commission.

637. Mr. Rokison again misrepresented to NSC the position about address commissions and the commissions charged by the buyers' brokers when in September 2003 he negotiated the sale en bloc to Hanseatic Lloyd Reederei of four vessels, the "Altair", the "Alioth", the "Almak" and the "Arcturus". They were sold by the 39th, 40th, 41st and 42nd claimants in the Intrigue action, Altair Marine Inc, Almak Marine Inc,

Arcturus Marine Inc, and Alioth Marine Inc. On 18 September 2003 Aquamarine Shipping Consultants ("Aquamarine"), the buyers' brokers, sent an offer for the four vessels of $76 million "less 2% total commission including address". On the same day Mr. Rokison reported to Mr. Oskirko an offer of $76 million "less 4.5% total commission including adress [sic]". The sale was concluded, but on 23 September 2003 Mr. Rokison, as I find, persuaded Aquamarine to reduce their commissions to 0.75% on the understanding that Galbraith's would be receiving the same level of commission and the total of brokers' commissions would be 1.5%. Mr. Rokison did not report to NSC that Aquamarine had reduced their commissions. In an e-mail to Mr. Izmaylov dated 29 September 2003 Mr. Rokison explained the total commissions of 4.5% on the basis of "the number of offices involved on the buyers'/financiers' behalf (2.5% add comm.)", and advised that the net price offered by Hanseatic Lloyd Reederei was still significantly higher than by others. In fact, only 1% of the total commissions of 4.5% was paid as address commissions and 0.75% was paid to the buyers' brokers. Of the remaining 2.75%, 1.75% was paid to Amon, 0.25% was paid to Shipping Associates and 0.75% was retained by Galbraith's. The sellers paid additional commissions of 2%, not because of the high commissions on the buyers' side but because of Galbraith's arrangements with Mr. Nikitin and Mr. Privalov.

638. Thirdly, in September and October 2003 NSC agreed to sell to Stena companies the rights in respect of four Uljanik hulls that were being built for them in Croatia, hulls nos 448, 449, 450 and 451. There were protracted negotiations that began in about April 2003. Odin Marine Inc. ("Odin") acted as brokers in the transactions. According to Mr. Oskirko's evidence, they acted for the sellers, but the claimants' pleaded case is that they were the buyers' brokers (see para 37(2)(a) of the particulars of claim in the Intrigue action), and this was Mr. Izmaylov's understanding. Although the position was complicated because of the time charter arrangements for the vessels, I reject Mr. Oskirko's evidence about Odin's role. Galbraith's handled the sales for NSC.

639. Although Odin were to pay Galbraith's commissions of $50,000 upon each of the four contracts, Galbraith's also sought commissions from NSC. Initially they submitted draft invoices for commissions of 2%, but on 13 October 2003 Mr. Oskirko wrote that there was no reason that NSC should pay them. Mr. Rokison replied on 14 October 2003 that no fixed commissions had been agreed "as we strived to maximise the sale price – however you are aware that we are forced, in some cases, to cover both the buyers' address commission and buyers' brokerage in our total invoices … Our total invoices, inclusive of other brokers and address commissions were issued accordingly ... ". The commissions that Galbraith's were charging did not in fact include any buyers' brokerage or address commission. Mr. Rokison repeated this misrepresentation in his e-mail to Mr. Oskirko of 16 October 2002 (the same e-mail as he gave the same false explanation for the commissions on the sale of hull no 0201). Mr. Oskirko on 15 October 2003 had offered to pay commissions of 1% or 1.5%, and Mr. Rokison responded on 21 October 2003 that "as a compromise" Galbraith's could "convince parties involved this side" to accept commissions of 1.75%. In fact, only Galbraith's, Amon and Shipping Associates were to be paid from the commissions. Mr. Rokison's explanations for the level of commissions were deliberately misleading.

640. The claimants submitted that Mr. Izmaylov too acted dishonestly and in breach of his duty in relation to the sale of the Uljanik vessels. Their allegations were based upon the evidence of Mr. Oskirko, according to whom the negotiations for the sales were handled within NSC by Mr. Izmaylov. Although Mr. Izmaylov was involved in the major decisions concerning the sale, Mr. Oskirko mis-stated the position. He conducted the negotiations, although I accept that he kept Mr. Izmaylov informed and consulted him when necessary. In particular, Mr. Oskirko accepted that he carried on the negotiations about Galbraith's commissions.

641. According to Mr. Oskirko, Mr. Izmaylov was concerned to ensure that Galbraith's as well as Odin should be involved in handling these transactions. He recalled Mr. Izmaylov telling Odin that NSC were not going to pay commissions to any brokers other than Galbraith's and that Odin should be paid their commissions by Stena, and after that Galbraith's were instructed to represent NSC's interests. Mr. Izmaylov had no recollection of such a conversation with Odin, but in any case I cannot attach any significance to it. Given that Odin were, as the claimants plead, Stena's brokers, it is unremarkable.

642. Next, Mr. Oskirko said that, when he was negotiating with Mr. Rokison for a reduction in Galbraith's commissions, Mr. Rokison told him that he was wasting his time in protesting that commissions of 1.75% were excessive because that was the level of commissions that he had been instructed to charge and had been agreed with Mr. Izmaylov. Mr. Izmaylov denied that he had instructed Galbraith's to charge commissions at that or any rate and denied reaching any agreement about commissions with Galbraith's. It seems improbable that he did so, given that Mr. Oskirko accepted that he dealt with Mr. Rokison about commissions. It is possible that Mr. Rokison said something to Mr. Oskirko for negotiating purposes to persuade him that Mr. Izmaylov was likely to support the level of commissions that he sought, but I do not accept that Mr. Izmaylov had spoken to Mr. Rokison in the terms that, according to Mr. Oskirko, Mr. Rokison reported. I conclude that Mr. Oskirko either decided, or at least concurred in the decision, to pay Galbraith's commissions of 1.75%. I reject his evidence that he agreed to it only because Mr. Izmaylov insisted that he should do so. I therefore reject the allegation that Mr. Izmaylov intervened in the exchanges about the level of commissions in order to ensure that Galbraith's were paid the commissions that Mr. Rokison sought and that he did so in order to ensure that Galbraith's were paid enough commission to fund the payments to Amon.

643. The claimants make a further allegation against Mr. Izmaylov in relation to the sale of the Uljanik hulls. They alleged that there was no good reason for the decision to sell the hulls, and, according to Mr. Oskirko (or at least according to the evidence in Mr. Oskirko's witness statement), Mr. Izmaylov instructed him and Mr. Agaev to adjust the profit calculations on the sales to show a profit of "close to $1.5 million per vessel", but he declined to do so. In cross-examination, Mr. Oskirko gave a rather different account. He said that Mr. Izmaylov's instructions were that the profit per vessel should be "not less than $1.5 million", that Mr. Izmaylov gave the instructions to him (not to him and Mr. Agaev) and that, rather than refuse the instructions, he passed them on to Mr. Agaev in London.

644. The allegation is denied by Mr. Izmaylov. Mr. Agaev did not recall it and his evidence, which I accept, is that he would have done so. Mr. Oskirko's evidence is

not corroborated by any document or otherwise. I conclude that Mr. Oskirko's account was untruthful, and I reject the allegation.

Mr. Izmaylov's knowledge of the payments to Milmont and Amon

645. There is no direct evidence that Mr. Izmaylov knew of the payments to Milmont and Amon by Clarkson and Galbraith's. He denied any knowledge of them. Mr. Nikitin's evidence was that he did not mention anything about his commission arrangements with Clarkson and Galbraith's to Mr. Izmaylov, and it is the claimants' pleaded case that he made it clear to Mr. Rokison that nobody at NSC or NSC's subsidiaries should be made aware of his arrangement with Galbraith's. In support of this plea the claimants relied upon a memorandum from Mr. Rokison to Galbraith's Board of Directors dated 11 October 2005, in which he wrote that, "No discussions of commissions ever took place in [Mr. Izmaylov's] presence, in fact it was made clear that nobody at Novoship should be aware of the commission agreement", that Mr. Izmaylov, "more than anyone, would try to squeeze us on commissions" and that "At no stage did we ever have any discussions with any persons within Novoship to suggest that they knew anything about this agreement. In fact all negotiations with Novoship resulted in us having to fight to obtain the commission that the structure required". Mr. Oskirko and Ms. Spasova said that, as far as they had been aware, nobody at NSC was aware of payments to Amon or to Mr. Nikitin's order. As I have said, Mr. Privalov did not have any discussions with Mr. Izmaylov about any of NSC's purchases or sales of vessels, and he had no direct knowledge that Mr. Izmaylov knew of the commissions. He said that his impression or understanding was that Mr. Nikitin had "some influence" over Mr. Izmaylov and that he was aware of the payments, but he did not credibly explain on what it was based.

646. The claimants nevertheless argued that Mr. Izmaylov knew of, and was party to, Mr. Nikitin's arrangements with Clarkson and Galbraith's. Their argument rested largely upon their contention that he had and maintained control of negotiations for the sale and purchase of vessels, and that others at NSC simply acceded to and carried out his instructions. Mr. Izmaylov denied that this was the position. He said that negotiations for sales and purchases were conducted by Mr. Oskirko and then by Ms. Spasova, that he would rely upon information and advice from them in deciding whether transactions should proceed and he should confirm their decisions, and that the sale and purchase transactions were scrutinised and approved by the Executive Board and then the General Board of NSC.

647. There is no dispute that Mr. Oskirko was responsible for the day to day conduct of negotiations, and that, after he left, Ms. Spasova took over his responsibilities. She dealt with sales and purchases and Mr. Agaev assisted her, in particular with sales of foreign flag vessels. They liaised with Mr. Gale and Mr. Rokison. They had a good deal of personal control over and responsibility for the negotiations, although they would refer important decisions on transactions to Mr. Izmaylov. They did not report only to Mr. Izmaylov: Mr. Oskirko confirmed that he reported to the General Board about sales and purchases and about the progress of the fleet renewal programme. He also reported to the other executives on the progress of any proposed transactions at NSC's weekly management meetings.

648. I accept that Mr. Oskirko or Ms. Spasova sought authorisation from Mr. Izmaylov before committing NSC to a contract. I also find that on occasions Mr. Izmaylov

dealt directly with the brokers. For example, during the negotiations in the autumn of 2004 to acquire four Aframax newbuildings from Samsung, Mr. Gale sought Mr. Izmaylov's authority to make an offer, and Ms. Spasova responded to Mr. Gale on 8 October 2004, "We are interested in ordering two vessels at Samsung shipyard with delivery on 2007 and two more vessels 2008 berth at buyer's option. We are instructed by Mr. Izmaylov to authorize you to make an offer up to USD 56 mln per vessel". Thereafter, Mr. Gale communicated with Mr. Izmaylov about what counter-offer he should make. Similarly, in late 2003 NSC were in negotiations with HHI about buying two further Aframax vessels, and Mr. Oskirko advised Mr. Gale in an e-mail dated 8 December 2003 after lengthy discussions to obtain approval from Mr. Izmaylov, and Mr. Gale did so.

649. Mr. Izmaylov said in cross-examination that he did not give instructions to Mr. Gale, and at first he appeared to be being untruthful about that. However, it became clear when he was questioned further that he did not intend to dispute that he discussed with Mr. Gale the purchases that NSC were negotiating. He considered that he had not given instructions to Mr. Gale because, as he saw it, Clarkson were paid by the yard to sell to NSC and were presenting proposals to NSC. Clarkson, to his mind, were not acting for NSC and he was negotiating with them rather than instructing them. This is not a correct understanding of NSC's relationship with Clarkson: Clarkson were NSC's brokers upon their purchases, as Galbraith's were their brokers on sales. I accept, however, that Mr. Izmaylov genuinely saw NSC's relationship with Clarkson, and his relationship with Mr. Gale, as he explained it, and I do not consider that he was giving deliberately untruthful evidence when he denied giving instructions to Mr. Gale. He readily accepted that NSC were trusting Mr. Gale and Clarkson to act in their best interests.

650. The picture painted by Mr. Oskirko in his witness statement of 28 November 2008 was that Mr. Izmaylov dictated the conduct of sale and purchase negotiations because he had a domineering personality. In particular, he said that Mr. Izmaylov would "invariably tell me not to push for any further reduction" in the level of commissions that Galbraith's were earning, but I reject that evidence. Ms. Spasova said that she was guided about commission levels by what had been charged on previous deals, and she did not indicate that Mr. Izmaylov influenced, let alone dictated, her views about them beyond approving or confirming what she agreed. Mr. Oskirko himself accepted in cross-examination said that he would always try to secure the best price net of commissions for the vessels being sold and did not suggest that Mr. Izmaylov prevented him from doing so by insisting upon high commission levels. I accept Mr. Izmaylov's evidence that generally he left the conduct of individual transactions to others, and that, particularly while Mr. Oskirko was at NSC, he recognised that he was relatively inexperienced in ship sales and purchases and did not dominate negotiations or impose his own thoughts about how they should be conducted.

651. Each proposed sale or purchase contract was presented to the General Board and the Executive Board for approval before it was concluded. In his witness statement, Mr. Oskirko described the Executive Board and the General Board as "rubber stamping" deals which had already been done. When he was cross-examined, he denied that he intended this description to cover the decisions of the General Board. I accept that, as Ms. Spasova explained, the General Board was more concerned to ensure that the fleet renewal programme was carried forward than about individual vessels or

transactions, but they had reports that enabled them to appraise the merits of each sale or purchase.

652. I am also unable to accept that "rubber-stamping" fairly describes how the Executive Board took decisions. The true picture was given by Ms. Spasova. Before the Board considered proposals, generally the managerial departments had assessed them and decided that "the project was feasible". Mr. Izmaylov too had "provisionally agreed" the costs and commissions concerned, and so the proposals put before the Board had Mr. Izmaylov's support. Reports for the Board would then be prepared by the Economics and Finance Department in consultation with other relevant departments, and Ms. Spasova described the care with which they were composed. She specifically said that Mr. Izmaylov had never prevented her from presenting information about the commissions that NSC would be paying or sought to adjust calculations made by her department. Although most members of the Board would already be familiar with the proposed transaction through informal discussions in the course of their work, the proposal would be considered at the meeting of the Executive Board in order to decide what was in the best interests of the company.

653. There was no real dispute that the Executive Board approved of all the sales and purchases by NSC before they were concluded. Mr. Oskirko had said in his witness statement of 28 November 2008 that an agreement for the purchase of the only second hand vessels bought through Clarkson, the two Suezmax tankers which NSC renamed the "Kaspiy" and the "Kuzbass", was "signed" before either the Executive Board had decided to support the purchase or the General Board had given their approval. However, in cross-examination, he agreed that no legally binding agreement had already been concluded, although he believed that NSC was commercially committed to the purchases because Mr. Izmaylov had told him that NSC were buying the vessels and that Mr. Sawyer would be arranging the finance. However that might be, NSC entered into memoranda to buy the vessels on 19 February 2003 (and they were eventually acquired through two Maltese single ship companies, whose formal resolutions of the Maltese companies to acquire the vessels were dated 2 June 2003). On 17 February 2003 the General Board had decided, upon the proposal of the Executive Board, to acquire the vessels for $43 million each. Mr. Izmaylov did not attend the meeting on 17 February 2003, and the proposal was presented to the board by Mr. Oskirko, who said that the acquisitions were greatly in NSC's interest. He said that he did so on the instructions of Mr. Izmaylov, but I cannot believe that he would have expressed those views unless he subscribed to them.

654. I conclude that Mr. Izmaylov did not prevent others from participating in NSC's decisions upon sales and purchases, and reject the claimants' contention that he dominated NSC's decision-making procedures in order to drive through sales and purchases broked by Galbraith's and Clarkson.

655. The claimants also argued, that, just as Mr. Skarga must have known that address commissions were being diverted to Mr. Nikitin's companies from the Sovcomflot purchases, so too Mr. Izmaylov must have known that they were being diverted from the NSC purchase contracts. Mr. Izmaylov's response to that argument is similar to that of Mr. Skarga: that he had no knowledge or suspicion that the yards and others were paying address commissions for NSC, and that it was not NSC's practice to negotiate for address commissions and so they were never discussed. I accept that evidence for the same reasons that I accepted Mr. Skarga's corresponding evidence

and rejected the claimants' attack upon its credibility, and I consider that it answers the claimants' argument.

656. As for the claimants' argument that Mr. Izmaylov was likely to have learned about address commissions when attending closing ceremonies or naming ceremonies, the evidence was, and I accept, that Mr. Izmaylov did not always attend such ceremonies. Sometimes NSC were represented by Mr. Oskirko or Mr. Agaev. Mr. Izmaylov was no more likely to have heard about address commissions in this way than Mr. Oskirko and Mr. Agaev were, and there is no evidence that they were ever mentioned in the presence of any of them.

657. I add that in their pleaded case the claimants relied in support of their contention that Mr. Izmaylov was party to the arrangements with Mr. Nikitin upon an e-mail sent by PNP to Mr. Mihaylyuk's office e-mail and then forwarded by him to his home address. It provided details of Amon's bank account. Mr. Mihaylyuk's evidence was that, as far as he recalled, PNP had sent the details because Mr. Nikitin had indicated that he would like NSC to use the company as brokers. On the face of it, this is an unconvincing explanation: Amon did not, as far as the evidence goes, have any business as shipbrokers and in any case this does not explain why Mr. Mikhaylyuk was sent details of their bank account. However, whatever the reason that Mr. Mikhaylyuk had details of Amon's bank account, there is nothing to indicate that he provided the information to Mr. Izmaylov. Further, even if Mr. Izmaylov had known of or had been party to Mr. Nikitin's arrangements with Clarkson or Galbraith's or both, this would not explain why he would have needed information about Amon's bank account. I do not consider that this e-mail supports the contention that Mr. Izmaylov knew of the payments to Amon or was party to a scheme that they should be made.

658. I conclude there is no evidence from the transactions handled by Clarkson and Galbraith's for NSC that Mr. Izmaylov participated in or knew about the brokers' arrangements with Mr. Nikitin.

The Sawyer commissions scheme

659. When in about November 2001 Mr. Izmaylov expressed his thoughts to Mr. Nikitin about whether NSC should continue to use North South's services, Mr. Nikitin also saw that opportunity to profit from introducing a financial consultant to them. He spoke to Mr. Privalov, who had, as Mr. Nikitin thought, good connections with financial advisors and asked him to suggest whom he could introduce to NSC. Mr. Privalov introduced him to Mr. Sawyer, and Mr. Nikitin in turn arranged a meeting between Mr. Izmaylov and Mr. Sawyer. He did not tell Mr. Izmaylov how he had come to know of Mr. Sawyer because he understood that Mr. Izmaylov did not hold Mr. Privalov in high regard.

660. Mr. Nikitin had not known Mr. Sawyer before Mr. Privalov introduced him, and he had met him only once before introducing him in turn to Mr. Izmaylov. Mr. Nikitin said that he did not require Mr. Sawyer to pay him for the introduction to NSC, and that he simply hoped that Mr. Sawyer might be grateful for the introduction and so encouraged to consult him about NSC's newbuilding programme. In fact Mr. Sawyer paid to Amon half of the commissions that he received from NSC. I reject the evidence of Mr. Nikitin that he had no understanding with Mr. Sawyer that he

would be paid for the introduction to NSC. Mr. Privalov's evidence was that, when Mr. Nikitin asked him to find a financial adviser for NSC, Mr. Nikitin's intention was to benefit from the arrangement and that he approached Mr. Sawyer on this basis. On this point, I prefer Mr. Privalov's evidence because this reflects the other arrangements that Mr. Nikitin made when, with Mr. Privalov's assistance, he introduced brokers to Sovcomflot and NSC, and because Mr. Sawyer would not have paid so much by way of commissions for Mr. Nikitin simply as a voluntary recognition of the initial introduction. The spreadsheets that Mr. Privalov prepared for Mr. Nikitin confirm that payments were expected from Mr. Sawyer, and Mr. Privalov would not have prepared them as he did without knowing what payments were expected. Thus, for example, a spreadsheet sent by Mr. Privalov to Mr. Nikitin on 8 April 2003 showed two receipts of $57,900 in respect of arrangements made with BNP Paribas and arrangements made with CAI, and further payments of $187,500 expected in April 2003 in respect of arrangements with Nordea and $194,850 expected in May 2003 in respect of arrangements with Fortis Bank.

661. In April 2002 Mr. Izmaylov came to London with Mr. Oskirko, at least partly in order to attend the annual general meeting of NOUK. He and Mr. Sawyer met over lunch with Mr. Nikitin at the Ritz Hotel on 11 April 2002. Mr. Izmaylov gave Mr. Sawyer some general information about NSC, including information about the newbuildings programme. He was cross-examined about how much information he gave to Mr. Sawyer at the meeting, and the claimants submitted that Mr. Izmaylov must have disclosed more than he was admitted. I do not accept that criticism of Mr. Izmaylov's evidence: he denied providing Mr. Sawyer with any documents or with specific and detailed financial information, but, as I understood his answers, he agreed that they discussed the nature and pattern of NSC's requirements. Mr. Sawyer impressed Mr. Izmaylov with his financial experience and his banking contacts. Before the meeting Mr. Nikitin had told Mr. Izmaylov that Mr. Sawyer would be willing to review NSC's finances without NSC committing themselves to engage his services and on the basis that he would be paid only if NSC accepted what he proposed. At the meeting Mr. Sawyer did indeed offer to conduct a review on this basis.

662. Mr. Oskirko was not at the lunch. He did not give evidence about why he did not attend, or even that he was in London at the time although it is probable that he was. I accept Mr. Izmaylov's explanation that Mr. Oskirko was busy with other matters, including the annual accounts of NOUK. The documents show that a lunch was planned that day for those attending NOUK's annual general meeting, and Mr. Oskirko might well have had to be there. It was suggested in cross-examination to Mr. Izmaylov that, if the purpose of the meeting had been proper, Mr. Oskirko would have attended it so as to meet a potential financial advisor and form a view about him. I see some force in the observation, but, in the absence of evidence from Mr. Oskirko, I conclude that there is no proper basis to reject Mr. Izmaylov's account.

663. After the meeting Mr. Izmaylov discussed with Mr. Oskirko and other members of the Executive Board whether NSC should use Mr. Sawyer's services. Mr. Izmaylov said that he discussed the meeting with Mr. Oskirko only after they had returned to Russia: it seems surprising, on the face of it, that he did not do so if he was in London, but again Mr. Oskirko gave no credible evidence about this. Mr. Izmaylov decided, in consultation with others at NSC, that Mr. Sawyer should be engaged as a consultant, and Mr. Oskirko was asked to negotiate commission arrangements and other terms of

his appointment. Mr. Oskirko's evidence was that, as far as he recalled, he first knew of Mr. Sawyer when Mr. Izmaylov gave him Mr. Sawyer's business details and a commission agreement to check and sign. I am unable to accept that. There is no documentary evidence that suggests that a commission arrangement was drafted before Mr. Oskirko became involved.

664. On 10 May 2002 Mr. Sawyer wrote to Mr. Izmaylov and Mr. Oskirko, having first obtained Mr. Privalov's comments on a draft letter. Mr. Sawyer expressed appreciation of the "frank and open discussion" on 11 April 2002 and made some general proposals about how he might assist NSC to improve their banking and financing arrangements. He asked for "further information regarding your general strategy and in particular whether you have any plans for further new-buildings and whether you have a disposal programme for the near future". He continued, "Should you wish to employ my services I would propose that I send you a mandate letter. That letter would include, amongst other things, a success fee of 30pbs on the initial transaction and reducing to 25pbs for any future transactions. I would also expect reimbursement of all reasonable out of pocket expenses". It is clear that this e-mail was seen by Mr. Oskirko as well as Mr. Izmaylov because he made manuscript notes on a copy of it.

665. On 16 May 2002 Mr. Sawyer sent a further e-mail to NSC, addressed to Mr. Izmaylov, with a mandate letter for consideration. He said that "further to our recent discussions" he would assist in arranging financing for NSC's newbuilding programme and proposed that he should be paid "0.3% flat on the amount of debt arranged" and that the fee would be reviewed and agreed annually. He also expected to be paid his expenses. Again, Mr. Sawyer had consulted Mr. Privalov before sending this proposal. In an e-mail to Mr. Privalov of 16 May 2002 he had sent a draft of the proposal with the covering note "This is the simple version. What do you think?". In that draft the proposal about remuneration was that Mr. Sawyer should be paid "0.3% flat for the first $150 million of debt arranged and 0.25% flat for all debt thereafter".

666. Mr. Izmaylov was content with the proposal put forward on 16 May 2002. On 20 May 2002 he endorsed his copy of it "We confirm our agreement too". He was asked in cross-examination why he agreed to pay a commission of 0.3% upon all transactions, given that Mr. Sawyer had initially proposed a lower rate upon "repeat business". Mr. Izmaylov told me, and I accept, that he did not notice this change: it was Mr. Oskirko's responsibility to deal with the details of the negotiations with Mr. Sawyer. In any case, the revised proposal would not prove to be less favourable to NSC than the original terms unless there was repeat business before the proposed review of the 0.3% rate. If, as seems likely, repeat business did not so rapidly follow an initial transaction, the rate for it would have depended upon the annual review.

667. On 20 May 2002 Mr. Oskirko wrote to Mr. Sawyer confirming that NSC accepted his services and seeking to negotiate lower fees. He wrote "In your message of 10.05.02 you mentioned 30pbs on the initial transaction and reducing to 25pbs on future transactions. We suggested that in case you arrange re-financing of a loan with the same banks the fee would be 15pbs." He said that NSC would be raising around $500 million "within 2 coming years", and invited Mr. Sawyer to review his proposals.

668. Mr. Sawyer did not agree to reduce his charges. I reject the claimants' submission that this shows that he was relying upon an arrangement that he had already made secretly with Mr. Izmaylov, and that this was not an ordinary commercial exchange at arms' length. Mr. Sawyer rightly judged that NSC wanted his services and would pay the fee that he had requested. On 22 May 2002 Mr. Oskirko wrote to Mr. Sawyer that Mr. Izmaylov had agreed to his proposed fees provided they were reviewed on a regular basis, and he recorded that they would first be reviewed in January 2003. Mr. Sawyer sent a letter agreement dated 22 May 2002 addressed to Mr. Izmaylov, which he and Mr. Oskirko both countersigned. By it Mr. Sawyer agreed "to assist Intrigue … in arranging finance for its new-building programme and refinancing of its current debt", and recorded Mr. Sawyer's understanding that he would be "their exclusive representative and any financings arranged during my period of appointment will be covered by the remuneration as detailed below". His remuneration was to be "0.3% flat on the amount of debt arranged and such fee will be reviewed and mutually agreed annually but commencing January 2003. You undertake to reimburse all my reasonable out of pocket expenses including air travel within Europe/Scandinavia . . ." The letter stated that the agreement should be governed by English law.

669. There is a dispute between the claimants and Mr. Izmaylov about how this agreement was reached. Mr. Izmaylov's evidence was that, after he met Mr. Sawyer, he was not involved in further discussions until Mr. Oskirko told him that he could not persuade Mr. Sawyer to accept less than 0.3%. He then agreed to Mr. Sawyer's terms and countersigned the offer letter after Mr. Oskirko had said that he considered the terms acceptable and in line with his discussions with Mr. Sawyer. According to Mr. Oskirko, he considered the level of Mr. Sawyer's commission excessive, but Mr. Izmaylov "told [him] not to waste time" and that he had already agreed to pay 0.3%. I prefer Mr. Izmaylov's evidence. There is nothing in the exchanges that indicates that there was not a genuine negotiation. In reaching this conclusion, I do not overlook that the letter of 16 May 2002 addressed to Mr. Izmaylov refers to "our recent discussions", which the claimants suggested reflects Mr. Izmaylov's involvement in discussions. I am not persuaded about that. It was natural for Mr. Sawyer to address a formal letter of this kind to Mr. Izmaylov, as the senior executive whom he had met, and it is, to my mind, equally natural that he should refer to discussions with NSC as "our ... discussions", whether or not Mr. Izmaylov was personally conducting them. In any event, I am not persuaded that Mr. Izmaylov imposed upon the other members of NSC's Executive Board a decision to engage Mr. Sawyer and to pay him the commission that was agreed, or that the decision to appoint him was in any way suspicious or dishonest as far as Mr. Izmaylov was concerned.

670. The claimants submitted that North South were paid only 0.5% of the difference between new loans that North South arranged and the lending that was refinanced, and that therefore Mr. Sawyer's fees were higher than those of North South had been. Whatever the true meaning of NSC's consultancy agreement with North South dated 1 June 1998 (which to my mind is uncertain), the claimants have not disclosed documents that show how much North South charged in practice. A limited number of documents about North South's charges were provided to the claimants by Mr. Batra in the course of the proceedings, and there is no information about how they were selected or why more invoices are not available. Much of the lending that NSC

expected that they would need was for purchasing newbuildings and would not be by way of refinancing. In any case, NSC did not change their financial consultants and appoint Mr. Sawyer because of the level of North South's charges. The purpose was to have better advice, not to economise on fees. I am unable to say whether NSC paid more or less by way of fees under the changed arrangements, but I do not consider this important to the issues that I have to decide.

671. After his appointment Mr. Sawyer acted for NSC as a financial consultant on various ship financing transactions and by the end of May 2003 he had earned commissions totalling $996,300. Mr. Privalov worked closely with Mr. Sawyer, and in particular was, as I conclude, the link between Mr. Sawyer and Mr. Nikitin and well placed to ensure that Mr. Sawyer paid Amon upon the business. Mr. Sawyer also rewarded Mr. Privalov by paying Shipping Associates. On 26 November 2002 Mr. Privalov sent Mr. Sawyer details of the bank accounts of Amon at Wegelin and of Shipping Associates at Dresdner Bank. Mr. Sawyer also passed to Mr. Privalov information about NSC's business. For example, on 23 August 2002 Mr. Privalov sent Mr. Nikitin "as discussed" details of financing that Mr. Sawyer had set up for NSC to buy the four product carriers from Hyundai Mipo, which he must have obtained from Mr. Sawyer. On 12 September 2002 Mr. Sawyer sent to Mr. Privalov "as requested" information about "Intrigue cash flow" and Mr. Privalov sent it on to Mr. Nikitin "As discussed".

672. Although when Mr. Sawyer was appointed it was intended that his remuneration should be reviewed in January 2003, nothing was done before June 2003. On 3 June 2003 Mr. Oskirko wrote to Mr. Sawyer that, "As per the letter of appointment dated 22.05.02 we agreed that we would review the fee in June. We suggest to bring it to the levels where we started while negotiating your appointment, i.e. 20-25 bps flat on the amount of debt arranged beginning 01.06.03". Mr. Sawyer sent the letter to Mr. Privalov for his comments. On 9 June 2003 Mr. Sawyer responded to Mr. Oskirko that he would not reduce his fees, but suggested that "we leave things as they are at present", and on the same day Mr. Oskirko replied that he agreed that the fees should remain unchanged. Again, Mr. Sawyer sent this exchange of e-mails on to Mr. Privalov.

673. Mr. Oskirko said in evidence that Mr. Izmaylov was displeased that he had questioned Mr. Sawyer's commission and instructed him to leave it as it was, and the claimants submitted that this explains why Mr. Oskirko was not more strenuous in his efforts to reduce Mr. Sawyer's fees. I am not persuaded by this submission. Despite his position, Mr. Oskirko appears to have been an ineffective negotiator, and my impression from his evidence was that he would not show resolution when he met resistance. The claimants also submitted that Mr. Sawyer rejected Mr. Oskirko's proposal because Mr. Izmaylov was party to a corrupt arrangement with him, and he was confident that Mr. Izmaylov would not have allowed his remuneration to be reduced. According to Mr. Privalov, when Mr. Sawyer told him that Mr. Oskirko had proposed that his fees be reduced, he spoke to Mr. Nikitin, who said that he would speak to Mr. Izmaylov and in due course Mr. Nikitin reported that Mr. Sawyer's fees would remain unchanged. Mr. Nikitin and Mr. Izmaylov both denied this. I consider it likely that Mr. Nikitin was told of Mr. Oskirko's proposal. Mr. Nikitin had an interest in it because the amount paid to Amon was tied to Mr. Sawyer's commissions. However, whatever Mr. Nikitin said to Mr. Privalov, there

is no credible evidence that he discussed the matter with Mr. Izmaylov. Mr. Sawyer's response to Mr. Oskirko is readily explained by his confidence that NSC would not wish to lose his services and because he was more effective and forceful in negotiations than Mr. Oskirko.

674. By a letter agreement dated 9 December 2004 which was countersigned by Mr. Izmaylov, Mr. Sawyer agreed with NSC that Mr. Sawyer's services "would be retained to conclude these [forthcoming] financings. All other terms and conditions of our [22 May 2002] Agreement to remain unchanged". The claimants submitted that this agreement was designed to secure Mr. Sawyer's position, but I do not regard this agreement as suspicious and do not accept that it supports the claimants' allegations against Mr. Izmaylov.

675. There is no evidence that I accept that Mr. Izmaylov was involved in dishonesty, corruption or breach of duty in relation to NSC's dealings with Mr. Sawyer. The claimants' pleaded case at the start of the trial was that "in about early 2002" Mr. Izmaylov, Mr. Nikitin and Mr. Privalov agreed together that Mr. Sawyer should be appointed as NSC's financial consultant on the basis that he would be paid commission of 0.30% of all debt arranged by him and that Mr. Sawyer would be required to pay 50% of his commissions to Mr. Nikitin or his companies and one sixth of his commissions to Mr. Privalov or his companies. This case was put to Mr. Nikitin in cross-examination, but it was not supported by Mr. Privalov's evidence. He said that he was not present at any meeting when Mr. Izmaylov met Mr. Nikitin and Mr. Sawyer. It was not put to Mr. Izmaylov that he was party to any agreement with Mr. Privalov or that he knew that Mr. Privalov was party to any agreement. The claimants' case about the Sawyer commissions scheme remains, however, that Mr. Izmaylov was acting dishonestly to defraud NSC, and that in breach of his duties to NSC he was party to an arrangement that substantial sums from NSC should be unjustifiably paid to Mr. Nikitin and his companies.

676. The claimants have not pursued any claim in respect of Sawyer commissions scheme against Mr. Nikitin and the Standard Maritime defendants otherwise than upon the basis that Mr. Izmaylov was party to a dishonest scheme with Mr. Nikitin, and that Mr. Izmaylov acted dishonestly in breach of his fiduciary duties. They amended their pleaded claim towards the end of the trial to abandon any allegation that Mr. Privalov was party to the arrangements with Mr. Sawyer. If therefore I reject their contention that Mr. Izmaylov was dishonest in relation to the scheme, I should reject the claims about the Sawyer commissions scheme against all the defendants.

The RCB scheme

677. The RCB scheme concerns a debt of some $20 million (including interest) owed by Sovcomflot to the Russian Commercial Bank ("RCB"). The benefit of the debt was assigned through BCV to Gemarfin SA ("Gemarfin"), a Swiss company acting for Meino, in consideration of 45c. in the dollar or about $8.7 million, and was assigned by Gemarfin to Fiona in consideration of 61c. in the dollar or about $12.169 million. The claimants say that Mr. Skarga acted dishonestly in relation to these dealings. At the start of the trial they alleged that he had negotiated and agreed with RCB the assignment of the debt at 45c. in the dollar so as to enable Meino to profit from the dealings with the debt. This allegation was abandoned during the trial and the core of

the claimants' allegation now is that he **"**directed and/or was aware (through discussions from time to time with Mr. Nikitin and/or Mr. Privalov) of the negotiations and/or agreement with RCB and/or those interested in RCB to settle the RCB debt for 45c. in the $ and then conspired with Mr. Nikitin and/or Meino and/or Mr. Privalov to misappropriate some $3.4m from Fiona by arranging for Meino to buy the RCB Debt for 45c. in the $ and to sell it to Fiona for 61c. in the $.": see para 102.15 of the particulars of claim. They go on to allege that Mr. Skarga so acted because he received bribes or other benefits from Mr. Nikitin or companies owned by him or that Mr. Skarga had an interest in companies associated with Mr. Nikitin and so would benefit from the transactions. Fiona, who bought the RCB debt, therefore make claims in respect of the RCB scheme against Mr. Skarga, Mr. Nikitin and Meino for an account of profits and also for damages or equitable compensation. FMA also make a claim in the alternative to Fiona's on the grounds that they are vicariously liable to Fiona for the actions of Mr. Privalov and Mr. Skarga that they did as directors or agents of FMA.

678. In 1994 Sovcomflot's predecessor, AKP Sovcomflot ("AKP"), had been granted a loan facility in the total of $26,059,787.73 ("the AKP loan"). It was by way of re-scheduling part of a facility agreed on 7 April 1989. Another part of the 1989 loan was advanced by Eurobank, who did not participate in the re-scheduling. The lenders agreeing to the re-scheduling included the RCB as lead bank, acting through their Swiss branch, and their share was $13,004,901.58. The following lenders were Corporate Commercial Bank of Sofia and East-West United Bank of Luxembourg. Under the agreement, the banks were entitled to assign the benefit of that debt to "any other bank or reputable lending institution". The agreement had been signed in Zurich and was governed by Swiss law. AKP submitted primarily to the courts of Zurich in respect of any legal action or proceeding arising out of the agreement, and AKP appointed Sovchart in Geneva to accept service of process.

679. After 31 July 1995, AKP made no payments in respect of the loan. On 8 August 1995 Mr. Borisenko wrote to RCB that AKP could not service it. Legal proceedings were threatened against AKP, but they were not brought. On 1 January 1996, by an Act of Transfer of State Property and Obligations, assets and liabilities of AKP were transferred to Sovcomflot. The transfer was said in the Act to be in respect of assets and liabilities "as per the list attached", and the listed liabilities did not include the AKP loan. In 1999, following the Russian sovereign debt crisis of 1998, Mr. Borisenko as acting Director-General of Sovcomflot negotiated a settlement of the parts of the AKP loan owed to the following banks: they were assigned to VEB, a Russian state bank, who assigned them to Artesia Bank, Luxembourg SA, who in turn sold them to Fiona for 20c. and 18.5c. in the dollar. As Mr. Borisenko acknowledged in his evidence, Sovcomflot realised that the intermediary banks were making a profit under the settlement agreements, but they did not know and were not concerned about how much their profit was.

680. On 17 April 2000 Mr. Borisenko wrote to RCB about the debt. RCB had told Sovcomflot and Moore Stephens that at the end of 1999 the debt was some $26 million, and Mr. Borisenko asked RCB to explain why they had not reduced the debt to some $13 million. RCB later relied upon this letter as an acknowledgement of the debt when they bought proceedings to enforce their claim.

681. On 29 June 2000, RCB's lawyers, Salans Herzfeld & Heilbronn International ZAO ("Salans"), wrote a letter before action to Sovcomflot. Mr. Skarga wrote on 25 July 2000 to Mr. Alexei Kudrin, the Deputy Prime Minister and Minister of Finance, seeking his assistance to resolve the matter without Sovcomflot having to pay the debt in full. No answer to the letter is in evidence, but at a meeting with Mr. Skarga and Mr. Borisenko VEB, who owned RCB, threatened court proceedings if the debt was not repaid in full. On 27 July 2000 Sovcomflot replied to Salans disputing their liability for the debt on the grounds that it was not among the listed assets and liabilities transferred from AKP under the Act of Transfer. However, as Mr. Lipka told me and I accept, "it was the common view of top management" that Sovcomflot could not successfully defend the claim.

682. In about October 2000, RCB brought proceedings in Geneva against Sovcomflot to enforce the debt and on 30 October 2000, in accordance with the Swiss procedure, they pursued their claim by having a payment order notified in the sum of $13.665 million, plus interest. By April 2001, RCB had obtained a court order against Sovcomflot for the debt and Sovcomflot's attempt to appeal against it had been unsuccessful. On 16 July 2001 Sovcomflot brought proceedings against RCB in the Zurich courts for a declaration that they were not liable for the debts of AKP, but on 12 October 2001 Sovchart were served with an Avis de Saisie for enforcement of the claim.

683. Neither Sovcomflot nor their Swiss lawyers, Lalive & Partners, thought that they had any real chance of defending RCB's claim. Mr. Borisenko, however, said in his witness statement of 11 February 2009 that he "had no views since [he] was not involved in handling the Swiss proceedings". I reject that evidence, and I accept the evidence of Mr. Lipka that the settlement of the RCB loan was "first and foremost" the responsibility of Mr. Borisenko because he was the Chief Financial Officer. Although in his evidence he sought to minimise his involvement, Mr. Borisenko was well aware of the progress of RCB's claim and the legal proceedings. For example, on 28 March 2001, in Mr. Izmaylov's absence and at his request, Mr. Borisenko wrote to Lalive & Partners to explain the background to RCB's claim and on 30 March 2001 he instructed Mr. Lipka to write a report recommending what should be done. When he was cross-examined, Mr. Borisenko acknowledged that, while he did not form an independent view of his own, he accepted and relied upon Mr. Izmaylov's assessment that Sovcomflot were in a weak position to defend the claim. There is further evidence that Mr. Borisenko's involvement with the RCB debt was more than he was prepared to acknowledge in a document that was disclosed by the claimants only after he and Mr. Lipka had given evidence, and that should have been disclosed earlier. At a meeting on 29 March 2001 Sovcomflot's General Board approved "Plan of works on the implementing the Principal Lines of Development of OAO Sovcomflot for 2001". It identified Mr. Borisenko, together with Mr. Izmaylov and Mr. Lipka, as responsible for dealing with the settlement of the RCB debt.

684. In about July 2000, Mr. Skarga, having discussed the problem of the debt with others on the Executive Board, spoke to Mr. Katkov and Mr. Malov about it when he was visiting Kinex. As shareholders in Kinex, they, together with Mr. Timchenko and Mr. Smirnov, had had an interest in Tokobank, a major Russian bank before the 1998 financial crisis, and Mr. Skarga hoped that they might use their influence with the Central Bank of Russia to gain for Sovcomflot more time to settle the debt from RCB,

an indirect subsidiary of the Central Bank. Mr. Katkov and Mr. Malov could provide no effective assistance, and they reported this to Mr. Skarga in the autumn of 2000. During their discussions with Mr. Skarga, it was suggested that an intermediary might acquire the debt from RCB and sell it to Sovcomflot. Mr. Skarga and Mr. Borisenko discussed this suggestion, and later, at a New Year's party at the start of 2001, Mr. Skarga tried to interest Mr. Katkov and Mr. Malov in taking the idea forward, but they declined to do so.

685. Mr. Nikitin, however, had been present when Mr. Skarga met Mr. Katkov and Mr. Malov and had already gone about exploring this possible solution. On 4 September 2000 he had telephoned Ms. Imogen Rumbold, a partner in Lawrence Graham who acted for him, for advice about a loan agreement with a Swiss Bank which they were "ready to sell with a certain discount" (as Ms. Rumbold recorded what was said in her attendance note). Mr. Nikitin had not then had any contact with RCB. Ms. Rumbold recorded that the matter was "all highly [private and confidential]". This would be expected, and does not suggest impropriety. Mr. Nikitin said that he would send her "a document", which was, as Mr. Nikitin confirmed, a copy of the loan agreement with RCB which he had obtained from Mr. Skarga. It does not suggest to me improper collusion between Mr. Skarga and Mr. Nikitin that Mr. Nikitin had a copy of the agreement. There is no proper reason to suppose that Mr. Skarga provided it in order to assist Mr. Nikitin, and he probably provided it during the discussions on his visit to Kinex. On 8 September 2000 Ms. Rumbold wrote to Mr. Nikitin that she had received the loan agreement and confirmed that Mr. Nikitin sought advice "on the merits or otherwise of purchasing the debt (at a discount of course) and then recuperating (sic) the outlay if you did buy the debt". I should make it clear that it is not alleged that Ms. Rumbold acted dishonestly or improperly in relation to this or any other matter.

686. On 22 November 2000 Ms. Rumbold wrote to Mr. Nikitin that she understood from a telephone conversation with him that "matters … have progressed in such a way that you are now intending to make an offer to [RCB] under which a British Virgin Islands company in your group of companies will buy the debt … at, say, a 40% discount and you will then collect the debt from Sovcomflot, maybe also at a discounted figure (say 20%)". By this time, according to Mr. Nikitin's evidence, which I accept about this, he had decided to conduct negotiations with RCB through Mr. Claudio Cepollina, whom he knew as a shipbroker and considered to be a skilful negotiator. He also had decided that the debt might be acquired from RCB by Gemarfin, since he thought that a Swiss bank might be more receptive to an approach from a Swiss company. (Gemarfin provided such services as ship management, banking intermediary services and related financial services, and was connected with Ms. Francesca Berlosconi and Mr. Alfonso Delorenzi, with whom Mr. Nikitin had previously had dealings as corporate services providers.)

687. On 24 November 2000 Mr. Nikitin spoke by telephone to Ms. Rumbold. In her note of that conversation she recorded that "One of our friends is top manager of [Sovcomflot]", and Mr. Nikitin confirmed in his evidence that he was referring to Mr. Skarga. Ms. Rumbold recorded that Sovcomflot had been "taking their time to pay the debt", but that they were "happy to pay at a discount". She also recorded that "RCB understood their loan is not so solid because the nature of [Sovcomflot] has changed from State to joint stock and they understand that the loan is to a Soviet

Union company. RCB has no security to their claim". Mr. Nikitin agreed that he must have learned from Mr. Skarga the thrust of Sovcomflot's defence to the claim. Mr. Skarga had sought the assistance of Mr. Katkov and Mr. Malov, and Mr. Nikitin was present when Mr. Skarga explained the nature of the dispute. The reference to Sovcomflot being happy to settle the debt at a discount is similarly explained.

688. By the end of November 2000 an approach had been made to RCB. On 27 November 2000 Ms. Rumbold sent to Mr. Nikitin suggested wording for a letter that might be sent to show that "the 'unofficial' approaches made are serious approaches from your side". There was an exchange of correspondence between Gemarfin and RCB at the beginning of December 2000, and this led to a meeting in Zurich on 14 December 2000 at which Gemarfin were represented by Lawrence Graham and Mr. Cepollina. RCB indicated that they might accept about 62.5c. in the dollar for the debt. Mr. Nikitin came to Zurich, but he did not attend the meeting with RCB because, as Ms. Rumbold explained, he considered it important that "RCB did not get a whiff that there was anything Russian about the proposal to buy the debt".

689. According to Mr. Nikitin, early "unofficial" approaches to RCB had been made by Mr. Cepollina, and in a statement dated 7 November 2006 and put in evidence by Mr. Nikitin and the Standard Maritime defendants under the Civil Evidence Act 1995 Mr. Cepollina said that he approached Mr. Nigmetzanov of RCB as a broker for an unnamed principal and expressed interest in acquiring the debt: he had two or three meetings with Mr. Nigmetzanov. The claimants submitted that Mr. Cepollina could not have approached RCB without an introduction and invited the inference that Mr. Skarga was involved in arranging the introduction. I reject that submission as speculation, and also as inconsistent with Mr. Nikitin's concern in December 2000 that RCB should not associate the approach with Russians. Mr. Nikitin would not have told Ms. Rumbold this if, when they met her, RCB might well have mentioned that Mr. Cepollina had been introduced to them by Mr. Skarga.

690. Mr. Nikitin first told Mr. Skarga in late 2000 or early 2001 that he was exploring the possibility of acquiring the debt from RCB with a view to selling it to Sovcomflot. There is no evidence that persuades me that Mr. Skarga knew at any earlier date that Mr. Nikitin was doing so. The claimants argued that Mr. Nikitin would not have expended money on legal fees without first ensuring that Sovcomflot would be interested in acquiring the debt from him at a discount, but I do not accept this argument. It must have been clear to Mr. Nikitin after the discussions at Kinex that Sovcomflot would be interested in an arrangement of this kind. Mr. Skarga discussed with other members of the Executive Board the possibility of an intermediary acquiring the debt and discounting it to them, and they contemplated paying something like 60c. in the dollar to acquire the debt. Mr. Borisenko confirmed in cross-examination that there had been these discussions, and, although he denied it, I conclude that Mr. Borisenko was party to discussions about how much Sovcomflot should pay. That would have been his concern as Chief Financial Officer.

691. On 20 March 2001 a company called R & S Investments AG of Zurich ("R&S") wrote to Mr. Borisenko and Mr. Izmaylov, and offered to seek to acquire the debt and to discount it to Sovcomflot for 60c. in the dollar. This approach was not of interest to Sovcomflot because R&S's proposal was that they should acquire and discount the debt owed to Eurobank from the 1989 loan as well as the RCB loan and because R&S required a deposit of $19.8 million. Mr. Skarga mentioned to Mr. Nikitin the letter

from R&S. Mr. Nikitin told Mr. Cepollina and Ms. Rumbold of it, and asked Mr. Cepollina to find out whether RCB had already disposed of the debt. At about this time, as Mr. Nikitin told me and as I accept, Mr. Skarga indicated to Mr. Nikitin that he believed that the directors of Sovcomflot would pay something like 60c. in the dollar to acquire the debt.

692. On 2 April 2001 Mr. Nikitin reported to Ms. Rumbold that Mr. Cepollina had had further discussions with Mr. Nigmetzanov in which RCB had spoken about selling the debt at a price of 40c. in the dollar for the interest and 50c. for the principal, and Mr. Cepollina had responded with a proposal to pay 45c. in the dollar for the interest. At some time in April 2001 Mr. Cepollina told Mr. Nikitin that RCB were prepared to accept 45c. in the dollar for the debt and after some further exchanges RCB and Mr. Nikitin agreed upon this price.

693. Mr. Nikitin also told Ms. Rumbold that he was prepared to discount the debt to Sovcomflot for 60c. in the dollar. She recorded in her attendance note of the telephone conversation, "We are ready to discount debt at 60c. per dollar". Mr. Nikitin said that this does not reflect what he meant because at all times he had "higher ideas", but in her witness statement dated 13 February 2009, which Mr. Nikitin and the Standard Maritime Defendants adduced in evidence, Ms. Rumbold confirmed that Mr. Nikitin did say that he was prepared to discount the debt at that price. I find that by this time Mr. Nikitin was indeed prepared to accept 60c. in the dollar for the debt, but I accept that he had it in mind to seek a higher price. I also accept Mr. Skarga's evidence that at some point during discussions Mr. Nikitin suggested that the price paid by Sovcomflot should be 70c. in the dollar.

694. On 2 April 2001 Mr. Nikitin instructed Ms. Rumbold to start to draft the documents for the planned transactions. A number of questions arose: for example, the parties wished to understand the position about the debt owed by Sovcomflot to the following banks. It was learned that Sovcomflot had reached a settlement of their debts, and Ms. Rumbold wrote in her attendance note, "We know more than we are supposed to know". Mr. Nikitin's evidence about this was that Mr. Skarga had provided to him confidential documents that showed that Sovcomflot had settled the claims, and this is in accordance with Ms. Rumbold's evidence. She said that "she probably felt slightly uncomfortable about the source of the documents", but, since it appeared to be in Sovcomflot's interests to have the concern about the following banks resolved in order to progress a proposal that was potentially to Sovcomflot's advantage, she was not overly concerned about it. Certainly I do not consider that this suggests that Mr. Skarga was not acting in Sovcomflot's best interests or was improperly promoting Mr. Nikitin's interests.

695. In about May 2001, Mr. Skarga spoke to Mr. Nikitin about whether he would be interested in entering into a similar arrangement in relationship to the Eurobank debt to that which he was negotiating for the RCB debt. I accept his evidence that he discussed this with Mr. Borisenko before approaching Mr. Nikitin. Mr. Skarga suggested to Mr. Nikitin that he might approach Mr. Privalov for information about the Eurobank loan. Mr. Privalov confirmed that he was asked by Mr. Skarga to explore whether such an arrangement was feasible. He was asked to find a bank willing to acquire their debt from Eurobank and sell it to Mr. Nikitin or one of his companies, with a view to it being discounted to Sovcomflot. He approached Mr. Caze of BCV, who agreed that BCV might assist. As is reflected in Ms. Rumbold's

file notes, Mr. Nikitin told her about the proposal for a further agreement about the Eurobank debt, and on 11 June 2001 she met Mr. Privalov to be given further information and documents about the Eurobank loan and the proposed transaction. In the event the proposal was not pursued because Eurobank, unlike RCB, did not press Sovcomflot for immediate settlement of the debt.

696. However, Mr. Privalov had further dealings with Ms. Rumbold in relation to the RCB debt. In particular, at about the beginning of April 2001 it had come to be appreciated that RCB could assign the debt only to another bank or "lending institution", and so it was necessary to introduce such an intermediary in the chain of assignments of the debt. Mr. Nikitin asked Wegelin whether they would assist by acting as an intermediary assignee, but they declined to do so. He asked Mr. Skarga for help to find a suitable intermediary, and Mr. Skarga turned to Mr. Privalov. Mr. Privalov approached Mr. Caze, who agreed that BCV would take an assignment from RCB and re-assign the debt to Gemarfin. Initially they sought to be paid by taking a share in the profits, but they agreed to act for a fixed fee.

697. On 18 July 2001 Mr. Nikitin instructed Ms. Rumbold to make contact with Mr. Privalov about this, and she spoke to him on 19 July 2001. On 20 July 2001 Ms. Rumbold sent to Mr. Privalov a draft letter that BCV might send to RCB. In her covering fax she said that she had "lifted the figures" from the draft assignment between RCB and Gemarfin. The draft letter that she sent to Mr. Privalov read, "We are pleased to offer to acquire from your bank its total interest and participations in the … loans for the amount of USD0.45 payable on closing of the final assignment of those interests and participations".

698. Thus, Mr. Privalov learned, if he did not already know, what Gemarfin were paying for the RCB debt. Further Ms. Rumbold sent a copy of her communication to Mr. Nikitin, and so it would have been apparent to him that Mr. Privalov was aware of the price. Ms. Rumbold had assumed, from her understanding of Mr. Privalov's role, that Mr. Privalov knew it anyway. Mr. Nikitin had not specifically authorised her to disclose this information, but he was not concerned that Mr. Privalov had learned it, because he did not think that Sovcomflot would wish to derail the deal at that late stage. There is no evidence that Mr. Privalov told Mr. Skarga, or anyone else at Sovcomflot, what Gemarfin were paying for the debt.

699. On 31 July 2001 Mr. Caze informed Ms. Rumbold that RCB and BCV had agreed, subject to contract, that the debt should be transferred for 45c. in the dollar. On 6 August 2001 Mr. Nikitin spoke to Ms. Rumbold about the structure of the transaction. He said that Gemarfin should act for a company which he would specify. He had it in mind that he might possibly use Pollak for this purpose, but he also said that he would probably use a different company. Ms. Rumbold recorded in her attendance note "Gemarfin propose to [Fiona] 71c. per dollar. [Fiona] will refuse. 61c". According to Mr. Nikitin, this reflects that he hoped to negotiate a higher price for the debt than 61c. in the dollar, and intended to propose a price of 71c. so as to entice Sovcomflot to make a counter-proposal.

700. On 7 August 2001 Mr. Privalov gave Ms. Rumbold instructions about the structure of the transaction. It had been decided that Mr. Nikitin should use Meino, rather than Pollak, as the corporate vehicle, and that Gemarfin, as Meino's agent, should assign the debt to Fiona. Gemarfin were to write to Fiona proposing the transaction without

mentioning that they were acting for Meino. Ms. Rumbold and Mr. Privalov agreed upon the terms of the letter that Gemarfin were to write, which presented an offer to assign the loan for 71c. in the dollar. On 9 August 2001 Gemarfin sent to Mr. Privalov at FML's offices a letter to Fiona which read, "We have negotiated to take an assignment of the [RCB] loan. We are in turn offering to assign to you the total interest and participation in the said loan for the discounted amount of $0.71 in the dollar … . The present offer is not intended to create any commercial relations between us at this stage … . We await your response with interest".

701. The offer was considered on 9 August 2001 at a meeting of Sovcomflot's Executive Board, which was attended by Mr. Skarga, Mr. Borisenko, Mr. Terekhin, Mr. Izmaylov and Mr.Lipka. The minutes record that Mr. Skarga "informed the Board about tentative negotiations to settle the indebtedness of the RCB bank credit the result of which was a proposal to settle the matter on the basis of 71c. per one US dollar…". It was proposed that Mr. Privalov be authorised "to hold further talks on the basis of settling at no more than 61c. in the dollar". Mr. Izmaylov, Mr. Borisenko and Mr. Terekhin spoke about the proposal, and it was approved unanimously. After the meeting Mr. Izmaylov sent Mr. Privalov a fax authorising him to settle the debt for 61c. in the dollar or less, on the basis that the whole loan and all interest on it would be discharged.

702. It is not clear what information was before the Executive Board when they made this decision because, as Mr. Lipka recalled and I accept, there was before the meeting a briefing note, and it is not in evidence. However, the proposal was fully discussed. Mr. Lipka said that the unanimous view was that it would be "a good deal for Sovcomflot and Fiona" to settle upon the terms proposed. Mr. Izmaylov's evidence was that there was full and open consideration of the matter. Mr. Borisenko said in his witness statement of 11 February 2009 that he knew nothing of a proposal to settle the RCB indebtedness before the meeting, but I reject that evidence. It is incredible that the Chief Financial Officer did not know about the proposal, and the more incredible that he did not complain at the meeting if the proposal had come as a surprise to him. In any event he spoke in favour of the proposal, and he agreed in cross-examination that a settlement at 60c. in the dollar would have been "a very good deal", and that a deal at 61c. in the dollar was in Sovcomflot's best interests.

703. On 9 August 2001 Mr. Privalov sent to Gemarfin a fax that stated that he had authority to settle the loan for 61c. in the dollar, and asked for confirmation that this proposal was acceptable. There is no documentary evidence that Mr. Privalov attempted to negotiate a lower price; Mr. Nikitin could not recall whether or not Mr. Privalov sought to discuss the price further; and Mr. Privalov said that he did not seek to negotiate because he understood that Mr. Nikitin would not reduce the price below 61c. in the dollar. There was, as I understand it, no suggestion, and in any event there was no credible evidence, that Mr. Privalov was instructed by Mr. Skarga or anyone else not to attempt further negotiations or that he reported to anyone that he had not done so. I conclude that he simply offered 61c. in the dollar for the debt.

704. Although agreement upon the transaction had been agreed in substance by 9 August 2001, it was not formally concluded and documented for some time. On 5 October 2001 Ms. Rumbold, who had noticed that Gemarfin had not responded to Mr. Privalov's letter of 9 August 2001, wrote to Gemarfin and suggested that they reply direct to FML.

705. By a series of agreements dated 24 October 2001, the outstanding debt to RCB, which was then $19,949,061.76 (comprising the principal sum of $13,004,901.58, unpaid interest due at 31 July 1995 of $660,165.32 and further interest which had accrued subsequently of $6,283,994.86) was acquired by Fiona through the following chain of assignments: RCB assigned the debt to BCV for 45c. in the dollar, that is to say for $8,997,077.79; BCV assigned the debt at the same price to Gemarfin, who acted as the agent for Meino; and Gemarfin assigned it to Fiona at 61c. in the dollar, that is to say for $12,169,927.67. Accordingly, Fiona paid 16c. in the dollar, or $3,191,849.88, more for the debt than RCB were paid for it, and Meino received most of this as their profit.

706. As I understand it, there are four strands to the claimants' contentions that Mr. Skarga acted dishonestly in relation to the RCB debt scheme. First, the claimants plead (having amended their case in the course of the trial) that Mr. Skarga directed the negotiations with RCB. There is no convincing evidence that supports this contention, and I reject it.

707. Secondly, it is said that Mr. Skarga knew that the debt was being acquired from RCB for 45c. in the dollar, but this was not disclosed to others on Sovcomflot's Executive Board, and was concealed so that Gemarfin, and therefore Meino and Mr. Nikitin, could profit from the transaction. I reject the contention that Mr. Skarga knew of the price of 45c. in the dollar. Mr. Privalov had no recollection of discussing the price with Mr. Skarga. He spoke in cross-examination of having an "impression" that Mr. Skarga knew, but he did not explain why he had that impression and his evidence was, in my view, vague and unreliable. Mr. Nikitin's evidence was that he did not tell Mr. Skarga how much he was paying for the debt and, as far as he knew, Mr. Skarga did not have this information. Mr. Skarga said that he did not learn of the terms of the deal that Mr. Nikitin had made with RCB, including the price that he was paying, and did not know what profit Mr. Nikitin was hoping to earn or what he did earn.

708. The claimants argued that, unless Mr. Nikitin knew that Mr. Skarga already was aware of the price being paid to RCB, he would have been concerned about Mr. Privalov learning it from Ms. Rumbold. I disagree: by then the proposal was sufficiently advanced for Mr. Nikitin to feel confident that Sovcomflot would not want to take advantage of the information and Mr. Skarga had indicated that they would pay something like 60c. in the dollar for the debt. In any event, the corollary of the claimants' argument is that Mr. Nikitin would have been equally concerned about Mr. Privalov revealing the price to Mr. Borisenko (who was his "line manager") and others on the Executive Board. The claimants also argued that Mr. Skarga would have asked Mr. Nikitin for this information because it would be important to Sovcomflot's negotiating position. I am not persuaded of this. Of course Mr. Skarga, like others on the Sovcomflot Executive Board, knew that Mr. Nikitin was making a profit on the transactions. However, Mr. Skarga explained that he decided to indicate to Mr. Nikitin what Sovcomflot were willing to pay for the debt and to maintain that stated position. This was, to my mind, a perfectly reasonable negotiating strategy, and I reject the claimants' suggestion that, if he had been acting honestly, Mr. Skarga would have sought to negotiate a lower price than what he had originally indicated. That course would have lacked credibility.

709. Thirdly, the claimants argued that Mr. Nikitin and Mr. Skarga agreed before the Executive Board meeting on 9 August 2001 that Sovcomflot would pay 61c. in the

dollar. I reject that submission because, to my mind, there is no evidence to support it. Of course, Mr. Skarga had indicated that Sovcomflot would pay about 60c. in the dollar for the debt, but there is no reason to think that Mr. Nikitin was not hoping to be paid more, even if privately he was prepared, if necessary, to accept about 60c. in the dollar and was not expecting to succeed in negotiating a higher price.

710. Fourthly, it is said that Mr. Skarga did not present the proposal honestly to the Executive Board on 9 August 2001. In this context the claimants (at paragraph 102.19 of their particulars of claim) plead that:

i) Mr. Skarga dishonestly failed to tell the Executive Board that RCB were prepared to settle the debt for 45c. in the dollar. I have concluded that Mr. Skarga did not know this.

ii) Mr. Skarga did not tell the Executive Board that the letter containing Gemarfin's offer was designed to give the impression that it was from "an independent third party" who had already acquired the debt. The claimants referred to Mr. Privalov assisting Ms. Rumbold to draft the letter and to the fact that, when Mr. Privalov wrote to Gemarfin after the Executive Board meeting, they did not reply until October 2001. There is no evidence that Mr. Skarga knew how the letter came to be drafted or that Mr. Privalov had a part in its preparation, and I am unable to understand the significance that the claimants attach to the delay in Gemarfin responding to the offer made after the meeting.

iii) Mr. Skarga "dishonestly failed to tell the Executive Board that the plan which existed at 9 August 2001 was for Fiona itself to provide the funds for Gemarfin to purchase the RCB debt at 45c. in the $". This argument was not developed by Mr. Popplewell. The claimants would have to establish that this was the plan on 9 August 2001, and they have not proved this. In any case, where there is a series of back-to-back agreements of this kind, it is not unusual or remarkable that the price is passed down the chain of sellers.

711. The claimants also alleged that Mr. Skarga concealed from the Executive Board that the counter-party to the transaction was, in effect, Mr. Nikitin. The claimants have not proved this. Mr. Izmaylov could not remember whether Mr. Nikitin's involvement was mentioned because it was not something that would have interested him, and I accept Mr. Skarga's evidence that Mr. Borisenko worked with Mr. Privalov in arranging the transaction and knew of Mr. Nikitin's interest.

712. At the start of the trial it was alleged that Mr. Skarga also concealed the role of BCV in the transaction. This was based upon the allegation that Mr. Skarga, together with Mr. Nikitin and Mr. Privalov, instructed Ms. Rumbold to conceal from Sovcomflot "the true nature of the arrangements" between the parties to the transaction. The allegation that Mr. Skarga so instructed Ms Rumbold was abandoned when the claimants amended their pleading during the trial. In any event the claimants have not shown that Mr. Skarga was party to any attempt to conceal BCV's role. Mr. Borisenko accepted in cross-examination that he knew that the terms of the loan prevented RCB from assigning it except to a bank or financial institution, and I reject his evidence that he thought that Gemarfin were a bank. His evidence was he knew of BCV's role only after Mr. Skarga had left Sovcomflot, but I also reject that evidence

because on 25 October 2001 Mr. Privalov sent him a copy of the assignment agreement between Gemarfin and Fiona from which BCV's role was apparent. I accept Mr. Privalov's evidence that he made no attempt to conceal BCV's role and received comments from Sovcomflot's legal department upon draft documents that revealed it.

713. I therefore do not consider that the evidence about the RCB scheme supports the allegations of dishonesty on the part of Mr. Skarga made by the claimants, and I conclude that neither the nature of the arrangements to discharge the debt nor the way in which they were carried out indicates Mr. Skarga acted dishonestly in relation to the RCB scheme.

The SLB arrangements scheme

714. In 2002 Sovcomflot secured funding through finance leases or SLB transactions which were arranged with Mr. Nikitin. I shall consider later who provided the funding: it is convenient in describing the transactions simply to refer to the "Investors". The claimants say that the transactions were dishonest and collusive arrangements concluded between Mr. Nikitin and Mr. Skarga with Mr. Privalov's assistance, and that they are "inexplicable" on any basis other than that Mr. Skarga was motivated by bribes or other personal benefit. Mr. Skarga and Mr. Nikitin contend that they were proper arrangements whereby Sovcomflot obtained funding that they needed and that they could not have expected to obtain on better terms.

715. Sovcomflot sold the eight Arbat-type sisterships to the Investors and leased them back on bareboat charters. The Investors agreed to sell and the charterers agreed to buy the vessels at the end of the charter period for an agreed price, that is to say, in the terminology of such transactions, the "residual risk" was with the charterers. The charterers' obligations, both under the charterparties and as to the residual risk, were guaranteed by Fiona. There were three such transactions or groups of transactions: the first concerned only the "Fili"; the second group, July SLB arrangements, concerned three vessels; and the third group, November SLB arrangements, concerned four vessels.

716. Before 2002 Sovcomflot had occasionally entered into SLB arrangements. Mr. Borisenko and Mr. Sharikov were both familiar before 2002 with this means of raising finance. In about 1992 and 1993 Mr. Sharikov had been involved with such finance leases of two of the Tromso vessels, the "Romea Champion" and the "Tropic Brilliance", and also of a newbuild gas carrier. When Mr. Kornilov was Director-General, Sovcomflot had entered into a SLB arrangement in respect of the "Maxim Gorky". In 2000, after Mr. Skarga had become the Director-General, Sovcomflot had provided finance under a SLB arrangement for a reefer called the "Electra", earning a return of 16.75% per annum. Mr. Borisenko also gave evidence of entering into a SLB arrangement with Mitsubishi.

717. According to Mr. Skarga and as I accept, Mr. van Boetzelaer prompted him to consider raising funds by SLB transactions. On 7 September 2001 Mr. van Boetzelaer sent him an e-mail about an unsolicited proposal from a German company, Buettner Shipping, to purchase and charter back a sea class tanker. He described the advantages to Sovcomflot of such an arrangement, including that it would "free up cash", that Sovcomflot could earn a trading profit, that Unicom could manage the

vessel for a fee, and that Sovcomflot might be able to have an option to purchase the vessel at the end of the charter period. In around the autumn of 2001 Mr. Skarga, as I conclude, discussed with Mr. Borisenko whether Sovcomflot might enter into such arrangements. Mr. Borisenko's evidence was that he could not recall any "specific discussion" of this kind, but I prefer the evidence of Mr. Skarga.

718. The claimants contended that Mr. Skarga introduced Sovcomflot to commercially unfavourable SLB arrangements because of his relationship with Mr. Nikitin. This must be considered against the evidence that other executives were involved in Sovcomflot's discussions and decisions about how they should meet the demands upon their finances. Mr. Borisenko sought in his evidence to give the impression that he was not party to any discussions that led Sovcomflot to raise funds through the SLB transactions, but I reject that evidence. He was responsible for ensuring that the Sovcomflot group had the funding that they needed and for considering about how they might best acquire it. The claimants have not made disclosure of documents showing how Mr. Borisenko, and through him the group, planned to meet their financial commitments. Mr. Borisenko said that he had had only "general discussions" with Mr. Skarga about how Sovcomflot should fund their requirements in 2002 before the SLB agreements with the Standard Maritime defendants were concluded. Given his position, Mr. Borisenko must have had more detailed discussions about the group's finances with Mr. Skarga and with other members of the Executive Board than he was prepared to acknowledge. For example, Mr. Borisenko was, as I infer, involved in preparing Sovcomflot's strategic plan for 2002, which was presented to the General Board on 15 February 2002. The plan itself is not in evidence, and I understand that it has not been disclosed by Sovcomflot, but it will have covered projected bank borrowings and funding plans, as the comparable plans for 2003 and 2004 did.

719. Sovcomflot invited bankers to a conference on 20 and 21 February 2002 at Krasnogorsk. One purpose was for Sovcomflot to report to their bankers about their financial position, their plans for new projects and their intentions about developing Russian trade. Sovcomflot also wished, no doubt, to demonstrate to banks that they faced competition between each other for Sovcomflot's business. I accept Mr. Skarga's evidence, despite Mr. Borisenko's reluctance to acknowledge this, that the conference was an opportunity for Sovcomflot to discuss how they might raise funds and to gauge the banks' willingness to lend to them. In any case, the senior executives of Sovcomflot would not have arranged and participated in such a conference without discussing between themselves the funding requirements of the group.

720. At a meeting of the Executive Board on 4 February 2002, Mr. Borisenko was charged with organising the conference. It was agreed that he should give a presentation on the "prospects of the fleet's development and financing". When he was first cross-examined about what he said at the conference, Mr. Borisenko, insisting that he had little involvement with Sovcomflot's plans for raising funds, said that the presentations at the conference were not those that had been planned at the Executive Board meeting, and that he had spoken only about Sovcomflot's results for 2001. After he had given this evidence in cross-examination, the claimants disclosed the slides that accompanied Mr. Borisenko's presentation, and they show, in my judgment, that he also spoke of how Sovcomflot were re-financing the newbuilding

programme: that the cost of newbuildings was $681.5 million, of which $179.7 million had been met by "own cash paid to shipyards" and that $322.7 million had been raised by bank loans arranged for the ten newbuilding contracts to which Sovcomflot committed themselves in 2001. It would have been obvious that Sovcomflot would need further funds. On 14 March 2002, Mr. Borisenko presented a report on the "financing of newly-built ships" to a meeting of the Executive Board.

721. Accordingly it seems to me that there were many occasions when Mr. Borisenko would inevitably have discussed the group's finances with Mr. Skarga and other executives. As I shall explain, in January and February 2002 Clarkson had made enquiries for Sovcomflot about the rates available for SLB funding, and Mr. Borisenko accepted that he would have expected to have been informed about any enquiries of this kind. No contemporaneous document indicated that he complained or expressed surprise that he was not being properly informed about discussions that were taking place. Even if Mr. Skarga had it in mind to enter into collusive and dishonest SLB arrangements with Mr. Nikitin and the Investors, he would have had no reason to risk provoking Mr. Borisenko's suspicions by conducting secret discussions behind his back.

722. Mr. Skarga's evidence was, and I accept, that he first discussed with the Investors the suggestion that they might provide SLB finance at about the end of February or the beginning of March 2002. Between 27 February and 1 March 2002 he and Mr. Borisenko visited Unicom in Cyprus. By this time, as I find, they and other executives knew that the Investors might provide finance, and Mr. Skarga had asked Mr. Borisenko to put together some proposals that Sovcomflot might make. According to Mr. Skarga, Mr. Borisenko provided him with a schedule of two pages: one set out proposals in the form of a spreadsheet that Mr. Skarga might present to the Investors, and the second page indicated possible adjustments that might be made to the proposal if the Investors sought to negotiate. Mr. Nikitin stated that Mr. Skarga did produce such a document during their discussions. Mr. Borisenko denied any recollection of it, and no schedule of the kind described is in evidence. Mr. Orphanos said that he was "pretty sure" that no such spreadsheet was provided by Unicom because he would have known if his staff had produced it. I accept Mr. Skarga's evidence at least in that he had discussed the proposal for a SLB arrangement with Mr. Borisenko before he approached the Investors with any specific proposal. I also conclude that Mr. Borisenko probably provided a schedule of the kind that Mr. Skarga described: if finance leasing was under discussion, it is likely that the Chief Financial Officer made such calculations.

723. It was the evidence of both Mr. Nikitin and Mr. Skarga, and I accept, that Sovcomflot approached the Investors with a suggestion that they might provide finance. The discussions were not initiated by Mr. Nikitin or the Investors. Mr. Skarga told Mr. Malov that Sovcomflot contemplated SLB funding for the "Fili" and three other Arbat vessels, and Mr. Nikitin, Mr. Smirnov and Mr. Katkov were also present at the early discussions. They had several meetings. Mr. Skarga explained the concept of SLB financing because neither Mr. Nikitin nor the other potential Investors were familiar with it, and he spoke of the potential benefits for them of developing their business association with Sovcomflot. He presented Sovcomflot's proposals on the basis that the terms were not negotiable: that Sovcomflot should sell the vessels for $17 million, lease them back on a 5-year charter at the rate of $8,000 per day and re-purchase them

at the end of the charter period at a price calculated to reflect an effective rate of interest in line with the market. He illustrated the proposal by presenting a page of the schedule that Mr. Borisenko provided to him. Mr. Smirnov made it clear that he was not interested in the proposed investment. Mr. Malov, Mr. Katkov and Mr. Nikitin decided to invest, but, "so as to be sure how it worked", they wanted initially to enter into an SLB arrangement for only one vessel, the "Fili" (which, as I shall explain when I describe the Sovcomflot time charters scheme, had been chartered to PNP in February 2002). They intended to enter into further transactions for three more vessels "if they were satisfied".

724. Mr. Skarga did not usually become so directly involved in negotiations to raise funding for Sovcomflot, and the SLB transactions were the only time that he did so. It seems to me readily understandable that he should have conducted these discussions. Sovcomflot were seeking finance from Mr. Nikitin and others with whom Mr. Skarga had worked in the past, and it is not surprising that he should have made the approach to them. In itself this does not, to my mind, suggest that the arrangements were collusive, dishonest or improper. The evidence about what involvement other executives at Sovcomflot had with the proposals and discussions is unsatisfactory. However, I accept Mr. Skarga's evidence that he was acting with the knowledge and support of others, and also that there were e-mail exchanges and other relevant documents that would have reflected this: they have not been disclosed and are not in evidence. I shall refer later to the evidence that Mr. Borisenko knew of the discussions and explain why I reject his evidence about when he first learned of them.

725. At first it was contemplated that the Investors would themselves finance the SLB arrangements for the "Fili", but Mr. Nikitin then made it clear that they wished to raise their own funding. At Mr. Skarga's suggestion, Mr. Privalov assisted Mr. Nikitin in this. On 10 April 2002, he sent an e-mail to Mr. Caze, inquiring whether BCV would finance a SLB transaction. After a meeting on 18 April 2002 BCV agreed to do so, and they provided an indicative term sheet on 22 April 2002, which Mr. Privalov forwarded to Mr. Wettern, who was acting for the Investors.

726. On 22 April 2002 Mr. Privalov sought from Mr. Gale a valuation of the "Fili" at $17 million. Mr. Gale advised him that Clarkson's current valuation was $15.75 and asked "what do you want me to do?" Whatever the response, Clarkson produced a valuation certificate dated 9 May 2002 giving a valuation at $17 million. Mr. Privalov's evidence was that the valuation was sought in order to help the Investors to raise finance. This seems to me the most likely reason that Mr. Privalov obtained it, but I do not accept Mr. Privalov's evidence that Mr. Nikitin knew that Mr. Gale provided an adjusted valuation for this purpose.

727. On 29 April 2002, Mr. Wettern sent Mr. Privalov the following e-mail: "Please see attached the text of the proposal. As you can see, this has been structured in such a format that you can forward it to Moscow as if you had received it directly from the prospective buyer. I hope this is OK." The proposal was made in the name of Cepsa Shipping SA ("Cepsa"), which had been acquired by the Investors as a vehicle for the SLB transactions. In early May 2002 it was realised that, since the "Fili" was registered in Cyprus, she had to be acquired by a Cypriot company. She was in fact bought by Blanter, which was owned as to 999 of the 1,000 shares by Cepsa and as to the remaining share by Elpico Nominees Ltd., which it held on trust for Mr. Nikitin in accordance with a declaration of trust dated 13 May 2002.

728. The proposal was addressed to Fiona. Its terms were essentially those upon which the SLB arrangement for the "Fili" was later concluded. Mr. Privalov sent the e-mail on to Mr. Skarga on the same day, 29 April 2002, writing "As per your authority, we have encouraged potential buyers for "Fili" to send attached offer. The offer represents competitive proposal of what is available on the market for this type of sale and bareboat charter back transactions. Please authorise to proceed." Mr. Skarga replied on 30 April 2002, "Looks attractive, pls develop. Can you check with buyers abt package deals or some options."

729. Mr. Skarga's reply gives the impression that he expected Mr. Privalov to conduct negotiations to improve the proposed terms. In fact there were no such negotiations, and Mr. Skarga did not expect there to be. On his own account, he had approached the Investors on the basis that Sovcomflot's proposal was not negotiable. Mr. Skarga's explanation for the exchange with Mr. Privalov was that he understood from other board members that Sovcomflot preferred to receive rather than to make offers: it reflected their general "style of operating". He explained his response on the basis that, although terms had been agreed with the Investors in principle, they still needed to be encapsulated in a formal agreement. I do not accept this: there is no credible evidence that Sovcomflot had a general practice of receiving rather than making offers, and the expressions "looks attractive" and "develop" in the reply would not have been used in an instruction to Mr. Privalov to have documented an agreement that had already been reached in principle.

730. Mr. Berry submitted that, if the purpose was to create a false picture of negotiations, the deception would have been carried out more thoroughly, and a chain of offers and counter-offers would have been concocted. I am not persuaded of this. Mr. Skarga and Mr. Privalov might have thought that this exchange would suffice if the history of the transaction was explored. However, I agree with Mr. Berry's submission that it is difficult to see how the exchange would have contributed to the collusion that the claimants allege, and whom it was intended to deceive. As far as the evidence goes, negotiating documents of this kind would not be seen by the Executive Board. Although the exchange is curious and, to my mind, has not been satisfactorily explained by the defendants, I find it difficult to ascribe any specific dishonest or improper purpose to it. There is no evidence that Mr. Skarga or Mr. Privalov ever did use the e-mails to mislead others.

731. The SLB transaction for the "Fili" was concluded on 21 May 2001 at a meeting in St Petersburg attended by Mr. Skarga, Mr. Privalov, Mr. Wettern and Mr. Nikitin. Fili Shipping Company Ltd. ("Fili Shipping"), the 14th claimant in the Fiona action, sold the "Fili" to Blanter for $17 million, less a 1% address commission payable to Blanter on delivery; Blanter chartered the "Fili" to Fili Shipping for 5 years at a daily hire rate of $8,000 with hire prepayment of $240,000; and Fili Shipping agreed to re-purchase and Blanter agreed to re-sell the vessel for $10,500,000 at the end of the charter period on terms that delivery should be when she was re-delivered under the charter. The following agreements were signed to give effect to the arrangements:

i) A memorandum of agreement in Saleform 1993 of the Norwegian Shipping Association ("Saleform 1993") between Fili Shipping and Blanter for the sale of the vessel. The purchase price was to be paid to Fili Shipping's account at BCV in Switzerland.

ii) A charterparty in the Baltic and International Maritime Council ("Bimco") bareboat charter form "Barecon 89" between Blanter and Fili Shipping for the five year time charter.

iii) A second memorandum of agreement in Saleform 1993 between Fili Shipping and Blanter Shipping whereby Fili Shipping agreed to buy and Blanter agreed to sell the "Fili", and that the price of $10.5 million should be paid to Blanter's account at BCV in Switzerland on delivery of the vessel.

iv) A guarantee whereby Fiona guaranteed to Blanter the obligations of Fili Shipping under the charterparty and the second memorandum of agreement.

732. The agreements gave addresses in Cyprus for Fili Shipping and Blanter, and stated that the "Fili" was a Cypriot vessel. The guarantee stated Fiona's address in Liberia, but provided for service of proceedings upon Fiona at the address of FML in London, and proceedings upon Blanter at an address in Panama. All the agreements were stated to be governed by English law. The two memoranda of agreement and the charterparty contained an agreement to London arbitration, and the guarantee contained a clause that the English High Court should have jurisdiction. All the agreements were signed by Mr. Wettern on behalf of Blanter and by Mr. Privalov on behalf of Fili Shipping and Fiona.

733. Blanter funded the transaction (i) by borrowing $10 million from BCV against the security of a first charge over the "Fili"; and (ii) by taking a subordinated loan of $7 million provided by Meino, secured by a second charge on the "Fili". The benefit of Fiona's guarantee was assigned to BCV as additional security.

734. On about 17 May 2002 Mr. Wettern had sent to Mr. Lipka the documents to be executed in order to conclude the agreements relating to the SLB of the "Fili", including a power of attorney authorising Mr. Privalov to execute documents on behalf of Fiona and Fili Shipping. He introduced the e-mail with the words, "As I think you are aware, [the "Fili"] is to be the subject of a sale and leaseback …". Mr. Lipka wrote to Unicom on 20 May 2002 accordingly. Mr. Lipka's evidence was that, despite the wording of Mr. Wettern's e-mail, he had not previously known about the SLB (he described the expression "As you are aware" as "just a polite form of address"), and that he spoke to Mr. Borisenko about it. Mr. Borisenko denied this, but it would have been natural for Mr. Lipka to have dealt with the Chief Financial Officer on a matter such as this, and I prefer the evidence of Mr. Lipka. On 30 May 2002 Mr. Wettern sent to Mr. Borisenko and to Mr. Lipka a fax that summarised the SLB arrangement for the "Fili". He attached copies of the contractual documentation.

735. On 30 May 2002 Mr. Lipka sent to Mr. Wettern minutes of a meeting of the Board of Fiona signed by Mr. Skarga, Mr. Borisenko, Mr. Lipka, Mr. Terekhin and Mr. Ambrosov. As usual, no meeting had actually taken place, and minutes prepared by Mr. Wettern were simply signed by the directors. However, as I have said, Mr. Lipka's evidence, which I accept, was that each signatory scrutinised the minutes before signing them. They recorded the Board's unanimous decision to enter into the agreements comprised in the "Fili" SLB transaction.

736. According to the claimants' pleaded case (in para 120A-d of the particulars of claim) and his evidence, Mr. Borisenko first learned of the proposed SLB of the "Fili" only on about 26 April 2002 when Mr. Privalov told him of it in St Petersburg. Mr. Borisenko said that he then guessed, but was not told, that the counter-parties were Mr. Nikitin and his business associates. He said that Mr. Privalov mentioned the proposed SLB while they were talking in the street, and that, when they were travelling back to Moscow from St Petersburg, he told Mr. Skarga that it was expensive to raise finance through SLB arrangements. He learned the terms of the "Fili" transaction, he said, only on about 21 May 2002 after the agreements had been concluded, and Mr. Skarga then spoke about SLB arrangements with the Investors for three other ships as well as the "Fili". Mr. Borisenko's account was supported by Mr. Privalov, who said that he spoke to Mr. Borisenko about the proposed SLB of the "Fili", as he believed, in April 2002. (I have referred to the case pleaded by the claimants in the particulars of claim. At para 12.2.8 of their Reply, the claimants plead that their case is that both Mr. Privalov and Mr. Borisenko agreed to "organise and support" the SLB transactions, including that for the "Fili" in the expectation of being bribed. Mr. Borisenko denied that he organised any of the SLB transactions, and I understand that that contention is not pursued by the claimants.)

737. I reject this evidence. In fact, as I conclude from the documents in evidence, Mr. Skarga did not travel back from St Petersburg to Moscow with Mr. Borisenko in April 2002. In any case, I consider Mr. Borisenko's account incredible. If he, being the Chief Financial Officer, had learned that funding had been arranged without reference to him, he would have not responded simply by mentioning in general terms that SLB funding was expensive. He would have wanted to know the details of what was being arranged and why he had not been told about it earlier.

738. Mr. Borisenko also stated in his witness statement of 11 February 2009 that on 7 June 2002 Mr. Skarga told him to obtain the terms of the "Fili" transaction from Mr. Privalov, and that he telephoned Mr. Privalov, who advised him of them. Mr. Borisenko knew the terms of the transaction before 7 June 2002 because he had been sent the copies of the contractual documents. In cross-examination Mr. Borisenko sought to explain that in his witness statement he meant that he telephoned on 7 June 2002 in order to "refresh those terms in [his] memory", but that is simply not what his witness statement said. His statement was untruthful. I accept Mr. Skarga's evidence that during April 2002 he kept Mr. Borisenko informed about discussions with the Investors. They discussed them, for example, on a train journey from Zermatt to Geneva in April 2002 and after a meeting in London with JP Morgan on 10 April 2002, which was attended with Mr. Privalov.

739. On 7 June 2002 Mr. Borisenko sent to Mr. Privalov an e-mail in which he calculated effective interest rates for five possible SLB arrangements. (I explain below the concept of an effective, implied or nominal interest rate in relation to a SLB arrangement or financial lease.) It was headed "Fili plus 3" and so, when he sent it, Mr. Borisenko clearly knew that it was contemplated that Sovcomflot would enter into SLB arrangements for three more vessels as well as the "Fili". The e-mail read:

> "17m less 1%, 5 years, 8000 pd, 10,5m : 11,7% p/a.
>
> 17m less 1%, 5 years, 8000 pd, 10,0m : 11,18% p/a.

17m less 1%, 5 years, 7500 pd, 10,5m : 10,42% p/a.

17m less 1%, 5 years, 7500 pd, 10,0m : 9,86% p/a.

17m less 1%, 5 years, 7000 pd, 10,5m : 9,12% p/a."

Each calculation, therefore, assumed a five years' charterparty, but Mr. Borisenko added, "Maybe try: 17m less 1%, 3 years 8,000 pd 12.6m: 10.64%", that is to say, he suggested the possibility of a three years' charterparty.

740. Mr. Borisenko said that he sent this e-mail because Mr. Privalov asked him to calculate the effective interest rate on these five sets of assumptions, and that he added the calculation based upon a three years' charterparty because he thought that SLB funding was expensive, and that, if it was required at all, cheaper funding could have been found after three years. I reject that explanation. Mr. Privalov would not have needed Mr. Borisenko to calculate effective interest rates for him, and in any case the arrangements for the "Fili" had been concluded. I consider it more probable that Mr. Borisenko knew by 7 June 2002 that Sovcomflot planned finance leases for three other vessels, and he was setting out proposals that might be put to the Investors.

741. The arrangements for the SLB of the "Fili" were considered at a meeting of the Executive Board on 10 June 2002. Mr. Borisenko instructed Mr. Dobrynin to prepare a briefing note for the meeting, and told him what to put in it. The note stated the main terms that had been agreed and supported the transaction, saying that, "This arrangement will provide free assets and keep the ship in the fleet, effectively with 100% financing". The proposal was presented to the Board by Mr. Borisenko. The minutes, which I accept are accurate, record that Mr. Borisenko referred to negotiations about the Megaslot debt and observed that in order finally to discharge it Sovcomflot needed not less than $160 million in "freely available cash" assets. The minutes continued:

> "The company does have such means available. However, to provide for normal current work and a stable financial position it is still necessary to have not less than 30-50 million US dollars in freely available assets. In connection with this it appears to be advisable to confirm the transaction with M/V "Fili". Selling the vessels and subsequently chartering her on bareboat charter allows an extra roughly 7 million US dollars net to be obtained without drawing on additional loans from financing banks. Opportunities to obtain credit at the present time are limited owing to implementation of the fleet renewal programme."

742. The Board approved the transaction "on the terms proposed" by Blanter. The decision was taken unanimously by Mr. Skarga, Mr. Borisenko, Mr. Ambrosov, Mr. Terekhin, Mr. Lipka and Mr. Sharikov.

743. According to Mr. Borisenko, what he told the Executive Board on 10 June 2002 was incomplete and misleading, and, because no other sources of funding had been explored, there was no real reason to think that the opportunities to obtain credit

elsewhere were limited. The briefing note did not state the effective or implied rate of interest under the arrangement, and this is not mentioned in the minutes. It was suggested when Mr. Borisenko and other witnesses were cross-examined that this information was provided in a schedule to the briefing note, but I do not accept this. There would have been no reason to have a separate note about the interest rate. Mr. Borisenko said that he avoided referring to it because the interest rate was higher than funding secured by ship mortgages. Mr. Dobrynin said that it simply did not occur to him to include it in the briefing note. (In cross-examination he accepted that he could have calculated it, despite contrary evidence in his witness statement.) I accept the evidence of Mr. Dobrynin and not that of Mr. Borisenko, but the point is not, to my mind, of great significance. The Board had information from which they could readily have seen the cost of the funding. It was not, and could not have been, kept secret. Mr. Dobrynin explained that calculations of this kind were made in respect of all transactions, sometimes by himself, sometimes by Ms. Matveeva using a software package called "Shipinvest" and sometimes by Mr. Sharikov. In fact, Sovcomflot's annual report for 2002 stated that the interest rates for the eight SLB arrangements were "within the range of from 9.65% to 11.84% per annum."

744. Mr. Borisenko said that, although Sovcomflot needed more capital assuming that they repaid the Megaslot debt, he thought that the SLB arrangements were too expensive to be justified, and that he supported the proposal before the Executive Board only to avoid disagreeing with Mr. Skarga and because Mr. Skarga had told him that he would be paid for his support. I refer later to Mr. Borisenko's evidence about his complaints to Mr. Skarga about the bonuses that he was receiving from Sovcomflot: it is sufficient here to say that I reject his account, and I reject his explanation for supporting the SLB arrangements. I conclude that he, like the rest of the Executive Board, thought that they were in Sovcomflot's best interests.

745. The July SLB transactions concerned three vessels: Presnya Shipping Company Ltd. ("Presnya Shipping"), the 15th claimant in the Fiona action, sold the "Presnya" to Repmar; Poliyanka Maritime Company Ltd. ("Poliyanka Maritime"), the 16th claimant, sold the "Poliyanka" to Plutorex; and Sokolniki Shipping Company Ltd. ("Sokolniki Shipping"), the 17th claimant, sold the "Sokolniki" to Socoseas. The vessels were hired back on bareboat charters to the Sovcomflot companies that sold them. Mr. Wettern had incorporated Repmar, Plutorex and Socoseas, all Cypriot companies, on the instructions of Mr. Nikitin. Agreements similar to those in the "Fili" transaction were executed in St Petersburg on 18 July 2002.

746. As with the arrangements for the "Fili", Mr. Privalov assisted in arranging finance with BCV for the Investors, and on 4 July 2002 BCV provided a term sheet for a facility of $30 million, which they planned to syndicate with Helaba Bank. Repmar, Plutorex and Socoseas were to fund the purchase price of $17 million per vessel (less 1% address commission) (i) by borrowing $30 million (or $10 million each) from BCV against the security of the vessels; and (ii) by taking subordinated loans of $7 million provided by Meino to each company, secured by a second charge on the vessels. Mr. Privalov arranged to have the ships released from securing other loans. In the event Milmont, instead of Meino, provided all the finance to Plutorex and 20% of the finance to Socoseas. Fiona guaranteed the obligations of Presnya Shipping, Poliyanka Maritime and Sokolniki Shipping to Repmar, Socoseas and Plutorex under

the charters and re-purchase agreements, and the benefits of the guarantees were assigned to BCV by way of security.

747. There were no negotiations between Sovcomflot and the Investors about the terms of these transactions. According to Mr. Skarga and Mr. Nikitin, this was because it had been decided that, provided the Investors were satisfied with the agreement for the "Fili", the arrangements for the other three vessels should be similar. Their evidence was unclear about whether the parties were already committed to the July SLB transactions: in cross-examination Mr. Skarga said that there was a "firm commitment, subject that [the Investors] will decide whether to continue or not". The claimants challenged this evidence, and I conclude that the parties had not committed themselves to the further transactions. Mr. Borisenko's e-mail to Mr. Privalov of 7 June 2002 shows that he at least thought that the further transactions might be on different terms. Further, in June 2002 Mr. Privalov and Mr. Gale sought quotations or indications about the terms available elsewhere for SLB arrangements, which might suggest that Sovcomflot were not committed to entering into the July SLB transactions with the Investors on the same terms as for the "Fili".

748. On 10 July 2002 Mr. Privalov sent to Mr. Skarga "three offers received" from the Investors for the further three vessels. They were in similar form to that sent on 29 April 2002 in respect of the "Fili". The purchasing companies wrote letters which formally proposed terms, "Following exploratory discussions with your representatives". The e-mail under cover of which Mr. Privalov sent them to Mr. Skarga simply asked for authority to proceed, and nothing indicates that on this occasion Mr. Privalov and Mr. Skarga were concerned to create an impression of prior negotiations between the parties. I do not consider that the reference in the formal letters to "exploratory discussions" when introducing the terms was calculated to do so: the expression is, to my mind, unremarkable in a letter of this kind.

749. On 11 July 2002 Mr. Wettern sent to Mr. Lipka draft resolutions for the directors of Fiona to execute so as to authorise the July SLB transactions. Mr. Lipka had them signed by Mr. Skarga, Mr. Ambrosov and Mr. Terekhin, he signed them on his own behalf and as proxy for Mr. Borisenko, and he returned them to Mr. Wettern. Again, no meeting of the Fiona board was in fact convened.

750. As I have said, the agreements for the July SLB arrangements were concluded in St Petersburg on 18 July 2002. Mr. Privalov signed them on behalf of the selling and chartering companies and Mr. Wettern signed on behalf of the purchasing companies. Mr. Borisenko and Mr. Skarga were present when they were signed.

751. The Executive Board considered and approved the July SLB arrangements at a meeting on 30 July 2002. Mr. Borisenko arranged for Mr. Dobrynin to prepare a briefing note which was, so far as is relevant, similar to that for the proposal about the "Fili" which was before the meeting on 10 June 2002. Mr. Borisenko presented the matter to the Board. The minutes record that he said that negotiations about the Megaslot deal with the Ministry of Finance and VEB were nearly completed, and confirmed, "At the same time it was pointed out that for the final discharge of debt to the Company it is essential to have a considerable sum freely available in cash, which the company has. However, to provide for normal current work and a stable financial situation it is essential to have additional funds freely available and for this reason it is advisable to approve the transaction involving the sale of the Oil products tankers

"Presnya", "Poliyanka" and the "Sokolniki" and the vessels subsequently being chartered on bareboat charter. The transaction will allow 100% financing to be obtained while keeping the vessels on the fleet's books". Mr. Terekhin, Mr. Skarga and Mr. Lipka spoke in support of the proposal and it was approved unanimously.

752. I accept that the minutes are accurate. Mr. Lipka confirmed that he checked them before signing them. He also confirmed that all the members of the Executive Board considered that the transactions were in the best interests of Sovcomflot. Mr. Borisenko's evidence was that, although what he is recorded in the minutes as telling the meeting was true, he avoided saying that finance could be arranged more cheaply or that Sovcomflot had no need for more working capital, because he did not want "to intervene to find a competitive arrangement to what was proposed by Mr. Skarga and his partners". I reject that evidence and find that he genuinely supported the proposal as being in Sovcomflot's best interests.

753. The November SLB arrangements concerned the "Arbat", the "Izmaylovo", the "Ostankino" and the "Nagatino". They were concluded on 28 November 2002 when the agreements were executed by solicitors of WFW acting for the parties, as I infer in London. The structure and terms of the agreements was similar to the earlier ones, but the charters were for only three years. Each vessel was sold by her owner for $16 million, less an address commission of 1.25%: Ostankino Shipping Company Ltd. ("Ostankino Shipping"), the 18th claimant in the Fiona action, sold the "Ostankino" to Martex Navigation; Glefi Shipping V Company Ltd. ("Glefi V"), the 19th claimant, sold the "Arbat" to Class Properties; Glefi Shipping VII Company Ltd. ("Glefi VII"), the 20th claimant, sold the "Izmaylovo" to Akola Maritime; and Glefi Shipping VIII Company Ltd. ("Glefi VIII"), the 21st claimant, sold the "Nagatino" to Savory Trading. Martex, a Cypriot company, and Class Properties, Akola Maritime and Savory Trading, Liberian companies, had been incorporated by Mr. Wettern on Mr. Nikitin's instructions. The sellers entered into bareboat charters of the vessels at a rate of hire of $7,250 per day for three years. The charterers agreed to re-purchase the vessels and the lessors agreed to re-sell them at the end of the charter periods for $11.9 million.

754. The purchase price was funded by Martex, Class Properties, Akola Maritime and Savory Trading (i) by borrowing $42 million (or $10.5 million each) from Credit Suisse against the security of the vessels; and (ii) by taking subordinated loans of $5.5 million each, in the case of Martex and Class Properties from Kosta, which was owned by Mr. Nikitin, and in the case of Akola Maritime and Savory Trading from Meino. Fiona guaranteed the obligations of Ostankino Shipping, Glefi V, Glefi VII and Glefi VIII under the charterparties, and the benefits of the guarantees were assigned to Credit Suisse.

755. Mr. Privalov went about arranging the November SLB transactions in September 2002. On 11 September 2002 he sought valuations of the four vessels from Mr. Gale. He referred to the valuation of the "Fili" at $17 million, and asked Mr. Gale, "could you do a bit better than that?" The "Arbat", the "Izmaylovo" and the "Nagatino", which were built in 1991, were valued on Clarkson's system "shipvalue.net" at $16.07 million, and the "Ostankino", built in 1992, was valued at $16.27 million. The estimated values had been increased by 5% over those which would have been given for standard vessels of their type because the four vessels were ice-strengthened. On 2 October 2002 Mr. Privalov pressed Mr. Gale for valuations

at $16.5 million. On 3 October 2002 Mr. Gale increased the valuations on the "shipvalue net" system to $16.95 million for the 1991 vessels and $18 million for the "Ostankino" by adding a premium of 15% to their value (and that of Sovcomflot's other Arbat vessels) on the basis that they were "double[hull]/double [side] exceptional for age". As I shall explain, the premium was not justified because these were not exceptional features and so the original valuation had taken account of them. On 3 October 2002 Mr. Gale sent an e-mail to Mr. Privalov giving estimated values of $16.5 million and $17.5 million respectively for the 1991 vessels and the "Ostankino", and Mr. Privalov sent it on to Mr. Caze.

756. Mr. Privalov said that the purpose of obtaining these increased valuations, as with the adjusted valuation of the "Fili", was to help raise funding for the Investors. Mr. Berry submitted that the Investors bore the risk that the security would prove to be inadequate because the bank's security interest in the vessels had priority over theirs, and they argued that Mr. Privalov, far from assisting them to exploit Sovcomflot, was working against their interests to raise funds for Sovcomflot. I am not persuaded of this argument. The Investors might well have been willing to risk being under secured in order to earn the return.

757. It is not clear whether Mr. Gale was deliberately giving the vessels a higher value than could properly be placed upon them, and I do not need to decide whether he was being deliberately dishonest in this way. Even assuming that he was, his ploy would not support the claimants' contentions that Mr. Privalov was colluding with Mr. Nikitin against Sovcomflot, but neither do I accept that it provides evidence that Mr. Privalov was misleading him.

758. Mr. Nikitin's evidence was that, like the previous SLB transactions, the November SLB arrangements were proposed by Mr. Skarga, who again presented the proposal on the basis that it was not negotiable, and said that the Investors' return, although lower than for the previous arrangements, reflected the "going rate". Mr. Skarga, however, said that, while he might have made an initial approach to Mr. Nikitin, the terms were negotiated by Mr. Privalov. This account has support in the documentary evidence and I prefer it to that of Mr. Nikitin. As I shall explain, on 13 September 2002 Mr. Privalov provided Mr. Nikitin in a spreadsheet with a calculation of the return upon the November SLB arrangements. In October 2002 Credit Suisse, who had been introduced to Mr. Nikitin by Mr. Caze, made an initial proposal to finance the purchase of "two (max four) vessels", which apparently reflects that the proposal still was under discussion. Mr. Nikitin and Mr. Privalov considered different possible arrangements, including charter terms of three years and of five years, address commissions of 1% and of 1.25% and an arrangement providing for capital repayment to the Investors of $200,000. Thus, Mr. Privalov became involved in considering the return which, in view of the finance available from Credit Suisse, the Investors might earn from different arrangements with Sovcomflot.

759. These transactions were complicated because the four vessels and other vessels were the subject of inter-linked security arrangements and Sovcomflot had to make new arrangements to secure their borrowings. On 16 October 2002 Mr. Privalov sent to Mr. Skarga and Mr. Borisenko a fax in which he calculated that $33.44 million would be generated from the November SLB arrangements after repaying other loans secured on the vessels. Mr. Borisenko denied that he saw this fax, but he accepted when cross-examined that he knew that Sovcomflot were going about releasing the

securities over the vessels and that he probably asked Mr. Privalov about the proposed arrangements. At a meeting on 31 October 2002 the Executive Board approved refinancing arrangements, and Mr. Borisenko spoke upon this matter. Although he was reluctant to accept it in cross-examination, he must have explained to the meeting that the refinancing was part of a proposal to raise further SLB funds.

760. The November SLB arrangements were themselves considered at a meeting of the Executive Board on 15 November 2002, before they were concluded. As with the earlier SLB transactions, Mr. Borisenko had Mr. Dobrynin produce a briefing note for the meeting. It reported the terms of the proposed transactions, and that loans for $69.6 million would be discharged early, and recommended that the transactions be approved. At Mr. Borisenko's request, Mr. Dobrynin also presented the proposal at the meeting on 15 November 2002. Mr. Borisenko said that he asked Mr. Dobrynin to do this because he "felt uncomfortable" about presenting the proposals which he knew were not "good deals as far as Sovcomflot were concerned". I cannot accept this: he had himself presented the previous proposals for SLB arrangements, about which he claimed to have had similar reservations. The effective rate of return in respect of the "Fili" and the July SLB arrangements was 11.84%, and so that funding was more expensive than the finance raised by the November SLB transactions, for which the return was 9.65%. Moreover, he spoke in support of the proposal at the meeting. The minutes of the meeting on 15 November 2002 record that Mr. Skarga, Mr. Terekhin and Mr. Khlyunyev also spoke upon the proposal, and that the Board unanimously decided to support it. They read as follows:

> "Yu. A. Dobrynin reported to the Governing Body that owing to implementation of the programme for renewal of the fleet, the opportunities for obtaining credit at the present time were limited, but to provide for normal current work and a stable financial position it was necessary to have additional freely available funds and in connection with this it seemed advisable to approve a transaction for the sale of the Oil products tankers "Izmaylovo", "Arbat", "Nagatino" and "Ostankino" with the vessels being chartered subsequently on bareboat charter. The said transaction would allow 100% financing to be obtained without drawing on additional bank loans while keeping the vessels on the fleet's books … ".

761. According to Mr. Borisenko and Mr. Dobrynin, the minutes do not accurately reflect what was said at the meeting of 15 November 2002 in that Mr. Dobrynin simply reported to the meeting what was said in the briefing note that he had prepared, and he did not state that the "opportunities for obtaining credit at the present time were limited". Mr. Borisenko said in his witness statement of 11 February 2009 that after the meeting Mr. Porechniy asked how the proposal should be recorded and that he dictated to Mr. Porechniy what he should write. He presented an explanation to justify entering into the SLB transactions rather than raising any necessary funds through secured borrowing. In fact, however, Mr. Porechniy had not attended the meeting and Mr. Lipka took notes of what was said and signed the minutes as secretary to the Board. In cross-examination Mr. Borisenko said that, although he referred to a conversation with Mr. Porechniy in his witness statement, he was "pretty

sure" that he spoke to Mr. Lipka about the minutes. Mr. Lipka's evidence was that, although he was not present, Mr. Porechniy probably drew up the minutes of the meeting on the basis of notes taken by Mr. Lipka and possibly a tape recording of it. Whoever took the notes, I do not accept that Mr. Borisenko had any conversation designed to include in the minutes discussion that had not taken place, and I conclude the minutes are an accurate record of what was said.

762. On 18 November 2002 Mr. Privalov sent to Mr. Skarga and Mr. Borisenko letters from the purchasing companies formally offering terms for the November SLB arrangements. They were similar in form to the offers for the July SLB arrangements, and again, for similar reasons, I reject the claimants' submission that their wording was designed to mislead about the discussions that led to the offers. Documents recording board resolutions of Fiona to authorise the November SLB arrangements dated 18 November 2002 were signed by Mr. Skarga, Mr. Borisenko, Mr. Lipka and Mr. Terekhin. The documents formally recording the SLB arrangements themselves were dated 28 November 2002 and the documents recording the funding arrangements were dated on 3 December 2002.

763. I have rejected Mr. Borisenko's evidence that he was not involved in discussions that led to the "Fili" transaction. I also reject his evidence that he was little involved in discussions before later transactions, and learned of them only shortly before they were concluded. He knew about them well before the meetings of the Executive Board at which they were approved. His contrary evidence in his witness statement of 11 February 2009 was untrue. In it he said of the July SLB arrangements that, apart from his discussions with Mr. Privalov in June about funding rates, he was not involved in any negotiations, and that he believed that he learned about the terms of these transactions "shortly before", meaning, as he said in cross-examination, a day or two before, the Executive Board Meeting on 30 July 2002 at which Mr. Skarga asked him to report on them. In fact he went to St Petersburg on 17 July 2002 to sign the relevant agreements, and accepted in cross-examination that he knew the terms of the transactions before he went. He had also appointed Mr. Lipka as his proxy to sign the Fiona board minute of 12 July 2002.

764. As for the November SLB arrangements, Mr. Borisenko said that he was not informed that they were planned and not involved in negotiating them However, on 27 September 2002 Mr. Privalov sent Mr. Borisenko by e-mail a spreadsheet setting out proposed terms, including a calculation of the Investors' return. I shall refer to this later, but I reject as incredible his evidence that he thought that he was sent the spreadsheet in error and deleted it unread from his computer because he thought the information was not intended for him. The spreadsheet shows that he was aware that the November SLB arrangements were under discussion.

765. There is no credible evidence that any of the other members of the Executive Board expressed any disquiet or reservations about any of the SLB transactions or the cost of the funding that they provided. The Board approved all the transactions unanimously, and I cannot accept that they did so without understanding them or considering them properly. Admittedly the arrangements for the "Fili" and the July SLB arrangements were concluded before the Executive Board meetings that considered them, but that is no reason that the executives should not have voiced any concerns that they had. Mr. Terekhin and Mr. Ambrosov did not give evidence, but Mr. Terekhin, as it appeared from Mr. Lipka's evidence, would not have supported proposals uncritically

and Mr. Ambrosov was very experienced in shipping matters. Mr. Sharikov was familiar with SLB finance, and understood that it was more expensive than mortgage secured funding, but he saw advantage in raising funding to the full value of the vessels rather than a smaller amount by way of borrowing secured against them. As he put it, "the interest rate is different but it's understood". Mr. Lipka, Mr. Sharikov and Mr. Khlunyev all said that they did not know who the Investors were, and I accept that evidence. However, I find that they did properly understand the nature of the arrangements and concurred in the decisions that Sovcomflot should raise funds in this way.

766. I should mention that, when Unicom were converting accounts and schedules prepared under International Financial Reporting Standards ("IFRS") to US Generally Accepted Accounting Principles ("US GAAP"), Mr. Orphanos noticed with some concern that under the first four transactions the funding was very expensive compared with the Group's other borrowings in 2002, which was by way of bank loans secured on vessels in the fleet and Fiona's guarantees, but he did not voice his concern to Mr. Skarga, Mr. Borisenko, Mr. Dobrynin or any other senior executive at Sovcomflot.

767. In about April 2002, at about the time that BCV offered to provide finance for the first SLB transaction, Mr. Privalov began to prepare for Mr. Nikitin spreadsheets in a form designed to show the cashflow and net return for the Investors. He said that, using information from Mr. Gale about the market rates for SLBs and with some assistance from Mr. Caze, he calculated the return that the Investors might expect.

768. On 13 September 2002 Mr. Privalov sent to Mr. Nikitin an e-mail that read, "As discussed, please find attached investors' return figures for another four Arbat vessels. [Sovcomflot] cost of finance will be 9.87% (without taking into account address com of 1.25%)". A spreadsheet headed "Arbat Cashflow XLS" was attached to the e-mail: the calculations were similar in format to other spreadsheets that Mr. Privalov had previously from time to time provided to Mr. Nikitin, and they contemplated a SLB over five years. First, there was a calculation of the excess of income from freight and hire over the expenses of operating the vessels and of servicing and repaying the finance. It was a curious calculation in that it brought into account the operating costs that would be incurred by the Sovcomflot companies and the finance costs that would be incurred by the Investors. Secondly, there was a calculation of the income to the Investors by way of hire under the bareboat charters and the return that they would earn net of the financing costs (or "loan's service"). The income was described as "Investors return (incl 1.25% com and reduced bank's fees plus other fees)". It showed an average return over the five years of 14.61%, and it was calculated that in the first year the investment return would be $674,819 or 11.25%.

769. On 27 September 2002 Mr. Privalov sent to Mr. Borisenko the e-mail to which I have referred, with a copy of the same spreadsheet. The e-mail had no covering message. Mr. Privalov said that he sent it to Mr. Borisenko by mistake. Mr. Borisenko said that in September 2002 (as he put it, in "the very late days of September") Mr. Privalov sent him a spreadsheet which he realised set out the terms of financing arranged by the Investors and which he deleted because he realised that he was been sent it by mistake. I cannot accept that explanation. Mr. Privalov was keeping Mr. Borisenko informed about his calculations of what the Investors were to earn, but I cannot tell why he was doing so.

770. Mr. Privalov provided to Mr. Nikitin further spreadsheets in October and November 2002. He was continuing to assist Mr. Nikitin to complete the transactions and was working closely with him. On 1 October 2002 he sent two spreadsheets with the headings "FiliCashflowactualxls" and "PPSCashflowactualxls", which were said in the e-mail to be "revised actuals" in respect of the "Fili" and the second group of vessels ("PPS" connoting the "Presnya", the "Poliyanka" and the "Sokolniki"). Mr. Privalov said that Mr. Nikitin had asked for them, and they showed differences from previous spreadsheets prepared by him for Mr. Nikitin to calculate the anticipated returns from those arrangements. They were based upon commission of 1%, not 1.25%, and the returns for the first years were $828,016 for the "Fili" spreadsheet and $856,828 for the other three vessels. On 2 October 2002 Mr. Privalov sent a further e-mail to Mr. Nikitin, which was headed "sale and c[harter] back" and read, "Here is revised Arbat type figures". There was attached to it a spreadsheet showing the return on investment for the four vessels that were the subject of the November SLB arrangements on the basis of a lease of three years. On 11 November 2002 Mr. Privalov sent a further spreadsheet under cover of an e-mail headed "revised spreadsheet" and reading "as discussed". On 14 November 2002 he sent a further spreadsheets under cover of another e-mail headed "revised spreadsheet" and reading, "As discussed yesterday, here is the revised spreadsheet with $200,000 annual repayments of investors' capital". Mr. Privalov said, and I accept, that the spreadsheets of 11 November and 14 November 2002 were also produced at the request of Mr. Nikitin.

771. According to Mr. Privalov, at some earlier date he had discussed the SLB arrangements at a meeting with Mr. Nikitin and Mr. Skarga at Mr. Nikitin's dacha outside St Petersburg. He presented to them his calculations about the rate of return that might be earned, and about cashflows. Mr. Skarga instructed him to proceed with the "Fili" SLB transaction on terms that included 1% address commission for the Investors and to put together a proposal that Mr. Nikitin might present to Sovcomflot. Mr. Privalov agreed that he would approach Mr. Caze to have BCV provide finance. According to Mr. Privalov, Mr. Nikitin and Mr. Skarga also discussed entering into a second group of arrangements and they decided that the terms of them should be the same of those for the "Fili". Mr. Nikitin promised that he would reward Mr. Privalov for his assistance, and would pay him an "arrangement fee" of something like $145,000 for the "Fili" transaction and a similar amount for each subsequent transaction. Mr. Privalov said that Mr. Skarga proposed that the fee should be paid in two instalments, but, as I understood Mr. Privalov's evidence, he said that in the end Mr. Nikitin decided that the whole fee should be paid when the transaction was concluded.

772. Mr. Privalov's evidence about these discussions was denied by Mr. Nikitin and Mr. Skarga. It is not corroborated, and his accounts were inconsistent and contradictory. In his witness statement of 12 February 2009, Mr. Privalov had said that the discussions took place at two meetings: the first was at the dacha before Mr. Skarga had instructed him to proceed with the "Fili" transaction, and there was a further meeting in June or early July, which Mr. Privalov recalled was either in London or in St Petersburg, at which the July SLB arrangements were discussed. In a further witness statement dated 26 October 2009 Mr. Privalov said that Mr. Nikitin told him at the meeting in June or early July that he would pay him $145,000 for the "Fili" transaction and a similar amount for the further transactions. His oral evidence was

markedly different: he said that there had only been one meeting, that it had been at the dacha, and that all three groups of transactions were discussed. Whereas in his witness statement, he had said that the first "arrangement fee" of $145,000 was to be paid "at the end of the year", he denied this in cross-examination, and his evidence about both the amount that he was to be paid and when he was to be paid became confused and incoherent.

773. I reject both Mr. Privalov's written account and his oral account as untruthful. I do not accept that Mr. Privalov ever went to Mr. Nikitin's dacha or that Mr. Skarga was present at any discussion about Mr. Privalov receiving payment from Mr. Nikitin in relation to the SLB transactions.

The claimants' allegations about the SLB arrangements scheme

774. The parties called expert evidence about ship finance. Mr. Jonathan Hill gave evidence for the claimants and Mr. Raymond Bailey was called by Mr. Nikitin and the Standard Maritime defendants. Mr. Hill is an accountant and a director of Tufton Oceanic (Middle East) Ltd., who are based in Dubai, and he has been employed by the Tufton Oceanic group since 1989. The group provide financial advice to the shipping industry and arrange finance of different kinds, including leasing. Mr. Bailey is the managing director of Theisen Securities Ltd., a private company owned by him and his family, which for some 20 years has specialised in giving financial advice and arranging debt for the shipping industry. Both were well qualified to give expert evidence about how Sovcomflot might have arranged finance through SLBs or otherwise, and both were honestly seeking to assist the court. However, the issues about this part of the case so developed that their evidence was of relatively marginal importance.

775. The claimants' case about the defendants' liability in respect of the SLB arrangements scheme had been pleaded on the basis that SLB funding was by way of mezzanine funding, and the SLB arrangements made by Sovcomflot cost them much more than the cost of mezzanine debt available on the market. That case was not pursued. Their case was further defined in exchanges before the parties called their expert witnesses about ship finance. The exchanges were prompted because Mr. Nikitin and the Standard Maritime defendants had served a supplementary report of Mr. Bailey shortly before these expert witnesses were called, and Mr. Popplewell explained that he was not in a position to cross-examine about it. It became apparent in the exchanges that, in view of the case that the claimants were pursuing, they did not need to cross-examine Mr. Bailey about the supplementary report upon any issue about liability, and the expert witnesses gave evidence about shipping finance accordingly. In light of the exchanges, I said that, whatever conclusion I reached on liability in respect of the SLB arrangements scheme, I should not determine any question about the quantum of damages in this judgment and without giving the claimants an opportunity to respond to Mr. Bailey's report.

776. The claimants' case, as Mr. Popplewell explained it, is that Mr. Skarga, to Mr. Nikitin's knowledge, acted dishonestly in arranging for Sovcomflot to enter into the SLB transactions. In support of this case the claimants said that Sovcomflot entered into the transactions when they had no particular need to raise further funding or at least they had no sufficient need to explain why they paid such expensive rates for it. The claimants also said that, even if Sovcomflot did need more funding, there was no

proper reason for Mr. Skarga to accept the terms available from the Investors without proper arms' length negotiation of the terms and without exploring whether cheaper funding was available either through a different kind of arrangement or through better terms for SLB finance. The inference, the claimants said, is that Mr. Skarga was acting to benefit Mr. Nikitin, and that he (as well as Mr. Privalov and Mr. Borisenko) "stood personally to benefit". This argument depends upon Mr. Skarga's contemporaneous assessment of Sovcomflot's funding needs and his understanding about whether cheaper funding was or might be available elsewhere, and, since other members of the Executive Board supported the transactions, whether they did so for different reasons from Mr. Skarga. An objective assessment of Sovcomflot's funding needs, or alternative sources of finance available to them and their cost, is not directly relevant.

777. Mr. Berry rightly observed that this case is different from and narrower than the pleaded allegation. It represents a shift from an allegation that the SLB transactions were so "uncommercial" that they are explicable only on the basis that Mr. Skarga stood personally to gain from bribes or otherwise. Essentially, as I see it, the allegations about the SLB arrangements scheme, and, more particularly, the question whether the evidence supports the claimants' allegations that Mr. Skarga was acting dishonestly in collusion with Mr. Nikitin, raise these issues: (i) Did Mr. Skarga genuinely believe that Sovcomflot needed the funding? (ii) Did Mr. Skarga genuinely believe that it was in Sovcomflot's interests to raise the funding through SLB arrangements? (iii) If Mr. Skarga had been honest, would Sovcomflot have arranged cheaper SLB funding than that provided by the Investors? And (iv) Does the way in which the SLB arrangements were made indicate that Mr. Skarga was dishonestly acting in the interests of the Investors or against Sovcomflot's interests?

Sovcomflot's need for funding.

778. According to Mr. Skarga, when he became Director-General, Sovcomflot's financial position was very unhealthy, and the SLB arrangements were concluded because their financial problems continued and there was a pressing need to improve the group's liquidity. The claimants disputed the extent of Sovcomflot's financial difficulties and submitted that Mr. Skarga exaggerated them, particularly criticising him for describing Sovcomflot as a company "close to collapse". There is some force in this criticism: Sovcomflot did not face an immediate short-term cashflow crisis during the early months of 2002. The annual report of the Sovcomflot group for the year to 31 December 2001, which Mr. Skarga signed in about March 2002, reported consolidated group profits of $111.6 million, described the year as quite successful, and stated that Sovcomflot had "the necessary financial … resources for successful performance of tasks before the … Company". At a meeting of the General Board on 25 December 2001, the General Board resolved to pay a bonus to employees in recognition of "the positive results of activities and Sovcomflot's steady financial position". The Action Plan presented to the General Board on 19 April 2002 did not indicate a crisis or immediate need for funding. Sovcomflot's forecasts indicated that they would have sufficient funding if they abandoned the plan to settle the Megaslot debt.

779. However, Sovcomflot undoubtedly faced major demands upon their finances in 2002, given their plan to repay the outstanding part of the Megaslot debt and in view of the fleet renewal programme. Part of the Megaslot debt, as I have explained, had been

discharged in 2001, and Sovcomflot planned to discharge the remainder in 2002. At the end of 2001 the principal debt exceeded $330 million. Sovcomflot's accounts for the year ending 31 December 2001 recorded that, "The Group's Directors assume that "Megaslot" will repay its debt to the Ministry of Finance … during 2002". At a meeting on 19 April 2002 the General Board approved an "action plan" relating to "Implementation of tasks in the key spheres of activity…", and it included, as I interpret it, discharging the debt. In August 2002 Sovcomflot went about settling the Megaslot debt, which was then more than $360 million, and by 27 August 2002 they had paid at least $150 million to VEB. At a meeting of the Executive Board on 9 September 2002 the settlement was approved. Sovcomflot were not legally obliged to discharge the debt in 2002 or for some years, but they had cogent commercial reasons to rid themselves of the debt at a discount of 50%, and, as I conclude, the decision to do so reflected the settled policy approved by the General Board and was taken by the Executive Board as a whole. Although it had been expected in June 2002 that the debt could be discharged for $160 million, in fact $180 million was needed.

780. In 2001 Sovcomflot had assumed major obligations under the fleet renewal programme. Mr. Bailey calculated that the total contract value of ships ordered by the end of 2001 was $681.5 million (excluding "SCF Altai", one of the Athenian vessels, which had been delivered in December 2001, and the "Tucknov Bridge", a tanker ordered from the Admiralty shipyard in Russia, which appears despite a contract date of 1 November 2001 to have been formally ordered in 2002). Sovcomflot could expect to fund up to 70% of the purchase prices through secured borrowings, and to have to find the balance of 30% from cash resources or from loans secured on other vessels.

781. The position later in 2002 about financing the programme was set out in a briefing note prepared for a meeting of the General Board on 3 September 2002. It reported that 20 vessels had been acquired for a total cost of $856.8 million. Sovcomflot had arranged bank loans of some $552.2 million, and some $225.1 million had been paid from Sovcomflot's funds. As for the balance of $77.5 million, it was anticipated that there would be further bank lending of $38.5 million and that Sovcomflot would need some $39 million from their own resources.

782. On any view, in the second half of 2001 and in 2002 Sovcomflot needed to raise substantial additional finance. Mr. Popplewell pointed out that Sovcomflot's annual report for 2001 shows that at 31 December 2001 the group had $164,414,000 as money by way of "working capital". However, in the event $180 million was needed to settle the Megaslot debt, and, given the policy to do so, at the end of 2001 they were not in a position to place further orders for new vessels. This was the conclusion of Mr. Bailey, and I accept his evidence. This placed a restraint upon plans for expansion: for example, Sovcomflot were to hold discussions with Sakhalin Energy about ordering a gas tanker, but this would require more funding.

783. Sovcomflot also had reduced income from the fleet. There is room for debate about how much less they were earning, but the general picture, which is sufficient for present purposes, is illustrated by Mr. Novikov's forecast on 6 December 2001 that the operating profit in 2002 would be little more than half of the corresponding figure in 2001. In the first quarter of 2002 the operating profit was much less than that for the same quarter in 2001, and this pattern continued during the year. The minutes of the meeting of the General Board on 3 September 2002 record that receipts were only

$154.4 million in the first half of 2002 whereas they had been $256.9 million in the first 6 months of 2001. The General Board instructed Mr. Skarga to draw up measures to raise "the efficiency of the fleet's operations against the background of falling rates in the world freight market …".

784. The Executive Board had recognised in 2001 that they needed to keep a close watch on the financial position. At a meeting on 9 July 2001, Mr. Dobrynin had presented a forecast of Sovcomflot's capital expenditure to the end of 2002, with details of the sources and application of funds. As at 1 July 2001 Sovcomflot had $88 million by way of unallocated funds, after taking into account that $105 million had been allocated to repay part of the Megaslot debt in 2001. Some $354 million was required before the end of 2002 for the planned programme of newbuilding purchases, and a further $7 million for new offices for Unicom in Cyprus. Mr. Dobrynin reported that Sovcomflot had sufficient funds on the basis that foreign commercial banks would advance about 70% of the price of newbuildings and that seven OBO ships would be sold. The Executive Board decided to adopt a reporting procedure to provide monthly accounts for circulation to the Board. (In fact according to Mr. Dobrynin's evidence, which I accept, the reports were not circulated to the whole Board, but were sent only to Mr. Borisenko.) Further, Mr. Shatov, then the Head of the Fleet Operations Department, was instructed to present the Executive Board with cash flow forecasts for the group to the period until 2003. I accept the submission on behalf of Mr. Skarga that this reflects that the Executive Board appreciated that the group's commitments were placing pressure upon their finances.

785. I conclude that Mr. Skarga believed in 2002 that Sovcomflot needed further funds and that it was in Sovcomflot's best interests to raise them even if they were relatively expensive. I also conclude, if it be relevant, that Mr. Skarga had reasonable grounds to think that the funds were required because of Sovcomflot's fleet renewal programme and in order to fulfil their established policy to settle the Megaslot debt. This view was shared by the other members of the Executive Board, and this is why they supported the SLB transactions. This is confirmed by the letter of Moore Stephens dated 28 July 2005 and their report of what they were told when conducting their audit in 2002 by Mr. Borisenko and, as Mr. Borisenko said in evidence and I accept, by other members of the Executive Board.

The decisions to raise funds by SLB arrangements

786. I come to the evidence about whether Sovcomflot could have raised the necessary finance more cheaply than by SLB arrangements. There was a difference between the expert witnesses as to how much funding was in fact raised through the SLBs. The claimants' pleaded case is that they raised additional capital of $52,200,333. That case was not supported by either Mr. Orphanos or Mr. Hill by the time that they gave evidence. They said that the additional capital was $53.6 million, comprising $30.4 million raised from the "Fili" transaction and the July SLB arrangements and $23.2 million raised from the November SLB arrangements. Mr. Bailey's evidence was that the total additional finance was $62.2 million, comprising $30.5 million from the "Fili" transaction and the July SLB arrangements and $31.7 million from the November SLB arrangements. Thus, the difference is almost entirely attributable to the treatment of the funds raised from the November SLB arrangements, and that in turn depends upon the treatment of the repayment of loans that were secured by charges over the four vessels.

787. The "Arbat" and the "Izmaylovo" were subject to first charges to NIB Capital Bank NV ("NIB") (to secure an advance referred to as loan L795) and second charges to ING Bank ("ING") (by way of security for loan L860). The "Nagatino" was subject to a first charge to Nordea, formerly known as CBK, (by way of security for loan L820, together with charges over the "Kapitan Tasman" and the "Sokol 8") and a second charge to ING (by way of further security for loan L860). The "Ostankino" was subject to a first charge to Nordea (by way of security, together with charges over the "Tromso Trust" and the "Nikolay Malakhov", for loan L855).

788. Sovcomflot made a new financing arrangement with Nordea (known as loan L597) in order to release the vessels from the charges over them. This involved both refinancing the loans with ING (loan L860, secured by the second charges over the "Arbat", the "Izmaylovo" and the "Nagatino") and with Nordea (loan L855, secured by the first charge over the "Ostankino"), and also early repayment of the loan from Nordea which was secured on the "Nagatino", the "Kapitan Tasman" and the "Sokol 8" (loan L820). This is apparent from the request sent on 16 October 2002 by Mr. Privalov to Mr. Skarga and Mr. Borisenko for authorisation to sign the new terms proposed by Nordea; this document also shows that the early repayment of this loan was integral to the November SLB arrangements. Mr. Privalov stated that the "Total cash to be generated" from the November SLB arrangements was $33.44 million after the various prepayments of loans were brought into account. Mr. Dobrynin confirmed in the evidence that Mr. Privalov's request reflects how the financing position was regarded in Sovcomflot at the time, and that he so presented it to the meeting of the Executive Board on 31 October 2002 when he put forward the proposal that they approve the re-financing of the loans, which was necessary to allow the November SLB arrangements to go ahead. Mr. Borisenko was evasive when cross-examined about this meeting, but, if he intended to dispute this, I reject his evidence.

789. Nordea's proposal was accepted and the advance made on 3 December 2002, when funds were paid under the November SLB arrangements. The security provided to Nordea for the new advance (loan L597) was to be over five vessels, the "Kapitan Vaga", the "Mekhanik Kurako", the "Tromso Fidelity", the "Tromso Trust" and the "Nikolay Malakhov". The "Kapitan Vaga", the "Mekhanik Kurako" and the "Tromso Fidelity" were then financed under a separate loan from ING (loan L529) and ING required this to be repaid as a condition of releasing the vessels. The "Tromso Trust" and the "Nikolay Malakhov" were available to secure the new advance (loan L597) because Sovcomflot repaid the loan that they had secured (loan L855).

790. In calculating that Sovcomflot secured additional finance of $23.2 million Mr. Hill brought into account against the receipt for the four vessels of $62,330,000 (the sale prices less address commissions and bareboat charter hire prepayments) the payment of amounts which he regarded as secured upon the four vessels, namely: (i) $13.2 million to redeem the loan by NIB; (ii) $6.2 million to repay the part of the loan from Nordea that was secured on the "Nagatino"; (iii) $10.6 million to repay the part of the loan from Nordea that was secured on the "Ostankino"; and (iv) $4.8 million to repay part of the loan from ING that was secured by the second charges over the "Arbat", the "Izmaylovo" and the "Nagatino". He also brought into account the payment of $4.3 million to secure the release by Nordea of the charges over the "Kapitan Tasman" and the "Sokol 8", so that those two vessels could provide replacement

security for ING and so allow the release of the second charges over the "Arbat", the "Izmaylovo" and the "Nagatino". He did not otherwise bring into account the refinancing arrangements with Nordea because, while he recognised that they were made at the same time as the November SLB arrangements, he considered that the proper way to identify the capital raised by the transactions is to identify the amounts required to release the loans of the four vessels and otherwise to regard the refinancing operations as separate arrangements.

791. I am unable to accept this approach. The purpose is to identify what effect the SLB arrangements in fact had on Sovcomflot's finances so as to assess whether they could have raised similar sums by other means and if so what they would have cost. There is no evidence, and no reason to suppose, that Nordea would have entered into the new arrangements with Sovcomflot otherwise than in the context of the November SLB transactions. I therefore agree with Mr. Bailey that, in order to assess how the transactions affected Sovcomflot's finances and in particular the capital available to them, the right approach is to bring fully into account the implications of the new arrangements with Nordea and ING. More specifically, Mr. Bailey was criticised by the claimants because he brought into account the prepayment of the ING loan (loan L529), and it is said that he did so "unnecessarily". To my mind, this is necessary in order to take full account of the impact of the arrangements.

792. The claimants contended that Mr. Hill's approach is to be preferred to that of Mr. Bailey because that is how Mr. Orphanos calculated the capital raised and Moore Stephens used a similar method in allocating loan security in the group's consolidated accounts. Further, it is pointed out that the Sovcomflot's Executive Board gave approval on 31 October 2002 for the new Nordea loan on the basis that it would itself generate funds of some $8 million, and did not regard it as part and parcel of the November SLB arrangements. To my mind, these points do not meet Mr. Bailey's argument.

793. In any case, the important question is not how an expert in shipping finance or an accountant would measure how much was raised by the transactions. At the time, as I conclude, the executives of Sovcomflot, including Mr. Skarga, were proceeding on the basis that, having raised some $30 million in the "Fili" transaction and the July SLB arrangements, they were raising some $33 million in the November SLB arrangements. In considering whether there is evidence of corruption on Mr. Skarga's part, the question is whether he knew or believed that Sovcomflot could raise a comparable amount more cheaply by other means.

794. I should refer to three alternative sources of funds that have been suggested might have been available to Sovcomflot. First, ship sales: Mr. Skarga's evidence was that there was good reason that Sovcomflot should avoid selling vessels in 2002. It would have been politically unpopular if sales had led to Russian crews being laid off, and it was not a good time to sell ships. The tanker market was depressed in late 2001 and for most of 2002 with regard to sale prices for second hand vessels, as well as chartering rates. (I have already referred to the views expressed by Dr Stopford at Sovcomflot's banking conference in February 2002.) Mr. Skarga, in my view, had good reason to consider that Sovcomflot should not look to ship sales to raise funds. Mr. Borisenko too was reluctant to do so because, as he put it, the volume of the fleet was of paramount importance. In fact, Sovcomflot did not rule out vessel sales altogether. In early 2002, on Mr. Privalov's instructions, Clarkson made enquiries

about selling "a couple" of Arbat vessels. In about May 2002 Sovcomflot were discussing selling to Genmar two Tromso vessels, and Genmar inspected them in early June 2002.

795. Secondly, unsecured finance: in September 2002, when Sovcomflot learned that they would have to pay not $160 million but $180 million in order to settle the Megaslot debt, their immediate need for cash was alleviated by an unsecured facility provided by RCB Cyprus to Megaslot for $30 million for 12 months at an interest rate of 8.5%. It was obtained with the assistance of Mr. Andrey Kostin, who was the Chairman of VEB, the owner of RCB Cyprus, and a member of the General Board of Sovcomflot. The loan was approved by the Executive Board on 9 September 2002 and the funds were paid on 20 September 2002. Its purpose was to fund the settlement of the Megaslot debt and it could be used only for that purpose. The facility was obtained for a specific purpose in special circumstances. I do not consider that it supports a case that Sovcomflot could have obtained further unsecured facilities in 2002, still less that they could have done so at an interest rate of 8.5%, or that Mr. Skarga should have had Sovcomflot make further efforts to do so.

796. Thirdly, could and should Sovcomflot have raised funds by refinancing the fleet and increasing borrowings against the security of the fleet? There is a difference between Mr. Hill and Mr. Bailey about whether Sovcomflot could have obtained funding of this kind. I shall deal with the question how much banks and other financial institutions might have lent as briefly as I can because I do not consider that in the end the answer to it helps to determine whether Mr. Skarga was acting honestly in relation to the SLB transactions in 2002. The answer largely depends upon whether there was enough equity in Sovcomflot's fleet to support increased borrowing in a comparable amount to that raised through the SLB transactions, and so depends upon (i) the value of the fleet, and (ii) what proportion of the value bankers or other lenders would have regarded as acceptable security. Mr. Hill concluded that Sovcomflot could have borrowed up to 70% of the fleet's value and that on this basis Sovcomflot could have raised additional finance of $92.1 million. Mr. Bailey considered that Sovcomflot could not have raised more than 65% of the value and that Mr. Hill had placed an excessive value on the fleet at the relevant time. He concluded that the maximum Sovcomflot could have raised was $41.1 million (or some $20 million less than Sovcomflot raised through the SLB transactions).

797. I prefer the opinion of Mr. Bailey, whose careful and detailed report about this I thought impressive. After a detailed assessment of what funds might have been borrowed, his opinion was encapsulated as follows:

> "I do not consider it likely that Sovcomflot's management would have undertaken the type of detailed analysis I have made in order to assess the cost of the financing alternatives open to them in 2002. However, they were aware of the different cost of debt, lease and equity capital and must have been aware of the limitations they had on raising additional secured debt funds due to the falling value of their vessels in 2001 and 2002 as well as the difficulty of raising new equity to sit side-by-side with that provided by the Russian State. In 2002 they had many new investment projects in which to invest, such as the redemption at a 50% discount of the MinFin

> loan, payments for their committed newbuilding contracts and new investments to be made in the Sakhalin crude oil and LNG transportation projects. They were also aware in 2002 of the major task ahead to raise new loans from international shipping banks to fund Sovcomflot's large, committed newbuilding program. In my opinion, a clever and resourceful ship owner, such as Sovcomflot, could have concluded that, on balance, the higher cost of SLB financing compared to bank debt was acceptable because of the limited amount of alternative bank debt available, the impracticality of accessing such additional bank debt at that time and the benefit of retaining the additional debt capacity that was available for future use, considering the good return on capital that could reasonably be expected to be obtained from the funds raised from the SLBs."

798. My main reasons for accepting Mr. Bailey's view about this are these. First, I accept his evidence that lenders would be unlikely to advance more than 65% of value of the fleet, given the age and type of Sovcomflot's vessels. Mr. Bailey seemed to me to have wider and more relevant experience about this question than Mr. Hill, and I consider it inherently probable that financiers would take as acceptable security a smaller proportion of the value of the old vessels of the Sovcomflot fleet than of newbuildings. Further, Mr. Hill attributed a value to the vessels in order to assess what security they would have provided by taking an average of the values attributed to them by Clarkson as at 31 December 2001 and as at 31 December 2002. This was done in order to assess their value at 30 June 2002, and was directed to assessing what funding could then have been raised. This is likely to have overestimated the security then available. In particular, the defendants also cogently criticised the use of values at 31 December 2002 because values increased only in December 2002 after falling for most of the year. The use of the year end valuations exaggerates the value of the fleet at earlier times in the year.

799. Moreover, Mr. Bailey explained that lenders generally rely upon lower values of vessels than those provided by owners or would have been provided by Clarkson because they assess values net of expenses that would be incurred upon sale to realise the security. Often banks advance money on the basis of an average of a valuation provided by the borrower and their own more conservative valuation. Mr. Hill agreed that historically banks had been sceptical of brokers' valuations and discounted them as Mr. Bailey described, but he considered that by the early 2000s the position had changed, and he explained the Clarkson Shipping Intelligence Network had been introduced in order to avoid inconsistency between different valuations provided to different interests or for different purposes. Mr. Hill therefore did not consider it necessary or appropriate to adjust Clarkson's valuations on this account. Mr. Bailey did not claim to have direct experience about whether the Clarksons' system would produce different values for owners and banks, but I accept his evidence that in practice owners' valuations tend to be higher than those of banks, and I prefer his evidence about this to that of Mr. Hill. In assessing what funds Sovcomflot could have raised by secured borrowing, Mr. Bailey reduced Clarkson's valuations of the vessels by 5%. He recognised, as do I, that the amount of the deduction is somewhat arbitrary, but I accept Mr. Bailey's evidence that some deduction of this order is realistic.

800. Undoubtedly SLB finance was more expensive than secured borrowing would have been if it could have been obtained. The cost of finance leases, such as SLB financing, is measured by reference to their implicit or effective interest rates. These are assessed by calculating the difference between the fixed lease payments (or lease rentals) and the total amount advanced by the lessor to the lessee (the lease principal amount), and bringing into account any finance charges other than interest (such as payments of commission and fees). The difference is taken to represent interest on the funding provided by the finance lease. Thus, under the SLB arrangements the lease principal amount was the purchase price of the vessel and the lease rentals were the daily hire charges, and so the sum of the lease rentals is the fixed daily bareboat charter rate multiplied by the number of days from the start to the end of the charter. The address commissions were brought into account as finance charges.

801. Mr. Hill calculated that the effective interest rate for the "Fili" transaction and the July arrangements was 11.84%, and that for the November arrangements it was 9.65%. Mr. Bailey calculated that the rates were lower: 11.52% for the "Fili" and the July arrangements and 9.10% for the November arrangements. The difference between their assessments is attributable to their different treatment of the address commissions. I do not need to resolve this difference. On either view, the SLB finance was markedly more expensive than what Sovcomflot would have paid for borrowing against the security of their ships. According to Mr. Orphanos' evidence, which I accept, between August 2001 and November 2002 Sovcomflot paid between 1.1% and 1.25% over three months LIBOR upon such borrowings.

802. I conclude that in 2002 Sovcomflot did not explore whether they could and should increase their secured borrowings rather than raise funds through the SLB arrangements. Mr. Skarga did not recall them doing so, and, although he suggested at one point in his cross-examination that Mr. Borisenko might have investigated the position, there is no evidence that he did so. Mr. Skarga also said in cross-examination that he thought that further borrowings would have caused Sovcomflot to be in breach of a limit on borrowing ratios, but this does not explain why the possibility was not examined. The simple fact is that none of the Executive Board or the responsible executives, such as Mr. Dobrynin, suggested at the time that Sovcomflot should increase the secured borrowing rather than enter into the SLB transactions.

803. I conclude that the executives collectively supported the SLB transactions. They were properly informed about the cost of the SLB finance and knew that it was more expensive than secured borrowings, and they had the experience to judge what was in Sovcomflot's best interests. The obvious inference, as it seems to me, is that they recognised that Sovcomflot could not raise as much by secured borrowing as by entering into the SLB arrangements, and that it was thought better not to exhaust Sovcomflot's limited lines of available credit. There is, in my judgment, no proper basis for concluding that Mr. Skarga was alone responsible for Sovcomflot's decisions to raise finance through SLBs, and I conclude that the Executive Board collectively decided to do so. Mr. Skarga shared the views of other executives against whom no corruption is alleged. His support for SLB funding other than secured borrowing is not evidence that he was corrupt or dishonest.

Could Sovcomflot have raised cheaper SLB funds elsewhere?

804. In their opening submissions, the claimants did not really allege that the cost of the SLB funding for the "Fili" transaction and the July arrangements was more expensive than other SLB funding that was available to them. They said that "From the limited information available, it appears that the first four transactions may have been at rates slightly higher than could have been achieved elsewhere". They said in respect of the November SLB arrangements that "significantly more favourable terms were available elsewhere …". This position reflects the opinion expressed by Mr. Hill in his report dated 14 May 2009. It does not reflect the claimants' pleaded case in so far as it is directed against Mr. Skarga in that it is only pleaded that he was in breach of duty with regard to the November SLB arrangements because the terms were uncompetitive and uncommercial in that the claimants could have borrowed additional capital less expensively by refinancing all or part of their fleet: paras 156.4 and 159 of the particulars of claim.

805. By January 2002 Clarkson were making market enquiries on behalf of Sovcomflot about the rates at which SLB funding was available. According to Mr. Privalov, Mr. Skarga had already spoken to him about Sovcomflot selling vessels to Mr. Nikitin and leasing them back, and the purpose of Mr. Gale investigating the market was to be able to justify what Mr. Nikitin charged. I do not regard this evidence as reliable: his answers about this in cross-examination were unconvincing. The claimants' pleaded case (at para 106A of the particulars of claim) is that "In or about March 2002" Mr. Privalov was told about Mr. Nikitin's wish to invest in Sovcomflot's shipping business, and that a SLB arrangement for the "Fili" was proposed. There is no credible evidence that, when the Sovcomflot executives first discussed SLB funding, Mr. Skarga planned that Mr. Nikitin or the Investors should provide it.

806. Clarkson reported about the cost of SLB funding in a series of e-mails sent by Mr. Gale to Mr. Privalov in January and February 2002. On 29 January 2002 Mr. Gale wrote of a market for (i) a sale of Arbat vessels for $16 million, less 2% commission, on the basis that Sovcomflot would take five years' bareboat charters of the vessels at $8,250 per day and (ii) a sale of the vessels for $16 million, less 3% commission, on the basis that Sovcomflot would take five years' charters of the vessels at $13,250 per day. On 30 January 2002 Mr. Gale wrote that Drytank, a ship-owning company, had indicated that they would pay $16 million for an Arbat vessel and lease her back to Sovcomflot for 5 years under a bareboat charter for $8,250 per day:

> "Arbat-Drytank says willing to compete with Norwegian/German indication 16 mil and [bareboat charter at $]8250, funny thing is, that there seems to be a consensus from potential buyers around this level – would be inclined to say 17.5 million at 8000 for 5 yrs which gives 10pct return basis future value of 10 million (current estimated value for 86 built) – the downside risk on residual would of course be for buyers account".

807. On 1 February 2002 Mr. Broke-Smith, who had been or was about to be appointed as the head of the second-hand desk of the Sale and Purchase Division of Clarkson, reported to Mr. Gale an indication that the Bergshav AS group were interested in a SLB arrangement for the Arbat vessels on the basis of purchasing them for $17.5 million and Sovcomflot taking bareboat charters either for 5 years at $8,975 per day or for 7 years at $8,350 per day. On 12 February 2002 Mr. Gale wrote to Mr.

Privalov that "Boeing Capital saying 17.5 v 7 yrs 8,400 bb", that is to say they were speaking of Sovcomflot selling a vessel for $17.5 million and hiring her back under a seven years' bareboat charter for $8,400 per day. On 18 February 2002 Mr. Gale received an indication that Boeing were interested in buying vessels for $17.5 million, less 1% commission, and hiring them back on a seven years' bareboat charter at $7,750 per day. On 26 February 2002 Mr. Gale wrote that Nor-Ocean were interested in providing finance under sale and bareboat chartering arrangements. They were said to prefer tonnage of a maximum age of ten years, and they were prepared to "take residual risk", that is to say they did not require the owner to re-purchase the vessel at the end of the charter period.

808. On 28 February 2002 Mr. Gale sent Mr. Privalov a summary of the "main competitive sale and charter back proposals for "Arbat" type for 5 years with no buyback options or profit sharing but buyers take all residual risk". Having set out the responses that Clarkson received, he said, "It would appear to us that still a small margin for negotiation for five years", and expressed the view that a "realistically achievable aim" would be a sale for $17 million with a bareboat charter for five years at $8,000 or $8,100 per day, and that for a seven years' bareboat charter he would expect the rate of hire to be about $500 lower.

809. It is not possible or necessary to compare exactly the effective rates of interest under these indicated terms with those earned by the Investors. Clarksons had obtained initial indications of rates, which might have been improved through negotiations. They were on the basis that the residual risk would rest with the purchaser or the financier. Mr. Hill's evidence, which I accept on this point, was that this would increase the effective rate of interest by some 1.5%. The rates reported by Mr. Gale would indicate that the effective rate of interest paid to the Investors under the "Fili" transaction and the July SLB arrangements was towards the top end of the market range, but not higher than it and certainly not significantly so.

810. Two other pieces of evidence support this view. First, Mr. Bailey gave evidence of his own experience of arranging in May or June 2002 a SLB of a tanker for another Russian owner. The effective interest rate was above 12%. Further, in June 2002 Mr. Privalov made further enquiries about the market for SLB arrangements for Arbat type vessels. On 11 June 2002 he asked DVB Bank for an indication of the rate on the basis of a sale price of $17 million and a bareboat charter of five years, and on 17 June 2002 received a response, on the basis of "some rough calculations" and subject to directors' approval, that for a sale at $16.5 million (not $17 million) and on the basis of a "hell and high water bareboat charter", the rate could be $8,650 per day. This was subject to DVB Bank having a put option to sell the vessel to the charterers at the end of the charter for $9 million and the charterers having a call option to buy her for $11 million. The effective interest rate for this arrangement was calculated by Mr. Hill to be 12.96% and by Mr. Bailey to be 12.63%.

811. Mr. Privalov wrote the words "alternative quote" on a printed copy of this e-mail exchange. On his account he obtained this indication from DVB Bank because Mr. Skarga had asked him to do so in order to "justify" the terms of the "Fili" transaction and he chose to approach DVB Bank because he "was confident that they would not provide a very competitive quote". I reject this evidence. Mr. Hill accepted that DVB (or more precisely their Norwegian-based joint venture that provided SLB financing) was a "credible" provider of SLB finance, and that there was no convincing reason to

think that their terms would predictably have been uncompetitive. Of course, as the claimants pointed out, the indication was not negotiated and the proposal was said to be based on "rough calculations", but it was higher than that paid to the Investors. It supports the conclusion that the Investors' return was not in excess of the highest market rates.

812. On 10 September 2002 Mr. John Ring of McQuilling Brokerage Partners Inc. ("McQuilling") approached Mr. Skarga by e-mail indicating Boeing Capital Corporation ("Boeing") would be interested in providing SLB financing to Sovcomflot and would be competitive in their pricing. Earlier in the year he had heard that Sovcomflot might be interested in such finance and developed contacts with Mr. Terekhin, whom he already knew, Mr. Sharikov and Mr. Skarga, and in the summer of 2002 he had met Mr. Sharikov and Mr. Skarga in New York. Mr. Skarga referred the approach in September 2002 to Mr. Terekhin and asked him to check the rates that were being offered. Mr. Ring and a Mr. John Schmidt of McQuilling had a meeting at Sovcomflot's offices on 24 September 2002 with Mr. Terekhin, Mr. Sharikov and Mr. Borisenko. (In his first witness statement dated 11 February 2009 Mr. Ring said that Mr. Skarga too was at the meeting, but his notes of the meeting do not mention Mr. Skarga being there and in a witness statement on 15 June 2009 he acknowledged that his initial recollection about that was likely to be wrong. Mr. Borisenko in his first statement dated 11 February 2009 made the same error.) Mr. Ring indicated at the meeting that he had three clients interested in providing SLB finance, Boeing Capital, GECC and Transamerica, but he was not in a position to put forward a firm offer. He proposed rates at 200 to 300 basis points above US Treasuries range, which was then the equivalent of interest rates of approximately 5.5% to 6.5%. Mr. Ring told me that he would not himself have been able to calculate the effective interest rate under a SLB transaction.

813. The terms that Mr. Ring indicated were available would have provided finance at a lower effective interest rate than those that had been agreed for the "Fili" transaction and the July SLB arrangements, and lower than the rate at which Sovcomflot were to obtain finance through the November arrangements. Nevertheless, Sovcomflot did not explore further whether they might enter into SLB transactions through Mr. Ring. Mr. Skarga said that this was because he asked Mr. Terekhin to consider Mr. Ring's approach and Mr. Terekhin was apparently not interested by it. The claimants submitted that this is incredible, and that, if Mr. Skarga had been concerned to find the best terms available or to compare the terms that Mr. Nikitin was providing with the market, he would have made himself aware of what Mr. Ring had said. I accept Mr. Skarga's evidence about this. It is entirely understandable that the Chief Executive Officer should delegate a matter of this kind. Mr. Terekhin was an experienced member of the Executive Board. It was for him and Mr. Borisenko, who had met Mr. Ring, to pursue anything that they judged worth further consideration. I cannot tell whether, had Mr. Ring's indications been pursued, Sovcomflot would have obtained SLB funding more cheaply than that provided by the Investors, but it is unrealistic to criticise Mr. Skarga for delegating consideration of what was, after all, simply an unsolicited approach from a broker with whom Sovcomflot had not had previous dealings. I do not consider that his response to Mr. Ring's approach provides any evidence of dishonesty.

814. Both Mr. Hill and Mr. Bailey recognised that it is difficult to identify a "market rate" for SLB transactions because they are individually tailored to the specific circumstances of the borrower. The transactions earned the Investors a good return over the period of some two years before they were terminated: the precise amount is controversial but is calculated by the defendants' expert accountant, Mr. Andrew Grantham, to be $9.7 million. The only risk that the Investors bore for this return was that the chartering companies and Fiona as guarantor might not meet their obligations. There is, however, no evidence that persuades me that the SLB funding provided by the Investors was more expensive than comparable funding that might have been available to Sovcomflot from other sources.

815. Mr. Skarga was largely responsible for the decision that Sovcomflot should approach Mr. Nikitin in order to obtain SLB finance, and, as I have said, he conducted the discussions himself. He did not approach anyone else for funding of this kind. According to Mr. Skarga, Sovcomflot did not enter into discussions with others because it appeared that the terms that they might offer by way of the sale price, the charter rate and the term of the charter would be less attractive than Sovcomflot "ideally were looking for". He saw advantage in dealing with Mr. Nikitin because this avoided brokerage fees, which might, he understood, have amounted to 2% of the transaction value. In his witness statement dated 13 February 2009 Mr. Skarga also said that Sovcomflot did not wish to deal with other companies who might have provided funding (i) because "during our discussions" with them it became apparent that they would require due diligence surveys of the vessels, and the price that Sovcomflot would receive would then have been reduced because of their condition, and (ii) because other companies would have required a guarantee from Fiona or Sovcomflot, which would in turn have led to due diligence investigation of Sovcomflot and revealed their weak finances. In cross-examination, Mr. Skarga accepted that in fact Sovcomflot had no discussions with other potential financiers: his witness statement referred, he said, to what he understood from Mr. Borisenko and Mr. Terekhin would have been required by other lenders.

816. None of these explanations appears to me to provide a compelling reason that Sovcomflot did not pursue further the indications obtained by Mr. Gale, and, on the face of it, they indicated that others might offer comparable terms to those to which the Investors agreed. After all, Sovcomflot did not even explore with other financiers what their requirements might in fact be. Mr. Gale's reports did not indicate that vessels surveys or due diligence exercises would be required. BCV apparently did not require surveys when providing finance to the Investors. There appears to be no obvious or convincing reason that Sovcomflot sought SLB funding only from the Investors and did not explore what terms might be available from others.

817. This does not in itself mean that Mr. Skarga did not consider it in the best interest of Sovcomflot to deal with the Investors. He might have genuinely considered that there were potential advantages for Sovcomflot in dealing with those whom they knew: for example, the first transaction was the easier to arrange because the "Fili" was already chartered to PNP. This is, however, to my mind, a consideration to be weighed when deciding on the whole of the evidence whether the claimants have established their allegations of dishonesty against Mr. Skarga and Mr. Nikitin.

818. When Mr. Nikitin and the other Investors expressed interest in Mr. Skarga's approach, Mr. Skarga instructed Mr. Privalov to assist to find finance for them. He did not consider this improper, as he explained, because he thought it in Sovcomflot's interest that the Investors should raise the finance that they needed so that the transaction might proceed. He also said that he knew nothing of Mr. Nikitin paying Mr. Privalov for his help, but that, if he had known about this, it would not have troubled him or Sovcomflot. They would have turned a blind eye to it because, as Mr. Skarga explained, Russians working abroad often earn extra income as well as their normal remuneration. This underlines that Sovcomflot were not dealing at arms' length with the Investors. Had they been, the Investors would not have wished Mr. Privalov to know the terms upon which they were obtaining finance. Whether or not these terms were also known to Mr. Skarga and Mr. Borisenko, they were not made known to other members of the Executive Board. I reject Mr. Skarga's evidence that he discussed Mr. Privalov's role with other directors. Indeed, he eventually agreed in cross-examination that he could not recall doing so.

819. I therefore conclude with regard to the SLB arrangements scheme that Mr. Skarga and other executives of Sovcomflot genuinely and honestly considered that Sovcomflot needed further funding in 2002 and that it was in Sovcomflot's interests to raise it by entering into SLB arrangements. The claimants have not shown the effective rate of interest paid to the Investors was above the market rates for similar comparable finance that might have been available elsewhere. I have already observed that the effective rate of interest that Sovcomflot paid was stated in Sovcomflot's accounts and known to the members of the General Board, who did not object to or question the arrangements. Mr. Skarga approached the Investors to provide finance without exploring whether better terms for SLB finance might have been obtained from other sources, and this was because of Sovcomflot's and in particular Mr. Skarga's close relationship with Mr. Nikitin. I shall consider later whether this helps the claimants to show that Mr. Skarga was dishonest in relation to these transactions and more generally.

Who were the "Investors"?

820. I have referred to the participation of "Investors" in the SLBs. They included Mr. Katkov and Mr. Malov as well as Mr. Nikitin. The transactions in relation to the "Fili", the "Socoseas" the "Presnya", the "Ostankino" and the "Arbat" were financed by Meino, and, as I conclude, before August 2003 Meino were owned by Mr. Katkov and Mr. Malov, as well as Mr. Nikitin. The record of resolutions of Meino and Kosta dated 21 November 2002, to which I have referred, identified the purchases made in the "Fili" transaction and the July SLB arrangements, and recorded an agreement by the owners and directors of Meino and Kosta to "allocate ultimate ownership of the [companies owning the four vessels] in proportion to shareholders' funding that Meino's shareholders had provided to [Meino] and to Kosta", and that entitlement to repayment of subordinated loans should be allocated correspondingly. It then recorded resolutions that the "Fili" and associated entitlements relating to the "Fili" should be owned in equal shares by Mr. Malov and Mr. Katkov; that the "Presnya" and associated entitlements relating to the "Presnya" should be owned wholly by Mr. Nikitin; that the "Poliyanka" and associated entitlements relating to the "Poliyanka" should be owned wholly "to the order of [Milmont]"; and that the

"Sokolniki" and associated entitlements relating to the "Sokolniki" should be owned as to 20% by Mr. Malov, as to 20% by Mr. Katkov, as to 40% by Mr. Nikitin and as to 20% "to the order of" Milmont.

821. On any view this is a strange document, and I do not understand its purpose. Mr. Nikitin said, and I accept, that it was drafted by Mr. Wettern. Mr. Nikitin also described the document as "inaccurate" and said that, despite the large sums involved in these investments, he did not examine the distribution of shares that it recorded with care because the participants had "very friendly and informal relations". He denied knowing why the ownership of Plutorex was said to be "to the order of" Milmont". As for the shares recorded about the "Sokolniki", he said that the interests reflected that, although Mr. Smirnov had indicated that he was not interested in participating in the investment, Mr. Nikitin decided again to invite him to do so, and a 20% interest in the "Sokolniki" transaction was set aside for him. However, Mr. Smirnov again declined the proposal.

822. Mr. Nikitin's evidence that Mr. Smirnov had indicated that he might be interested in taking a small share in these investments is not corroborated, and I reject as incredible the account that this share of 20% was allocated to him despite him having, as Mr. Skarga put it, "made it pretty clear early on that he was not interested". In any case, this would not explain the curious drafting of this document.

823. The position is more mysterious because Mr. Nikitin and Mr. Privalov both give evidence that they had some discussion about this 20% share in the "Sokolniki" transaction. Mr. Nikitin said that he asked Mr. Privalov if he knew of anyone interested in taking a share in one of the SLB transactions, and Mr. Privalov reverted with the suggestion that Getwire might take it, producing a draft agreement for this purpose. When Mr. Nikitin required to know who was behind Getwire and Mr. Privalov acknowledged his interest, Mr. Nikitin said that he did not consider it appropriate that he should have an interest. Mr. Privalov, on the other hand, gave evidence that Mr. Nikitin approached him with a proposal that the 20% of the "Sokolniki" transaction might be invested through Getwire and later produced a draft agreement, albeit for an investment by Getwire of only $500,000. In the event, no such arrangement was made. Both accounts seem to me to be improbable. I cannot discern from the evidence how or between whom Mr. Nikitin intended the interest in the investment to be shared.

824. I cannot accept that Mr. Nikitin's evidence about this matter was honest and conclude that he was concealing something about who was to participate, or who it was contemplated might participate, in the SLB transactions. I do not, however, accept the claimants' contention that it is therefore to be inferred that Mr. Skarga had or was to have an interest in them. There is no evidence to support this suggestion, and I regard it as simply speculation.

Account of profits

825. I received submissions about issues between the parties that would arise if Mr. Nikitin or others are liable to give an account of profits. It is common ground that any account of the profits from the SLB transactions should be taken on the basis that the profits were earned upon termination of the arrangement; and that accordingly the

starting point of the calculation of profits is $9,714,555, but there remain three points of difference between the parties. In view of my other conclusions, I refer to them only briefly.

826. First, the sum of $9,714,555 is calculated on the basis that there is to be deducted from the gross profits earned by Blanter, Repmar, Socoseas and Plutorex the sum of $2,619,000, which represents payments made in February and March 2003 to Kosta and Vicco Invest Corporation ("Vicco"), in which Mr. Malov and Mr. Katkov were interested. The question whether this sum should be deducted depends upon the nature of the payments and whether they can properly be treated as expenses incurred by Blanter and the other companies. Kosta and Vicco had provided funding to Meino for promissory notes with which Meino funded the four companies, and Mr. Dominic Wreford, the claimants' expert accountant, considered that the payments were most likely either repayment of this lending or a distribution, neither of which would justify their treatment as deductible expenses. The accounting records relating to these items give them various descriptions, but Mr. Grantham pointed out that in the accounts for the companies for the year ended 31 December 2004 they were included in the "Depreciation account", with the relevant narrative stating "Bad debt write-off related party". He considered that they were properly treated as expenses because they were either payment of loan interest or the waiver of a debt. Despite the description in the accounts to which I have referred, and although the accounts were audited by Ernst & Young, it is, in my judgment, unlikely that Blanter and the other companies would have lent funds to Kosta and Vicco and no explanation for why they might have done so has been advanced. Further, there is no evidence that the four companies were paying interest on their funding: the promissory notes of Meino said that they could bear interest, not that they did so. Although the evidence is not conclusive, on balance I conclude that Mr. Wreford is right not to treat these payments as expenses to be deducted from any monies due on an account.

827. Secondly, the sum of $9,714,555 is calculated on the basis that Mr. Nikitin paid to Mr. Privalov $700,000 by way of consultancy fees in respect of the SLB transactions. As I shall explain, I do not accept Mr. Nikitin's evidence that he did so. Whatever the reason for the payments to Mr. Privalov, I do not consider that they, or part of them, can properly be deducted by the defendants from any account**.**

828. Thirdly, there is an unresolved dispute about whether there should be deducted from the profits certain legal fees amounting to $31,827. The disputed items are included in a list of items which are in total $43,035.98. Some of the items in the list undoubtedly are included in the defendants' accounting records and to treat those items as further expenses would involve double counting. In the absence of proper documentation about the disputed items, on balance it seems to me more probable that the disputed items have similarly already been brought into account, and that they should not be treated as additional expenses.

829. I would therefore conclude, if an account of the defendants' profits were ordered, that the profits should include these three disputed items of $2,619,000, $700,000 and $31,827.

The termination of SLB arrangements scheme

830. On 26 April 2004 agreements were signed for the sale to Primal Tankers Inc. ("Primal Tankers") of the eight Arbat vessels that were the subject of the SLB arrangements and two Tromso vessels, the "Tromso Confidence" and the "Tromso Fidelity". The sellers were the Standard Maritime defendants who bought the Arbat vessels under the SLB transactions and two other companies associated with Mr. Nikitin, Buckingham Tankers Inc. ("Buckingham"), named as the seller of the "Tromso Confidence", and Marshall Transportation Corp. ("Marshall"), named as the seller of the "Tromso Fidelity". Primal Tankers agreed to pay a total of $178 million for the Arbat vessels and $36.4 million for each of the Tromso vessels. Their agreement was subject to various conditions which were to be lifted by different dates on or before 15 July 2004, including a condition that the Board of Primal Tankers should approve it when it would be known whether an IPO in New York had been successful.

831. In order to carry out the agreement, the sellers needed the concurrence of the Sovcomflot companies who were charterers of the Arbat vessels and who owned the Tromso vessels. By agreements dated 16 July 2004 between the owners and the charterers of the Arbat vessels, the charterers agreed to terminate the SLB arrangements on the basis that the owners paid them in total $20 million.

832. The claimants' case is that these agreements were not the result of arms' length dealings between Sovcomflot and the charterers on the one hand and Mr. Nikitin and the owners on the other hand, but that Mr. Skarga dishonestly preferred Mr. Nikitin's interests over those of Sovcomflot and he and Mr. Nikitin planned that Mr. Nikitin should keep as much of the profit from the sale of the Arbat vessels as possible, the total profit being some $56 million. They contend that to this end (i) Mr. Skarga arranged for Clarkson to reduce their valuations of the Arbat vessels, so that the lower values might be used to justify Sovcomflot receiving less from the sale proceeds, and (ii) in May 2004 Mr. Privalov provided to Sovcomflot's accounts department a spreadsheet headed "BBC termination prices", which was prepared on the basis that Sovcomflot would receive from the sale proceeds $20 million, a sum calculated to show a small profit for Sovcomflot as a result of the SLB arrangements being terminated but to allow Mr. Nikitin to keep most of the proceeds. The claim is for an account or for compensation (by way of damages or equitable compensation). It seems to me that the claimants who would be entitled to any compensation would be the charterers of the vessels under the SLB arrangements, the 14th to 21st claimants in the Fiona action, who lost, if the claimants establish liability, the difference between the value of their rights under the SLB arrangements and what they received for agreeing to terminate them.

Clarkson's valuation

833. The ships in Sovcomflot's fleet were valued annually by Clarkson as at 31 December for the purpose of preparing their financial statements. This was usually done in about January. On 13 January 2004 Mr. Borisenko asked Mr. Orphanos at Unicom to send to FML a list of the vessels that should be valued, and Unicom did so on 14 January 2004. It was provided to Clarkson, and on 14 January 2004 Mr. Gale sent to Mr. Borisenko a copy in which Clarkson had valued each vessel, valuing at $18.6 million the 1991 Arbat vessels and at $20.4 million the 1992 Arbat vessels. Mr. Borisenko sent this to Mr. Dobrynin, who in turn forwarded it to Mr. Orphanos.

834. Mr. Orphanos had been asked by Mr. Borisenko in January 2002, if not earlier, to consider how changes to the valuations of the fleet affected the group's income statements. On about 22 or 23 January 2004 Mr. Orphanos was in London to prepare for the audit of FML, and he had a discussion with Mr. Gale about the valuation of the vessels. His concern, which was shared by Mr. Borisenko and Mr. Dobrynin, was that unnecessary fluctuations in the values should not have a significant impact upon Sovcomflot's income statements, and so he wished any increases in values to be no more than were properly required. In their discussion Mr. Gale agreed to reduce the values of the "Tropic Brilliance" and the "Romea Champion" by $2 million each, but there is no evidence about the reason for this.

835. On 28 January 2004 Mr. Orphanos sent to Mr. Dobrynin what he called "a list of minimum vessels values". It set out the values provided by Clarkson on 14 January 2004 and also a "minimum value" for each vessel, which he described in the covering e-mail as "the minimum acceptable vessel values". Those for the Arbat vessels built in 1991 (the "Fili", the "Arbat", the "Izmaylovo" and the "Nagatino") were $15.5 million and for the 1992 vessels (the "Ostankino", the "Presnya", the "Poliyanka" and the "Sokolniki") were $16.5 million. He explained that his purpose was "to have as small credit in the income statement as possible resulting from the vessels' revaluation. In this way we will avoid huge write-offs to the income statement next year. Also with lower valuations the depreciation charge for next year will be lower". He was seeking the support of the finance department in Moscow to this end. Mr. Dobrynin sent Mr. Orphanos' e-mail on to Mr. Privalov, asking him to "approach the Clarksons asap". It was urgent because of the timetable for preparing the annual accounts. Mr. Privalov sent Mr. Dobrynin's e-mail on to Mr. Gale on 2 February 2004 with the comment, "Please revert if can be adjusted as requested".

836. In an e-mail on 2 February 2004, Mr. Gale reduced the values of the Arbat vessels built in 1991 from $18.6 million to $15.66 million and the values of those built in 1992 from $20.4 million to $17.18 million. Apart from making the reductions to the values of the "Tropic Brilliance" and the "Romea Champion" and correcting a mistake about the valuation of another vessel, the "Petropavlovsk", he did not change any other values. Mr. Gale sent FML a revised schedule, which he described as providing "corrected amended valuations". Mr. Privalov sent it on to Mr. Dobrynin and Mr. Orphanos under cover of an e-mail that read, "Ref your request here is the message from Clarkson".

837. After Mr. Borisenko returned from holiday on 9 February 2004, Mr. Dobrynin provided him with the revised valuations, and on 13 February 2004 Mr. Dobrynin, at the request of Mr. Orphanos, asked Clarkson for an official valuation which could be presented to the auditors. He was sent an e-mail attaching what were described as "Clarksons valuations as requested". The attachment was a letter from Mr. Gale addressed to FMA, which itself attached Clarkson's "Valuations of the [Fiona] fleet as at 31st December 2003". The letter stated that the valuations assumed that the vessels were in "good seaworthy condition" and were made "on the basis of prompt charter free delivery and between a willing Buyer and a willing Seller for Cash payment upon normal commercial terms". The letter was dated 15 January 2004, but it is clear that the valuations were in fact made on 2 February 2004.

838. I reject the claimants' contention that Mr. Skarga required Clarkson to adjust their valuations of the Arbat vessels. The only evidence in support of it was from Mr.

Privalov, who stated in his witness statement of 12 February 2009 that he persuaded Mr. Gale to reduce the valuations of the Arbat vessels because he had been instructed to do so by Mr. Skarga, and that the purpose was that the value of the ships recorded in the consolidated accounts should be "lower than their true value" in order that any payment upon termination of the SLB arrangements should appear more generous to Sovcomflot. In cross-examination Mr. Privalov did not fully support his witness statement. He said that he struggled to recall these events, and he was uncertain whether he asked Mr. Gale to reduce the value only of the Arbat vessels. As far as he recalled, Mr. Skarga's instructions were simply that Clarkson should reduce the valuations, not that they should produce figures that were below the true value of the ships. In any case, Mr. Privalov's account is contradicted by the contemporaneous documents, which show that the revised values were prepared at Mr. Orphanos' request and for his purposes. The fact that Mr. Orphanos, the Group's Chief Accountant, and Mr. Dobrynin, the Head of Sovcomflot's Financial Department, were involved in obtaining them refutes the claimants' contention that the purpose was that upon the termination of the SLB arrangements the benefit to Mr. Nikitin should be maximised "without attracting scrutiny from Sovcomflot's financial department …": see para 279C.2.1 of the particulars of claim in the Fiona action.

839. In his e-mail dated 2 February 2004 to Mr. Dobrynin and Mr. Orphanos, Mr. Gale explained why he changed the values of the Arbat vessels: "We have … reconsidered the values of Arbat class, bearing in mind that they were allocated a "premium" for being double hull, but now "market vessels" has been re-assessed as also double hull and premium therefore should be cancelled". The claimants submitted that this explanation should be rejected because there had been no re-assessment of what were regarded as "market vessels" in the case of ships such as the Arbat product carriers. Most vessels of the type had double hulls, and since at least 2001 this had been recognised in standard valuations. For example, from March 2003 Clarkson Research Services ("Clarkson Research") in Clarkson Shipping Intelligence Weekly ("CSIW") had specifically described the standard vessel as "d/h", that is double-hulled.

840. As I have explained, Clarkson's valuations first introduced a 15% uplift in valuing the eight Arbat vessels on the basis that they were (as it was entered on their Shipvalue.net system) "double/double exceptional for age" after Mr. Privalov had asked Mr. Gale on 11 September 2002 if he could "do a bit better" with regard to the value of vessels for the November SLB arrangements than the $17 million valuation that had been provided for the "Fili". On 12 September 2002 Mr. Nigel Thorne of Clarkson advised Mr. Gale that Clarkson's Shipvalue.net system valued the 1991 Arbat vessels at $16.07 million and the 1992 vessels at $16.27 million. However, after some discussion within Clarkson, on 3 October 2002 Clarkson advised Mr. Privalov that they estimated the value of the 1991 vessels at $16.5 million and of the 1992 vessels at $17.5 million because they understood that they were ice strengthened and had "double hull (side and bottom)". This was reflected in the 15% uplift to the values entered in their system.

841. In September 2003 Mr. Thorne was asked by a banking client of Clarkson to provide valuations of two Arbat vessels. He reduced the values shown in the Shipvalue.net system in that (i) he reduced a premium for the ice strengthening of the vessels from 5% to 3%, and (ii) he removed the 15% uplift that had been introduced in October 2002. However, in January 2004, when initially providing the valuations for the

Arbat vessels, Mr. Gale re-introduced the 15% uplift. He removed this in February 2004, and when he did so he increased the ice premium back to 5%. The claimants argued that Mr. Gale was dishonest in removing the 15% uplift in February 2004, because he had known in January 2004 that standard vessels were valued on the basis that they were double-hulled but had decided that nevertheless the uplift was justified. He had learned nothing since then that could properly have led him to a different view.

842. However, the evidence of Dr Stopford was that this enhanced value for the Arbat vessels had never been justified, and I accept that evidence. There is no evidence from Mr. Thorne explaining his decision in 2003 to remove the uplift: possibly he was valuing the vessels more conservatively for a banking client, but that is speculation. Equally, there is no evidence from Mr. Gale about why he re-introduced it in January 2004: it is again tempting to speculate and to suppose that he thought it right for the valuations to be made on the same basis as those of the previous year. Nevertheless, the fact remains that, when asked to do what he properly could do to reduce values, he removed an unjustified uplift. To my mind, this explains why it was the values of the Arbat vessels that were reduced when Mr. Orphanos was concerned about the overall value of the fleet. I reject the contention that the reduction was to do with a plan to end the SLB arrangements and to sell the Arbat vessels. In fact the values that he produced were higher than Mr. Orphanos' "minimum acceptable values" for the ships.

843. In support of their contention that the revised valuations were dishonest, the claimants submitted that the original valuations of January 2004 properly reflected the values of the Arbat vessels at 31 December 2003 and no honest and competent broker of the experience and professed expertise of Clarkson and Mr. Gale would have subscribed to the revised values. It would not assist the claimants to establish this since I reject their allegation that Mr. Skarga was responsible for the revised valuation. In any event, I reject this submission.

844. The claimants argued that various features of the Arbat vessels meant that they were worth more than a standard double-hulled carrier of their age and size. They relied upon the expert evidence of Mr. Nicholas Willis, who spent some 15 years as a sale and purchase broker between 1985 and 2000, and since 2000 has worked as a consultant and now has his own company, Ship Valuation Consultancy Ltd. Mr. Willis expressed the view that the values of the 1991 vessels were $18.75 million and those of the 1992 vessels were $20.25 million. These values are close to a contemporaneous valuation given by Galbraith's to BNP Paribas (who had taken over loans that had been originally provided to the Standard Maritime defendants by BCV) on 23 January 2004, which put a value of $19 million on the "Fili", a 1991 vessel, and a value of $20 million on the "Presnya", a 1992 vessel.

845. Mr. Day, who gave expert evidence for the Standard Maritime defendants about ship values as well as broking practice, considered that at 31 December 2003 the value of the 1991 Arbat vessels was between $15 million and $16 million and the value of the 1992 vessels was between $16 million and $17 million. This in itself answers the case that the revised valuations could not represent the opinion of an honest broker of Mr. Gale's competence and position. It was not suggested to Mr. Day either that he had not honestly presented his views about the values or that his background and experience differed significantly for present purposes from that of Mr. Gale. In fact, I

prefer Mr. Day's evidence to that of Mr. Willis both generally (for reasons that I shall explain later) and about the value of the Arbat vessels at the end of 2003.

846. Clarkson Research published in CSIW values for 45,000 dwt product carriers, and on 19 December 2003 and 2 January 2004 they gave values of $18.5 million for a 10 years old vessel and $11 million for a 15 years old vessel. This would, on the face of it, indicate that for the 1991 Arbat vessels values were towards the middle of a range between $18.5 million and $11.0 million and that the values for the 1992 vessels were probably somewhat higher. However, Mr. Willis relied upon the Clarkson Research's index of prices for second hand sales of carriers which were 10 years old to demonstrate that around 31 December 2003 the market was "sharply rising": it stood at $17.25 million in November 2003, at $18.5 million in December 2003, at $20 million in January 2004 and at $22 million in February 2004. Mr. Willis acknowledged that price tracking indices provide only a rough guide to market value, and he thought that, particularly in a volatile market, they can "lag behind real events". Nevertheless, unless the Arbat vessels were superior to a standard product carrier, I consider that the index supports Mr. Day's assessment rather than that of Mr. Willis.

847. There were no reported sales of comparable vessels at around the end of December 2003. The most relevant comparator was the sale of the "Garnet Lady", which was reported as at 21 November 2003 for $18 million. Mr. Day spoke to the former owners of the vessel, and was told that the price was in fact $17.7 million. I accept that this information was probably correct. However, on any view a single sale of a comparator vessel is of limited help in establishing a market value, and in this case the experts disagreed about whether the "Garnet Lady" would have been regarded as an especially attractive vessel on the market. If it matter, Mr. Day gave reasons that persuaded me that she would have been. She had been built by Tsuneishi, a leading Japanese yard, and she was more stable than the Arbat vessels because of the layout of her cargo tanks and her transverse sections.

848. Mr. Willis also relied upon a reported sale en bloc of the "Samothraki" and three sister ships on 5 December 2003. The prices were reported at $16 million for vessels built in 1989 and at $17 million for a 1990 vessel. However, since Mr. Day, to my mind convincingly, observed that this sale might well have been by way of a re-financing arrangement and in any case the vessels were subject to five-years' bareboat charters when they were sold, this provides no useful guidance to the values of the Arbat vessels. Nor do I consider that sales of the younger tankers, the "Torm Alice" and the "Eagle", reported in February and March 2004, provide any guidance to the value of the older Arbat vessels some weeks earlier, especially given the volatility of the market.

849. I am not persuaded that the Arbat vessels had such attractive features that they were worth significantly more than a standard vessel of their type, age and size. They had some advantages over a standard vessel but they also had some unattractive features. Their engines were larger. They were ice strengthened, but only to ice-class 1C and so they could trade only in very light ice conditions. While at 47,000 dwt the Arbat vessels were slightly larger than standard 45,000 dwt carriers, their extra space was of limited use because products were often traded in parcels of fixed sizes. They had eight hydraulic cargo pumps, but, as I understand the evidence, this did not increase their pumping capacity. Their tanks were epoxy coated, but the coating had

deteriorated and was expensive to maintain. This is apparent from the briefing notes to the Sovcomflot's Executive Board of 27 July 2004 about the termination of the SLB arrangements, to which I shall refer.

850. On the other hand, Mr. Day identified features that would have depressed the value of the Arbat vessels. They were built by the Halla yard in Korea, which had gone into insolvency in 1997 and was not held in high regard. Some potential buyers might have been concerned because, as the experts agreed in their Joint Memorandum, "Russian controlled ships do tend to have a reputation for poor maintenance". Further and more importantly, the vessels were constructed with a large amount of high tensile steel, which tended to cause cracking. Mr. Willis acknowledged that by the early 2000s such construction was associated with this problem, and the Arbat vessels were certainly affected by it. In their annual report for 2001 Sovcomflot had reported that, "Analysis of the cracks appearing in the "Arbat" type tankers … indicated that fatigue affected the hull structures subject to the greatest stress in those vessels, and that there had been no exact method of calculating these at the time they were built, as a result of which the structure of the designs used proved inadequate after 8-10 years intensive operation of the vessels. A method of repairing such cracks and strengthening the structure of the "Arbat" type vessels was agreed with the classification society is [sic] being implemented during scheduled and unscheduled repairs of the vessels of the class for 2001 and the first half of 2002". The problem was aggravated because the vessels did not have a centre-line bulkhead, which caused concern about to their stability as well as their structural strength.

851. I reject the claimants' contention that the revised valuations by Clarkson undervalued the vessels. They were not at levels that suggest that Mr. Gale and Clarkson were dishonest in providing them. After all, if in February 2004 Mr. Gale had been seeking to place the lowest possible value on them, he would not have increased the ice premium to 5%.

The use of the valuations

852. The claimants contended that the revised valuations were used to maximise, at Sovcomflot's expense, Mr. Nikitin's profit from the sale of the Arbat vessels and the termination of the SLBs. Their reasoning was that, in order to justify for accounting purposes Sovcomflot's agreement to terminate the SLBs, Mr. Skarga and Mr. Privalov needed to show that the benefits to Sovcomflot of terminating them were worth more than the value of the vessels. The benefits to Sovcomflot were (i) that they would be freed of their contractual obligations to pay hire to the end of the charter periods and to pay the prices of re-purchasing the vessels, and (ii) that they would receive from the owners a "release price" for agreeing to the terminate the arrangements. For this reason, it is said, the lower the value of the vessels, the smaller the amount of the release price that needed to be paid in order for the termination to be presented as profitable to Sovcomflot. They submitted that, because of the lower valuations, this could be achieved with a release price of only $20 million.

853. On 26 May 2004 Mr. Privalov sent to Mr. Dobrynin, under cover of an e-mail which simply read "As discussed", a spreadsheet entitled "BBC termination prices" (which presumably meant "bareboat charter termination prices"). The spreadsheet set out the names of the eight Arbat vessels and the year when each was delivered, and stated

an amount for each vessel: the amounts ranged from $15,759,000 for the "Arbat", the "Izmaylovo" and the "Nagatino", to $16.5 million for the "Fili", to $16,759,000 for the "Ostankino" and to $17,701,000 for the "Presnya", the "Poliyanka" and the "Sokolniki". Mr. Privalov's evidence was that he calculated these figures with the assistance of Mr. Caze. While he could not recall precisely how they were calculated, they represented in essence the total for each vessel of (i) a capitalised sum for future charter hire under the leaseback charter, (ii) the price that the Sovcomflot charterer was to pay to re-purchase the vessel and (iii) a release price. He said that the eight release price sums were in total $20 million, being $2 million for the four 1991 vessels and $3 million for the four 1992 vessels. Thus, the claimants say, by 26 May 2004 Mr. Skarga and Mr. Nikitin had come to an understanding, at least provisionally, that Sovcomflot should be paid only $20 million for terminating the SLB arrangements; and in due course, the charterers did indeed accept these release prices.

854. I am not persuaded by this argument. As the defendants pointed out, the figures show at most only that Sovcomflot had calculated for their internal purposes that they would accept $20 million for agreeing to end the SLB arrangements. The document does not provide evidence that this sum had been agreed between Mr. Skarga and Mr. Nikitin, or even discussed by Mr. Nikitin.

855. In any event, the claimants' witnesses did not, in my judgment, support their contention that these figures were used to present the termination of the SLB arrangements as profitable. On 26 May 2004, Mr. Orphanos sent to Mr. Dobrynin an e-mail entitled "expected vessel disposals", to which he attached a spreadsheet that listed the eight Arbat vessels, the six Tromso vessels and the "Nikolay Malakhov" and set against each an expected disposal date. For the Arbat vessels, the "Tromso Confidence" and the "Tromso Fidelity", the date was 31 July 2004. There was a "sales proceeds" column, but that was left blank for all the vessels except the "Nikolay Malakhov". By 2 June 2004 Mr. Orphanos had obtained figures for the "sales proceeds" for the Arbat and the Tromso vessels, and sent a copy of the spreadsheet with those details included to Mr. Dobrynin. The figures for the Arbat vessels were those which Mr. Privalov had sent to Mr. Dobrynin on 26 May 2004 as the BBC termination prices. The sale proceeds for the "Tromso Confidence" and the "Tromso Fidelity" were $35 million, although by then Primal Tankers had provisionally agreed to pay $36.4 million for each of them.

856. Mr. Orphanos was confused about what the "BBC termination prices" were. In his witness statement dated 13 February 2009 he said that he intended to include in the spreadsheet the "anticipated selling prices of the Arbat vessels", but it is not disputed, as I understand it, that this was because he misunderstood what Mr. Privalov's "BBC termination prices" were. Although this was not apparent on the face of the schedule of prices sent by Mr. Privalov, according to Mr. Dobrynin's evidence, which I accept, he and Mr. Orphanos appreciated that it supposed that the termination prices were $20 million more than the outstanding liabilities under the SLB arrangements. However that may be, Mr. Orphanos said in a witness statement dated 8 October 2009 and in his oral evidence that his misunderstanding was not relevant to the accounting calculation of Sovcomflot's loss or profit. He accepted that this did not depend upon knowing the selling prices of the vessels, but he had thought that the proceeds for Sovcomflot from the sales of the Arbat vessels were equal to the anticipated selling

prices. In 2004 he had assumed that Sovcomflot would be paid $20 million as a "release price" for agreeing to terminate the SLB arrangements.

857. Despite Mr. Orphanos' misunderstanding or confusion, it is to my mind clear that the "BBC termination prices" did not mislead or confuse Sovcomflot's financial and accounting departments. They recognised that they were simply a calculation of what the financial position would be if the charterers were paid release prices totalling $20 million. The claimants plead that the sum of £20 million was identified as being an amount which would pass the scrutiny of Sovcomflot's financial department and Fiona's auditors because, in view of the reduced valuation of the vessels that Mr. Gale had produced, it could be presented as generating a profit. The defendants, however, pointed out and I accept that the claimants have not shown that the downwards revision of the valuation of the vessels in February 2004 was necessary in order to show a profit upon the termination of the SLB transactions. Sovcomflot prepared financial statements in accordance with both US GAAP standards and IFRS (International Financial Reporting System) standards. The reduction in the values of the Arbat vessels would not have affected any GAAP profit and loss or other calculation because the calculation was based upon a depreciated fair market value. As far as calculations in accordance with IFRS were concerned, an increase in vessel values would not be shown in a profit and loss account, but would be recorded in a revaluation reserve, and remain in the reserve until the vessel was disposed of. The reduced valuation of the Arbats would not have affected profit and loss calculations unless there was an insufficient revaluation reserve to absorb them. Given the general increase in market values of vessels, the reserve was likely to be sufficient.

858. However precisely the "BBC termination prices" were calculated and whatever their purpose, I am not persuaded that they were provided to Mr. Dobrynin and then to Mr. Orphanos as part of a scheme to maximise Mr. Nikitin's profit from the termination of the SLB arrangements and the sale of the Arbat vessels, or in order to minimise the amount that the charterers were to be paid upon termination. These documents seem to me to provide no support for the claimants' contention of a dishonest conspiracy.

History of the sale to Primal

859. I next consider the history of the sale of the Arbat vessels itself because the claimants contend that it shows that Mr. Skarga and Mr. Nikitin were working together dishonestly to prefer Mr. Nikitin's interests to those of Sovcomflot. In 2002, when they entered into the SLB arrangements, Sovcomflot knew that the Arbat vessels had problems with cracking, but they were expected to trade profitably for the charter periods of three or five years. In fact, in 2002 and 2003 they did operate profitably. Sovcomflot had no settled plan in early 2004 to sell the Arbat vessels. On 16 February 2004 Mr. Skarga presented to the Executive Board a report summarising the main operating and financial activities of the group, which indicated that they planned to sell only six "Socofl" timber carriers and still to have the Arbat vessels at the end of the year.

860. Sovcomflot were nevertheless, as I conclude, interested in disposing of the Arbat vessels if they received a satisfactory offer, because of concern about their condition and the expense of repairing them, and because Sovcomflot's general policy was to dispose of tankers after 15 years' operational service. These reasons were set out in briefing notes for an Executive Board meeting on 27 July 2004 at which Board

considered the decision to cancel the SLB arrangements, and, although the claimants challenged whether these were genuine reasons, the Executive Board would not have been misled on a matter of this kind. Mr. Sharikov and others would have been well aware of the vessels' problems and Sovcomflot's policy about disposing of vessels. Mr. Thompson confirmed in his evidence that there had been discussion for some years about disposing of the Arbat vessels, and that the aim was to replace them with new carriers. Their disposal was, as described in Sovcomflot's annual report for 2004, part of the fleet renewal programme.

861. By November 2003 Mr. Skarga had arranged for Clarkson to explore the market, but it was not anticipated that the Arbats would all be sold "en bloc". (On occasions Clarkson wrote to buyers about a possible "en bloc" sale, but, even assuming that this reflected Sovcomflot's instructions, they probably had in mind a block sale of a number of ships but not of all eight of them.) By the end of January 2004 Mr. Gale was trying to stimulate buyers' interest in the "Fili" and the "Izmaylovo". On 9 February 2004, in an e-mail that was internal to Clarkson, Mr. Gale referred to the possibility that, if target prices were achieved for these two vessels, "Sovcomflot may be tempted to sell the remaining sisters …".

862. On 7 April 2004 Allied Shipbroking Inc. of New York sent to Clarkson a formal proposal on behalf of Primal Tankers to buy en bloc the eight Arbat vessels together with the "Tromso Confidence" and the "Tromso Fidelity". There had been some communication about at least some of these vessels between Allied Shipbroking and Clarkson for some time, but it is not clear how far their previous discussions had progressed. On 5 December 2003 Clarkson had sent Allied Shipbroking details of the "Fili" and the "Izmaylovo". On 23 January 2004 Allied Shipbroking expressed interest in the Tromso vessels, and on 27 February 2004 Clarkson wrote to them that "ideas 35 mill each but this should be somewhat negotiable". On 14 April 2004 Clarkson responded to the proposal of 7 April 2004 and their negotiations resulted in the concluded agreements dated 26 April 2004 for the sale and purchase of the 10 vessels.

863. Mr. Wettern signed the documents on behalf of the selling companies. They comprised ten memoranda of agreement and two letter agreements. The memoranda were for the sales of the eight Arbat vessels and the two Tromso vessels. One of the letters recorded that the commitment of Primal Tankers was subject to inspection of the vessels' records, with approval to be declared by 17 May 2004; physical inspection of the vessels, with approval to be declared by 14 June 2004; and an IPO on the New York stock exchange achieving a target subscription of $90 million, with declaration of this to be made by 15 July 2004. It also recorded two purchasers' options: to buy only six of the ten vessels, and, if the sale did not otherwise proceed, to buy one of four vessels, the "Fili", the "Izmaylovo", the "Tromso Confidence" and the "Tromso Loyalty". The total sale price was $251.2 million: $21.8 million was paid for the 1991 Arbat vessels, $22.8 million for the 1992 Arbat vessels and $36.4 million for the Tromso vessels. Overall, the prices were very good for the sellers. As well as disposing of the Arbat vessels, Primal Tankers were offering to pay for the two Tromso vessels what Mr. Sharikov described as "fantastic" prices. It was a particularly good deal in light of predictions from some that the market would fall. For example, Dr Stopford again expressed pessimistic views at Sovcomflot's Bankers Conference in May 2004.

864. Although Primal Tankers' commitment to buy the vessels was subject to conditions, the commitment of the selling companies was unqualified. They committed themselves although:

i) The Arbat vessels were chartered to Sovcomflot companies, which had rights to re-purchase them at the end of the charter periods; and

ii) The "Tromso Confidence" and the "Tropic Fidelity" were owned by Glefi Shipping XX Co Ltd. ("Glefi XX") and Glefi Shipping XXII Co Ltd. ("Glefi XXII"), two Sovcomflot companies. Buckingham and Marshall, which were controlled by Mr. Nikitin, agreed to sell them although they had no rights over them.

865. Thus, Mr. Nikitin's companies entered into commitments that they could fulfil only with Sovcomflot's cooperation. The claimants submitted that Mr. Nikitin would not have put them in this position if he had had a proper relationship with Sovcomflot, and that the fact that he did so is evidence that his relationship with Mr. Skarga was corrupt.

866. The evidence about the discussions about the sales within Sovcomflot and between Sovcomflot and Mr. Nikitin is not satisfactory. The claimants have disclosed no correspondence exchanged between 1 and 25 April 2004, although there are in evidence some documents that were disclosed by Clarkson. Sovcomflot must have had more exchanges and internal documentation about the sale. For example, in an internal e-mail dated 21 April 2004 Mr. Gale wrote that Mr. Privalov was "going to put the full proposal forward tomorrow, it has already been favourably considered", but no documents about this have been produced. It was clear from Mr. Borisenko's evidence that Mr. Terekhin, the Fleet Department, Sovchart and Mr. van Boetzelaer and Unicom would all have been involved in such matters as arranging the inspection of the vessels, discussions with time charterers and providing access to class records The sale would have required changes to budgets and plans for repairs, and the cancellation of dry dockings schedules. I accept Mr. Skarga's evidence that there was internal correspondence about the sale, and Mr. Borisenko, Mr. Terekhin and Mr. Sharikov knew how much Primal Tankers were paying. Given that Mr. Terekhin and the Fleet Department knew about the sale, Mr. Skarga could hardly have concealed the prices from them without exciting their suspicions.

867. I therefore reject the evidence of Mr. Borisenko about when he learned of the proposed sales. He denied that he was told anything about them in April 2004, and said that he first learned of them in early May 2004, when he received a telephone call from Mr. Anthony Argyropoulos of DVB Bank. Mr. Argyropoulos, who was working for Primal Tankers in relation to the IPO, asked for more time to lift one of the conditions governing Primal Tankers' commitment to the agreement. Mr. Borisenko's evidence was that, knowing nothing of the matter, he referred Mr. Argyropoulos to Mr. Privalov, and that he then telephoned Mr. Privalov to ask what was happening. He was told by Mr. Privalov that the vessels were to be sold, but, on Mr. Borisenko's account, he was not told the price to be paid and he did not ask. He said only that he "was aware that the disposal to a company doing a IPO would usually result in a good sale price", and that he did not discuss the sale with Mr. Skarga before July 2004. I find this evidence incredible. If Mr. Borisenko, the Chief Financial Officer, had learned of the disposal of the vessels from a third party,

he would have immediately asked Mr. Skarga why had had not been told and consulted about it, and would have been eager to learn what was to be paid. In fact, on 5 May 2004 Mr. Borisenko had received from FMA copies of draft memoranda of agreement. I conclude that Mr. Borisenko was aware of the sales to Primal Tankers by the time that they were being concluded in April 2004.

868. I also reject Mr. Sharikov's evidence that he learned of the proposed sales only shortly before a meeting of the Executive Board on 27 July 2004. Mr. Skarga said, and I accept, that, for example, they were discussed when between 21 and 24 May 2004 Sovcomflot held their third Bankers' Conference in Cyprus, which was attended by Mr. Skarga, Mr. Borisenko, Mr. Privalov, Mr. Dobrynin, Mr. Orphanos and Mr. Sharikov. Certainly, on 26 May 2004 Mr. Orphanos e-mailed Mr. Dobrynin about "expected vessel disposals" and the inference is that they knew about them when they were in Cyprus, if not before. Mr. Sharikov would not have been excluded from discussions to which Mr. Dobrynin and Mr. Orphanos were party. A transaction on this scale simply could not have been concealed from the members of Sovcomflot's Executive Board. Obviously it would come to the Board's attention in due course and it would have been futile to have tried to conceal it. I conclude that the members of Sovcomflot's Executive Board including Mr. Sharikov were kept informed about the sales and knew, among other things, the prices that Primal Tankers were paying.

869. Against this background, I come to the account given by Mr. Nikitin and Mr. Skarga about their discussions in April 2004. They said that Sovcomflot did not seek Mr. Nikitin's agreement to end the SLB arrangements and to sell the Arbat vessels before they had received the proposal from Primal Tankers on 7 April 2004, and that by 26 April 2004 they had not reached any agreement about the terms upon which they should cooperate to complete the agreement with Primal Tankers and to share the proceeds of the sales. There is no convincing evidence that they had reached any understanding about this, and I conclude that they had not done so. Mr. Privalov said that he supposed that an agreement was reached between them in April or May 2004 only because his "BBC termination prices" assumed that Sovcomflot would receive $20 million. He did not claim to have been party to an agreement or to have been actually aware of one.

870. The evidence of Mr. Nikitin and Mr. Skarga about their discussions was not entirely consistent. Mr. Nikitin said that Mr. Skarga approached him, either by telephone or at a meeting, and proposed that the SLB arrangements should be terminated. In his witness statement of 13 February 2009 he said that it was proposed that Sovcomflot should share the profits, although he did not recall whether Mr. Skarga indicated what their share should be. He recalled that he first rejected the proposal, believing that he had a strong negotiating position, but when pressed by Mr. Skarga he indicated that he would terminate the arrangements if he might keep all the proceeds from the sales; and later he agreed in principle to the sales on the basis that, if they went through, he and Sovcomflot should later discuss how the proceeds should be divided. In cross-examination, Mr. Nikitin said that at first Mr. Skarga did not mention dividing the profits, and no agreement or understanding was reached before 26 April 2004 about whether Sovcomflot should be paid any, and if so what, share of the sale receipts. Later Mr. Skarga spoke of dividing the sale proceeds, and he thought that Mr. Borisenko also spoke to him about this and suggested that they should be shared equally.

871. Mr. Skarga said in his witness statement of 13 February 2009 that, when he first contacted Mr. Nikitin between 8 and 23 April 2004 to seek his agreement in principle to the sales to Primal Tankers, Mr. Nikitin was "negative". He thought that Mr. Nikitin had no real incentive to agree to the proposal in view of the return that he was earning from the SLB arrangements, not least because Mr. Nikitin had changed the owners' funding agreements so that they were paying at a floating rate of interest. Mr. Skarga said that he had further discussions with Mr. Nikitin in particular about the poor condition of the Arbat vessels, and Mr. Nikitin came round to accepting that they should be sold. Mr. Skarga believed that by 26 April 2004 Mr. Nikitin had accepted the proposal "in principle", or at least Sovcomflot were confident by then that he would do so. However, no agreement had been reached about dividing the profit. In later telephone conversations he and Mr. Borisenko pressed for an equal division of the profit between Sovcomflot and Mr. Nikitin, but Mr. Nikitin only agreed, after some pressure, that he would allow Sovcomflot to take $10 million. In cross-examination Mr. Skarga said that Mr. Nikitin had agreed to the sales before 26 April 2004 mainly because of the condition of the Arbat vessels, but he and Sovcomflot had not agreed upon the terms upon which the charters should be ended. He did not discuss these terms because he did not want to jeopardise the deal with Primal Tankers by having a prolonged debate about them.

872. The claimants submitted that Mr. Nikitin and Mr. Skarga were together planning to sell the vessels in order that Mr. Nikitin should, as Mr. Popplewell put it, "keep the lion's share of the profits", with Sovcomflot receiving only "the amount necessary to ensure that there was no adverse internal scrutiny". They argued that it is incredible that discussions between them about the sales had not taken place before 8 April 2004, and that on any view they were not engaged in honest business dealings.

873. The Arbat vessels could not, of course, have been sold by Sovcomflot alone, and the "Fili" and the "Izmaylovo", which apparently had been specifically identified by Clarkson for sale, were chartered to Henriot with options to extend the hire periods until April 2005. The claimants argued that it would have been pointless for Sovcomflot to have had Clarkson market the vessels without Mr. Nikitin's agreement and without first finding out whether he would co-operate in sales if Clarkson found a buyer, and so Mr. Skarga would inevitably have discussed with Mr. Nikitin any plans to dispose of the vessels.

874. The claimants also referred to Mr. Privalov's evidence in cross-examination that Mr. Nikitin, when first approached, was reluctant to agree to sell the Arbat vessels "at the prices indicated originally, something like below $20 million". They said that this supported their contention that Mr. Nikitin knew about the marketing of the vessels before 7 April 2004. I do not agree. Even accepting Mr. Privalov's evidence, the proposal of 7 April 2004 put forward an offer of only $19.5 million for the 1991 Arbat vessels.

875. In fact, in cross-examination Mr. Skarga agreed that he might have mentioned to Mr. Nikitin that Sovcomflot were looking to sell the ships, but he could not recall doing so before April 2004, and Mr. Nikitin said that he could not remember whether Mr. Skarga had told him that Sovcomflot were looking for buyers. It is likely that Mr. Skarga would have said something to Mr. Nikitin about this, but there is no reason to think that Mr. Nikitin and Mr. Skarga had significant discussions about selling the Arbat vessels before Primal Tankers put forward their proposal of 7 April 2004.

Until then, it was, as Mr. Skarga put it, "all academic". Before April 2004 Clarkson really were only putting out feelers in the market for any interest in the vessels. They let it be known that they might be available for acquisition, but, unless and until there were serious expressions of interest, there really was nothing for Mr. Nikitin and Mr. Skarga to discuss.

876. On any view, and whatever inconsistencies there were in their evidence, both Mr. Nikitin and Mr. Skarga said that Mr. Wettern was instructed to commit the selling companies controlled by Mr. Nikitin to selling the ships to Primal Tankers before the charterers had given any certain or formal commitment that they would cooperate in selling the Arbats vessels and when Marshall and Buckingham were not in a position to deliver the Tromso vessels; and that Mr. Skarga concurred in him doing so without discussing the terms upon which the charterers would give up their rights and Glefi XX and Glefi XXII would sell the Tromso vessels. Mr. Nikitin agreed that this left his companies exposed to commitments that they could not have fulfilled without Sovcomflot's support, and that "in theory" Sovcomflot could have exploited this in later negotiations, but said that he could not believe that "they could behave in some nasty way" and that it was "simply not imaginable" that Sovcomflot would "squeeze" him.

877. Mr. Skarga, as far as I understood his answers in cross-examination, said that he saw nothing unusual in Mr. Nikitin exposing the selling companies to these commitments to Primal Tankers without proper arrangements to fulfil them. I do not accept that. Mr. Nikitin put the selling companies in an extraordinary position, and there was no obvious reason to do so. It is remarkable that Mr. Nikitin, an acute and experienced businessman, should have done so. However, on any account that is what he did: the selling companies entered into their commitments on the basis of some inconclusive discussions and an informal understanding that Mr. Nikitin had with Mr. Skarga. If in the event Sovcomflot did not concur in the sales, Mr. Nikitin was, or more precisely the selling companies were, exposed whether his discussions with Mr. Skarga and the understanding between them were proper or improper and whether they were honest or dishonest. This does not, to my mind, show that Mr. Nikitin and Mr. Skarga had by then reached an understanding that Mr. Nikitin would exploit the sales at the expense of Sovcomflot. I should have been the more reluctant so to conclude without any of the documentation about the relevant exchanges within Sovcomflot and without relevant and credible evidence from the claimants' witnesses.

878. Primal Tankers' IPO was successful and in July 2004 the agreement for the sales of the vessels proceeded. Primal Tankers took all ten vessels, and did not exercise their option to take only six. The owners and charterers of the Arbat vessels reached agreements, which were signed by Mr. Wettern on behalf of the owners and by Mr. Privalov on behalf of the charterers, whereby the charterers of the 1991 vessels were paid $2 million and the charterers of the 1992 vessels were paid $3 million, and the chartering and re-purchase agreements were terminated. They were dated 16 July 2004, but there is no dispute, as I understand it, that they were concluded some days later, after a meeting on 20 July 2004 between Mr. Nikitin, Mr. Skarga, Mr. Borisenko and Mr. Privalov.

879. The meeting was specifically arranged to discuss how the sale proceeds of the Arbat vessels should be shared. I accept Mr. Skarga's evidence that by then, probably in around May 2004, Sovcomflot had made a calculation that the profits on the sales of

the Arbat ships would be some $56 million, after taking account of commissions and information from Mr. Privalov about loan repayments. (Mr. Orphanos denied that such a calculation had been made by Unicom, as Mr. Skarga thought. It seems more likely that it was made by the Finance Department.)

880. The meeting was in a restaurant in St Petersburg called "Behind the Stage", which was near the opera house. Mr. Skarga had been to a production of "The Nose" by Shostakovich, in which a friend of his, Mr. Sergei Skorokhodov, was singing. None of the witnesses gave a wholly convincing account of the discussions at the restaurant. I reject Mr. Borisenko's evidence of a meeting lasting only five minutes at which there was no real discussion. Mr. Nikitin had come direct from the airport for the meeting and Mr. Privalov had travelled from London to be there: they would not have done so if there was nothing to discuss. Indeed Mr. Privalov accepted that (contrary to Mr. Borisenko's account) Mr. Nikitin and Mr. Borisenko debated about how much Sovcomflot should be paid. This is corroborated to some extent by Mr. Skorokhodov, who said in a witness statement that, having arranged to meet Mr. Skarga, he was kept waiting while discussions continued.

881. Mr. Nikitin said that he was unsure whether any agreement was reached at the meeting or whether it was concluded by telephone the next day. I accept Mr. Skarga's evidence that it was agreed at the meeting, after genuine negotiations, that Sovcomflot should be paid $20 million. It is unclear whether before the meeting Mr. Nikitin had been told that Sovcomflot would be looking for $20 million, but Mr. Skarga never suggested to Mr. Nikitin that they would accept less than that.

882. On 27 July 2004 the Executive Board of Sovcomflot approved the decisions that the chartering arrangements for the Arbat vessels should be terminated and that the two Tromso vessels should be sold. The proposals were presented by Mr. Sharikov, and the proposal about the Arbat vessels was supported by Mr. Skarga and Mr. Borisenko and also by Mr. Dobrynin, who had been invited to attend the meeting. The Board had briefing notes, which had been signed by Mr. Dobrynin and prepared by Ms. Matveeva with the assistance of other executives, including Mr. Buchumov, Sovcomflot's Chief Engineer, Mr. Orphanos and Mr. Sharikov. There is no evidence that Mr. Skarga influenced the preparation of the briefing notes or determined what information they should include. They referred to Sovcomflot's policy of operating ships for no longer than 15 years, and stated that the Arbat vessels had problems by way of cracking and deterioration of coatings. They also referred to predictions that chartering rates would fall, and concern that this would affect the sale value of the ships. They assessed the profit on sale of each ship according to IFRS and GAAP standards and stated the amount that each Sovcomflot chartering company was to be paid on termination of the chartering arrangements.

883. The briefing notes did not state how much was being paid by Primal Tankers for the ships, but I am not persuaded that this was concealed from any member of the Executive Board. Mr. Privalov's evidence was that, although the sales were reported "at least by Clarkson", Mr. Skarga was the only member of the Executive Board to know the prices, and, while others might have discovered the information for themselves, it was thought unlikely that they would do so. I do not accept that evidence: undoubtedly Mr. Borisenko also knew the prices, and, as I have said, I conclude that Mr. Terekhin and Mr. Sharikov had been aware of them since April. I conclude that other members of the Executive Board also did so by July 2004, if not

before. In June 2004, the sale had been reported in the shipping press, for example in the Weekly Marine Project Report of 11 June 2004 of Poten & Partners, which reported a price of $21.5 million for all of the Arbat vessels. Their reports were circulated to Sovcomflot's senior employees: Mr. Sharikov accepted that he received them, and he would not have overlooked this report about the sale of the Arbats. Neither would other executives.

884. In reaching this conclusion, I do not overlook that on 26 July 2004 Ms. Matveeva asked Ms. Janet Atherton, Mr. Privalov's secretary or personal assistant, for copies of the memoranda of agreement for the Arbat vessels, and she replied that "As all the Arbat type vessels are only on bareboat charter to [Fiona] there will not be any MOAs", that the memoranda would be between the owners and the buyers and that Fiona would be party only to a cancellation agreement with the owners. Ms. Matveeva did not press the enquiry. Further, in October 2004 Mr. Orphanos sought completion statements for the sales when he was preparing management accounts, and, having received statements for the "Fili", the "Izmaylovo" and the "Poliyanka" apparently by accident, he asked Ms. Atherton to obtain from the sellers the price of each of the vessels. She responded that Mr. Privalov advised her that "we do not have the sale price of the vessels on which we were bareboat charterers as we were not party to the sales. The only thing we were required to have was the Termination Agreement".

885. Mr. Privalov's evidence was that this information was withheld in order to conceal the prices because he and Mr. Skarga were concerned that this information might lead to questions about the reduced Clarkson valuations and what Sovcomflot was paid. Mr. Privalov's evidence about this is not reliable, and without it I do not consider that these responses of Ms. Atherton show that anyone was attempting to conceal the prices from the Sovcomflot. On the face of it, Ms. Atherton understood that Ms. Matveeva was asking for memoranda of agreement between Sovcomflot companies and the buyers, and she rightly pointed out that there were no such documents in relation to the Arbat vessels; and Ms. Matveeva appeared to accept that. Mr. Orphanos requested the documents after Mr. Skarga had left Sovcomflot and at a time when the future of the relationship between Sovcomflot and the Standard Maritime defendants was uncertain. It is understandable that Mr. Privalov should have been cautious about supplying to Sovcomflot copies of documents to which they were not party.

The alleged scheme about the Tromso vessels

886. The claimants contended that Mr. Nikitin, Mr. Skarga and Mr. Privalov also had a scheme to exploit for Mr. Nikitin's advantage the sale to Primal Tankers of the two Tromso vessels, which were sold by Buckingham and Marshall. Mr. Gale had been involved in the discussions about Buckingham and Marshall selling the ships. On 23 April 2004, when Mr. Wettern pointed out that Buckingham and Marshall did not own them, Mr. Gale responded "Well I guess that as long as they do when the deposit is lodged it doesn't matter. Some people, we have to trust". Mr. Wettern suggested that he speak to Mr. Privalov because in fact the companies would still not own the vessels when the deposit was to be paid by Primal Tankers. Nevertheless, Buckingham and Marshall entered into the memoranda of agreement of 26 April 2004. The plan, the claimants alleged, was that Buckingham and Marshall should buy the vessels from Glefi XX and Glefi XXII and sell them on to Primal Tankers for

a profit. In support of this allegation, they relied upon the e-mail from Mr. Dobrynin to Mr. Orphanos of 26 May 2004 in which the price for the vessels was said to be $35 million, and Mr. Dobrynin's evidence that Mr. Privalov probably gave him this information.

887. In the event, no such scheme was put into practice. According to Mr. Privalov, Mr. Nikitin told him that the sale to Primal Tankers had attracted too much publicity for the plan to go ahead. The defendants denied that there was ever any plan of this kind. The allegation (which has not been pleaded) was first made in the summer of 2009, and the defendants submitted that, if true, it would have been made in Mr. Privalov's first witness statement.

888. The defendants argued that the claimants' contention is inconsistent with the contemporaneous documents, which support their case that Buckingham and Marshall were named as the selling companies because Sovcomflot did not want their companies named in any memoranda of sale until it was clear that Primal Tankers' IPO was successful and the sale would proceed. On 2 July 2004 Mr. Gale sent an internal e-mail to Mr. Coleman in which he emphasised that Sovcomflot did not wish to have their name associated publicly with the Primal Tankers transaction. In an e-mail of 29 July 2004 to Mr. Skarga, which was copied to others including Mr. Lipka, Mr. Privalov explained that, until Primal Tankers' IPO had succeeded, Sovcomflot had not wanted to sign memoranda of sale but intended to sell the ships to "nominee companies", which would sell them on to Primal Tankers. In the event, Glefi XX and Glefi XXII were, in effect, substituted as the selling companies for the Tromso vessels.

889. I do not find convincing the defendants' explanation that Sovcomflot did not want their name associated with the sales in case they fell through. The sales of the "Tromso Confidence" and the "Tromso Fidelity" to Primal Tankers were, unsurprisingly, reported in the shipping press, and this in itself would have associated Sovcomflot with the sale to Primal Tankers. It would not have assisted them to avoid signing memoranda of agreement. However, the claimants simply have not provided any convincing evidence in support of their contention that the history of the sales of these vehicles reflects a dishonest scheme which was planned between Mr. Skarga and Mr. Nikitin, but was abandoned. There is no reason to associate them, and no convincing reason even to associate Mr. Privalov, with the mis-statement of the price by Mr. Dobrynin in his e-mail to Mr. Orphanos. Again, it is likely that this curious matter is the more obscure because so few documents from April 2004 have been disclosed by the claimants.

890. I do not consider that the claimants have shown that the history of the sale to Primal Tankers and of the termination of the SLB arrangements provides evidence of dishonest collusion between Mr. Skarga and Mr. Nikitin. Other members of the Executive Board knew that the vessels were to be sold and concurred in the decision to do so. I reject the claimants' contentions that Mr. Gale revised the values of the Arbat vessels for improper purposes and that the revised values were used to justify the total release price of $20 million. That price was finally agreed after negotiations on 20 July 2004. There has been no convincing explanation about why Mr. Nikitin allowed Standard Maritime companies to enter into the agreements with Primal Tankers without having reached a firm understanding with Sovcomflot about the terms upon which the SLB arrangements should be ended and about arrangements

to complete the sale of the Tromso vessels, but this does not show that there was dishonesty or collusion between Mr. Skarga and him.

The newbuildings scheme

891. The newbuildings scheme concerns newbuildings that were constructed in Korean shipyards and were acquired by six of the Standard Maritime defendants and also Hayes Enterprises Ltd. ("Hayes"), another company associated with Mr. Nikitin which is not a defendant in these proceedings. On 3 March 2003 Buckthorn and Southbank, two Liberian companies, concluded contracts with HHI for the construction of hulls nos 1564 and 1565 respectively. In January 2004 Standard Maritime acquired the shares in Titanium and Pendulum, which companies were the buyers of hulls nos 1585 and 1586 respectively under contracts with HHI dated 3 March 2003. In February 2004 Standard Maritime acquired the shares in Accent, which had entered into a contract with Daewoo for the construction of hull no 5274, and on about 23 March 2004 they acquired the shares in Severn, which had entered into a contract with Daewoo for the construction of hull no 5272. On 15 June 2004 Hayes entered into an agreement with HHI for construction of a LPG vessel, hull no 1757.

892. I shall refer to these seven companies, Buckthorn, Southbank, Titanium, Pendulum, Accent, Severn and Hayes, as the "purchaser companies". These acquisitions were very profitable to the purchaser companies, and all except Hayes realised their profits by selling their vessels in 2005, 2006 and 2007.

893. The claimants say that the purchaser companies acquired the benefit of these contracts through Mr. Skarga and Mr. Privalov acting dishonestly and in breach of their fiduciary duties to Sovcomflot, Fiona and FML. They complain (as pleaded in para 163 of the particulars of claim) that the transactions were of no commercial benefit to Fiona and Sovcomflot, but were of very significant commercial benefit to Mr. Nikitin or companies or others with whom he was associated; that Fiona guaranteed the purchasing companies' obligations under shipbuilding contracts; and that the security provided to Fiona against potential liability under the guarantees was inadequate. The defendants say that Sovcomflot were collaborating with Mr. Nikitin and his companies in acquiring newbuildings, and this collaboration was proper and undertaken because it was, and was recognised to be, to the advantage both of Sovcomflot and of Mr. Nikitin and his companies. The benefits of the collaboration were, according to the defendants, set out in a so-called "Co-operation Agreement", and it is convenient first to refer to this agreement.

894. The "Co-operation Agreement" was a letter from Standard Maritime to Fiona dated 26 February 2003. It was signed by Mr. Wettern for Standard Maritime and counter-signed by Mr. Privalov for Fiona, his signature being dated 1 March 2003. In fact Standard Maritime were not incorporated until 17 March 2003, and there is no dispute that the Co-operation Agreement was created in 2004. It purported to record an agreement about collaboration between Fiona and Standard Maritime in ordering new oil tankers, and to recount the benefits of doing so. The defendants contended that it reflected the nature of and rationale for the understanding that Mr. Skarga and Mr.

Nikitin had had from early 2003 when there was first collaboration over ordering vessels.

895. The Co-operation Agreement was headed "Vessel Investments", and it read as follows:

> "This letter confirms the agreement that we have reached, following discussions together, about ordering new oil tanker vessels.
>
> 1 You will keep us informed about your programme of ordering new ships.
>
> 2 When you order new ships, we may decide to order additional ships of the same type at the same time. If so, we will collaborate together to place series of orders. This will be of mutual benefit, because:
>
> (a) you will get a better price for the ships you have already decided to order, because of the "bulk-volume discount effect";
>
> (b) we will be able to utilise the technical skills of your designers and supervision teams, to buy suitable vessels ourselves;
>
> 3 Taking into consideration the benefits you will derive from our orders as described in (2) above, we may agree with you that you will provide security arrangements for our orders (e.g., to cover our buying company's obligations to shipyards by your guarantee) but all payments to the shipyards for ships that we order will remain our sole and full responsibility.
>
> 4 You will arrange for us to have access to and use of your supervision teams, to supervise construction of our vessels also. We will pay for this.
>
> 5 After delivery, you will arrange for us to be able to utilise Unicom as managers of our vessels. We agree to use them, and to pay reasonable fees.
>
> 6 The arrangements under (4) and (5) will need to be documented formally.
>
> 7 In relation to employment of vessels after delivery, we agree at all times to collaborate and to work together, with the objective of mutually advantageous optimisation of use of your and our fleets. Within the scope of this, we will both share with each other all vessel employment opportunities that may arise that may be suitable. Nevertheless, ultimate decision-making

> for employment of each vessel will be held by the group which owns it."

896. On 19 March 2004 the letter was sent by Mr. Wettern to Mr. Nikitin under cover of this message: "Following advice from Privalov that Standard Maritime will be taking over the contract for the first [Daewoo] newbuilding [sc hull no 5272], please find enclosed the following: ... short and informal 'letter of intent' which is designed to pre-date all of the contract transfers …". A signed copy of the document was sent by Mr. Wettern to Mr. Baum on 25 March 2004, when it was referred to as "the 'Heads of Agreement' which was signed at the same time [as the contract for Standard Maritime's purchase of the shares in Severn, the purchaser of hull no 5272], but back-dated, between Fiona and Standard Maritime …". In a letter of the same date, Mr. Wettern sent the original of the letter to Mr. Baum, describing it as the "Overall Letter of Intent".

897. The claimants' case is that in March 2004 Mr. Wettern was instructed to draw up the Co-operation Agreement by Mr. Privalov, who in turn was acting on the instructions of Mr. Skarga and Mr. Nikitin. When he was cross-examined, Mr. Privalov said that he did not remember whether he was instructed by Mr. Nikitin or by Mr. Skarga or by both, and there is no evidence that Mr. Nikitin was involved in arranging for the agreement to be prepared.

898. Mr. Nikitin's evidence was that he recalled the Co-operation Agreement only vaguely: he was told that a simple document was required to reflect the collaboration between Fiona and Standard Maritime, but he did not pay much attention to what Mr. Wettern produced because he did not regard it as important. He said that he did not recall whether he had authorised Mr. Wettern to sign it on behalf of Standard Maritime, and that he did not realise that the document was back-dated. I am unable to accept this: Mr. Wettern had specifically mentioned in his e-mail of 19 March 2004 that the agreement was back-dated and, despite Mr. Nikitin's insistence that he was relying upon Mr. Wettern as his lawyer to behave properly, he must have been aware of this.

899. Mr. Skarga said that the Co-operation Agreement was produced after he had told Mr. Nikitin that they should have a document recording their collaboration "in view of the increasing amount of business conducted between Sovcomflot and Mr. Nikitin's companies" and as a result of discussions that he had with his "fellow directors". In his witness statement of 13 February 2009 he said that he gave instructions for Mr. Wettern to produce it, either directly or through Mr. Privalov. I find that he did so, and I reject his suggestion in cross-examination that Mr. Lipka might have instructed Mr. Wettern. Mr. Skarga said that he could not recall whether he saw the document after it had been signed, and that he did not know, or he did not pay attention to the fact, that it was back-dated. I am unable to accept that he was unaware of this. Mr. Wettern would not have taken it upon himself to back-date the agreement without Mr. Skarga knowing, and Mr. Privalov would not have instructed Mr. Wettern to back-date it without Mr. Skarga's agreement.

900. I accept that the agreement records advantages which Sovcomflot thought in early 2003 might result from collaboration in ordering vessels from yards. An Option Exercise Agreement dated 3 March 2003 between Fiona and Kosta and Vicco (to which I shall refer later) referred to Sovcomflot supervising the orders placed by the

Standard Maritime defendants and to Unicom managing the vessels after delivery. I infer, because of the timing and because of what Mr. Wettern wrote to Mr. Nikitin and Mr. Baum, that the Co-operation Agreement was prepared at least partly in connection with the sale of the shares in Severn, but there is no evidence that gives a cogent explanation about why it was prepared or why it was back-dated. Mr. Skarga or Mr. Nikitin or both apparently thought that it might be useful for some purpose to have a document that set out why Sovcomflot and Mr. Nikitin collaborated about ordering vessels, but there is no evidence that they ever used it. Ms. Matveeva used the Co-operation Agreement when she prepared briefing notes for an Executive Board meeting on 2 July 2002 about the sales to Titanium, Pendulum, Accent and Severn, but Mr. Skarga did not suggest that she should do so. Mr. Privalov, through his secretary, Ms. Atherton, provided her with a copy of it when she sought his help to explain the sales in the notes.

The IPO

901. The collaboration over ordering vessels took place when in 2003 and 2004 Sovcomflot were pursuing their fleet renewal programme in accordance with the Principal Directions. I should first describe how Sovcomflot were funding their programme, and shall also deal with the evidence about the value of the vessels and of the rights that the Standard Maritime defendants acquired.

902. Since 2002 and earlier Sovcomflot had considered the possibility of raising money through an IPO of Fiona's shares on the New York stock exchange. On 31 October 2002, the Executive Board resolved that a proposal for an IPO and Sovcomflot's investment plans should be presented to the General Board. On 22 November 2002 the General Board resolved that Sovcomflot should explore this possibility further: Mr. Skarga was to select a consultant and to report back to them. It was contemplated that an IPO might raise something of the order of $250 million. The purpose was to raise funds for newbuildings, and, as is clear from the presentation to the General Board on 22 November 2002, it was particularly associated with plans to exploit the gas and oil resources of Sakhalin Island off the coast of Siberia and to supply the Far East market. The briefing note referred to the need for Aframax vessels in relation to the Sakhalin 1 project and the need to acquire LNG carriers in relation to the Sakhalin 2 project. On 26 December 2002 Mr. Skarga presented to a meeting of the General Board a plan for 2003 (under the title "Reference on the key directions of production and financial indications of the Sovcomflot Group of 2003") that stated, "… in order to provide for the supplies of New-build vessels and the implementation of new projects (Sakhalin 1 and Sakhalin 2) in the course of 2003, provided there is a successful placement of shares on the stock exchange it is planned to organise new bank loans in the summer of about USD270 million and to raise equity cash in the sum of USD250 million".

903. The IPO proposal was not straightforward. Because Sovcomflot were owned by the Russian state and designated a "strategic enterprise", the Ministry of Property, the Ministry of Transport and the Ministry of Finance all had to give their approval, and other government bodies, including the Ministry of Economics, were also involved in the process. In February 2003 the Ministry of Transport approved the proposal but Sovcomflot did not learn this until about 3 March 2003. The Ministry of Property

also gave their approval, and JP Morgan were appointed consultants. The Government's response was therefore apparently supportive, but progress was slow. On 6 June 2003 and 18 July 2003 the Ministry of Finance required further calculations and analysis. On 31 October 2003 they gave conditional approval for the proposal, but Mr. Skarga's evidence was that by around the end of October 2003 "there had been no positive progress with the IPO, which was evidently not going to succeed". Mr. Skarga said in cross-examination that he formed this view from "negotiations with the bureaucrats" whom he had met. Sovcomflot had had a discouraging meeting at the Ministry of Finance on 23 October 2003, but in November 2003 the Ministry of Property confirmed their support. I cannot accept that the prospects for the IPO were as bleak as Mr. Skarga described, but I do accept that the proposal had made little apparent progress and at the end of 2003 its prospects were uncertain.

904. I have referred to plans to export oil and gas from Sakhalin Island to the East Asian markets. Sovcomflot tendered, in the event successfully, for transport contracts for both phases of this project. This was in line with their objectives to collaborate with Russian business, to carry Russian cargoes and to support the export of Russian oil and other products. This strategy presented Sovcomflot with a dilemma about the ships that they should acquire in that they had to have suitable vessels if their tenders were successful, but at the same time they were reluctant to commit themselves to buying newbuildings for this specialist trade in case they were not. They therefore sought to persuade yards to keep available for them "slots" for newbuildings and, as Mr. Skarga stated in his evidence and I accept, they thought that yards would be readier to do so if they were placing large orders. This was one reason, he said, for collaborating with Mr. Nikitin over orders when dealing with yards.

Ship values and expert evidence

905. The Claimants allege that Sovcomflot allowed the purchasing companies to acquire from them the benefit of shipbuilding contracts, or the shares in single-purpose companies with rights under the shipbuilding contracts, for less than their true value. This allegation is made about all the vessels that the Standard Maritime defendants acquired, but not about HHI hull no 1757, which was acquired by Hayes. The parties called expert evidence about the value of the rights and the vessels to be delivered by the yards from Mr. Willis and Mr. Day.

906. I was not impressed by Mr. Willis' evidence. He was not himself an active participant in the market at the relevant time, having retired from broking and become consultant in 2000, and some of Mr. Day's evidence showed the advantage of his more direct experience of market sentiment. On occasions Mr. Willis allowed himself to use hindsight in order to confirm, or, I think, to form, his views about market movements, and he did not distinguish what information would have been available contemporaneously. Some of his views seemed to me contrary to normal commercial experience: for example, he said that in a strong market a buyer ordering several ships would expect to pay a higher price than for a single order, and would have no negotiating advantage from the size of his order. However, the main reason that I am unwilling to rely upon Mr. Willis' evidence was that he had formed many of his opinions on the basis of information that was inaccurate or at least incomplete; and, perhaps more importantly, when this became apparent, rather than reconsider his conclusions, he sought new arguments to support them. I refer, by way of example,

to his evidence about the epoxy tank coatings of the HHI hulls nos 1564 and 1565 and his evidence about the sale of vessels by HHI to the Tsakos group, to which I shall refer.

907. Mr. Day's evidence was of a much higher quality. Although he had had no experience at Jubilee of buying newbuildings as large as Aframax and Suezmax vessels, he had more direct knowledge of the market at the relevant time. More importantly, he was more moderate in his views and willing to assess dispassionately all the relevant information. He was generally careful, and when he did make errors (as on occasions he did) he was willing to reassess his views. He recognised the difficulties in dealing with some of the issues, and in particular, he engaged with the difficulty of valuing contractual rights rather than vessels. Overall, I consider that he provided much more balanced and reliable opinions than Mr. Willis.

The value of HHI hulls nos 1564 and 1565

908. By an option agreement made on 13 February 2003, HHI granted Fiona an option to buy two 159,000 dwt Suezmax tankers, hulls nos 1564 and 1565, for a price of $45 million each. Fiona exercised the option and HHI entered into shipbuilding contracts dated 3 March 2003 for the vessels with Buckthorn and Southbank, which were not in the Sovcomflot group but companies with which Mr. Nikitin was associated. The claimants submitted that, when the option to buy these vessels was exercised, the price for the vessels which a yard such as HHI could have agreed on the market would have been about $1.5 million more than $45 million, and so Fiona passed to Buckthorn and Southbank the benefit of favourable option rights.

909. I observe that, even if the claimants' submission is correct, it would not follow that Fiona disposed of option rights for less than some value that they had on the open market. I accept Mr. Day's evidence that the option conferred on 13 February 2003, which had to be exercised by 3 March 2003, was not an asset that could have been sold on the market because there was not enough time to do so. It would not have been realistic to start to market the option before it had been formally granted on 13 February 2003, notwithstanding that HHI had entered into a letter of intent to grant it on 27 January 2003.

910. The claimants' submission is based upon Mr. Willis' evidence about the market value of the vessels. His opinion was that in February 2003 the market price for Suezmax tankers such as hulls nos 1564 and 1565 was about $46 million or $46.5 million. He relied in particular upon reports at the beginning of 2003 from shipbrokers of a strong prevailing market, of shipyards' slots for constructing vessels becoming less readily available and of the delivery schedules of yards becoming longer; upon the prices shown in Clarkson Newbuilding index, which increased for Suezmax newbuildings from $43.75 million in December 2002 to $45.5 million in February 2003 and to $46.5 million in March 2003; and upon a schedule of reported prices of comparable sales of Suezmax newbuildings.

911. The newbuildings ordered from HHI were in some ways more attractive than standard Suezmax vessels, and Mr. Willis considered that they would therefore command a higher value. One of his reasons was that mistakenly he believed that the vessels' tanks were to be fully epoxy coated. He also observed that they were to be larger than an average Suezmax vessel and were to have other attractive features.

912. Undoubtedly at the end of 2002 and the beginning of 2003 brokers were reporting that the market was strengthening, but it is apparent only with hindsight that a sustained period of rising prices had started. Mr. Day recalled that, while brokers were speaking enthusiastically of a recovery and there was a "positive feeling" around, the market generally felt uncertain about the future, and some, those who Mr. Day described as the "research fraternity", were less "bullish". To give just one example of a more pessimistic view, on 22 January 2003 Fearnleys AS of Oslo ("Fearnleys") published in their Weekly Report that they doubted the "robustness" of the "present firm interest".

913. Further, the schedule of reported prices on which Mr. Willis relied was incomplete. He omitted reports of sales of an unnamed Daewoo vessel for $45 million in January 2003 and of another Daewoo vessel, the "Nordic Freedom", reported on 7 February 2003 at $44.5 million. Although Clarkson's index reported a price of $45.5 million for a Suezmax newbuilding at the end of February 2003, other brokers' indices were rather more cautious: a report of 28 February 2003 from Compass Maritime Services LLC of New Jersey ("Compass") and a report of 26 February 2003 from Fearnleys assessed the price at $45 million.

914. I accept that by the end of February 2003 the price of vessels generally had increased to some extent. The strengthening market is reflected in a briefing note before the meeting of Sovcomflot's Executive Board on 11 February 2003, to which I shall refer. If it were relevant to place a value on these HHI Suezmaxes towards the end of February 2003, my best estimate is that they were worth $45.8 million. As I shall explain, this is the price which HHI initially sought in February 2003 for the further options for similar vessels, although in fact they agreed to lower prices because arrangements for address commissions were adjusted.

The value of Titanium and Pendulum

915. On 3 March 2003 HHI entered into contracts for the construction of two further Suezmaxes, hulls nos 1585 and 1586, for $45 million with Titanium and Pendulum. The hulls were sisterships of hulls nos 1564 and 1565. The shares in Titanium and Pendulum were sold by Fiona to Standard Maritime, and the claimants allege that they were sold at a substantial undervalue. For reasons that will become apparent, Mr. Willis and Mr. Day gave evidence about the value of the shares as at 14 August 2003, 23 November 2003 and 6 January 2004.

916. Titanium and Pendulum were single-purpose companies and they had no assets or liabilities other than their rights and liabilities under the shipbuilding contracts with HHI. The value of the companies therefore depended upon the value of the contracts. This does not simply reflect how much yards would have charged to build a similar vessel. Mr. Willis and Mr. Day agreed, and I accept, that, whatever legal mechanism is adopted to transfer contractual rights of this kind, there are disadvantages and difficulties, which would have been reflected in the price that could be obtained for them. Thus:

i) Mr. Willis had no previous experience of rights in a shipbuilding contract being transferred by a sale of the shares, the method used to transfer the rights

to hulls nos 1585 and 1586 to Standard Maritime, and he accepted that such a sale "would be unlikely to attract many open market buyers".

ii) In the contracts with Titanium and Pendulum, HHI had agreed that, before the vessels were delivered, the benefits of the contracts might be assigned to a bank or financier providing finance in connection with the vessel but otherwise they were assignable only with HHI's prior written approval, which was not to be unreasonably withheld or delayed. They had also agreed that there might be a novation to another company in the group. In either case, the buyers' obligations were still to be guaranteed by Fiona. Mr. Willis accepted that shipyards do not generally like to have their contracts assigned or to enter into novations of their contracts, and are often reluctant to agree arrangements of either kind.

iii) Mr. Willis and Mr. Day agreed that the usual method adopted to transfer the benefit of a shipbuilding contract is to enter into a Norwegian Sale Form contract upon terms mirroring the shipbuilding contract. This would not bring the buyer into a direct contractual relationship with the yard, and particularly if, as here, the benefit is transferred some time before delivery of the vessel, this has potential disadvantages for the buyer. For example, the seller has little incentive to supervise the construction carefully.

917. Mr. Willis considered that potential buyers of hulls nos 1585 and 1586 might nevertheless have been attracted because their delivery dates were 30 September 2005 and 30 November 2005 respectively whereas, as far as he knew, by August 2003 yards were not committing themselves to delivery dates before 2006 on orders for vessels of this size. I was not convinced by his evidence about the available delivery dates, but, even accepting it, I conclude that the disadvantages of transferring a contract would have reduced the price which a buyer would have agreed to pay, and that the delivery dates of these newbuildings would not significantly have off-set this. It is impossible to measure the adverse impact at all precisely, but I accept Mr. Day's estimate that some 5% to 10% against a yard's price for a newbuilding should be recognised, and adopt his reduction of 7.5% as a sensible approximation.

918. Standard Maritime paid for the shares in Pendulum and Titanium $47 million, a premium of $2 million over $45 million, which was the price of the vessels under the shipbuilding contracts. The claimants submitted that this was less than their value in August 2003. The evidence of Mr. Willis was that they were then worth $48 million. Mr. Day's view was that as at 14 August 2003 the contractual rights (and shares in the companies) had no value that was realisable on the markets, or at least no value greater than the prices that Standard Maritime paid.

919. I prefer the evidence of Mr. Day. When Mr. Willis first assessed the value of the rights, he understood that the vessels' tanks were to be fully epoxy coated, but this was not correct. He also relied upon a schedule of reported prices of comparables that, at best, omitted relevant matters: for example, with regard to the sale of a vessel called the "Soponata", he referred to a reported price of $46.3 million, without mentioning that according to another report the price was $45 million, and he referred to a sale of two vessels to the Thenamaris group without observing that they were reported to be ice-class vessels. Moreover, in my judgment the market in August 2003 was less buoyant than Mr. Willis suggested. Some were expressing concern

that charter prices would fall: for example, Marsoft in their "Tanker Market e-Brief" for 5 August 2003 predicted that spot rates would "fall back … during the final few months of 2003 with a further drop likely in the first half of 2004". J P Morgan's analysts anticipated substantial falls in tanker earnings in 2004 due to over-supply. The Clarkson Research showed in their index no increase in the price of Suezmax newbuildings between March and August 2003: it remained at $46.5 million. Drewry's reports gave a price of $47 million in August 2003 (compared with $45.5 million in March 2003).

920. Mr. Willis agreed in cross-examination that in the summer of 2003 prices for Suezmax newbuildings were within a range from $45 million to $49 million and that the more expensive vessels were of ice-class status. This is not significantly different from the view of Mr. Day, who, having considered reports of sales of comparable vessels and the reports of Clarkson Research and of Drewry, concluded that prices were between $45 million and $48 million. Even without a discount for the disadvantages of transferring contractual rights, the claimants have not shown that in August 2003 the value of hulls nos 1585 and 1586 was more than Standard Maritime agreed to pay for Titanium and Pendulum.

921. Mr. Willis considered that by 23 November 2003 the value of the contracts for the HHI hulls had increased to $52,750,000. Mr. Day considered that they still had no value that was realisable on the market or no value greater than the price paid by Standard Maritime. I do not accept Mr. Willis's evidence. I acknowledge that the price shown by the Clarkson Research in their Suezmax index had increased by November 2003 to $51 million. However, this appears to me to be out of line with reported sales. Mr. Day and Mr. Willis agreed that price tracking indices should always be treated with caution and only used as a rough guide. In this case it is possible that Clarkson Research gave a price as high as $51 million because it reported a sale of three vessels on 19 September 2003 to be for $52.5 million per vessel whereas others reported the prices at only $46.7 million. In any case, I have seen no other evidence that corroborates Clarkson Research's price of $51 million for November 2003, and I do not accept that the index is a reliable guide in this instance. Drewry gave a price of $49 million in November 2003.

922. I accept the defendants' submission that the best comparable indicating the price in November 2003 of a Suezmax newbuilding is the sale of two 160,000 dwt tankers by Samsung to Viken Shipping AS ("Viken") at a price of $48 million each. This reported price is in line with the price of $48.5 million for which Daewoo offered to supply standard (rather than ice-class) Suezmax tankers to Sovcomflot. In his report of 28 September 2009 Mr. Willis said that the sales to Viken provided "excellent guidance to market activity for this type at that time". When he wrote this, he thought that hulls nos 1585 and 1586 would command higher prices because the tanks would have full coatings. I do not overlook that Mr. Willis sought to support his assessment of the value in November 2003 by reference to orders by Marmaras Navigation with Hyundai Sambo, but in my judgment there is such confusion about the reporting of these orders that they do not provide a useful or a reliable comparator.

923. Mr. Day observed that, even taking the Clarkson Research index price for November 2003 at face value, the range of prices indicated by the indices and the prices paid in the comparable Viken sale would be between $48 million and $51 million for a vessel such as the HHI newbuildings. I accept that evidence, and reject Mr. Willis' view that

the market price would have been as high as $52,750,000. I also agree with Mr. Day that, in assessing the price of $47 million paid by Standard Maritime for the shares in Titanium and Pendulum, it must be recognised that the shares would command upon transfer a lower price than a vessel ordered from the yard and that, by selling to Standard Maritime, Sovcomflot did not incur the brokers' commissions that they would have paid upon a market sale, a saving of perhaps $1 million.

924. I conclude that the claimants have not shown that Standard Maritime acquired the shares in Titanium and Pendulum at a price below their true value as at 14 August 2003 (when the defendants say that the price was agreed) or at 23 November 2003 (by which date the claimants accept that the price was agreed). The claimants' pleaded case, however, is not directed to the value of the shares (or the vessels) in August or November 2003. They plead that the shares were transferred to Standard Maritime at a substantial undervalue because by January 2004 the value of the hulls (not the shares) had increased to $54.5 million: see para 202.3 of the particulars of claim. Mr. Willis's evidence was that as at January 2004 the value of the contracts of Titanium and Pendulum was $54.5 million. Mr. Day disagreed, and again I prefer Mr. Day's opinion. I shall deal with this issue only briefly because I consider irrelevant the value of the shares (or contractual rights or vessels) at a date after the price had been agreed. Mr. Day gave evidence, and I accept, that, even if no contractually binding agreement had been made earlier, it would have been contrary to normal commercial practice to seek to increase the price while written contracts were being prepared.

925. The indices of Drewry and Clarkson Research indicated (admittedly on the basis of few reported transactions) that as at 6 January 2004 the price of vessels was around $53 million. Applying a discount of (say) 7.5% to reflect that the sale was of contractual rights rather than a vessel, this would indicate a price of $49 million. If account is taken of commissions that would have been incurred if Sovcomflot attempted to sell the rights in the vessels on the market, this would indicate a price of around $48 million. The claimants have not shown that the shares were transferred for a substantial discount against their market value in January 2004. Indeed, given the fragile nature of any calculation of a market value of contractual rights such as these, I do not consider that they have shown that they were transferred at a discount at all.

The Value of Accent and Severn

926. The claimants say that Standard Maritime acquired at an undervalue the shares in more two companies, Accent and Severn, who had entered into contracts with Daewoo to construct for $57.9 million hulls nos 5274 and 5272 respectively, two 162,000 dwt Suezmaxes of ice-class 1A. They contended that on 20 February 2004 the price of such a vessel would have been $61 million and by 23 March 2004 it would have been $62.5 million. Mr. Willis' evidence supported this contention. Thus, the claimants contended, when in February 2004 Standard Maritime acquired the shares in Accent for $57.9 million, they paid $3.1 million less than their value, and when in March 2004 they paid $58.9 million for the shares in Severn, they paid $3.6 million below their value. The defendants disputed this. Mr. Day considered that they were worth no more than the price of $57.9 million which was to be paid for the vessels under the shipbuilding contracts with Daewoo.

927. There is no dispute that between November 2003, when Daewoo and Fiona agreed upon the price of these vessels in a letter of intent and a side letter of intent, and February or March 2004 the price for Suezmax newbuildings increased considerably. In November 2003, the Clarkson price index for a standard vessel of 156,000 dwt to 158,000 dwt was at $51.5 million and by March 2004 it had risen to $57 million. Mr. Willis considered that the specification of the Daewoo vessels was such that they would command a higher price in that they were 162,000 dwt, rather larger than the standard size of a Suezmax vessel; they were of ice-class 1A; they had bigger engines; and they had superior tank coatings.

928. In his report of 15 May 2009 Mr. Willis considered that, "The most significant market guide is undoubtedly the report in early February 2004 of two 162,400 Dwt, Ice 1A, coated Suezmaxes contracted at HHI with the Tsakos group for a price in excess of $60 million each. They are very similar specification vessels to the two Daewoo vessels … and I believe they provide a very accurate guide to their value". The report produced to support this was one of 13 February 2004 by Southport Atlantic of Florida, which stated that the vessels were "estimated to cost around US $60 million each" (not in excess of $60 million). When he was cross-examined about this, Mr. Willis said that he believed that he had seen another report of the sale and had amended his records of sales to reflect the other report. He later produced a report of the sale from Clarkson Asia Ltd., which stated that the sale of the HHI vessels was "at an undisclosed price estimated to be in excess of USD 60 mill." He explained his earlier report on the basis that all such reported prices are a rough guide and could not be regarded as necessarily accurate. I consider it unfortunate that his original report did not reflect all the information that Mr. Willis had about the sale to the Tsakos group in view of the importance that Mr. Willis attached to it as a comparator.

929. In fact, the reports about the sale were, as I conclude, inaccurate. Mr. Day was told by Mr. Jona Desselberger, a broker who worked on the transaction, that the price paid by the Tsakos group was $57.1 million, payable in four instalments of 10% each and a final instalment of 60%. Mr. Desselberger confirmed to Mr. Willis this information about the price. I consider it more reliable evidence about the price paid than market reports. It is beside the point that a higher price was mentioned in both reports, because mistakes of this kind, once made, are often repeated.

930. After he had been cross-examined, the claimants served a further report of Mr. Willis dated 15 February 2010 in which he defended his view about the value of the Daewoo vessels, notwithstanding the new evidence about the price paid by the Tsakos group. He stated that comparisons of this kind provide only a rough guide because they do not take account of differences in specification, and that the specification of the Daewoo vessels was superior to that of the HHI vessels. He explained that in his report of 15 May 2009 he had wrongly assumed that the HHI vessels were of extremely high specification. I found this unconvincing. Mr. Willis had given evidence through his report that the Daewoo vessels and the HHI vessels were "very similar specification vessels". I do not propose to analyse the various features that led Mr. Willis later to opine that the Daewoo vessels' specification was superior. It suffices to say that Mr. Day, having considered them carefully in a further report dated February 2010, concluded that "the differences in design (some of which favoured the Tsakos vessels) would not have resulted in any material difference in the value of the Tsakos contract compared with the Sovcomflot contract and indeed the

value of the Tsakos contract might well have been greater than the value of the Sovcomflot contract having regard to the payment terms and the extra sum payable by Sovcomflot for the engine". The last two points to which Mr. Day was referring were these: the instalments for the price were more favourable to the Yard under the Daewoo contracts (5 instalments of 20%) than under the HHI contract; and under the Daewoo contracts the buyers were to pay the cost of enhancing the engine to ice-class standard, whereas the Tsakos group introduced design modifications so that the vessels could have ice-class 1A status with a less powerful and therefore cheaper engine. I accept the evidence of Mr. Day about the relative value of the contracts for the Daewoo and the HHI vessels.

931. Mr. Day was right to recognise that what matters in this case is not the value of vessels, but the value of contractual rights against the Yard. As I have explained, this requires that some discount be introduced against the price of ordering a vessel. The contracts with Daewoo provided for delivery dates for the vessels of August 2006 for hull no 5272 and of September 2007 for hull no 5274. The September 2007 date would not have provided an incentive for buyers to prefer to take over the contract rather than to order a vessel from a Yard. The position with regard to an August 2006 delivery date is less clear. Mr. Willis considered that by March 2004 the delivery schedules of yards extended "well into 2007", and Mr. Day agreed that in March 2004 the delivery dates offered by yards were later than August 2006. There is no convincing evidence that the delivery dates would have significantly off-set the discount to be made for the disadvantages of transferring contractual rights.

932. In my judgment, the claimants' case that the value of the contracts for Daewoo vessels was as high as the claimants allege, or indeed above the price that Standard Maritime paid for the shares in Accent and Severn, depends upon the rise in the Clarkson and Drewry indices after Fiona and Daewoo agreed upon the price of $57.9 million in the letters of intent in November 2003. This evidence must be assessed in light of (i) the sale to the Tsakos group, which, on the face of it, presents a good comparator for the value of the Daewoo vessels and indicates that the published indices were too high; (ii) the difficulty of disposing of contractual rights for specialist vessels; and (iii) the limited market for vessels of this kind. The Daewoo vessels were specialised ships, and, as Mr. Day put it, there were very few non-Russian buyers who "have an absolute need for an ice-class 1A ship". I am not persuaded that Standard Maritime bought the shares in Accent and Severn at a substantial undervalue, or indeed that it has been shown that they bought them at any undervalue.

<u>The contracts with HHI for hulls nos 1564 and 1565</u>

933. I come to the dealings about which the claimants complain in respect of the newbuildings scheme. Towards the end of 2002 Sovcomflot decided that they should buy new Suezmax vessels, and Mr. Skarga instructed Mr. Privalov to investigate the market. Mr. Privalov advised that prices for newbuildings were low and that it was a good time for Sovcomflot to place orders. Mr. Gale opened negotiations with HHI about placing an order for vessels from their yard at Ulsan, Korea. Mr. Nikitin had spoken with Mr. Skarga about Sovcomflot's plans to buy new Suezmax vessels, and I accept that from the start Mr. Nikitin and Mr. Skarga had discussed whether the Investors, that is to say Mr. Nikitin, Mr. Katkov and Mr. Malov, might also acquire Suezmax vessels and collaborate with Sovcomflot if they did so.

934. On 9 December 2002 in an e-mail to Mr. Wood, who was HHI's broker, Mr. Gale said that Sovcomflot had instructed Clarkson to enquire of HHI about ordering two Suezmax vessels with an option to purchase two more. On 11 December 2002 Mr. Wood wrote to HHI about Fiona ordering Suezmax vessels on this basis that they intended to sign firm orders for two vessels in January 2003 and sought options for two more vessels which would be for declaration in March and June 2003. Clarkson and HHI carried on negotiations into January 2003. HHI advised Clarkson that they were being pressed hard by other potential customers for their berths, and in an e-mail to Mr. Privalov on 7 January 2003 Mr. Gale advised that "At the moment all Korean shipyards are raising prices like hell and fast", and that HHI were treating Sovcomflot more favourably than other customers. In an e-mail of 15 January 2003 Mr. Gale advised that the delivery date for the second vessel that HHI might build had been delayed to the second quarter of 2005 because the yard was "committing berths the whole time under current market pressures". The claimants relied upon these communications as evidence of heavy demand in the market in early 2003 and submitted that the Investors were able to buy newbuildings from HHI only by exploiting Sovcomflot's relationship with them. I am not persuaded of this: these were the comments of a yard engaged in negotiations or of brokers anxious to conclude a deal.

935. The negotiations resulted in Fiona signing a letter of intent with HHI dated 27 January 2003 to buy two 159,000 dwt crude oil carriers, with an option to buy two more. The price for each was $45 million payable in four instalments: 10% on signing the contract, 10% six months thereafter, 10% upon keel laying and 70% on delivery. The first vessel was to be delivered in the first quarter of 2005 and the second vessel was to be delivered in the second quarter of 2005, subject to HHI's option to deliver her in the first quarter. The optional vessels were for delivery in the second quarter of 2005. The options were to be declared on or before 3 March 2003. The letter of intent stated that Fiona were to provide a performance guarantee if the contractual buyer of the vessel was "a special purpose company or a company who has no substance".

936. Mr. Privalov gave Clarkson instructions during the negotiations on behalf of Fiona, and signed the letter of intent. He said that he understood that Fiona intended to place the firm orders and take the options for themselves, and that before early February 2003 he did not know that Mr. Nikitin or the Investors associated with him might acquire any of the vessels. I am unable to accept that evidence. On 24 January 2003 Mr. Privalov sent Mr. Nikitin a draft of the letter of intent under cover of an e-mail which, to my mind, makes it clear that Mr. Nikitin was familiar with, and had been following, the negotiations with HHI. This is not only consistent with the evidence of Mr. Skarga and Mr. Nikitin that they had discussed collaboration, but shows that Mr. Privalov knew of Mr. Nikitin's interest.

937. In early February 2003 Mr. Privalov sought Mr. Wettern's advice about how the option for further vessels might be exercised by or on behalf of the Investors, given that HHI were to have a performance guarantee from Fiona. Mr. Wettern responded in an e-mail dated 10 February 2003, in which he recalled that Mr. Privalov had explained that, "The Investors might well wish to purchase the first two option vessels" and that Sovcomflot would be asking HHI to agree to them having options for two further vessels. Mr. Wettern suggested that, "Because in your accounts it is going to look odd if Fiona has given Guarantees to HHI in respect of contracts of

which its subsidiaries are not the buyers", the buying companies might be subsidiaries of Fiona and sold to the Investors for nominal consideration when the vessels were delivered. The Investors would fund the payments to HHI against the security of assignments of the buyers' rights under the shipbuilding contracts and the refund guarantees that HHI were to provide.

938. This suggestion of Mr. Wettern was not adopted, and on 11 February 2003 he wrote to Mr. Nikitin setting out an alternative arrangement whereby Sovcomflot would exercise the option for the two vessels and the contracts for them would be made in the name of two new Liberian companies which would become subsidiaries of the Investors' companies, Kosta, a company of Mr. Nikitin, and Vicco, in which Mr. Katkov and Mr. Malov were interested. Mr. Wettern wrote that he understood that it was to be agreed that Fiona would supervise construction of the vessels and be reimbursed for the work at cost, that from delivery Fiona would manage the vessels, that the Investors would fund the payments under the shipbuilding contracts and that the Investors would provide a counter-guarantee to Fiona for their guarantee to HHI.

939. At about this time Mr. Lipka and Mr. Terekhin signed, on their own behalf and as proxies for Mr. Borisenko and Mr. Skarga, minutes of a meeting of the board of Fiona on 7 February 2003 that recorded a resolution that Fiona should execute guarantees in respect of the purchase from HHI of hulls nos 1562 and 1563 by two subsidiaries of Fiona, Tam Enterprises Inc. ("Tam") and Cambridge Carriers Ltd. ("Cambridge"). It was also resolved that Fiona should execute an Option Letter for two subsidiaries to take delivery of two further vessels. Mr. Lipka did not know who were to acquire these further vessels, but he acknowledged that he must have known by this stage that they were not for Sovcomflot. I infer that Mr. Terekhin and (despite his denials) Mr. Borisenko also knew this.

940. On 11 February 2003 the Executive Board of Sovcomflot considered the purchase from HHI, and unanimously decided to place an order for four vessels. The meeting was attended by Mr. Privalov. The minutes record that he reported that he had signed a letter of intent to buy four vessels with an option to order two more: there is no dispute that this was an error in the minutes. Mr. Privalov reported that, "These ships were ordered at a very good price, considering the general increase in the cost of newly built vessels, which has been brought about by the raising of rates in the charter market". A briefing note for the meeting, which had been prepared by Mr. Sharikov and Ms. Matveeva, said that the price of $45 million corresponded "to the lower limit of prices for new built ships for delivery in 2005 and is considerably less than the cost of modern ships now in use".

941. The minutes do not specifically refer to the Investors. They refer to the letter of intent giving an "option of the customer ordering two more tankers". The defendants submitted that "the customer" was not a natural expression to describe Fiona and it was intended to refer to the Investors. I disagree: Fiona were HHI's customer and naturally so described in the context of the reference to the letter of intent. However, this is not important. The discussion at the meeting must have been on the basis that Sovcomflot were not to acquire the two optional vessels for themselves. For example, Mr. Terekhin, who had signed Fiona's minutes, knew this and he spoke in support of the proposal.

942. On 13 February 2003, at a signing ceremony in Korea, Sovcomflot entered into contracts with HHI for the purchase of hulls nos 1562 and 1563 in the names of Tam and Cambridge and also an agreement that Fiona could declare no later than 3 March 2003 an option to buy two further vessels. Fiona were to provide a guarantee if the buyers were special purpose companies or had no substance. It was a single option to buy two vessels, and Fiona were not entitled, as I interpret the agreement, to elect to buy one further vessel. The shipbuilding contracts and the option agreement were governed by English law.

943. When the agreements with HHI were concluded, according to Mr. Skarga's evidence, which I accept, Mr. Nikitin had not firmly committed the Investors to buying two vessels from HHI, but he had indicated that they were likely to wish to do so. They took a firm decision to acquire them on about 14 February 2003 and advised Sovcomflot of it. On 17 February 2003 Mr. Wettern sent to Mr. Privalov and Mr. Nikitin a draft of an Option Exercise Agreement to be made by Fiona with Kosta and Vicco. He observed in his covering e-mail that "If this were to be done on arms-length terms", Fiona might ask for security for Kosta's and Vicco's indemnity in respect of Fiona's guarantees to HHI. Although he was not sure whether this was required "given the proximity of relations", he advised that without it Fiona's auditors would treat the purchasers of hulls nos 1564 and 1565 as companies in the Fiona group. In a further e-mail on 28 February 2003 Mr. Wettern wrote to Mr. Nikitin and Mr. Privalov that, after discussions with Mr. Privalov, he thought that, because the arrangements needed to be "capable of being defended from the point of view of Fiona", there should be security for the indemnity. He enclosed the draft of an agreement whereby the bearer shares in Buckthorn and Southbank, which were to acquire the vessels and to be owned by Kosta and Vicco, should be pledged as security and held by WFW for this purpose. Mr. Wettern explained that, in broad effect, this meant that Fiona would be secured by the instalments of the price paid to HHI, the first of which were due when the shipbuilding contracts were made.

944. Once the Investors firmly decided to acquire the two vessels, Sovcomflot went about acquiring from HHI further options for a fifth and a sixth vessel. HHI proposed prices of $45.8 million for them. Clarkson had arranged for HHI to pay address commissions of 2.5% in respect of the agreements for the first four ships. This was, I infer, to fund payments to be made under the Clarkson arrangement, and was not known to Mr. Skarga or any other executive of Sovcomflot in Moscow. Clarkson proposed in an e-mail to HHI on 18 February 2003 that the address commissions be reduced from 2.5% to 2%, or by $225,000, for all six vessels and that the price for the further optional vessels should be $45 million. HHI agreed to this on 19 February 2003, and Fiona immediately exercised the options for the fifth and sixth vessels, which were for hulls nos 1585 and 1586.

945. On 19 February 2003 Mr. Privalov stated in an e-mail to Mr. Wettern that "As agreed, vessels number 3 and 4 will be assigned by [Fiona] to investors", and asked him to incorporate two companies to acquire hulls nos 1585 and 1586 for Sovcomflot. HHI were not told that the Sovcomflot group did not intend to acquire all six vessels for themselves, and HHI clearly believed that they were to do so.

946. Clarkson were not straightforward in the way that they brought about this agreement. On 18 February 2003 Mr. Wood told HHI that "the buyers are prepared to reduce their address commission by 0.5%...", although he had no proper basis for believing

this to be true. On 19 February 2003 Mr. Gale sent to Mr. Wood a draft of a communication that he intended to send to Mr. Privalov, which stated that HHI were, "after due consideration, … prepared to offer a total of four additional vessels, but as a major concession, if these option vessels are declared immediately … they will concede a reduction of 1.3 million on each vessels from their original proposal 0.8 million on each vessel from what they stated (previously) as their final proposal". This was not, of course, the true position. The reduction in what Sovcomflot were to pay did not result from a concession by HHI, and was not related to the options being declared immediately. It reflected a reduction in what HHI understood they were paying as address commissions. Mr. Gale in fact sent a message to Mr. Privalov in these terms shortly after sending it in draft to Mr. Wood. Both brokers knew that the position was being misrepresented. It is unclear whether the intention was to mislead Mr. Privalov or, as is more likely, the intention was that Mr. Privalov should be able so to present the position to Sovcomflot in Moscow. None of this is to the credit of Clarkson's brokers, but it does not bear upon the issues that I have to decide. There is no evidence that either Mr. Skarga or Mr. Nikitin was aware of the address commissions or that they knew of or were party to the agreement to reduce them.

947. The documents show that the further options from HHI were known to Mr. Borisenko, Mr. Terekhin and Mr. Lipka, as well as to Mr. Skarga, and I infer that the other members of the Executive Board knew about them as well. Mr. Privalov sent to Mr. Borisenko a copy of his e-mail of 19 February 2003 to Mr. Wettern. On 24 February 2003 Mr. Wettern sent an e-mail to Mr. Lipka in which he set out which companies were to buy the four optional vessels: Buckthorn were to buy hull no 1564; Southbank were to buy hull no 1565; Titanium were to buy hull no 1585; and Pendulum were to buy hull no 1586. He pointed out that Buckthorn and Southbank were not owned by Fiona, but Titanium and Pendulum were.

948. Mr. Wettern prepared two sets of minutes to record resolutions of the directors of Fiona. As usual, no meeting was actually held but minutes of meetings on 25 February 2005 were signed by Mr. Terekhin and Mr. Lipka on their own behalf and as proxies for Mr. Skarga and Mr. Borisenko, and they were returned to Mr. Wettern. The first minutes recorded a resolution that Fiona should provide to HHI performance guarantees for Buckthorn, Southbank, Titanium and Pendulum and that a director should execute a power of attorney in favour of (among others) Mr. Privalov to enter into them. The other minutes recorded a resolution to authorise the execution of an Option Exercise Agreement to be made by Fiona with Kosta and Vicco, and stated (i) that Kosta and Vicco should own the shares in Buckthorn and Southbank, and (ii) that the Option Exercise Agreement should provide (among other things) that Kosta and Vicco would indemnify Fiona in respect of performance guarantees to be given to HHI, fund the instalments under the shipbuilding contract and have Unicom supervise the construction of the vessels and manage them after delivery. It was resolved that a director of Fiona should execute powers of attorney in favour of (among others) Mr. Privalov to enter into the Option Exercise Agreement. Mr. Terekhin executed powers of attorney authorising Mr. Privalov (among others) to execute the guarantees and the Option Exercise Agreement. It is clear from an e-mail sent on 11 March 2003 from Mr. Privalov to Ms. Matveeva that Mr. Borisenko had a copy of the Option Exercise agreement.

949. The Executive Board of Sovcomflot had again met on 18 February 2003. The agenda did not include any item about the further options. According to Mr. Skarga, they were discussed at the meeting and he suggested that the matter be on to the agenda, but others on the Board, in particular Mr. Terekhin, considered this unnecessary because two of the options were not for Sovcomflot. Mr. Lipka and Mr. Khlyunev did not recall this, but there is no reason that Mr. Skarga should have invented this evidence, and I accept that there was some discussion such as he described either at the meeting or in exchanges between members of the Executive Board before the meeting.

950. On 3 March 2003 there were executed the following: (i) shipbuilding contracts made by HHI with Buckthorn and Southbank for the construction of hulls nos 1564 and 1565; (ii) shipbuilding contracts made by HHI with Titanium and Pendulum for hulls nos 1585 nos and 1586; (iii) guarantees by Fiona of the obligations of Buckthorn, Southbank, Titanium and Pendulum to HHI; and (iv) an Option Exercise Agreement whereby Kosta and Vicco agreed to indemnify Fiona in respect of the guarantees for the obligation of Buckthorn and Southbank and to provide security to support the indemnities. All the agreements were governed by English law. In the guarantees the parties agreed upon the jurisdiction for the English courts. The Option Exercise Agreement included an agreement for English arbitration. The agreements were executed in London and Mr. Privalov signed them on behalf of Fiona under authority conferred upon him by the powers of attorney.

951. In January 2005 Southbank and Buckthorn entered into agreements to sell the vessels upon delivery for $80 million each to purchasers financed by Schoeller Holding Ltd. and Koenig & Cir GmbH & Co KG, who were referred to as the "Koenig purchasers". The claimants' contention is that by then Standard Maritime owned both Southbank and Buckthorn because (i) the shares in Southbank were owned from the date of incorporation by Kosta and Mr. Nikitin was the beneficial owner of Kosta; (ii) the shares in Buckthorn were owned from the date of incorporation by Vicco and after about July 2003, when Mr. Malov and Mr. Katkov transferred to Mr. Nikitin such interests as they had in shipping investments, Mr. Nikitin was the beneficial owner of Vicco; and (iii) at some time Mr. Nikitin arranged for the ownership of Southbank and Buckthorn to be transferred to Standard Maritime. The claimants did not develop these contentions before me and, had I needed to make findings about whether they were justified by the evidence, I would have invited further submissions about them. In view of my conclusions on other matters, I do not need to do so.

952. The claimants' pleaded complaint in relation to hulls nos 1564 and 1565 is directed to how Fiona dealt with the option to which HHI agreed in the letter of intent on 27 January 2003 and the option agreement dated 13 February 2003 and which Fiona exercised on about 19 February 2003. The Fiona board resolved on 25 February 2003 to enter into the Option Exercise Agreement which recognised that the optional vessels would be bought by Buckthorn and Southbank, and Fiona entered into the contract on 3 March 2003. The claimants alleged that Mr. Skarga, and also Mr. Borisenko and Mr. Privalov, all acted dishonestly and in breach of fiduciary duties owed to Sovcomflot, Fiona and FML "By causing or permitting Fiona to transfer the benefit of the shipbuilding options to Buckthorn and Southbank": see para 187 of the particulars of claim. They are said so to have acted because they had been paid or expected to be paid bribes. It is also alleged that FML were in breach of fiduciary

duties owed to Sovcomflot and Fiona because of what Mr. Privalov did when acting for them.

953. This pleading is open to proper criticism. First, as I have observed, there were not separate options for the two vessels, but a single option to buy two vessels. Secondly, the complaint is about how Fiona dealt with the options, and I do not consider that Mr. Skarga or Mr. Borisenko or Mr. Privalov acted in breach of duties owed to Sovcomflot or FML. Thirdly, in so far as the claimants argued that Mr. Privalov, being employed by FML, acted in breach of his duty to FML, because he caused FML in turn to be in breach of some duty to Fiona, I cannot accept either that FML were acting in any relevant way so as to be in breach of duty to Fiona or that Mr. Privalov was acting at any relevant time as employee of FML. Specifically he signed the agreements on 3 March 2003 on behalf of Fiona because he personally had been authorised to do so by the powers of attorney executed by Mr. Terekhin in accordance with the resolutions of the board of Fiona on 25 February 2003.

954. Fourthly, and more fundamentally, as a matter of legal analysis Fiona did not "transfer" any option to Buckthorn and Southbank, nor as a matter of commercial reality did Fiona allow the Standard Maritime defendants through Buckthorn and Southbank to acquire vessels which Fiona planned to buy for themselves. As I have concluded, from the start and certainly by the time the letter of intent was signed, it was contemplated that the Investors might buy the two vessels. By the time that HHI entered into the option agreement of 13 February 2003, the Investors were likely to decide to take them. By then, Sovcomflot had, as I conclude, decided that they might want four vessels from HHI. I accept Mr. Skarga's evidence that they so decided because it was then looking more likely that the IPO would proceed and this allowed or encouraged Sovcomflot to press ahead more ambitiously with the fleet renewal programme, but the reason for Sovcomflot's decision is not important. As a result of it, Sovcomflot approached HHI for the two further optional vessels, and HHI did agree to Sovcomflot's request. As far as Mr. Skarga and Sovcomflot were aware, HHI's price for each of the six vessels was $45 million. They knew nothing about Clarkson's negotiating manoeuvre about the address commissions. It is not clear how Sovcomflot and the Investors would have resolved the position if HHI agreed to sell only four vessels, but the question never arose.

955. I come to the more specific allegations that the claimants make in support of their contention that, dishonestly and in breach of duty Mr. Skarga (and others) caused or allowed Fiona to transfer the benefit of the options. First it is said (at para 187.1 of the particulars of claim) that "The options were a valuable item of property acquired by Fiona, inter alia, on the strength of its commercial relationship with [HHI] and its covenant as guarantor". I do not find it easy to understand this allegation: Fiona did not give a guarantee of "the options", although they might be required to provide guarantees if the option was exercised. In so far as it is said the option rights had a value on the open market, I accept Mr. Day's evidence that they did not. Whether it be supposed that Sovcomflot might have tried to sell the option when it was granted on 13 February 2003 or that they might have done so after the letter of intent was signed, there was simply not enough time to find a purchaser before the option had to be declared. Mr. Day observed that Sovcomflot would have needed a purchaser of the option who would buy vessels although they would have had no control over their specification. Even if Sovcomflot would have contemplated jeopardising their

relationship with HHI by trying to sell the option on the market, I conclude that it had no transfer value.

956. The focus of the claimants' claim, however, as they developed it in submissions, was that HHI's contracts with Buckthorn and Southbank were valuable because the market in Suezmax newbuildings had strengthened and the price for such vessels was, by the end of February 2003, higher than $45 million. As I have explained, in my judgment, they have not established that.

957. Next, the claimants alleged that Mr. Skarga acted in breach of duty and dishonestly because, "The options would not … have been available to Mr. Nikitin or any of his companies": para 187.2 of the particulars of claim. I understand that they mean that Mr. Nikitin could not have placed orders for comparable vessels on comparable terms. It was suggested by the claimants that the market was such that in early 2003 Mr. Nikitin could not have found a yard of HHI's standing who would have agreed to construct the vessels for him. I accept Mr. Day's evidence that there is no reason to believe this to be so.

958. The claimants also alleged that it was of no benefit to Sovcomflot or Fiona to collaborate with Mr. Nikitin and the other Investors in buying newbuildings. Mr. Skarga said that he and Sovcomflot considered that they might benefit in that (i) they strengthened their negotiating position and improved standing in the market by placing a large order with the HHI; (ii) they similarly put themselves in a stronger position when ordering equipment (buyer's supplies) for the vessels; (iii) Unicom were to be appointed by the Investors to supervise the construction of the vessels: and (iv) Unicom were to manage the vessels after delivery. The third and fourth of these considerations were reflected in the Option Exercise Agreement, which also provided that the parties should "collaborate in relation to mutually advantageous opportunities in relation to the vessels' employment after delivery… ". While it was a matter of negotiation how much Unicom would charge for their services, Mr. Thompson confirmed that he would negotiate as much as Unicom could obtain.

959. Mr. Skarga's evidence is corroborated by the explanation of the collaboration that Mr. Borisenko gave to Moore Stephens during their audits in 2003 and 2004. In any case, these were obvious potential advantages for Sovcomflot in this collaboration and in later collaborations with the purchasing companies over purchases of newbuildings. The collaboration was also in accordance with Sovcomflot's strategic aim of developing relations with Russian business. I accept that for these reasons in February 2003 Mr. Skarga regarded it as being proper for Sovcomflot to collaborate with the Investors in this way and to Sovcomflot's advantage to do so. Further, the decision to do so was supported by others on the Executive Board such as Mr. Terekhin, who, I infer, also considered it in the best interests of Sovcomflot and Fiona to do so.

960. I come to the complaint that Fiona guaranteed the obligations of Buckthorn and Southbank to HHI and, it is said, they were provided with "wholly inadequate security, which entitled Southbank and Buckthorn to retain the benefit of any rise in the market value of the ships under construction regardless of default": para 187.3 of the particulars of claim. The shares in the buying companies were to be deposited with WFW and the Option Exercise Agreement provided that Kosta and Vicco should

jointly and severally indemnify Fiona in relation to the guarantees and their liability to do so was secured as follows:

> "… in case [Kosta and Vicco] fail to fund either Buyer in relation to any instalment of the contract price under either contract and, in such situation, Fiona (in order to avoid to a call under the corresponding Guarantee) funds such Buyer to enable it to pay such contract price instalment to the Builder then, at the option of Fiona, the ownership of all the shares of such Buyer may be transferred to Fiona, which should only be obliged to pay to [Kosta and Vicco] as compensation an amount equal to the difference between: (a) the instalments already paid by that Buyer under the relevant contract that have been funded by [Kosta or Vicco]; and (b) the market price for sale of the relevant vessel, less instalments remaining to be paid under the Contract concerned unless also all costs and interest"

961. The effect of the provision is that, in the event that they made payment to HHI under their performance guarantee, Fiona had not only an in personam right to an indemnity against Kosta and Vicco but also the right, but not the obligation, to take over the relevant shipbuilding contract by paying the market price of the vessel. This would provide adequate security for the liability unless the market value of the vessel had fallen by more than the amount of any instalments paid to HHI. Since 10% of the price, some $4.5 millions, was payable when the shipbuilding contract was concluded, Fiona were exposed only if the market value fell to more than 10% below the contract price. As further instalments were paid to HHI, Fiona's security increased.

962. I accept that under the agreement Kosta and Vicco would benefit from any rise in the market value in the vessels under construction. The claimants have no proper grounds to complain about this. Fiona's security was, in substance, the instalment or instalments paid to HHI, not the vessels themselves. The scheme was that Kosta and Vicco should have the benefit or disadvantage of any change in the value before Fiona took over the contract.

963. In any case, even if the security could have proved inadequate in some circumstances, this is not evidence of dishonesty or improper conduct on the part of Mr. Skarga or indeed Mr. Nikitin. It is clear that, understandably, this part of the contractual arrangements was left to Mr. Wettern. He introduced the provision about security into the draft of the Option Exercise Agreement that he suggested on 28 February 2003. I accept Mr. Skarga's evidence that this matter was "left to the lawyers to draft" and Mr. Nikitin's evidence that he was relying upon Mr. Wettern "to do the way how he believes it's proper". The defendants rightly observed that the guarantees and counter-security were referred to in Fiona's financial statements and attracted no contemporary criticism.

964. I therefore reject the claimants' allegations that Mr. Skarga acted in breach of duty to Fiona (or to Sovcomflot or FML) in relation to the options for hulls nos 1564 and 1565 and that he acted dishonestly in that regard. The reality is that the decision to enter into the arrangements was taken by the board of Fiona collectively. I accept Mr. Lipka's evidence that he was not aware of the identity of the Investors who were behind the companies entering into the contracts, but there is no reason to think that

this information was deliberately withheld from him, or in any way influenced his decision to support the arrangements.

The sale of the shares in Titanium and Pendulum

965. By shipbuilding contracts dated 3 March 2003 HHI agreed with Titanium to construct hull no 1585 for $45 million and agreed with Pendulum to construct hull no 1586 for $45 million. The shares in Titanium and Pendulum were bearer shares and by a letter dated 11 March 2003 Mr. Skarga and Mr. Borisenko authorised Unicom to hold them.

966. On 6 January 2004 Fiona and Standard Maritime entered into two agreements whereby Fiona sold the shares in Titanium and Pendulum to Standard Maritime. The transfer was to be completed on 14 January 2004. The consideration for the shares in each company was $2 million and an amount equal to the payments made by Titanium or Pendulum to HHI. The agreements provided for Fiona to maintain the performance guarantees given to HHI for the obligations of Titanium and Pendulum under the shipbuilding contracts. Standard Maritime agreed to indemnify Fiona for any payments under the guarantees and to provide security for their indemnity by depositing with WFW the shares in Titanium and Pendulum on terms similar to the security for the indemnity in relation to hulls nos 1564 and 1565.

967. The share sale agreements were in similar form, and were also in the same form as the agreements whereby later the shares in Accent and Severn, who owned the Daewoo hulls nos 5274 and 5272, were sold. They were all governed by English law and contained an agreement to arbitration in accordance with English legislation. They were signed by Mr. Wettern on behalf of Standard Maritime and by Mr. Privalov on behalf of Fiona. In each case the agreement was stated to have been made "as of" a specified date. In the case of the sales of the shares in Titanium, Pendulum and Accent (but not in the case of the sale of the shares in Severn), the claimants allege that the agreements were falsely dated.

968. The agreements for the sale of the shares in Titanium and Pendulum were stated to have been made "as of 14 August 2003", and were drafted accordingly (so that, for example, in the recitals it was stated that the second instalment of the price for the vessel "will be due" on 7 September 2003). The claimants contended that there was no proper basis for this, and, as they plead at para 204.3.6(3) of the particulars of claim, "It is to be inferred that Mr. Skarga, Mr. Nikitin and Mr. Privalov required the insertion of that date in the sale and purchase agreement to conceal the true date from Fiona in the knowledge that the shares were being transferred at a substantial undervalue in a rapidly rising market". They plead that Mr. Wettern was informed on 23 November 2003 that the shares were to be transferred to Standard Maritime and that it is to be inferred that the agreement was reached between Mr. Skarga and Mr. Nikitin on around that date. The defendants contended that there was proper reason for the agreements to be dated "as at 14 August 2003", because Mr. Skarga and Mr. Nikitin then agreed to the transfer of the shares and the price to be paid.

969. In January 2005 Titanium and Pendulum agreed to sell hulls nos 1585 and 1586 upon delivery by HHI to the Koenig purchasers for $80 million each. The claimants contend that therefore Standard Maritime made a profit of $33 million per vessel from these dealings, and that they are obliged to account for it to Fiona (and other

claimants) because they dishonestly assisted breaches of fiduciary duties on the part of Mr. Skarga, Mr. Borisenko and Mr. Privalov.

970. In respect of this claim and the other claims about hulls nos 1585 and 1586, including the claims against Mr. Skarga for breach of fiduciary and other duties, it is not pleaded that Sovcomflot's decision to sell Titanium and Pendulum to Standard Maritime itself was not proper. The focus of the complaint is the terms on which they did so. The central issues about this part of the claim are (i) whether in August 2003 Mr. Nikitin and Mr. Skarga entered into any agreement about Mr. Nikitin acquiring the shares, or hulls nos 1585 and 1586, or the rights under the shipbuilding contracts with HHI; and (ii) what was the value of hulls nos 1585 and 1586, or more precisely the contractual rights with HHI or the shares in Titanium or Pendulum, at the time that it was agreed that they should be transferred. I have already concluded that the claimants have not shown that the companies were transferred for less than their value either in August 2003 or in November 2003.

971. There is no written record of any agreement in August 2003. Mr. Nikitin's evidence was that in August 2003, when they were on holiday together in Sardinia, he and Mr. Skarga had discussions about hulls nos 1585 and 1586 along these lines: Mr. Skarga had said that, when Sovcomflot decided to acquire four Suezmaxes from HHI in February 2003, they had thought that the IPO would go ahead, but the process of obtaining the necessary government approvals had stalled. He asked Mr. Nikitin whether he wanted to "take over the contracts" for hulls nos 1585 and 1586, and said that Sovcomflot would transfer them for the amount already paid to HHI and a "premium" of $2 million per vessel, because at that time the price for a comparable vessel ordered from a yard would have been $47 million. Mr. Nikitin sought to negotiate an arrangement that the premium should be repayable if the price for vessels fell but Mr. Skarga would not agree to this, and Mr. Nikitin accepted the proposal as presented by Mr. Skarga. Accordingly, Mr. Nikitin said, he considered that around mid-August they had "struck a deal" at a price for each company of $2 million over the amount of the instalments paid under the corresponding shipbuilding contract.

972. I cannot accept Mr. Nikitin's account. If he and Mr. Skarga had reached a firm and unconditional agreement in August 2003, they would have had no reason to wait until November 2003 before instructing Mr. Wettern to draft the required documentation, or doing anything else to implement it. Mr. Nikitin explained that he was very busy at around this time because he was ending his business relationship with the other Investors, and he overlooked the need to deal with the agreement, but this does not explain why Mr. Skarga should not have done so. Further in September 2003, six months after the agreements with HHI had been concluded, the second instalments of 10% of the price fell due under them. If an unconditional agreement as described by Mr. Nikitin had been concluded, the instalments would have been paid or funded by him, but nobody suggested that he should do so.

973. Mr. Skarga did not say that an unconditional agreement was reached in August 2003. He said that by August 2003 Sovcomflot were not confident whether the IPO would go ahead. It had been at least delayed because of the requirements stipulated by the Ministry of Finance on 18 July 2003. They also faced unanticipated demands on their finances: for example, the Admiralty shipyard increased the prices of their ships. At the same time, the Russian Government were emphasising to Sovcomflot that they should increase their involvement in Russian trade from Primorsk and other ice-bound

ports. Having ordered from HHI in February 2003 four Suezmaxes which did not have ice-class status, by August 2003 Sovcomflot realised that they needed ice-class vessels in order to trade through the winter to and from Primorsk and more northerly ports. Unicom and others advised Sovcomflot about this. According to Mr. Thompson, vessels of ice-class C could trade to Primorsk in some winters but not every year. As Mr. Skarga explained the position and I accept, Sovcomflot decided that they should acquire vessels with ice-class 1A status in order to be able to service the Primorsk trade every winter. Sovcomflot were therefore considering whether they could and should up-grade the specification of the HHI vessels to serve this trade, or whether they should place new orders for ice-class vessels.

974. Against this background, Mr. Skarga said that he and others at Sovcomflot decided to ask Mr. Nikitin whether he would be interested in buying HHI hulls nos 1585 and 1586. They investigated the appropriate price by consulting Sovcomflot's on-line service and considering a "Weekly Marine Project Report" of Poten & Partners dated 1 August 2003 and information from Clarkson, and thought that a "premium" of $2 million per vessel would be appropriate. Mr. Skarga then raised the matter with Mr. Nikitin when they were together in Sardinia in August 2003. After some discussion Mr. Nikitin agreed to "take over the contracts" on the basis that he would reimburse Sovcomflot for instalments of the price that had been paid and pay a premium of $2 million for each contract. He said that Mr. Nikitin firmly committed himself to the agreement, but that he did not commit Sovcomflot to it. He explained that Sovcomflot's decision depended upon two conditions: they were to investigate whether hulls nos 1585 and 1586 could be converted to an appropriate ice-class specification at a reasonable price, and they were to see how the plans for an IPO developed. They were to take a firm decision "within a quarter", which would mean by mid – November 2003, or at least they were to decide by then whether the IPO appeared likely to proceed. (In his witness statement of 13 February 2003 Mr. Skarga said that he was uncertain whether he told Mr. Nikitin that Sovcomflot's decision would turn upon these questions or whether they were only what he had in mind. In cross-examination he said that he believed that he spoke to Mr. Nikitin about them.)

975. On 23 or 25 November 2003 Mr. Skarga and Mr. Nikitin again discussed hulls nos 1585 and 1586 in St Petersburg. Mr. Wettern was present and, as Mr. Skarga believed, Mr. Borisenko was as well. Mr. Skarga said that at this meeting they "finalised this negotiation". Sovcomflot recognised that they no longer had good reason to qualify their commitment to the conditional agreement, and that it should be binding upon them. Mr. Wettern was given instructions to draft the necessary documentation. Mr. Skarga provided him with the date of 14 August 2003 as the date of the agreement.

976. Mr. Borisenko was vague in his evidence when he was cross-examined about this matter. He said that he had no recollection of an agreement in August 2003, and that he could not recall when he first learned about the shares in Titanium and Pendulum being transferred. But he accepted that it might have been decided in November 2003 that hulls nos 1585 and 1586 should be sold to Mr. Nikitin pursuant to an agreement that Mr. Nikitin had made with Mr. Skarga in August 2003.

977. The claimants submitted that, nevertheless, Mr. Skarga's account is to be rejected, and they dispute that the decision to sell Titanium and Pendulum had any connection

either with the progress of the IPO or with Sovcomflot's requirements for ice-class vessels.

978. As I have explained, in my judgment, Mr. Skarga overstated the position when he said that by the end of October 2003 the proposal for an IPO was evidently not going to succeed, and I recognise that no contemporaneous documentary evidence indicates that the decision whether to sell hulls Titanium and Pendulum was driven by the progress of the IPO proposal. However, I reject Mr. Borisenko's evidence and the claimants' submission that the IPO was proposed only with a view to funding newbuildings associated with the Sakhalin projects, and had no bearing upon the fleet renewal programme generally. There is, to my mind nothing improbable in Mr. Skarga's evidence that one reason for Sovcomflot selling Titanium and Pendulum was that the IPO proposal appeared to be making no real progress.

979. The claimants disputed that the disposal of hulls nos 1585 and 1586 was connected with any requirement that Sovcomflot had for ice-class vessels, and specifically vessels of ice-class 1A. They argued that the true position was that during the autumn of 2003 Sovcomflot were examining, in parallel but separately, two possible projects: the practicability of up-grading the specifications for hulls nos 1585 and 1586 to ice-class status, and the acquisition of newbuildings of ice-class 1A. Thus, on 21 August 2003 Mr. Gale enquired of HHI about up-grading the specifications of two vessels and also about the price of ice-class 1A Suezmax vessels. On 29 and 30 September 2003 Mr. Gale reported to Mr. Privalov the cost of up-grading hulls nos 1585 and 1586 to ice-class status 1A specification for the hulls and ice-class status 1C specification for the machinery. In October 2003 Unicom continued to explore the possibility of up-grading the vessels to ice-class 1A hull/1C machinery status. At the same time Clarkson were continuing discussions about Sovcomflot acquiring ice-class 1A newbuildings, and on 17 November 2003 Fiona and Daewoo exchanged letters of intent for the construction of two ice-class 1A Suezmax vessels with an option for a third. On 31 October 2003 HHI had made it clear that hulls nos 1585 and 1586 could not be up-graded to ice-class 1A or 1B specification for their machinery because they had reached too advanced a stage of construction. The exchanges about the possibility of up-grading the specifications to ice-class 1A hull/1C machinery status continued, and on 27 November 2003 Mr. Thompson and Mr. Robinson of Unicom had a meeting with HHI about the technical problems that this would entail. After that meeting Mr. Thompson sent Mr. Skarga a memorandum about the changes to the specification that would be necessary. However, on 24 November 2003 Mr. Skarga had sought and obtained confirmation that Sovcomflot had not given any contractual commitment to change the vessels' specifications, and on 3 December 2003 Mr. Thompson, having spoken to Mr. Skarga, advised HHI that Sovcomflot would "not be proceeding with the ice-class modification to the last two hulls. The intended trade will likely require a full ice-class specification of 1A".

980. I conclude that Sovcomflot had not made a clear decision by August 2003 that, if they could not up-grade the specifications for hulls nos 1585 and 1586 so that they could trade to Primorsk and more northerly ports every winter, they would dispose of them and instead acquire ice-class 1A vessels. Their thinking, as I infer from the documents, was more fluid than that. In the autumn of 2003 Sovcomflot probably wished to keep alive their discussions with HHI about up-grading the specifications partly in order to strengthen their negotiating position with Daewoo, but, even after

they had decided to acquire the vessels from Daewoo, they were still interested in up-grading the specifications of hulls nos 1585 and 1586. But this is no reason to reject Mr. Skarga's evidence that the decision to sell hulls nos 1585 and 1586 was connected with their decision to acquire other vessels which could service the Primorsk trade in all winters. Once the letter of intent with Daewoo was signed, Sovcomflot had less reason to spend money on up-grading the HHI vessels' specification and more reason to sell them, especially because the slow progress of the IPO appeared to be jeopardising the funding and progress of the newbuilding programme.

981. I accept the evidence of Mr. Nikitin and Mr. Skarga that in August 2003 they discussed the proposal that Mr. Nikitin should take over from Sovcomflot the contracts with HHI for hulls nos 1585 and 1586, and that Mr. Nikitin made it clear that he was willing to pay for each vessel $2 million in addition to the instalments of the purchase price that had been paid. No firm agreement was made, and Sovcomflot did not give a binding commitment to any arrangement. Indeed, they so qualified their position that they could hardly be said to have committed themselves at all, even on a conditional basis. However, when Mr. Nikitin and Mr. Skarga agreed in November 2003 to proceed with this proposal, Mr. Skarga provided Mr. Wettern with the date of 14 August 2003 as the date of the agreement because it was around that time that he and Mr. Nikitin had agreed what the prices should be if the proposal went ahead. I also accept that in August 2003 Mr. Skarga told Mr. Nikitin that the decision whether Sovcomflot would go ahead with the proposal would be taken in light of the progress of the proposal for an IPO and of further consideration about Sovcomflot acquiring ice-class ships.

982. I therefore reject the submission that, when the agreements of January 2004 were given the date "as of 14 August 2003", this was an entirely fictitious date chosen simply to cover up a dishonest scheme to justify the prices paid for the shares. There is no evidence that the date in the agreements was used for that purpose, and when the matter was put before the Executive Board in July 2004 the contracts were said to have been made in January 2004. There is no reason to suppose that anyone at the meeting referred to the agreements being dated "as of" 14 August 2003. It is not clear to me who it is said might have been misled by the dating of the agreements, but, if the purpose were to mislead, there is no obvious reason that the contracts should not have simply been dated 14 August 2003. The expression "as of" signified that the documentation was created later.

983. The claimants also suggested that, having instructed Mr. Wettern in November 2003 to draw up documents to record the agreement, the defendants deliberately did not execute them until January 2004 in case the market prices for the vessels fell in the interim. No credible evidence supports this suggestion and I reject it.

984. On 6 January 2004, Mr. Wettern sent to Mr. Privalov, Mr. Borisenko and Mr. Lipka by e-mail copies of contracts which he and Mr. Privalov had signed on behalf of Standard Maritime and Fiona respectively, and Mr. Privalov sent the e-mail on to Mr. Orphanos. On 12 January 2004 Mr. Wettern sent to Mr. Lipka draft minutes of a meeting of the Board of Fiona dated 12 January 2004 for the directors to sign, and they were signed by Mr. Borisenko, on his own behalf and as proxy for Mr. Terekhin, by Mr. Skarga and by Mr. Lipka. Mr. Lipka confirmed in his evidence that he, like other members of Fiona's board, approved the sales because he considered them to be

in Fiona's best interests. Although Mr. Borisenko said that he did not remember whether he noticed that the agreements were dated "as of" 14 August 2003, I conclude that he and Mr. Lipka both knew that they were so dated, and they were not concerned about this because they knew that the sales had been under discussion since then. They also knew the prices to be paid for the shares and, like Mr. Skarga, they did not consider the prices were too low.

985. The directors of Fiona also knew that the guarantees given by Fiona were to continue, and about the indemnity given by Standard Maritime and the security for it. Mr. Wettern drew attention to this in his e-mail of 6 January 2004. The claimants alleged that Mr. Skarga and Mr. Borisenko did not act properly in that the Fiona guarantee remained in place and "Fiona was provided with holding inadequate security and on terms which entitled Standard Maritime to retain the benefit of any rise in the market value of the ships under construction regardless of default": see para 202.4.2 of the particulars of claim. I have explained why I reject this argument when considering hulls nos 1564 and 1565. Indeed, here there was more security because two instalments of 10% of the price, $9 million in total for each vessel, had been paid to HHI by January 2004.

986. As I shall explain, the Executive Board unanimously approved sales of Titanium and Pendulum at a meeting on 2 July 2004, together with the sale of the shares in Accent and Severn. I do not consider that the history of the sales indicates that Mr. Skarga acted in breach of his fiduciary duties or dishonestly in relation to them. I do not accept that the shares were sold at an undervalue, or that Mr. Skarga had any reason to believe that they were.

The sale of the shares in Accent and Severn

987. Severn, the 17th claimant in the Fiona action, and Bassett Oceanway Ltd. ("Bassett"), the 70th claimant in the Fiona action, two subsidiaries of Fiona, entered into agreements dated 17 December 2003 with Daewoo to construct two ice-class Suezmax tankers, hulls nos 5272 and 5273, for $57.9 million each, the delivery dates being 31 August 2006 and 15 October 2006. Fiona guaranteed to Daewoo that Severn and Bassett would fulfil their obligations. Daewoo agreed that Fiona should have options for the construction of two further ice-class tankers, hulls nos 5274 and 5275: if Fiona declared them within one month, the prices were to be $57.9 million for hull no 5274 and $58.9 million for hull no 5275, but otherwise the options could be declared within three months at a price of $58.9 million each. In fact the options for both vessels were declared within one month on 16 January 2004, the exercise of the option for hull no 5275 being subject to the approval of the buyer's board, which was to be given by 16 February 2004.

988. In about January 2004 Fiona acquired Accent Tanker Inc. ("Accent"), and on 5 February 2004 Accent entered into a shipbuilding contract with Daewoo for the construction of hull no 5274 for $57.9 million. Another subsidiary of Fiona, Angelic Seas Corporation ("Angelic"), entered into a contract for the construction of hull no 5275. Fiona guaranteed to Daewoo the obligations of Accent and Angelic. Between 18 and 20 February 2004 Mr. Privalov, acting for Fiona, and Mr. Wettern, acting for Standard Maritime, signed an agreement whereby Fiona sold and Standard Maritime bought the shares in Accent for $57.9 million. The share sale agreement was dated "as of 25 November 2003". The price for the shares was $11.58 million, the amount

paid as a first instalment for hull no 5274 when the shipbuilding contract was signed. A minute of a meeting of the directors of Fiona on 4 March 2004 approving the sale of the shares was signed by Mr. Skarga, Mr. Borisenko, Mr. Lipka and Mr. Terekhin.

989. In February 2007 Accent agreed to sell hull no 5274 upon delivery by Daewoo to Knutsen Boyelaster XI KS of Norway ("Knutsen") or to Knutsen's nominee for $95.5 million, and the claimants claim that Standard Maritime and Mr. Nikitin are therefore liable to account to Fiona (and other claimants) for profits of $37.6 million in respect of their dealings with hull no 5274.

990. On about 23 March 2004 Standard Maritime made an agreement with Fiona to buy the shares in Severn, the purchaser of hull no 5272, for $12.58 million, that is to say for $1 million more than the first instalment of the price paid to Daewoo, which was $11.58 million. The agreement was dated "as of 23 March 2004", and was signed by Mr. Wettern for Standard Maritime and by Mr. Privalov for Fiona. A minute of a meeting of the directors of Fiona on 26 March 2004 approving the sale was signed by Mr. Skarga, Mr. Borisenko, Mr. Lipka and Mr. Terekhin.

991. In April 2006 Severn agreed to sell hull no 5272 upon delivery by Daewoo to clients of Barclays Shipping, Greece for $90 million, and the claimants claim that Standard Maritime and Mr. Nikitin are therefore liable to account to Fiona (and other claimants) for profits of $31.3 million in respect of their dealings with hull no 5272.

992. As I have said, the agreements for the sale of the shares in Accent and Severn were similar to those for Titanium and Pendulum. Fiona agreed to maintain their guarantees of their obligations under the shipbuilding contracts, Standard Maritime agreed to indemnify Fiona in respect of the guarantees, and the shares in Severn and Accent were deposited with WFW as security for the indemnity.

993. The defendants' case is that Sovcomflot never intended to acquire more than two of the vessels from Daewoo for themselves, and that the additional vessels were acquired so that Mr. Nikitin might take them. The claimants dispute this and say that Mr. Skarga, dishonestly and in breach of his fiduciary duties, allowed Standard Maritime to acquire vessels that were intended for Sovcomflot and that the prices were unjustifiably low.

994. The background to the agreements was this. By a fax to Clarkson dated 15 October 2003 Daewoo made a proposal to Sovcomflot to supply two ice-class 1A Suezmax newbuildings for $56 million each, including 1% commissions, with delivery by the end of August 2006 and October 2006. Mr. Gale reported it to Mr. Privalov, without mentioning commissions, on the basis that the price for the vessels was $57 million. On 24 October 2003 Clarkson advised Daewoo that the delivery dates were important to Sovcomflot, and wrote, "Potentially this project is for up to 4 vessels and we are encouraged by the buyers that if we could find 4 ships within 2006, they could be prepared to increase the order to four firm ships initially". On 31 October 2003 Mr. Gale advised Mr. Privalov that he had made an offer to Daewoo, subject to the approval of the buyers' directors, to buy two vessels with an option to buy two more, on the basis of a delivery date for all the vessels by the end of October 2006. On 5 November 2003 Mr. Gale advised Mr. Privalov that Daewoo had "allocated" to Sovcomflot berths to build two vessels, but that "the berths are heavily sought after by numerous projects".

995. As I have mentioned, on 17 November 2003, after further exchanges, Fiona and Daewoo signed a letter of intent for Daewoo to supply two ice-class Suezmax vessels for $54.9 million payable in five instalments of 20% each, for delivery by the end of August 2006 and by 15 October 2006. It contemplated that the purchases should be supported by finance from the Korean Export Import Bank ("Kexim"). They also signed a "Side Letter of Intent" whereby they agreed that Fiona should have options (i) to chose an alternative arrangement for the instalments, namely that $56 million might be paid by four instalments of 10% and a fifth instalment payable on delivery of 60%; (ii) to take vessels that were not of ice-class specification; and (iii) to take a third vessel with delivery in the second or third quarter of 2007. The option for the third vessel was to be exercised within three months, and the price was to be the same as for the firm orders if the option was exercised within one month of the contract for them and otherwise it was to be $1 million higher.

996. On 14 November 2003 Clarkson had sought an option for a fourth vessel (or second optional vessel), but Daewoo had initially refused this request. Clarkson made it clear to Daewoo, however, that Sovcomflot still wanted a further option. In an e-mail on 24 November 2003 Mr. Wood of Clarkson warned Daewoo that at a signing ceremony on 1 December 2003 Sovcomflot were likely to press for an option for a fourth vessel, which they regarded as "very important". On 25 November 2003 he wrote to Daewoo that the buyers wanted to have a revised form of the side letter of intent that would allow them to take two optional vessels. In the event, Daewoo did agree on 17 December 2003 to Fiona having an option to take one or two further vessels, but the price of the second optional vessel was to be $58.9 million even if the option was declared promptly.

997. The defendants' case is that Sovcomflot never considered acquiring more than two Daewoo vessels for themselves. The pleaded case of Mr. Nikitin and Standard Maritime defendants (at para 84 of their defence) is that Mr. Skarga approached Mr. Nikitin "In about late November or early December 2003 with a view to his participating in the acquisition of two new vessels to be constructed by Daewoo" on the basis that it would assist Sovcomflot to negotiate with Daewoo about four vessels rather than about two. Mr. Nikitin's evidence was that he spoke with Mr. Skarga about acquiring one or more of these vessels in November.

998. In his witness statement Mr. Skarga was vague about when he first spoke to Mr. Nikitin about possible collaboration over Daewoo vessels, but said that he might have done so when they met in St Petersburg in November 2003: they met there on around 23 or 25 November. When he was cross-examined, Mr. Skarga said that Mr. Nikitin had expressed an interest in acquiring a vessel or vessels before the letter of intent was signed on 17 November 2003, and indeed before Mr. Gale put forward the proposal of 31 October 2003. Mr. Skarga recalled that he was then interested in only one vessel, and that after 17 November 2003 the second option was requested because Mr. Nikitin had expressed an interest in two vessels. By 10 December 2003 Mr. Nikitin had made a firm decision, Mr. Skarga said, to take one vessel and was still to decide whether to take a second.

999. Mr. Skarga said that other members of the Executive Board knew that Mr. Nikitin interested in acquiring vessels from Daewoo, and knew of his decisions to do so. There is no indication that the directors of Fiona were taken by surprise when they were asked to sign the required documentation, or that other members of the Board

were surprised when the matter came before them. The claimants submitted that nevertheless this evidence about when Mr. Nikitin expressed interest in Daewoo vessels should be rejected because, on this account, Mr. Gale would not have had authority for the offer that he made on 31 October 2003, and further Mr. Wood broked the sale to Daewoo on the basis that Sovcomflot were interested in two optional vessels. I do not find those reasons compelling. On any view it is unclear what instructions Mr. Gale had, and Mr. Wood was relaxed about what he might tell yards for whom he acted. As he put it in cross-examination (albeit in a different context), "I am a broker; I broke. It is more like spin".

1000. There is, however, other evidence that Sovcomflot had it in mind that they might take as many as four tankers. Although Kexim were to support the purchases, Sovcomflot would also require finance from a commercial bank. CAI prepared for Fiona a presentation dated December 2003 about how it might be provided. They recorded that Fiona had decided to "focus … on the tanker market only ... in anticipation of a listing on the New York Stock Exchange", and had signed the letter of intent for up to four tankers. It is clear from the document itself and from the indicative termsheet attached to it that CAI understood that Sovcomflot might be purchasing and require finance for the four vessels referred to in the letter of intent and the side letter of intent. Mr. Skarga said that this presentation could have been arranged for Sovcomflot without him knowing about it. This would not explain a misunderstanding on the part of CAI about how many vessels Sovcomflot might buy. Mr. Skarga thought that Mr. Privalov might have arranged the presentation, and Mr. Borisenko said that he would have known of it. According to Mr. Skarga, they were both in St Petersburg when Mr. Nikitin's plans were discussed, and they would have known that, if Sovcomflot did not intend to take more than two Daewoo vessels, both optional vessels were for Mr. Nikitin if he decided to have them.

1001. I do not accept that Sovcomflot had firmly decided by December 2003 that they would not acquire more than two tankers from Daewoo. The presentation of CAI shows that Sovcomflot were undecided about how many they might order. I also conclude that before the end of 2003 Mr. Nikitin did not give a firm commitment to taking a Daewoo vessel. The position was less certain than that. In December 2003, when Daewoo agreed to the second option, neither Sovcomflot nor Mr. Nikitin was firmly committed to taking either or both of the optional vessels. However, there is no proper reason to reject Mr. Skarga's and Mr. Nikitin's evidence that, when the letter of intent was signed, Mr. Nikitin had already made clear that he was interested in the possibility of acquiring at least one vessel from Daewoo. I accept that, as the claimants pointed out, there is no documentary evidence of Mr. Nikitin's interest in a vessel before 23 January 2004 and no documentary evidence of his interest in a second vessel until 17 March 2004, but that would not be surprising if nothing was firmly decided.

1002. When the contracts with Daewoo for hulls nos 5272 and 5273 were concluded, Sovcomflot intended to take those vessels for themselves. If Mr. Nikitin decided to take any vessels, he was to take the optional vessels. It is not clear when he finally decided to take two vessels.

1003. Documents disclosed by Clarkson indicate that there was some debate within Sovcomflot about the decision whether to exercise the option for the fourth vessel. On 5 January 2004 Mr. Gale wrote to Mr. Wood in an e-mail, "Ref 4th Ice Suezmax:

Dmitry Skarga is making little progress on the extra million as seems his Board is very suspicious and causing problems. Either it's going to take a few more weeks beyond 17th to get the extra million so it looks like a completely new order, or preferably [Daewoo] swallow the extra mil and everyone lives happily ever after". Mr. Wood did not think that he could ask Daewoo to forego the premium of $1 million, but he approached Daewoo in these terms in an e-mail dated 6 January 2004: "At the moment the buyers are having trouble convincing their [Board of Directors] to approve the extra US$1 mill for the 4th ship. The reason for this is that having approved the deal for the firm ships and the first option at base price, they do not understand why they have to pay a premium for the 4th ship – especially when the firm contracts just signed (this is just the board not the working level people!)". He went on to say that with more time the premium could "more easily be justified on a rising market".

1004. Mr. Skarga's evidence was that the Executive Board was not "suspicious", as Mr. Gale described them. They were, he said, content that Mr. Nikitin should take two vessels and that one of them should be hull no 5272 or hull no 5273. They were only concerned, according to Mr. Skarga, that Sovcomflot should not buy the fourth vessel for the higher price. As I see it, what the Clarkson documents reflect is that at the start of 2004 Mr. Nikitin wanted more time to decide whether to take the optional vessels, and he also hoped to avoid paying the additional $1 million for a second vessel if he decided to acquire it. I infer that Mr. Nikitin was still not committed to a firm decision about the Daewoo vessels even when Fiona exercised the option on 16 January 2004 or by the time that Daewoo entered into the contracts with Accent and Angelic on 5 February 2004. Otherwise Standard Maritime companies would have bought the vessels, and there would have been no reason to resort to Standard Maritime buying the purchasing companies from Sovcomflot.

1005. The agreement concluded in February 2004 for the sale of the shares in Accent was dated "as of 25 November 2003". The claimants submitted that there was no proper reason for this, and that the purpose was "to conceal the true date [of the agreement] from Fiona in the knowledge that the shares were being transferred at an undervalue in a rapidly rising market". Presumably the allegation is that "the true date" was to be concealed from Fiona's directors. Mr. Skarga said that he could not remember why the date was used, but that he then reached an "in principle agreement" with Mr. Nikitin. I do not consider that an agreement had been reached in November 2003, and no convincing explanation has been suggested for the date of the agreement for the share sale, but, whatever the reason, it is not likely to have been to conceal anything from Fiona's directors. That is improbable speculation. Mr. Skarga, Mr. Borisenko, Mr. Lipka and Mr. Terekhin signed minutes of a meeting of the board of Fiona held on 4 March 2004 in which they approved the sale of Accent's shares and which referred to the agreement dated 25 November 2003 (not "as of" 25 November 2003). I do not accept Mr. Borisenko's evidence that he did not notice the date of the agreement: the evidence is that the directors read carefully the minutes that they signed. There is no reason to think that any director of Fiona was influenced to approve the sale by the date, or that Mr. Skarga or anyone else would have supposed that someone might have challenged the sale if it had been given a later date. If the purpose had been to conceal when the agreement was made, the contract would simply have been back-dated, and the back-dating would not have been signalled by the expression "as of". Moreover, if this were the purpose, the same device would

probably have been used to conceal from the board of Fiona the date of the agreement with Standard Maritime about the second Daewoo vessel that they were to acquire. Instead, as I shall explain, on the claimants' case, Mr. Nikitin paid an additional $1 million for the shares in Severn. Although Mr. Skarga's evidence about the reason for the date inserted in the agreement was unconvincing, it has not been shown that it was done for the reason that the claimants allege or for any dishonest reason.

1006. I come to the agreement dated "as of 23 March 2003" for the sale and purchase of the shares in Severn. Although Fiona had ordered hulls nos 5272 and 5273 in December 2003 because they wanted to take them for themselves, they agreed that Standard Maritime should acquire Severn and therefore hull no 5272, and that they should keep Angelic and so have hull no 5275. The two potential disadvantages to Sovcomflot in this arrangement were the delivery date of hull no 5275 and the price. Hull no 5272 was to be delivered by 31 August 2006, whereas hull no 5275 was not to be delivered until 2007. I accept Mr. Skarga's evidence that this arrangement suited Sovcomflot because the construction of the Murmansk pipeline for transporting oil from the polar fields had been delayed, and so they needed the ice-class vessels less urgently. The claimants adduced no contrary evidence.

1007. The price of hull no 5275 was $58.9 million, $1 million more than the other three Daewoo vessels. The defendants contended that this is why Standard Maritime paid Fiona $12.58 million for the shares in Severn, $1 million more than the amount of the first instalment paid to Daewoo under the shipbuilding contract. The claimants denied that Mr. Nikitin ever intended to take the optional vessel, hull no 5275, and disputed the reason that he paid the additional $1 million. When Mr. Wettern started to draft the documentation for the sale of Severn, he did not know about it. On 19 March 2004, when he sent to Mr. Nikitin and Mr. Privalov a draft contract, he wrote that Standard Maritime were to pay $11,580,000. Mr. Privalov instructed him later that day to "incorporate USD 1 mill premium". I accept the claimants' submission that probably it was decided only shortly before the contract was concluded that Standard Maritime should pay the premium, but to my mind this is consistent with the explanation for the payment given by Mr. Skarga and Mr. Nikitin. Mr. Nikitin said in cross-examination that he was reluctant to pay the extra $1 million and agreed to do so only after negotiations.

1008. The claimants pointed out, however, that this explanation for the additional payment is inconsistent with the briefing notes prepared for the Executive Board of Sovcomflot. As I shall explain, Ms. Matveeva prepared a briefing note for the meeting of the Executive Board in April 2004 and a revised note about the Daewoo vessels was prepared for a meeting on 2 July 2004. In the first draft, Ms. Matveeva presented the additional payment as profit upon re-sale of the tanker. In the revised note it was said that the extra payment was because the value of the shares increased between when the ship was ordered and the purchasing company sold. Neither version suggested that the additional $1 million was paid because Sovcomflot was allowing Standard Maritime to take the less expensive hull no 5272 rather than hull no 5275. Mr. Skarga said that the briefing note was wrong, but that the error was unimportant because everyone was aware of the true position, and that it was simpler to present the $1 million payment as profit "to deal with accounting issues".

1009. I am not convinced by defendants' evidence about why Sovcomflot allowed Standard Maritime to take hull no 5272 and why they paid the additional $1 million for the

shares in Severn. However, I also do not accept the claimants' complaint that sale of the shares was "at a substantial" undervalue, and they relied upon the payment of the additional $1 million to argue that Mr. Skarga and others knew this, were concerned that the price would attract attention and thought that the payment of the extra $1 million would disguise this. For reasons that I have explained, I am not satisfied that the sale was at an undervalue. If it were and Mr. Skarga thought that therefore the price would attract opposition or suspicion, I cannot accept either that the extra $1 million would have answered the difficulty or that Mr. Skarga would have thought that it would do so. After all, it is the claimants' case that on other occasions Mr. Skarga arranged for agreements to be back-dated in these circumstances, but this agreement was not.

1010. The agreements for the sale of shares in both Accent and Severn contained provisions that Fiona should maintain their performance guarantees to Daewoo, and that Standard Maritime should indemnify them and secure their indemnity by depositing with WFW the shares in the buying companies upon terms similar to those agreed in relation to the HHI vessels. For reasons that I have explained in relation to those sales, I do not consider that this indicates that Mr. Skarga acted in breach of duty or dishonestly in relation to these transactions.

The meeting of the Executive Board on 2 July 2004

1011. At a meeting on 2 July 2004, the Executive Board of Sovcomflot unanimously resolved to approve the sale of the shares in Titanium, Pendulum, Accent and Severn and the contracts for HHI hulls nos 1585 and 1586 and Daewoo hulls nos 5272 and 5274. The claimants argued that, had the transactions been proper, the Executive Board would have considered them earlier. However, Mrs Matveeva had prepared and signed a briefing note with a view to them being considered at a meeting of the Executive Board on 30 April 2004. According to Mr. Skarga, consideration was deferred from that meeting because the draft briefing note was inadequate. I accept that explanation because the note was very short and did not even identify by their hull numbers the vessels under consideration. Mrs Matveeva's evidence was that at the time she was told by Mr. Sharikov that her note was considered unsatisfactory, and she understood that Mr. Skarga specifically had said this. It is not important who rejected the note. I accept that this is why the Executive Board considered these sales only in July 2004.

1012. For the meeting on 2 July 2004, two separate briefing notes were prepared about the HHI vessels, hulls nos 1585 and 1586, and the Daewoo vessels, hulls nos 5272 and 5274. They were considerably more detailed than Ms. Matveeva's original draft, and were signed by Mr. Sharikov and Ms. Matveeva. Both stated that in February 2003 Standard Maritime "approached [Fiona] with a proposal to cooperate with regard to commissioning the construction of a tanker fleet", and as a result an agreement was reached. The agreement that was described set out the points contained in the "Co-operation Agreement", without specifically referring to it. Ms. Matveeva explained that, when her note was rejected, Mr. Sharikov could not tell her properly what changes she should make. She therefore spoke to Mr. Privalov, who told her of the Co-operation Agreement and provided her with a copy. She drew upon this when preparing the revised note.

1013. The briefing notes described the orders placed with the yards. The note about the HHI vessels referred to the order for six vessels, explained that hulls nos 1564 and 1565 were for Standard Maritime and hulls nos 1562 and 1563 were under construction for Sovcomflot, and said that shares in the purchasing companies of hulls nos 1585 and 1586 were sold to "a new owner" in January 2004 at a price $2 million in addition to the instalments paid for each vessel. It observed that, "Implementing this deal resulted in a profit of US$4 million, a saving of US$2 million in respect of the reduction in the contract price due to the size of the order and likewise gave Unicom Company the opportunity to earn additional income for the provision of its services".

1014. The note about the Daewoo vessels described the order for the four vessels, and explained that shares in the purchasing company for hull no 5274 were sold to "the new owner" for the amount that had been paid to Daewoo "since the deal was carried out practically at the moment the contract was signed". The sale of the company buying hull no 5272 was said to have been made "later in April 2004 and therefore the value of the shares was US$1 million higher than the payment already made in respect of that ship". The note observed that, "Implementing this deal resulted in a profit of US$1 million, a saving of approximately US$4 million in respect of the reduction in the contract price due to the size of the order and likewise gave Unicom Company the opportunity to earn additional income for the provision of its services".

1015. Mr. Sharikov was on holiday on 2 July 2004, and Mr. Novikov presented to the Executive Board the proposal to approve the sales. Mr. Borisenko, Mr. Skarga and Mr. Lipka spoke in favour of it, and it was unanimously approved.

1016. The claimants alleged that Mr. Skarga misled the Executive Board because he required the briefing note to be changed from that originally prepared by Ms. Matveeva and that he did so in order that it might refer to the Co-operation Agreement and present that as the "basis for the share sale agreements". (They originally pleaded that Mr. Skarga dictated to Mr. Sharikov draft amendments to the briefing note, but that allegation was withdrawn during the trial.) I reject this allegation, and consider that no credible evidence supports it. Mr. Borisenko said in cross-examination that he had no reason to doubt what was stated in the briefing note. Mr. Novikov spoke to Mr. Borisenko and Ms. Matveeva before the meeting and was told that the reason for the sales was that Sovcomflot was short of cash for the newbuilding programme. There is no proper reason to doubt that that was the position and was the reason that the Executive Board approved the sales.

1017. There are some aspects about the sale of the Daewoo hulls which are not satisfactorily explained by the evidence and about which I do not accept the defendants' accounts or explanations. However, in my judgment, the claimants have not made out their essential allegations that are said to provide evidence that in dealing with these vessels Mr. Skarga acted dishonestly and sought to favour the Standard Maritime defendants at the expense of Sovcomflot.

<u>The contract with HHI for hull no 1757</u>

1018. The last purchase that the claimants allege was made by the purchasing companies under the newbuildings scheme was of a liquefied petroleum gas ("LPG") vessel, hull no 1757, from HHI by Hayes, a subsidiary of Standard Maritime. The claimants do

not allege that Hayes acquired hull no 1757 at an undervalue, but they say (at para 245.1 of their particulars of claim) that Mr. Skarga (and others) dishonestly and in breach of fiduciary duty "caused and/or permitted Fiona to transfer the right that it had acquired to enter into a shipbuilding contract with [HHI] at a particular price to be transferred to Standard Maritime for no consideration", and that the right that was transferred was a valuable one.

1019. In about May 2004, Sovcomflot decided to acquire LPG vessels. In his witness statement of 13 February 2009 Mr. Skarga said that they had been advised to do so by Mr. Gale because prices were relatively low. In cross-examination he said that he was so advised by Mr. Nikitin. Mr. Nikitin also said that he gave Sovcomflot this advice and that it was always contemplated that Sovcomflot might acquire two LPG vessels and he might acquire one. The claimants submitted that Mr. Skarga was inconsistent in his evidence about whose advice led to the decision to buy LPG carriers, but I see no contradiction between these accounts. I accept that both Mr. Gale and Mr. Nikitin encouraged Sovcomflot's decision.

1020. On 29 April 2004 Clarkson advised HHI that Fiona wished to register their interest in building "a pair of … LPG vessels". On 14 May 2004 Clarkson put forward to HHI an offer to place a firm order for two LPG vessels, with an option to take two more. They offered a price of $48 million per vessel and the delivery dates were to be in the first quarter of 2007 for the two firm orders and in the second quarter of 2007 for the two optional vessels. Negotiations continued about an order for two vessels with one or two optional vessels. On 21 May 2004 HHI offered a third vessel for delivery in the first quarter of 2006. On 25 May 2004 Clarkson advised HHI that Fiona accepted this proposal, and Mr. Privalov told Mr. Wettern that an agreement had been reached with HHI for an order for three vessels, two for Sovcomflot for delivery in the first quarter of 2007 and one for Standard Maritime for delivery in the first quarter of 2006. On 26 May 2006 Fiona and HHI signed a letter of intent for three vessels at a price of $49 million each, with an option for Fiona to take one or two further vessels for $49.7 million each. One of the three vessels had a delivery date of the first quarter of 2006 and the other two had delivery dates of the first quarter of 2007.

1021. On 15 June 2004 agreements were concluded with HHI for the construction of the three vessels, hulls nos 1757, 1758 and 1759. The price of each vessel had increased to $49.5 million because of changes to the specifications. The agreement for hull no 1757, which was for delivery in the first quarter of 2006, was made by Hayes and the agreements for the other two hulls, which were for delivery in the first quarter of 2007, were made by subsidiaries of Fiona. Fiona gave HHI guarantees of the obligations of Hayes and the other two buyer companies.

1022. The directors of Fiona resolved to provide the guarantees by signing the minutes of a meeting on 11 June 2004. They were signed by Mr. Skarga, Mr. Borisenko and Mr. Terekhin (on his own behalf and as proxy for Mr. Lipka). They recorded that Mr. Skarga, as chairman of the meeting, stated that Fiona would sign an agreement with Standard Maritime in relation to Fiona "sponsoring Hayes in its relations with the Builder". There is no reason to think that, when they approved the minutes, either Mr. Borisenko or Mr. Terekhin did not know the nature of the arrangements whereby Fiona came to be giving this guarantee.

1023. At some later date Standard Maritime and Fiona entered into an agreement by which Standard Maritime agreed to indemnify Fiona against any liability under their guarantee to HHI in respect of hull no 1757. It was dated "as of" 15 June 2004. It was in similar terms to the indemnities given to Fiona for their other guarantees, and provided for the indemnity to be secured by the shares of Hayes being deposited with WFW. The claimants plead (at para 245.4 of the particulars of claim) that there was no "legitimate commercial basis for Fiona to execute any such guarantee prior to the grant to adequate security", but I infer that it was through oversight that the indemnity agreement was not concluded at the same time as Fiona gave their guarantee to HHI. I reject the allegation that this was associated with or indicative of dishonesty on the part of Mr. Skarga or anyone else. I also reject the allegation that the security was inadequate, as I have rejected the similar allegation in relation to other guarantees.

1024. It is not clear why Sovcomflot sought and obtained options to order one or two additional LPG vessels from HHI. Mr. Skarga's evidence was that they were seeking to acquire them for NSC, but I am unable to accept that. However, it is clear from Mr. Privalov's e-mail to Mr. Wettern that by 26 May 2004, when the letter of intent was signed, Standard Maritime were to acquire the vessel that was to be delivered in the first quarter of 2006. I reject the claimants' allegation that Mr. Skarga was acting dishonestly because Fiona "transferred" to Standard Maritime the right to acquire her: there was no transfer of rights. (In their submissions, the claimants argued that Standard Maritime was improperly favoured at the expense of Fiona because they took the vessel that was to be delivered first. This is not a pleaded allegation, and it is not open to the claimants to make it as they have. Nor is it supported by the evidence.)

1025. The claimants do not bring a claim for compensatory damages in respect of hull no 1757, but they say that by the time that the vessel was delivered to Hayes in about February 2006, her value was between $62 million and $65 million. Their contention about her value was supported by unchallenged evidence of Mr. Willis and I accept it. They say that therefore they are entitled to an account of profits made Standard Maritime and Mr. Nikitin which were between $12.5 million and $15.5 million. Had I upheld the claim, I would have invited further submissions about the claim, including (i) the contention that any defendant other than Hayes might be liable to account for profits and (ii) the claimants' submission that they are entitled to have the profits assessed at $15.5 million, the top of the range that they say that they have proved.

The "Romea Champion" commission scheme

1026. On 28 November 2002 the owners of the "Romea Champion", the Sovcomflot company Glefi Shipping XXVIII Company Ltd. ("Glefi XXVIII"), the 25th claimant in the Fiona action and the 9th claimant in the second Fiona action, agreed with Europetroleum Ltd. ("Europetroleum") to charter the vessel. The charterers were to be Europetroleum or a nominee to be guaranteed by them, and on 4 December 2002 ST Shipping and Transport Inc., a company in the Glencore group, were nominated as charterers. It is claimed that Mr. Nikitin and Mr. Skarga improperly arranged for PNP to be paid a commission for the fixture. The claimants also allege that, although it was agreed that Sovcomflot should be paid $35,000 per day, the charter stated a rate of hire of $19,000 per day in order to provide a justification for Sovcomflot chartering

to Henriot the "Tropic Brilliance", a sistership of the "Romea Champion", at below the market rate.

1027. Europetroleum were an independent trading company associated with Russians including a Mr. Yefremov, and they were said to have had a good relationship with Transneft, but there is no other evidence about the ownership of the company. Their "juridical" address was said in September 2002 to be Pasea Estate in the BVI, which is also PNP's registered address, but that is commonly used as the registered address for off-shore companies. It cannot be inferred from this that there was a connection between Europetroleum and Mr. Nikitin or any of the Standard Maritime defendants.

1028. The background to the charterparty was that Mr. Nikitin had learned and told Sovcomflot that Europetroleum had cargoes for shipment from Primorsk. Sovcomflot were interested to develop a business relationship with them to promote their involvement in carrying Russian cargoes, and Mr. Skarga entered into discussions with Europetroleum at a strategic level to this end. On 15 August 2002, Sovcomflot and Europetroleum entered into a voyage charter of the "Tropic Brilliance" upon terms that PNP and Sovchart should be paid brokerage commissions of 1.25% each and total commissions of 2.5% were to be deducted from the freight payments. On 7 and 23 October 2002, Sovcomflot entered into two voyage charters of the "Romea Champion" with Europetroleum. I accept Mr. Skarga's evidence that he did not conduct or take part in the negotiations for them. They were fixed between Sovchart and Europetroleum, and Sovchart sent recaps of them to Mr. Novikov, with copies to Mr. Sharikov and Mr. Terekhin but not to Mr. Skarga.

1029. At a meeting of the Executive Board of Sovcomflot on 31 October 2002 Mr. Skarga informed the Board about negotiations for a six-months' time charter for the shipment of crude oil from Primorsk and, after Mr. Terekhin and Mr. Sharikov had spoken, the Board resolved unanimously to endorse the charter of the "Romea Champion".

1030. Mr. van Boetzelaer said in his witness statement of 13 February 2009 that he understood that Mr. Skarga and Mr. Maxim Karpin of Europetroleum had conducted negotiations about the terms of the charter. By an e-mail sent on 30 October 2002 to Mr. Betty at Sovchart, Mr. Karpin wrote, "As you certainly know the agreement was reached yesterday in respect of long business for Romea and possibly for Tropic. Please find below the recap. Would be pleased to hear from you the confirmation all in order". Mr. Karpin then set out a recap of terms. The hire was to be $19,000 per day, and the period of hire was stated to be between 20 and 180 days; and it referred to a charterers' option, which had to be declared by 5 December 2002, to charter the "Tropic Brilliance" upon similar terms.

1031. On 30 October 2002 Mr. van Boetzelaer sent an e-mail to Mr. Skarga about the terms in the recap, and wrote, "Following our discussion yesterday you were still in talks with Europetroleum regarding possible [time charter] and profit sharing". He commented of the period of hire that the "wide spread leaves owners in a dangerous position" and that the current rate of hire for the "cross-continent" voyages (which would include voyages between Primorsk and Rotterdam or Wilhelmshaven) indicated a rate of $35,000 per day. He suggested that, given that the rate of hire had been agreed, Sovchart should seek to negotiate a profit sharing arrangement. He also said that, the market being "still on the up-swing", Sovchart should not agree to an option for the "Tropic Brilliance" at the same rate. According to Mr. van

Boetzelaer, Mr. Skarga told him that the rate of $19,000 per day had been agreed on the basis that the owners would not share the profit.

1032. After speaking to Mr. Skarga, Mr. van Boetzelaer sent an e-mail to Mr. Karpin stating that he understood the terms that he set out had been agreed, including a rate of $19,000 per day. In this e-mail, he recorded the period of hire as "6 months plus/minus 15 day in [charterers'] option", and he did not refer to the option to charter the "Tropic Brilliance". Mr. Karpin responded on 31 October 2002 that "there are some differences between what we thought was agreed during the talks with Mr. Skarga and your recap", and said that the period of hire was understood to be "20/180 days". He too did not refer to an option to hire the "Tropic Brilliance".

1033. Mr. Karpin's first e-mail is, in my judgment, consistent with Mr. Skarga's evidence that he was not involved in discussions about the terms of the charterparty, but only at a strategic level about developing a business relationship. Its introductory words recite an agreement that there should be "long business" in respect of one or possibly two vessels. Mr. Karpin's second e-mail, however, indicates that Mr. Skarga had more detailed discussions about the terms of the charterparty, and I reject his evidence to the contrary. I also conclude that, as appears from the e-mails between Mr. Skarga and Mr. van Boetzelaer, on about 20 November 2002 Mr. Skarga discussed a difference that had arisen in the negotiations about ballast bonus. I do not conclude that Mr. Skarga was deliberately seeking to mislead in his evidence about his part in the negotiations. As Director-General he would not usually be involved with such details, and, if negotiations for specific terms developed from more general discussions, Mr. Skarga might well have not recalled it.

1034. Under the charterparty of 28 November 2002, the hire was stated to be $19,000 per day and the period of hire was stated to be 6 months, more or less 15 days at the charterers' option. There was a trading exclusion that the vessel was not to force ice but was to follow ice breakers "as far as the ice channel is sufficiently wide but always subject to Master's approval which not to be unreasonably withheld", and the Owners confirmed that the vessel would trade in slushed ice. Under the heading "Approvals", the charterparty stated, "To the best of the Owners' knowledge the vessel at time of sub-fixing is approved by BP-Amoco, Exxon, Statoil, TotalFinaElf. Owners warrant that they will be instrumental in arranging inspection for, and will endevour (sic) to maintain throughout the duration of this charter, approvals by BP-Amoco, Exxon/Mobil, Statoil and TotalFinaElf. Also other major oil companies on Charterers' request…".

1035. I should refer to two other provisions of the charterparty. It provided that address commission "of 2.5 percent is payable by Owners to Charterers on the hire earned and paid under this Charter and 2.5 percent commission is payable to Sovchart S.A. on hire for division." The claimants submitted that some of this was paid on to PNP, who in turn paid it on to Milmont, although neither Mr. Nikitin nor PNP nor Milmont had had any part in fixing the charter or providing any other service.

1036. Secondly, although, as I have said, the period of hire was stated to be six months, the charterparty also provided that the charterers might cancel the hire at any time by giving 15 days' notice of re-delivery. This effectively gave the charterers as much flexibility over the period of hire as a charter period of between 20 and 180 days. In his evidence, Mr. Skarga said that the period of hire stated in the e-mails was "an

obvious mistake" for a period of 120 to 180 days. He said in cross-examination that a round voyage from Primorsk to a continental port and back would take twenty days, and there would be no sense in agreeing a time charter (rather than a voyage charter) for a period that could, if the charterers so decided, be as short as 20 days. I reject Mr. Skarga's evidence about this, and I infer that Sovcomflot agreed with Europetroleum at an early stage of the discussions that the charterers should have such flexibility about the hire period. This is undoubtedly unusual. In cross-examination Mr. Skarga sought to explain it on the basis that Europetroleum were uncertain whether they would have cargoes for the vessel to carry and Sovcomflot were anxious to encourage them to take the vessel in order to develop business of this kind.

1037. The vessel was used to trade between Holland and Primorsk. She sailed from Wilhelmshaven for Primorsk in ballast on 30 December 2002 and made a laden return voyage to Rotterdam where she arrived on 8 January 2003. By an addendum dated 8 January 2003 it was agreed that the rate of hire was to be increased to $35,000 per day for voyages "involving Primorsk" while remaining at $19,000 for all other voyages. On 9 January 2003 Mr. van Boetzelaer sent Mr. Skarga an e-mail setting out what Glencore told him had been agreed and asking for Mr. Skarga's confirmation of it. The e-mails also show that, when on 20 January 2003 Mr. van Boetzelaer asked him to agree different wording of this addendum, Mr. Skarga referred to the change as having been agreed in relation to trading in ice.

1038. Mr. Skarga explained, however, and I accept that he was not himself involved in discussions with Glencore about this change in the hire rate, and that he was on holiday at the time. Mr. Terekhin dealt with the matter, briefing Mr. Skarga by telephone about what was happening. I recognise that in e-mails to Mr. Skarga Mr. van Boetzelaer used such expressions as "your agreement" or "you agreed" in relation to the increased rate of hire, but they are ambiguous about whether they refer to an agreement made by Sovcomflot or an agreement by Mr. Skarga personally.

1039. According to Mr. Skarga, the increased rate arose from difficulties caused by particularly severe winter weather. Ice fields had built up and were continuing to build up in the Baltic, and it became difficult for an ice-class 1C vessel such as the "Romea Champion" to reach Primorsk. On 9 January 2003 Unicom advised that there should be at least two ice breakers in a convoy with vessels such as the "Romea Champion" to cut through the ice. However, the Russian Ministry of Transport and Transneft considered it important that cargoes should be lifted from Primorsk, and, according to the evidence of Mr. Skarga and as I accept, put pressure on Sovcomflot in discussions with Mr. Terekhin to assist to keep the port working. On 10 January 2003 the "Romea Champion" sailed from Rotterdam bound for Primorsk, but she did not reach her destination. On 14 January 2003, she found that because of the ice conditions she could not proceed. She damaged her propeller and rudder in the ice and required assistance from tugs. She turned back and eventually sailed from the Gulf of Finland on 29 January 2003.

1040. The claimants cross-examined Mr. Skarga and Mr. Nikitin on the basis that it had always been intended that the rate of hire under the charterparty should be increased to $35,000, and that the increased rate of hire could not credibly be attributed to severe winter conditions because the increase was agreed by 8 January 2003 (and indeed was agreed in principle by 6 January 2003, when the "Romea Champion" was

still at Rotterdam) and before the ship encountered difficulties on or about 14 January 2003. I reject that argument. It had become apparent before the rate was increased that the vessel would encounter difficulties in reaching Primorsk or was likely to do so, and the increased rate was agreed by way of an incentive for Sovcomflot to make every effort to lift cargo from Primorsk and to compensate for the additional expense in doing so. This was confirmed when after the end of the trial the claimants disclosed further documents that should have been disclosed earlier. On 3 January 2003 (when the "Romea Champion" was still at Primorsk on her first voyage) Sovchart warned Europetroleum by e-mail that the vessel would have to pass through 50 cm of ice to gain access to Primorsk, and, since the "Romea Champion" was only of ice-class 1C status, the ice might affect her future employment under the charter. Had timely disclosure been made by the claimants, I do not think that Mr. Skarga and Mr. Nikitin would not have been cross-examined about this incident as they were.

1041. Nevertheless, the claimants continued to argue that the account given by Mr. Skarga and Mr. Nikitin about this in some way undermined their credibility. It did not. The only possible criticism is that in a witness statement of 10 June 2009 Mr. Nikitin stated that he understood from Mr. Yefremov of Europetroleum that in the first voyage to Primorsk there was no problem with ice and that this arose only on the second voyage. In so far as this might be inaccurate, it is most likely that Mr. Yefremov did not recall the incident precisely when asked about it some years later.

1042. By an e-mail sent to Mr. Skarga on 23 January 2003, Mr. van Boetzelaer sought confirmation that PNP were to be included as brokers for this fixture, and in an e-mail dated 28 January 2003 Mr. Skarga told him that PNP were to be so treated. Mr. van Boetzelaer did not know the reason, and he did not inquire. Accordingly, on 29 January 2003, Mr. van Boetzelaer told Mr. Nikitin by e-mail that the Owners had agreed to include PNP as brokers in respect of the "Romea Champion" fixture and invited him to submit an invoice for commission, and PNP sent two invoices to Sovchart on 29 January 2003, one for $9,237.00 for commission at 1.25% in respect of hire from 21 December 2002 to 21 January 2003, and the other for $7,362.50 being 1.25% commission for hire from 21 January 2003 to 21 February 2003. Both invoices requested payment to PNP's account at Wegelin. Payment was made to that account on 25 February 2003, and the sums received from Sovchart were then paid on 3 March 2003 by PNP to Milmont's account at Wegelin.

1043. The pleaded case of Mr. Nikitin and Standard Maritime defendants (at response 83 of further information in the Fiona action dated 7 December 2007) is that "the Defendants received no benefit whatsoever from the charter of the Romea Champion to Europetroleum". Mr. Skarga pleaded (at response 86 to of further information in the Fiona action dated 10 December 2007) that to the best of his knowledge Mr. Nikitin had no involvement in arranging charters with Europetroleum or in other dealings with them. These pleadings were served, and verified by Mr. Nikitin and Mr. Skarga, before the claimants brought the "Romea Champion" commission scheme claim in the second Fiona action. Faced with this claim, they gave evidence inconsistent with their pleaded case. Mr. Nikitin's evidence was that he "pressed Mr. van Boetzelaer for a commission" around early 2003 because he had introduced Europetroleum to Sovcomflot, and the introduction had resulted not only in this time charter of the "Romea Champion", but also in earlier voyage charters of the "Tropic Brilliance". He also said that, while he did not have any part in negotiating the

charterparty of 28 November 2002, he spent time persuading Mr. Yefremov to enter into it and Mr. Yefremov directed complaints to him when Sovcomflot pressed for the increase in hire. Mr. Skarga said that Mr. Nikitin had introduced Europetroleum to Sovchart, on the basis of which charters of both the "Tropic Brilliance" and the "Romea Champion" had been fixed, and that he agreed to the payment of the 1.25% commission, which he regarded as normal for an introduction. He said that he had forgotten this when he verified the pleading.

1044. The claimants' case is that there was no proper basis for PNP to be paid a commission upon the charterparty of 28 November 2002 because PNP had duly been paid commissions on the voyage charters for introducing Europetroleum to Sovcomflot, and there was no reason to pay further commission upon subsequent hire of the vessel by Europetroleum. It is said that Mr. Skarga simply arranged to divert money to Mr. Nikitin. I am not persuaded of this. It could properly and reasonably have been thought that the time charter effectively resulted from the fixtures on the spot market and that commission on the time charter was properly earned. I do not consider that these allegations provide evidence of dishonesty or impropriety on the part of Mr. Skarga, or that it has been shown that the commission payment was improper.

1045. I shall therefore reject the claim about the "Romea Champion" commission scheme. I add that the defendants also submitted that it was time-barred under English law because, as they argued, it was agreed by 29 January 2003, more than six years before the second Fiona action was brought on 12 February 2009, that Glefi XXVIII should pay commission to PNP. I reject that argument: the agreement referred to in Mr. van Boetzelaer's e-mail of 29 January 2003 was not, as I interpret it, an agreement between Glefi XXVIII and PNP, but simply Glefi XXVIII's agreement with Sovchart that commission to PNP should be paid. This internal arrangement did not cause the claimants damage. Any damage was suffered when PNP were paid after 12 February 2003. I add that no argument of limitation was advanced on the basis that any breach by Mr. Skarga of his duties would have been before 12 February 2003. Had I otherwise upheld the "Romea Champion" commission scheme claim, I would not have concluded that was time-barred under English law.

The Sovcomflot time charters scheme

1046. As I have said, during the 1990s Kirishi Shipping and PNP hired vessels on the spot market, but by 2000 Mr. Nikitin had decided that they should consider entering into time charters, and discussed this with the Kinex partners. From February 2001 three of the Standard Maritime defendants, PNP, Remmy and Henriot, entered into time charters of Sovcomflot vessels, and from January 2003 Henriot entered into time charters of vessels owned by NSC. These were the first time charters entered into by the Standard Maritime defendants and, possibly with the single exception of a time charter of the "Emerald Star", did not then enter into time charters with any other owners.

1047. The claimants allege that these charterparties were another aspect of the corrupt dealings in which Mr. Nikitin engaged with Mr. Skarga and Mr. Izmaylov (although they do not allege that Mr. Privalov was party to these arrangements), and that this is reflected in:

i) a low rate of hire agreed for some, but not all, of the charters; and

ii) the owners' agreement to charterers' options to extend the hire of vessels, sometimes by way of options agreed as a term of the original charterparties (to which, adopting terminology used during the trial, I shall refer as "with-charter" options) and sometimes by way of separate option agreements later made for no consideration (so-called "stand-alone" options); and the terms of the options to which owners agreed. Sovcomflot granted the Standard Maritime defendants both with-charter options and stand-alone options, and NSC agreed to grant Henriot with-charter options.

1048. The claimants in the Fiona action also complain that:

i) Sovcomflot agreed to release Henriot from a term in a charterparty of the "Romea Champion" that the charter might be terminated on 30 days' notice in the event of the vessel being sold;

ii) The Standard Maritime defendants were allowed to transfer charters of the "Fili" and the "Azov Sea" from PNP to Henriot; and

iii) The agreements to charter the "Nevskiy Prospect" and the "Ligovsky Prospect" to Remmy were for some weeks "on charterers' subjects": that is to say, the parties agreed terms for the hire of the vessels on the understanding that, while the owners were committed to hire the vessels on those terms, the charterers were still free to decide whether or not to take the charters. (I need not consider whether the owners, as a matter of at least English law, were contractually committed to the fixture: the industry would conventionally regard the owners as having committed themselves to a commercially binding obligation.)

1049. All the chartering arrangements between the claimants and the Standard Maritime defendants were by the express terms of the charterparties governed by English law and provided for English arbitration. In the case of some of the charters which are the subject of the Sovcomflot time charters scheme claim, the owners have challenged the validity of the charters and sought to rescind them on the grounds that Mr. Skarga was bribed, but the House of Lords has determined that those claims are the subject of arbitration agreements, the owners' court proceedings have been stayed and the dispute about the validity of the charters is the subject of an arbitration reference. The arbitration proceedings are awaiting the outcome of this litigation.

1050. The parties called expert witnesses who considered the rates and other terms of the charterparties about which the claimants complain. The claimants' witness was Mr. Pearce, who has spent most of his working life with Shell. In 1987 he became their Head of Global Products Chartering, and between 1991 and 1996 he was Head of Global Crude Oil Chartering, responsible for the Shell crude oil fleet (of about 50 vessels) and time chartered fleet (of about 15 vessels) and for chartering in further

capacity as required. After he had left Shell in 1996, Mr. Pearce became the Chartering Manager of Agelef Tanker Chartering. During his career he has had a wide experience of negotiating charterparties both for owners and for charterers, has been concerned with both time and voyage charterparties and has dealt with vessels of all the types relevant to these proceedings: product carriers, Aframaxes and Suezmaxes.

1051. Mr. Nikitin and the Standard Maritime defendants called Mr. Huttemeier, who spent his career with the AP Moller Group. Between 1980 and 1986 he was in charge of their product tankers division. In 1990 he became director in charge of the crude carriers division, which included the Suezmaxes and Aframaxes, and in that position until 1995 he was involved with chartering in and chartering out tonnage. He returned in 2000 to take charge of the crude carriers division, which by then comprised only of VLCCs (very large crude carriers), although he also had some peripheral involvement with chartering product tankers.

1052. Neither expert had any significant direct experience of chartering ice-class vessels, but generally both had impressive experience and knowledge of the industry and they were well qualified to express opinions upon the matters about which they gave evidence. Both were, in my judgment, straightforward witnesses and were seeking to assist the court. The claimants submitted that I should prefer the evidence of Mr. Pearce about questions upon which the experts did not agree because he had more contemporaneous experience than Mr. Huttemeier. I do not accept that submission: Mr. Huttemeier generally gave clear evidence supported by convincing reasons, and I did not detect that he was handicapped by any lack of experience.

1053. The expert witnesses had a difficult task. They were asked to gauge the rate of hire for vessels in a market which on any view was very illiquid. Indeed, Mr. Berry questioned whether there can really be said to be an objective market rate when each fixture depended so much upon what were described as "subjective factors" reflecting the particular requirements and business assessments of the particular parties in relation to a particular vessel. I see much force in that observation: it emphasises the danger that, once a rate has been so identified, any fixture at a lower rate is scrutinised with undue suspicion. On any view, there is a very wide range of rates at which parties in arms' negotiations might properly fix a vessel. Nevertheless, I shall use the expression "market rate" as a convenient term to refer to the rate at which the vessel would have been chartered by a notional typical owner to a notional typical charterer in an arms' length transaction. However, it is important to consider the circumstances of the particular owner and the particular charterer when assessing the terms of a charterparty, particularly when it is alleged by the claimants that the terms of a fixture departed so far from the "market rate" or were so unusual as to suggest that they were not agreed honestly. (I recognise, of course, that this was not the only purpose of this expert evidence. It would also be relevant to establishing the quantum of any compensation if liability is established.)

1054. The task of the expert witnesses was the more difficult because the information available to them about other fixtures in the market is incomplete and often unreliable. They used such information as was available, but often there were no useful comparators against which to assess a rate of hire, and, when there were, they were too few to draw confident conclusions from them. Any individual fixture, even of a

sistership, can be influenced by special considerations irrelevant to Sovcomflot or NSC and to the Standard Maritime charterers.

1055. The experts used brokers' indices and market assessments for chartering rates. Mr. Pearce relied particularly upon the indices of CSIW, who published their assessment of prevailing rates for time charter of vessels of different kinds for different periods. These and other indices are drawn from reports which the compilers obtain, in particular from brokers in the market. Clarkson explain in their CSIW publication that, "With respect to timecharter rates, data is collected … by requesting brokers to fill in a weekly pro forma with the latest rate for each ship type or by estimating the likely rate acceptable to an owner in the absence of any fixture". Mr. Huttemeier tentatively agreed that CSIW reports, along with those of ACM Shipping ("ACM"), might generally be regarded as the leading brokers' indices for chartering rates. He also used the market assessments and forecasts published by Drewry who, being consultants rather than brokers and not themselves participating in the market, are able to collate information from a particularly wide range of sources. Mr. Huttemeier considered, and I accept, that for two reasons brokers' indices tend to overstate the rates in the market: brokers are inclined to "talk up" the market and to exaggerate the minimum that an owner would be willing to accept; and, whereas owners often correct any reports of fixtures of their vessels which state too low a rate of hire, neither they nor charterers generally correct reports that give too high a rate.

1056. There was, I think, some difference between the experts in their approach to assessing rates of hire against the market. Mr. Pearce relied upon the CSIW indices heavily and, in my judgment, on occasions excessively. This sometimes led him to adopt an almost mechanical calculation of market rates, which I found at times unconvincing. This became particularly vulnerable to criticism when he adjusted chartering rates drawn from the indices, which he assumed to be for a non-ice class vessel, in order to assess a higher rate for an ice-class vessel. This was an unreliable approach given that he agreed with Mr. Huttemeier that it depends upon the particular circumstances whether a fixture would attract any "ice premium" at all. On the whole I preferred the evidence of Mr. Huttemeier, who placed less reliance than Mr. Pearce upon the published indices and more upon such comparator fixtures as were available. He generally took careful account of all the relevant material available before expressing his views, and expressed them more cautiously than Mr. Pearce. In my judgment, this made his evidence more convincing: often it was unrealistic for the experts to express more than a tentative opinion about a chartering rate and how it compares with the market.

1057. I have said that the experts recognised that the parties' subjective reasons for entering into a charterparty on particular terms are important. As Mr. Huttemeier put it, "[s]ubjective factors are perhaps the most important when considering whether a time charter should be considered to have been "commercial" [and they] are certainly at least as important as … objective factors". (By a "commercial" charter, Mr. Huttemeier meant a charter on terms upon which a reasonable owner in the position of Sovcomflot, or as the case might be NSC, could have fixed the vessel at the relevant time.) Mr. Pearce did not disagree with view of the importance of "subjective factors". Such factors include, for example, the views of an owner about how the market will move, whether he wants to encourage a continuing relationship with the

charterer, his assessment of the quality of his vessel, and his trading strategy. They can also include an owner's assessment of the standing of a charterer.

1058. Mr. Pearce adopted a rather artificial categorisation of charterers into four classes (ranging from the highest category A to category D) in order to assess the standing or desirability of the Standard Maritime defendants as charterers, and he placed PNP as a category B charterer but Henriot as a category D charterer. I did not find this evidence useful. Both Sovcomflot and NSC considered that Henriot were really (as Mr. Sakovich of NSC put it in his report to the NSC board dated 2 September 2005) "a chartering subdivision" of PNP, and the executives of Sovcomflot and NSC thought them desirable counterparties. To give just one example, Mr. Vyvorotnyuk of NSC said that he had no reason to think that Henriot were not reliable charterers, and, as it seems to me, Mr. Skarga and Mr. Izmaylov cannot properly be criticised for sharing this assessment. I was not convinced that Mr. Pearce had any sound basis for taking any other view, and in any case I did not find expert evidence about this useful.

1059. Sovcomflot had sound reasons to place vessels on time charter between 2001 and 2004. Particularly in view of their fleet renewal programme, they needed a reliable and relatively stable income stream. This thinking is reflected in contemporary documents. To cite just one example, in Sovcomflot's annual report for 2003 it is stated that, "Sovcomflot's chartering policy was aimed at obtaining a stable income from fleet operations regardless of seasonal and market fluctuations in the freight market". While Mr. Skarga was the Director-General, there was a perceptible, but not dramatic, increase in the proportion of their vessels which Sovcomflot placed on time charters. In December 1999, just under 60% of the fleet were on time charters and in March 2004 this proportion had increased to about 75%. Like many owners, they did not foresee the strong and sustained growth in the market, and so did not take full advantage of the opportunity of profitable trading on the spot market.

1060. Sovcomflot's policy is the more understandable because they were receiving "bearish" advice about the prospects for the shipping market. The broking advice from Mr. van Boetzelaer in 2000, 2001 and 2002 was distinctly cautious, if not pessimistic. It is recorded that, at a brokers' meeting on 3 November 2000, he "recommended that Sovcomflot takes advantage of today's levels either by chartering vessels out for long term charter or sell futures to lock in a comparatively high return, even at a discount to today's market". In an e-mail of 11 January 2002, he apparently advocated selling vessels "at a loss" so that Sovcomflot could order newbuildings "and avoid potential losses on the chartering". In the same message, he refers to the time charter rates being lower than they had been a few months earlier, in September 2001. At the Sovchart shareholders' meeting on 9 March 2004, Mr. van Boetzelaer acknowledged that the strong recovery in the freight market was "contrary to his predictions last year" and said, "We took advantage of the good market to time charter out many of the vessels for 1 up to 5 years. Therefore the income should stabilise this year and be only partially influenced by the spot market. 75% of our vsl being on time charter".

1061. These predictions were in line with those that were being made by some other commentators, including those of Dr Stopford to which I have referred elsewhere in this judgment. It was also an assessment of the market shared by others at Sovcomflot. For example, on 28 May 2004 Mr. Novikov, whose duties included the preparation of market forecasts, sent to Mr. Orphanos and Mr. Borisenko what was

described as a "fleet & income forecast" that took a gloomy view of future over a five year period from 2004. In cross-examination Mr. Novikov sought to explain this document on the basis that Mr. Borisenko had instructed him to prepare "a pessimistic scenario of cashflow for the next five years", which he described as a "surprising request". He therefore used what he described as "extraordinary low" rates in preparing the document. I am unable to accept this explanation for the document. Nothing in the covering e-mail supports it, and I considered Mr. Novikov's evidence about it contrived and unconvincing. The document was a forecast, as it purported to be, and, while it might have been deliberately conservative, it reflected Sovcomflot's thinking about chartering rates.

1062. Given this assessment of the market and their financial commitments, it is understandable that Sovcomflot's policy should have been to place their vessels on time charter and to seek to develop long-term relationships with charterers. At a meeting of the Executive Board on 10 September 2004, as it was recorded in the minutes, "The meeting noted the positive results of operations as well as the right choice of tactics for leasing ships for time charter which allowed to reduce company's costs and avoid the negative effect of the oil crisis". Mr. Skarga agreed with and supported this policy, but there is no evidence that he was the author of it, still less that in any way he imposed it upon the other executives or that he in particular was responsible for Sovcomflot's chartering strategy.

1063. The claimants plead in the Fiona action (at para 297.3A of the particulars of claim) that the charterers' options to which Sovcomflot agreed "provided no commercial benefit to Fiona's subsidiaries but gave substantial benefits to the charterers". The nature of a charterers' option is, of course, that, unless and until it is exercised, it creates a legal right only for the charterers and a legal obligation only for the owners. This does not mean that there can be no proper or commercial reason that an owner might grant an option to a charterer to extend the period of hire. It is readily understandable that an owner might agree to a charterer's option as a term of a charterparty in order to induce a charterer to hire a vessel, and do so for sound commercial reasons even if the owner does not receive in return any distinct or recognisable consideration, by way, for example, of an identified increase in the rate of hire or a lump sum. Mr. Pearce and Mr. Huttemeier agreed that owners such as Sovcomflot and NSC, who were not established as leaders in the market, need to be flexible when negotiating charters, and that it is a feature of the market that on occasions owners of their standing do agree to charterers having with-charter options (as opposed to stand-alone charters) to extend the period of hire. In their experience, the rate of hire is not normally increased because the charterparty contains a charterers' option of this kind: indeed, neither expert knew of any case in which it had been increased. Sovcomflot did not agree to options of this kind only when chartering to the Standard Maritime defendants or to charterers associated with Mr. Nikitin. Mr. van Boetzelaer said in his witness statement dated 13 February 2009 that, when Sovchart had fixed time charters for Sovcomflot, it was "not unusual within the initial charter to grant options to extend the charter".

1064. The position of the "stand-alone" options is different. Neither of the expert witnesses had had experience of an owner entering into a separate agreement with a charterer after a charterparty had been fixed that the charterer should have an option to extend the hire period. There is no evidence that Sovcomflot entered into similar

arrangements with other charterers. Mr. Skarga said that he could not recall them being agreed with other charterers, but, if they had not been, it was because other charterers had not asked for them. Mr. Novikov could not recall Sovcomflot arranging a "stand-alone" option with any charterer other than the Standard Maritime defendants, and I conclude that they did not do so.

1065. Mr. Huttemeier drew attention to other arrangements in which Sovcomflot had showed some flexibility to charterers of their vessels and described them as "what appeared to be … further examples of options granted … during the currency of existing charterparties to other charterers". These arrangements are not, to my mind, comparable with the "stand-alone" options that Sovcomflot granted to the Standard Maritime defendants.

1066. First Mr. Huttemeier referred to an agreement with BP about the chartering of the "SCF Ural". The vessel had been chartered on 1 August 2003 for a period of four months, with a charterers' option to extend the period of hire for a further two months at a rate of $26,000 per day. On 16 September 2003 Sovcomflot agreed that BP should instead have an option to hire the vessel at the end of the charter period for 8 months at $25,000 per day. However, BP had to declare the option within two weeks: it was not an option which they were to hold over an extended period and Mr. Pearce regarded this arrangement as really being in the nature of an agreement for a further 8 months' hire period "on charterers' subject". I consider Mr. Pearce's view realistic.

1067. Secondly, Mr. Huttemeier mentioned the charter of the "SCF Caucasus" to Chartering and Shipping Services SA for six months with an option of a further six months' hire. The chartering documentation is confused and confusing, but it appears unlikely that a charterers' option was granted separately from the original charterparty, and probable that there was a mistake in the first addendum to the charterparty in that it stated that the option period was to run from 29 January 2004 and the option was to be declared by 29 April 2004.

1068. Next, Mr. Huttemeier referred to arrangements reached with Europetroleum about when the "Romea Champion" was to be re-delivered to the owners. It suffices to say that it was agreed that the vessel might be used for a voyage from the East Coast of Mexico to Spain and agreement was reached about re-delivery to accommodate this. This arrangement was not comparable to the stand-alone options agreed with the Standard Maritime defendants.

1069. Fourthly, Sovcomflot agreed that Clearlake, the charterers of the "Petrozavodsk" under a charter dated 26 October 2005, should have an option to re-deliver the vessel earlier than was permitted under the charterparty. The arrangements were reached in the context of fixing the charter of another vessel, the "Liteyny Prospect". The nature of the arrangements and the context in which they were agreed were quite different from the stand-alone options granted to the Standard Maritime defendants.

1070. Fifthly, Mr. Huttemeier referred to the owners' agreement to extend the period within which Gunvor were to declare an option to extend the period of hire of the "Tromso Trust", but Sovcomflot agreed to this because the vessel was going into dry dock.

1071. Finally, reference was made to the charter in about May 2001 of the "Kapitan Kermode", but there is no credible evidence that any charterers' option was granted in relation to her.

1072. The claimants submitted that the stand-alone options were not only unusual, but that they cannot be justified and that Sovcomflot agreed to them only because of the corrupt relationship between Mr. Skarga and Mr. Nikitin. Their case is that Mr. Skarga personally agreed the terms of the chartering arrangements with the Standard Maritime defendants including the stand-alone options, and that others had no significant part in doing so. The defendants argued that the claimants exaggerate Mr. Skarga's involvement in fixing the vessels with the Standard Maritime defendants, and that others within Sovcomflot were responsible for agreeing the terms, or others knew and approved of them.

1073. The Executive Board considered and approved some, but not all, of the impugned charters either before or after they were concluded, but the Board did not consider any of the stand-alone options at their formal meetings. However, the defendants contended that both Sovchart and the Fleet Operations Department and Mr. Terekhin, to whom the head of the Fleet Operations Department reported, arranged them or at least concurred in Sovcomflot agreeing to them. I shall consider below the evidence about the individual stand-alone options, but, as I shall explain, the claimants face particular difficulty in attributing them to Mr. Skarga's dishonesty because (i) Mr. Terekhin did not give evidence and his role in agreeing the chartering arrangements is important, (ii) the only evidence from Mr. van Boetzelaer is his witness statements, which are unreliable, and (iii) the documents disclosed by the claimants about how the stand-alone options were agreed appear to be incomplete, and in the only case where there is satisfactory documentary evidence, the option in respect of the "Tropic Brilliance" agreed in December 2003, it indicates that Mr. Terekhin authorised the option.

1074. Throughout the relevant period Sovchart, and in particular Mr. van Boetzelaer, arranged charterparties for the Sovcomflot group. Mr. van Boetzelaer was, in the words of Mr. Sharikov, "a very experienced chartering broker". Although it was not, as far as the evidence goes, recorded in writing, the understanding between Sovcomflot and Sovchart was that Sovchart had authority to conclude voyage charters and time charters for periods of up to six months, but they required authorisation from Sovcomflot in Moscow to enter into longer fixtures, or to extend the period of a charter or to grant an option that committed Sovcomflot to hire of a period longer than six months. Mr. Skarga was in a position to give such authorisation, and so too were others, including Mr. Terekhin and, as I conclude, Mr. Sharikov.

1075. The claimants served two witness statements made by Mr. van Boetzelaer, which were dated 13 February 2009 and 16 June 2009. He declined to attend to give oral evidence, and his written statements were put in evidence. I do not consider that generally I can rely upon that evidence, particularly about whether Mr. Skarga was responsible for the chartering arrangements with the Standard Maritime defendants. The statements are inconsistent with other evidence given on behalf of the claimants. For example, he said that after Mr. Skarga's appointment, although he still had some dealings with Mr. Terekhin and the Head of the Fleet Department, he more usually dealt with Mr. Skarga, who would respond more quickly to enquiries, and that he thought that Mr. Terekhin was less involved in chartering than he had been

previously. Mr. Sharikov's impression, however, was that Mr. Skarga and Mr. Terekhin "worked closely together", and I prefer that evidence to Mr. van Boetzelaer's. I also consider unreliable Mr. van Boetzelaer's evidence that Mr. Skarga and Mr. Nikitin would negotiate the "basic elements of a deal" leading to the chartering arrangements, and that he would simply record the agreement reached. The documents do not support this.

1076. The transcript of an interview of Mr. van Boetzelaer on 14 June 2006 conducted by the Swiss authorities at the request of the Russian authorities, which the claimants did not disclose until after closing submissions had been concluded, confirmed that Mr. van Boetzelaer's witness statements are unreliable. For example, in response to a question as to whether he raised any, and if so what, objections to the chartering to the Standard Maritime defendants, he replied that he objected to the series of options attached to the charters of the "Nevskiy Prospect" and the "Ligovsky Prospect". The clear implication was that he did not otherwise raise any objections. He also said that the charters of the "Azov Sea", the "Tropic Brilliance" and the "Romea Champion" were at market rates. The defendants did not rely upon these or other answers in the interview as evidence of the truth of their contents, but they submitted that they belie the contrary evidence in Mr. van Boetzelaer's witness statement. I accept that submission.

1077. Mr. Terekhin, as First Deputy Director-General, had special responsibility for chartering. His contract of employment, which was dated 25 January 2000, stated that, "The Company charges the First Deputy Chief Executive Officer with managing commercial and technical operation of the tanker fleet, developing cooperation with Russian oil and petroleum product exporters, ensuring implementation of procurement projects and construction of tanker tonnage". As I have said, when he joined Sovcomflot from NSC in 2000, he already had extensive experience of chartering, as well as ship finance and newbuilding construction.

1078. Although he was a non-executive director of NSC when witness statements in these proceedings were exchanged in February 2009, no witness statement of Mr. Terekhin has been served and he did not give evidence. The claimants have provided no explanation for this. There is no suggestion that Mr. Terekhin was himself corrupt, and on occasions he authorised Mr. van Boetzelaer to enter into time charterparties. The claimants submitted, however, that Mr. Terekhin was "acting on Mr. Skarga's instructions" and "providing no independent scrutiny" of the chartering arrangements with the Standard Maritime defendants. No credible evidence supports this submission. On the contrary, Mr. Lipka, in cross-examination, described him as an independently minded executive who questioned decisions that he did not understand or of which he did not approve, and I accept that assessment of him.

1079. As I have said, I conclude that Mr. Sharikov was entitled to authorise Sovchart to enter into time charters. This was Mr. Skarga's evidence and I accept it, and reject Mr. Sharikov's evidence to the contrary. Before Mr. Skarga was appointed as Director-General, Mr. van Boetzelaer would seek such authorisation from Mr. Terekhin or from Mr. Shatov, who was Mr. Sharikov's predecessor as Head of the Fleet Department, and there is no convincing reason to think that Mr. Sharikov had or exercised less authority than Mr. Shatov had done. Moreover, on some occasions when Mr. Skarga and others were absent, Mr. Sharikov was appointed to act as

Director-General, but Mr. Sharikov denied that even then he was permitted to authorise charterparties. I find that implausible.

1080. The claimants submitted that Mr. Sharikov and the Fleet Operations Department played no part in chartering vessels or in scrutinising chartering rates. In his witness statement of 12 February 2009, Mr. Sharikov said that, although he received weekly consolidated reports relating to the positioning and efficiency of the fleet, he did not review individual rates or "pay much attention to charters fixed by Sovchart". Mr. Novikov, who worked in the Fleet Operations Department and was its Deputy Manager between April 2003 and September 2004, produced the weekly reports to which Mr. Sharikov referred. He stated in his witness statement dated 27 March 2009 that these involved no review or analysis of the charters referred to.

1081. I cannot accept the picture of the work of the Fleet Operations Department given by Mr. Sharikov and Mr. Novikov in their witness statements, and a different picture emerged from their evidence in cross-examination. They received weekly reports with information about market rates, including reports from brokers, and Sovchart too sent them market information. Although the weekly reports produced by the department before August 2003 are not in evidence because they were destroyed in April 2007 by the claimants, the later reports that are in evidence contain extensive information about all of Sovcomflot's vessels, including their current and previous hire rates and details of any options granted to the charterers. After a draft prepared by Mr. Novikov had been approved by the Head of the Fleet Operations Department, these reports were circulated to Mr. Borisenko, Mr. Skarga and Mr. Terekhin. Mr. Sharikov accepted that, as well as preparing weekly reports, the department prepared quarterly reports comparing vessels' chartering rates with market rates. Mr. Novikov accepted that it was his responsibility to make a report to Mr. Sharikov, or in his absence to Mr. Terekhin, if a charter was fixed at a rate that did not correspond to the prevailing market. This is reflected in a job description that Mr. Novikov had been given by Mr. Shatov in 1996 in which one of his tasks was to "perform daily monitoring of the terms for chartering out vessels and the state of the freight market for the purpose of analysing the level of vessels chartered out by … Sovchart Geneva". I conclude that it was the role of the Fleet Operations Department to consider the terms of charters entered into through Sovchart and to compare them with the market rates, with a view to maximising the profitable deployment of the fleet.

1082. Mr. Skarga did not curtail the activities of the Fleet Operation Department in scrutinising charters made by Sovcomflot with the Standard Maritime defendants or more generally. Shortly after he became Director-General, Sovchart were instructed to prepare daily reports to Sovcomflot, on 19 December 2001 the Executive Board decided to reassess and improve their systems for statistical reporting, and on 13 March 2003 the Executive Board instructed Mr. Borisenko, Mr. Terekhin and Mr. Sharikov to propose further improvements in the collation of statistical data on the fleet's performance. Mr. Sharikov said in his evidence, and I accept, that Mr. Skarga supported these changes.

1083. In a witness statement dated 5 December 2008 that Mr. Nikitin and the Standard Maritime Defendants put in evidence, Mr. Betty, who worked as a broker for Sovchart between 1994 and September 2004, confirmed that Mr. Terekhin and the Fleet Operations Department assessed whether fixtures were profitable. He was aware that

Sovcomflot reviewed the terms upon which fixtures had been made because sometimes Mr. Terekhin or the Fleet Operations Department would ask him why the results of a charter compared badly with the market. I accept that evidence. Mr. Novikov agreed that he sometimes spoke to Sovchart about chartering rates, but said that this was "purely to satisfy my own curiosity". In view of the responsibilities of the Fleet Operations Department and Mr. Novikov's own duties, I cannot accept that explanation. He made enquiries of Sovchart so that he could understand and explain any rates that appeared out of line with the market or concerned him for some other reason. According to Mr. Betty, Sovchart were never so questioned about the rates of the chartering arrangements with the Standard Maritime defendants, and neither Mr. Sharikov nor Mr. Novikov disputed this. I accept Mr. Betty's evidence about that too.

1084. Mr. Novikov said, however, that his impression was that some of the chartering rates agreed with the Standard Maritime defendants were low. I shall refer below to his evidence about a charter of the "Romea Champion" dated 2 June 2003. When he was cross-examined, Mr. Novikov also gave an account of an occasion when, in Mr. Sharikov's absence, he reported to Mr. Terekhin concerns that he had about another chartering rate agreed with either Henriot or PNP that he considered to be low. According to Mr. Novikov, Mr. Terekhin had instructed him "very clearly and unambiguously that [he] should keep away from [individual charterers] because such decisions are taken at the very top level". I am unable to accept that this evidence was truthful. Had it been, such a significant exchange would have been mentioned before Mr. Novikov was being cross-examined.

1085. Mr. Sharikov said that, if he observed that the rate of hire in a charterparty seemed strange, he would mention it to Mr. Terekhin, but not to Mr. Skarga. He said in cross-examination that he had spoken to Mr. Terekhin about some rates of hire agreed with the Standard Maritime defendants, but his evidence about this was vague and unconvincing and I do not accept it. Had he done so, like Mr. Novikov he would have said so in his witness statements.

1086. I conclude that the rates and other terms on which vessels were chartered were known and assessed by the Fleet Operations Department. Mr. Terekhin was also well aware of them. Apart from Mr. Novikov's concerns about the chartering rate for the "Romea Champion", the terms and rates of the charters to the Standard Maritime defendants caused no disquiet. This, in my judgment, was because they were generally in line with the view taken within Sovcomflot of the prevailing market.

1087. Against this background I consider the individual agreements entered into by Sovcomflot with the Standard Maritime defendants in order to assess (i) whether they are upon terms which indicate that they indicate a corrupt relationship, (ii) the part played by Mr. Skarga and Mr. Nikitin in agreeing the terms, and (iii) the involvement of others at Sovcomflot in making the charterparties.

The first charters of the "Fili" and the "Azov Sea"

1088. The "Fili" and the "Azov Sea" were small, medium range crude oil or product carriers. The "Fili" was built in 1991, and the "Azov Sea" was built in 1998. By a charterparty dated 28 February 2001, the "Fili" was chartered to PNP by Fili Shipping for 12 months from 20 April 2001 at a rate of $18,000 per day, and PNP were granted

an option for a further 12 months' hire at the same rate. The option was to be declared within 9 months after start of the charter period. A ballast bonus of $170,000 was payable to the owners, but I accept the view of Mr. Pearce that, in commercial terms, this can be regarded as off-set by the terms for delivery (at Tallinn) and re-delivery (in the range of North West Europe and the Mediterranean), and so that it can disregarded for present purposes. On 7 February 2001 Sovcomflot's Executive Board approved the proposal to enter into the charterparty.

1089. The rate of hire of the "Fili" was apparently agreed directly between Sovcomflot and the charterers. For example, Mr. van Boetzelaer wrote on 29 January 2001 to the charterers' agent that he understood the rate had been agreed "between our principals". Mr. Nikitin and Mr. Skarga accepted that they had had some discussions which led to the charter, and Mr. van Boetzelaer was probably referring to negotiations conducted by Mr. Skarga.

1090. Under a charterparty dated 26 March 2001, the "Azov Sea" was nominated for charter to PNP by her owner, Valloy Shipping Co Ltd., the 27th claimant in the Fiona action. The terms as to the period of hire, the rate and a charterers' option were similar those for the charter of the "Fili". There is no evidence whether the rate for the "Azov Sea" was agreed between brokers or between principals, but Mr. Skarga authorised Sovchart to enter into the fixture. On 21 March 2001 Mr. van Boetzelaer reported by e-mail to Mr. Shatov that he had entered into it subject to charterers' approval "As per the authority of Mr. Skarga". (The e-mail in fact referred to a charter not of the "Azov Sea" but of her sistership, the "Barents Sea", which Sovcomflot originally planned to charter to PNP and for which the "Azov Sea" was substituted.)

1091. Both the "Fili" and the "Azov Sea" were chartered at rates that were in line with the market, if not above it, and upon terms that are consistent with normal industry practice. They were as high as any rate that Sovcomflot agreed during this period for a vessel of this kind. In Sovcomflot's report for the first six months of 2001 it was said that, of Sovcomflot's eight vessels of this type, six were hired on time charters to ST Shipping, Vitol and PNP for periods of between one and two years at a daily rate of between $14,700 and $18,000 "due to the instability of the spot freight market for product carriers". It was submitted by Mr. Dunning that this in itself is evidence that Mr. Skarga did not by early 2001 have a corrupt relationship with Mr. Nikitin and so that he was not party to the Sovcomflot Clarkson commissions scheme. I reject that submission: too little is known about how agreement about the rates of hire of the "Fili" and the "Azov Sea" was reached, and in any case Mr. Skarga might have thought it too risky to agree to low rates until Sovcomflot had a well established chartering relationship with the Standard Maritime defendants

1092. At about the end of December 2001 the hire rate for the "Fili" was reduced from 29 December 2001 to $13,500 per day and the rate of hire for the optional period was changed to $14,000 per day because she had been chartered on the basis that she had ice-class 1C status whereas in fact she had only the lower ice-class C status. PNP had threatened to terminate the charter because she did not comply with the charter description. The hire was reduced by way of a compromise of this complaint. PNP's initial proposal was that the rate of hire for the "Azov Sea" as well as for the "Fili" should be reduced to $13,000 from 1 December 2001, but it was agreed that only the rate for the "Fili" should be adjusted.

1093. The charterers did not declare the options to extend the period of hire of either vessel, but after further negotiations both vessels were chartered for a further 12 months' hire at $13,250 per day with a further charterers' options at a rate of $14,500 per day for 12 months from April 2003 (from 20 April 2003 in the case of the "Fili" and from 24 April 2003 in the case of the "Azov Sea") to be declared by 10 March 2003. The new rate of $13,250 ran from 1 March 2002 for the "Fili" and from 15 March 2002 for the "Azov Sea", that is to say, from before the date when the original charters expired. PNP declared the options on both vessels on 10 March 2003. (For the sake of completeness, I mention that, for reasons that are not explained in the evidence and are irrelevant for present purposes, in June 2003 it was agreed that the rate of hire of the "Fili" should be increased to $16,000 and the rate for the "Azov Sea" should be correspondingly reduced.)

1094. Neither the rates of hire nor anything else in these dealings suggests anything other than normal commercial dealings between the parties. In August 2003 Sovcomflot granted the charterers further options for the hire of the "Fili" and the "Azov Sea", which I shall consider below.

The "Tropic Brilliance" and the "Romea Champion"

1095. Before I consider the charters of the "Tropic Brilliance" and the "Romea Champion", I shall describe the condition of the vessels. They were Tromso type double-hulled Suezmaxes, built in 1992. The defendants contended that they were in poor condition, and that this supports their contention that they were chartered to the Standard Maritime defendants at proper rates. The Tromso vessels had no centre-line bulkhead in the cargo tanks, and by 2002 this was causing problems. Class restrictions had not been imposed, but some oil companies considered that the design might cause instability during loading and discharging operations. It also meant that stresses upon the vessels might cause cracking in the cargo and ballast tanks. Further, the coatings in the tanks were prone to deteriorate, and this led to corrosion and wasting of metal structures.

1096. Several relevant documents about the "Tropic Brilliance" and the "Romea Champion" were not disclosed by the claimants until after the close of final submissions. The defendants applied to re-open their case and to adduce some of the documents in evidence, and I permitted them to do so. I accept that the claimants did not deliberately withhold them, but the late disclosure hampered consideration of these issues. In particular, the evidence of Mr. Thompson about the condition of the vessels should have been tested against some of the documents, and, for example, in view of them I am unable to accept his evidence about how the condition of their ballast tanks compared with those of other vessels on the market, or his evidence that the "Tropic Brilliance" was in better condition than Sovcomflot's other Tromso vessels.

1097. It suffices to illustrate selectively the problems of the "Tropic Brilliance" with cracking and deterioration of her tank coatings without reciting their full history between 2002 and 2004. Between May and July 2002, when she underwent her second special survey, cracking was found in the cargo and ballast tanks, and the condition of the coating in the wing ballast tanks was described as "poor". Although a "riding squad" was put on board in the second half of 2002, the "Tropic Brilliance" continued to have problems with cracking and deterioration of the coatings

throughout 2003 and 2004. A condition of class was imposed in October 2002 when cracks were discovered in the transverse bulkhead. Work on the coatings had not been completed in time for the class annual survey in February 2003, and a requirement of annual class inspections of the wing and double bottom ballast tanks was imposed. In February 2004 further cracking and corrosion was found and she was required to have repairs completed by 23 May 2004. On 12 March 2004 Mr. Thompson recommended that the vessel be dry-docked for her intermediate survey in July 2004, the earliest permitted date. With the agreement of Henriot, the charterers, she went into dry-dock in Bahrain in August 2004. Steel was replaced, reinforced coatings were up-graded and permanent repairs of cracks were carried out in order to meet class requirements. On 6 November 2004, on her maiden voyage after leaving dry-dock, the "Tropic Brilliance" grounded in the Suez Canal, but there is no reason to suppose that this was because of the problems that I have described. The grounding was said by the defendants to have been caused by a failure of her steering gear, but I cannot determine the cause.

1098. Mr. van Boetzelaer's evidence was that the condition of the "Tropic Brilliance" did not affect the rates of hire that, in his view, the vessel could command, and that he would not expect it to have done so provided that major oil companies gave her their approval. I am unable to accept this. I prefer Mr. Skarga's evidence that Sovcomflot discussed the problems with Sovchart, and it was recognised that the "Tropic Brilliance" was a difficult vessel to charter on the market. Further, even if, as Mr. van Boetzelaer asserted, potential charterers did not question her condition in negotiations, Sovcomflot's concerns would, as I infer, have made them readier to accept a proposal to fix the vessel, especially from charterers, such as the Standard Maritime defendants, who already had chartered vessels from them and had not been unduly aggressive when problems occurred.

1099. It is, in any case, accepted by the claimants that the condition of the vessel might have affected rates if major oil companies did not approve her for their business. By the early years of this century, it was less clear than previously whether a vessel could be said to hold such approvals, for reasons that I should explain briefly. In the 1990s oil companies might, after a confidential inspection, give a general approval to a vessel to carry their cargoes, and the major oil companies had, through the Oil Companies International Marine Forum ("OCIMF"), developed the Ship Inspection Report System ("SIRE") whereby companies subscribing to the system would make available inspection reports to other members. However, after the explosion on the "Erica" in December 1999 and even more after the pollution caused when the "Prestige" sank in November 2002, oil companies were reluctant to give prior approval to a vessel, and they increasingly reserved the right to carry out their own inspection. Thus, while many (but not all) major oil companies would still indicate that a vessel was generally acceptable to them, owners and managers could not claim that their vessel was formally approved by major oil companies. Generally, they could only say that oil companies had accepted a vessel based on the last SIRE inspection report, and thus had given what Mr. Komyshev referred to as "implicit approval". In reality, a vessel's "approval status" was best indicated by identifying what major oil companies had allowed her to lift cargo and ascertaining whether oil companies had shown reluctance to do so or had even rejected her.

1100. In these circumstances and without a prevailing system of formal approvals, it is the more difficult to judge how far the condition of the "Tropic Brilliance" and the "Romea Champion" caused concern to the oil companies and as a result affected marketing of the vessels for hire and the rates that they commanded. I conclude that to some extent Sovcomflot experienced problems of this kind with all the Tromso vessels. For example, on 28 January 2003 BP advised that the Tromso vessels were not acceptable to them without further information about their condition. At a meeting of Unicom's Operators Weekly Meeting on 4 September 2003 it was said (as recorded in the minutes) that "Tromso class is still trading with difficulties due to the precise screening of Majors and Class records. It was noted the pressure of commercial and marine departments giving positive results like in "Tromso Confidence" case, however technical conditions of vessel and Class records require to be improved".

1101. In the case of the "Tropic Brilliance", undoubtedly some major oil companies had accepted her in 2002, and continued to do so, but I accept the defendants' submission that others had raised concerns about her condition. In an e-mail to PNP dated 29 November 2002, for example, Mr. van Boetzelaer was able state that the vessel was then approved by BP, by Total Fina Elf and by Exxon, but this did not tell the whole story. In August 2002 Total Fina Elf had given their approval only after the classification society had endorsed the condition of her ballast and cargo tanks, and, when cracking in the traverse bulkhead had been found in October 2002, such endorsement could probably not have been obtained. Unicom cancelled an inspection by Shell in December 2002 because the vessel would not have passed it. In 2004 Sovchart remained concerned about having oil companies' approval in order to attract business for the "Tropic Brilliance", and on 2 February 2004 they said of forthcoming inspection by Statoil, "We really do need a good SIRE report on this vessel".

1102. In March 2002 the "Romea Champion" underwent her second special survey. She had problems similar to those of the "Tropic Brilliance" (and the other Tromso vessels), and overall her condition does not appear to have been significantly better than her sistership. For example, in December 2002, cracks were found in her tanks and she was detained by the Savona Port Authority. Further cracks were discovered in around March and April 2003. In May 2003 Unicom decided to carry out a full inspection of the ballast coating of all the Tromso vessels, and it was found that in the case of the "Romea Champion" up to 90% of the coatings had deteriorated.

1103. The "Romea Champion" performed voyages in 2002 for Total Fina Elf, for Chevtex and for Sun, and in 2003 for BP, Chevoil and Petrobras. However, she had some difficulty over approvals from some major oil companies. In December 2002, for example, Exxon Mobil withdrew their approval pending further investigations, in February 2003 Agip would not accept her and by June 2003 she had also been rejected by Total Fina Elf and by Noble Denton. Moreover, as I have described, in January 2003 she suffered damage from ice in the Gulf of Finland, and, while the damage itself was relatively minor and quickly repaired, the incident attracted unwelcome publicity. Like the "Tropic Brilliance", the "Romea Champion" would not, as I conclude, have been an easy vessel to market for hire.

1104. Despite Mr. van Boetzelaer's evidence, I accept the defendants' submission that the problems that arose from the design and condition of the "Tropic Brilliance" and the "Romea Champion" are relevant when assessing the claimants' complaints about the

rates at which they were chartered to the Standard Maritime defendants. First, their condition, I conclude, was causing some concern to major oil companies. Secondly, whether or not in fact oil companies were concerned about their condition, I accept that Sovcomflot executives, including Mr. Skarga, were concerned that the vessels were not easy to charter, and so Sovcomflot were the readier to accept charters for reasonable periods and also to offer options in order to retain charterers' interest in the vessels.

1105. The claimants rightly observed that, at considerable cost both by way of expenditure and lost earnings while modifications were being carried out, at the time of their second special surveys in 2002 Sovcomflot had undertaken work to up-grade the "Tropic Brilliance" and the "Romeo Champion" so as to acquire ice-class 1C status for their hulls and ice-class C for their machinery. As was stated in Sovcomflot's annual report for 2001 (which Mr. Skarga signed), this work was done with a view to the vessels being able to trade from Primorsk. Mr. Skarga and Mr. Nikitin said that in fact this purpose was not achieved by the modifications because the vessels did not have heating in their ballast tanks, and, unless they were ballasted, their propellers would not be sufficiently low beneath the ice level. I do not accept that evidence because both vessels had another mechanism, an air bubbling device, which prevented freezing in the ballast tanks.

1106. However, I do not accept that this meant that the vessels commanded higher chartering because they had acquired ice-class status rates. As Mr. Pearce and Mr. Huttemeier agreed and I accept, the question whether a vessel attracts an "ice premium", that is to say an increased rate of hire because she has ice-class status, depends upon a variety of circumstances, including the degree of ice strengthening. There is nothing in the contemporary documents that suggests that anyone at Sovcomflot or at Sovchart considered that the rate of hire of the "Tropic Brilliance" and the "Romea Champion" should be higher than that of other Tromso vessels because their specification had been up-graded to ice-class status. They were effectively strengthened only to ice-class C, because, as Mr. Pearce accepted, if the status of a vessel's hull and that of her machinery are different, she is taken to be of the lower status. In any case, Sovchart would not have warranted that the "Tropic Brilliance" could cope with ice at Primorsk even on the basis that she was of ice-class 1C status. On 7 August 2002 Sovchart wrote to PNP that, "There is no doubt that in case of severe conditions a vessel of ice-class 1C such as the "Tropic Brilliance" will not be permitted to call at Primorsk as the risk of damage to the vessel would be unacceptably high". They would give a warranty only that the vessel would "trade in slushed ice". The published guidance which was available in 2002 stated that, in order to trade to Primorsk during the winter, a vessel should be of ice-class 1C, and Mr. Pearce accepted that a prudent charterer would not in these circumstances have paid an ice premium for the "Tropic Brilliance" with a view to her trading from Primorsk during the winter of 2002/03. In so far as the claimants argued that the chartering rates were unduly low because they did not reflect the ice-class status of vessels, I conclude that they would not have attracted an ice premium, and in any case the "Tropic Brilliance" and the "Romea Champion" were less suitable than other class ice 1C vessels for trading in demanding ice conditions because of concerns about their strength and general condition.

The charter of the "Tropic Brilliance" in December 2002

1107. By a charter dated 9 December 2002 Glefi Shipping XXIX Co ("Glefi XXIX"), the 24th claimant in the Fiona action, chartered the "Tropic Brilliance" to Henriot for 12 months at $19,000 per day, the charterers' obligations being guaranteed by PNP. The rate of hire had been agreed, subject to charterers' approval, on 20 or 21 November 2002. The charterers' approval was given and the charter was firmly concluded, as I infer, after it had been considered at a meeting of Sovcomflot's Executive Board on 9 December 2002 and the Board had unanimously approved the proposed charter. A briefing note before the Board referred to a "commercial offer" from Henriot and set out the essential terms of the charter. The proposal to approve it was introduced by Mr. Sharikov, and Mr. Terekhin, Mr. Borisenko and Mr. Skarga all spoke in support of it. The minute of the meeting expressly referred to the hire rate of $19,000 per day. Nobody at the meeting suggested that it was too low.

1108. The claimants plead that the rate for the charter had been directly agreed between Mr. Skarga and Mr. Nikitin, and that Mr. Skarga instructed Mr. van Boetzelaer to fix the vessel: see para 297.15 of the particulars of claim in the Fiona action. Mr. Skarga accepted that he had authorised Mr. van Boetzelaer to agree the charter and rate. He denied that he had any direct discussions with Mr. Nikitin about this fixture, but I reject that evidence. In e-mails dated 21 November 2002 and 22 November 2002 to Mr. Skarga, Mr. van Boetzelaer referred to "your negotiations" and what "you agreed with PNP", and Mr. Nikitin accepted that, if PNP had had negotiations with Mr. Skarga, he would have conducted them himself. Further, in a witness statement made on 16 June 2009 Mr. Skarga accepted that he had discussions with Mr. Nikitin about the fixture, and that he agreed with Mr. Nikitin that the fixture should remain subject to the approval of the charterers' management. Although in cross-examination he said that he did not recall this, I consider that this confirms what would in any case have been the most natural inference from Mr. van Boetzelaer's communications.

1109. The claimants also plead that the rate of hire was "significantly below the market rate" and "substantially lower than the then market rate": see paras 297.15 and 297.41.3 of the particulars of claim in the Fiona action. Mr. Huttemeier considered that the rate of $19,000 was a commercial rate for the vessel. One reason that he gave for this view was that, shortly after the rate was agreed, Sovcomflot agreed to charter the "Romea Champion" to Europetroleum at the same rate for six months with a charterers' option for a further period of six months. The claimants submitted that the rate of hire of the "Romea Champion" is not a guide to the proper rate of hire of the "Tropic Brilliance" because Mr. Skarga always intended that it should be increased, as indeed it was in January 2003. For reasons that I have explained, I reject the claimants' contention about the intention to adjust the hire rate, but my conclusion about the rate of hire of the "Tropic Brilliance" does not depend upon the rate of hire of the "Romea Champion".

1110. Mr. Huttemeier had other reasons for his opinion about the rate of hire of the "Tropic Brilliance", and to my mind they justify it regardless of the charter of the "Romea Champion". First, Drewry reported a rate of hire for a charter of 6 to 12 months of a 5 years old Suezmax of $18,000 in November 2002 and of $19,000 in December 2002. For the week of 15 November 2002 (when the rate of hire for the "Tropic Brilliance" was agreed) CSIW reported a rate of $18,750 per day for Suezmaxes of the early 1990s, although they increased the rate to $19,000 per day in the next week.

Secondly, on 13 December 2002 Mr. Skarga and Mr. van Boetzelaer were considering chartering to Chevtex a new Suezmax for $22,250 for a one year's charter or for $22,000 for a two years' charter. In fact, Chevtex apparently were not attracted by the proposal, but Mr. Huttemeier considered, and I accept, that a rate of $19,000 for the ten years old "Tropic Brilliance" would compare favourably with rates at this level for a new Suezmax. Further, on 25 November 2002 Sovcomflot chartered to Gunvor a sistership of the "Tropic Brilliance", the "Tropic Trust", for a period of 6 months with a charterers' option for a further six months' hire. The rate was $20,500 (or $19,475 net of 2.5% address commission and 2.5% brokerage), but, given the shorter charter period, the higher rate of commission and other terms of the charter of the "Tropic Trust" that were favourable to the charterers, I accept Mr. Huttemeier's assessment that this comparator too indicates that the charter of the "Tropic Brilliance" was on commercial terms.

1111. The claimants accepted that the rate of hire of $19,000 would have been appropriate for a standard Suezmax vessel which did not have ice-class status, but submitted that, given her status, the "Tropic Brilliance" commanded a higher rate. The defendants disputed that ice-class status generally commands a higher chartering rate, and also submitted that in any case the "Tropic Brilliance" would not have done so because of her condition. For reasons that I have explained, I agree with both of these submissions. Even leaving aside the condition of the "Tropic Brilliance", the claimants have not, in my judgment, shown that the rate of hire of $19,000 per day for the hire of the "Tropic Brilliance" was below the market rate for a vessel of her ice-class specification.

1112. There is no evidence that persuades me that the rate at which the "Tropic Brilliance" was chartered was below what Sovchart and Sovcomflot considered might be obtained on the market, or that they could in fact have obtained a higher rate. I conclude with regard to this fixture of the "Tropic Brilliance" that:

i) Mr. Skarga negotiated the fixture, including the rate of hire, with Mr. Nikitin, that the Executive Board of Sovcomflot approved the terms of the fixture, including the rate, before it was concluded, and that Mr. Skarga authorised Sovchart to enter into the fixture.

ii) The terms of the fixture, including the rate of hire, were in line with the market, and as favourable as Sovchart and Sovcomflot considered, and reasonably considered, that they could obtain for chartering the vessel.

<u>The charter of the "Izmaylovo" in March 2003</u>

1113. On 31 March 2003, the "Izmaylovo", a small crude oil or mid range product carrier built in 1991 and owned by Glefi Shipping VII Company Ltd. ("Glefi VII"), a subsidiary of Sovcomflot, the 20th claimant in the Fiona action, was chartered to Henriot for 12 months at a rate of $16,000 per day, with a charterers' option, to be declared at least 60 days before the end of the first period, for an additional year at the same rate of hire. Glefi VII was under the terms of the charter protected as to the place of re-delivery of the vessel because they were to be paid a ballast bonus of $150,000 if she was re-delivered in the United States Gulf, the Caribbean or the Mediterranean and $120,000 if she was re-delivered on the East Coast of Canada. The obligations of Henriot were guaranteed by PNP, but this guarantee was

terminated on 3 December 2003. I infer from an e-mail that Mr. van Boetzelaer sent to Mr. Skarga on 25 March 2003 that Mr. Skarga authorised Sovchart to enter into this fixture.

1114. The claimants accept that the rate of hire for this fixture was within the contemporary market range. At a meeting on 3 September 2003 Mr. Sharikov reported upon the fixture to the Executive Board of Sovcomflot and the Board endorsed it. In his evidence, Mr. Sharikov said that Mr. Terekhin, as well as Mr. Skarga, had already approved it. There is no basis for criticising the terms or rate of the charter, and nothing suggests collusion or that it was not a fixture made on terms reflecting the market.

The charter of the "Romea Champion" in June 2003

1115. On 2 June 2003, Glefi XXVIII chartered the "Romea Champion" to Henriot for one year at a rate of $19,000 per day with a charterers' option, declarable by 30 April 2004, for an additional year at the same rate. It was a term of the charterparty that, if Glefi XXVIII decided to sell the vessel, they could give 30 days' notice that they required her to be re-delivered. It was also stated that "at the time of offering and to the best of Owners' knowledge the vessel hold the following approvals: BP, ChevTex, EXXON, Statoil, TFE, Repsol". Until 3 December 2003, Henriot's obligations were guaranteed by PNP.

1116. Towards the end of May 2003 Mr. Nikitin told Mr. van Boetzelaer that he was interested in hiring the "Romea Champion" and invited the Owners to make an offer of chartering terms. By an e-mail of 26 May 2003 Mr. van Boetzelaer proposed a rate of $19,000 per day for a 12 months' fixture with no optional period. On 27 May 2003, PNP responded by way of an e-mail from Mr. Pavlov requesting an optional 12 months' period on the same terms as the initial period, declarable by 30 April 2004. Mr. van Boetzelaer sent an e-mail to Mr. Skarga dated 30 May 2003 seeking authority to agree to the request, and asking whether he should seek for an increased rate of hire ("should we ask for an additional USD500??"). In an e-mail to PNP dated 2 June 2003 Mr. van Boetzelaer agreed to the charterers' option that PNP had requested, but stipulated that the Owners should be entitled to terminate the hire on 30 days' notice if they sold the vessel.

1117. Mr. van Boetzelaer said in his witness statement that he was instructed by Mr. Skarga to offer the vessel at $19,000 per day, and that he considered that the rate of hire was "definitely low" because the market rate at the time was around $26,000, but that he did not recall whether he expressed this view to Mr. Skarga. Mr. Skarga did not recall any conversation with Mr. van Boetzelaer, and denied that, if they did speak, he would have given instructions about the rate of hire without discussing with Mr. van Boetzelaer what it should be. I do not regard Mr. van Boetzelaer's evidence as reliable, and I reject it. If he had believed the rate of hire to be so low, he would not have suggested, rather diffidently, charging only a further $500 per day for the option period. It is unlikely that Mr. Skarga gave Mr. van Boetzelaer authority to agree to the charterers' option or gave instructions about this fixture. Between 30 May 2003 and 2 June 2003 he was busy in St Petersburg as a member of the committee organising the celebrations for the 300th anniversary of the foundation of the city. On 3 June 2003 Mr. van Boetzelaer sent a recap of the terms of the fixture to, among others, Mr. Terekhin, Mr. Sharikov and Mr. Novikov. It was not sent to Mr. Skarga.

The likelihood is that Mr. van Boetzelaer received authorisation for the fixture of the "Romea Champion" from someone else at Sovcomflot, probably Mr. Terekhin or Mr. Sharikov.

1118. On his copy of the e-mail, against a reference to the fixture being made "as per your authority", Mr. Novikov wrote "who confirmed?" and against the rate of hire of $19,000 per day he wrote "$27,000 per day" and "in relation to Clarkson but only one fixture". His explanation of the note was that, when he received the recap, he thought that the market rate of hire, as indicated by CSIW, was $27,000 per day and therefore the rate of hire agreed with Henriot was very low. In his witness statement dated 27 March 2009 he recalled that he told Mr. Sharikov this and that he was curious to know who had authorised the charter. In cross-examination he said that he might have spoken to Mr. Terekhin rather than Mr. Sharikov. He had been unable, he said, to discover who had authorised the fixture. At their meeting on 3 September 2003 Mr. Sharikov informed the Executive Board about the charter, and the Executive Board endorsed it. There is no evidence that anyone on the Board shared any concerns that Mr. Novikov had expressed about the rate of hire.

1119. It was suggested to Mr. Novikov in cross-examination that he had not written his notes on the recap document in 2003, but at some later time when he was reviewing the charterparties entered into by Sovcomflot with Standard Maritime defendants. I accept Mr. Novikov's evidence that he wrote his notes in 2003. However, this does not persuade me either that the rate of hire for the charterparty was below the prevailing market or that this was generally the view within Sovcomflot. On the contrary, Mr. Novikov's view was based only upon the rate reported in CSIW, and he observed that only one comparator fixture appeared to support the CSIW rate (presumably the fixture of the "Sikinos", to which I shall refer). More significantly, any disquiet expressed by Mr. Novikov was apparently not shared by the member of the Executive Board to whom he spoke, whether that was Mr. Sharikov or Mr. Terekhin. Both voted to endorse the fixture at the meeting on 3 September 2003.

1120. The claimants submitted that the rate of hire of the "Romea Champion" of $19,000 per day in the charterparty of 2 June 2003 was substantially lower than the market rate, which they say was $29,687. They contended that the market rate for a vessel which was not of ice-class status was some $26,000 per day and the "Romea Champion" would have commanded an "ice premium", which Mr. Pearce calculated in his report of 5 February 2010 at $3,687 per day. (They did not pursue their pleaded case that the market rate, again disregarding the option, was $31,000.) They said that their contention that the market rate was $26,000 is justified by the indices published contemporaneously by brokers. For the week ended 30 May 2003 CSIW reported the rate to which Mr. Novikov referred in his note on the recap, $27,000 for a one year's hire of a modern 150,000 dwt vessel. Their corresponding rate for a 140,000 dwt vessel of "early 90s" was $25,000. ACM and Drewry published similar rates, indicating rates of $25,000 to $26,000 in their monthly figures for May and June 2003.

1121. As with the charter of the "Tropic Brilliance" of 9 December 2002, I reject the contention that the ice-class status of the "Romea Champion enhanced the market rate for hire of the vessel. This part of Mr. Pearce's evidence, and the claimants' case, was undermined when he accepted that a prudent charterer would not pay an ice premium for either vessel. On the face of it, however, the indices do support the

claimants' contention that the market rate for a Suezmax at and around the end of May 2003 was about $26,000 per day.

1122. The claimants also referred to reports at around the end of March or early April 2003 that the Suezmax vessel "Sikinos", which was built around 2000, had been fixed on a charter to Petrobras that was variously reported to be for two years or for 33 months at a rate of around $26,500. These reports do not, to my mind, provide a reliable comparator because, as Mr. Huttemeier pointed out, the "Sikinos" was a more modern vessel and because the fixture was concluded some two months earlier. More importantly, the vessel was again fixed to Petrobras in September 2003, this time for a three years' period. Mr. Berry suggested that this indicates that the period of the charter in March or April 2003 was in fact for 3 months with a three months' option period and a term of "3+3" was erroneously transcribed as "33 months". It is unduly and unnecessarily speculative to go that far, but the September 2003 fixture does indicate that the reports of the fixture in March/April 2003 are unreliable.

1123. In their defence, Mr. Nikitin and the Standard Maritime defendants plead that rates for vessels such as the Tromsos were expected to fall significantly, and say that Marsoft reported that they were expected to fall to $17,000 per day: see para 147A.8(2)(b) of their defence. This latter contention about Marsoft's report is not justified. It is based, apparently, upon a report which was published after the "Romea Champion" had been fixed, and which contained a "risk analysis", setting out an "upside potential" and a "downside potential". The pleading refers only to the latter. Marsoft's contemporaneous reports were broadly in line with the indices.

1124. In Mr. Huttemeier's opinion, there is no reason to think that the rate and other terms of the charter of the "Romea Champion" were anything other than commercial terms, the only unusual feature being that the owners had the right to cancel the option period in the event of a sale. He considered that there was little reason to rely upon the estimated rates in the indices because "it is difficult to see how their figures could have been much more than guesswork" in view of the paucity of comparable contemporaneous fixtures. He was unable to find any other reported fixtures of a Suezmax vessel in May or June 2003. He observed that in September 2003 NSC chartered the "Kuzbass" and the "Kaspiy" to Remmy at a rate of $18,000 per day (misreported to be at $21,500 per day), but the claimants disputed that these fixtures were properly negotiated at arms' length.

1125. I see force in defendants' submission that the dearth of comparator fixtures both casts doubt upon the authority of the indices as evidence of a market rate and makes it particularly difficult to judge whether the rate of hire agreed for the charter of the "Romea Champion" to Henriot was below what would have been expected if the parties were dealing at arms' length. The rate does appear to be broadly consistent with rates that Sovcomflot were accepting from other charterers of their Suezmax vessels. They chartered three of their relatively modern SCF Suezmaxes in the summer of 2003. Mr. Huttemeier said, and I accept, that these vessels would be expected to attract higher rates, especially for short periods of hire, than the year's charter of the "Romea Champion". On 9 May 2003 Sovcomflot agreed to charter a new (2002 built) Suezmax, the "SCF Khibiny", to Chevtex for about 120 days at a daily rate of $26,300. On 1 July 2003 Mr. van Boetzelaer recommended to Mr. Skarga that Sovcomflot accept a proposal from Chevtex for a charter at $22,750 per

day for two years of the "SCF Valdai", a Suezmax build in 2003. On 1 August 2003 the "SCF Ural" was chartered for $20,213 per day to BP for a period of 4 or 6 months.

1126. As for the Tromso vessels, on 25 November 2002 the "Tromso Trust" was chartered to Gunvor for a period of six months with a charterers' option for a further six months at a rate of $20,500. On 23 May 2003 Mr. van Boetzelaer wrote to Mr. Terekhin that, before deciding whether to declare the option, Gunvor wanted to know the owners' intentions with regard to having major oil companies restoring their approvals for the ship, and on 26 May 2003 Sovchart extended the date by which Gunvor might declare the option until 29 June 2003. As Mr. Huttemeier observed, this indicates that Sovcomflot did not expect to achieve a significantly higher rate for the vessel in the market than the option rate of $20,500. Otherwise they would not have extended the date, but would have let the option lapse. Mr. van Boetzelaer warned Sovcomflot of the difficulties in marketing the vessel without approvals from major oil companies, writing "Without approvals, the vessel becomes virtually impossible to trade".

1127. As for the "Romea Champion" herself, in May 2003 Mr. Skarga agreed to extend the period of the charter to Europetroleum for 30 days at a rate of $19,000 per day. In a report to Mr. Skarga in June 2003 Mr. van Boetzelaer advised that, after she had completed the charter to Henriot, she should not be hired again until she had had "the necessary repairs". It is not clear from the documents what repairs he had in mind, but it seems that he might have experienced difficulties in marketing her.

1128. Sovcomflot might well have taken a pessimistic view of the market for the "Romea Champion", and they might have achieved higher rates for their Suezmax vessels closer to those indicated in the brokers' indices, but without any reliable comparator fixtures I do not consider that the claimants have established that the rate of hire of the "Romea Champion" was far below market rates. In any case, I conclude that the rate at which Sovcomflot chartered the "Romea Champion" to Henriot was broadly consistent with the rates at which Sovcomflot agreed to charter other Suezmax vessels to other charterers in the summer of 2003.

1129. My conclusions with regard to the charter of the "Romea Champion" on 2 June 2003 are that:

i) There is no credible evidence that Mr. Skarga agreed the rate of hire with Mr. Nikitin.

ii) Mr. Skarga did not authorise Sovchart to enter into the fixture, and Mr. Terekhin or Mr. Sharikov did so.

iii) The rate of hire was no less favourable to Sovcomflot than other chartering rates for Suezmaxes to which they agreed at around this time.

iv) The claimants have not shown that the rate of hire was substantially below the market rate.

<u>The Charters of the "Ligovsky Prospect" and the "Nevisky Prospect"</u>

1130. By charterparties dated 10 June 2003, Sovcomflot agreed to hire to Remmy the "Ligovsky Prospect", owned by Progress Shipping Co, the 22nd claimant in the Fiona action, and the "Nevskiy Prospect" owned by Universal Navigation Co Ltd., the 23rd claimant. (I shall refer to these two vessels together as the "Prospect vessels") The charters were for three years at a rate of $20,500 per day, with three charterers' options for three further years' hire at the same rate, each option to be declared 3 months before expiry of the immediately prior period. The Prospect vessels were two of a series of three double-hulled Aframax tankers of 113,970 dwt, which were at the time of the charters still under construction at the Daewoo shipyard in South Korea. The third vessel was the "Liteyny Prospect". The specification of the three vessels was of ice-class 1B for hull, and 1C for machinery, and they were being acquired for trading in the Baltic Sea during winter months. The charters of the Prospect vessels provided that they were to "force ice and follow ice breakers". The delivery date ranges were between 15 October 2003 and 30 November 2003 for the "Nevskiy Prospect" and between 15 October 2003 and 15 February 2004 for the "Ligovsky Prospect".

1131. On 24 March 2003, Mr. van Boetzelaer sent Mr. Nikitin by e-mail an offer to PNP of a time charter of one of the three vessels being constructed by Daewoo for three years at the rate of $21,500 per day. Following further exchanges, he sent on 25 March 2003 an offer to charter the "Nevskiy Prospect" at a rate of $20,500 for three years with the three option periods of a year each. The offer was subject to the approval of the prospective charterers' management until 31 May 2003, and so it was open for acceptance for some 9 or 10 weeks. Mr. van Boetzelaer also sent an e-mail to Mr. Skarga that "as per your authority" he had concluded the fixture to PNP. Mr. van Boetzelaer's evidence was that Mr. Skarga instructed him to offer the three option periods and to allow the offer to remain subject to approval for so long.

1132. Mr. Nikitin advised Mr. van Boetzelaer that the charterers wished to charter two vessels on such terms, and on 26 March 2003 Mr. van Boetzelaer passed the request to Mr. Skarga and Mr. Terekhin by e-mail. On 31 March 2003 Mr. Terekhin confirmed the Owners' agreement to the request, and Mr. Skarga also did so in an e-mail dated 6 April 2003. The claimants argued that Mr. Terekhin was probably instructed by Mr. Skarga to do so, but there is no evidence to support that submission and I reject it. To my mind, the pattern of e-mails simply exemplifies that Mr. Skarga and Mr. Terekhin were working together in chartering the fleet, as Mr. Sharikov said that they generally did. On 24 April 2003 Mr. van Boetzelaer sent Mr. Nikitin a recap of the fixture of the "Ligovsky Prospect" for a period of 3 years with three charterers' options of a year each at a rate of $20,500 per day, the fixture being subject to the approval of the prospective charterers' management until 31 May 2003.

1133. At a meeting of the Executive Board of Sovcomflot on 15 May 2003 Mr. Sharikov informed the Board of the fixtures of the Prospect vessels, and presented briefing notes drafted by Mr. Novikov, which stated (among other things) the rates of hire and the option periods. The Executive Board unanimously endorsed them. After further discussions the fixtures were finally agreed and confirmed in recap e-mails on 10 June 2003. The charterers were Remmy, but their obligations were guaranteed by PNP until, as with other charterparties, PNP's guarantee was determined on 3 December 2003.

1134. The claimants relied in support of their contention that Mr. Skarga acted improperly in relation to these charterparties (i) upon the rates of hire, (ii) upon the three options, and (iii) upon the length of time for which the fixtures were subject to the charterers' approval.

1135. The claimants submitted that the hire rates under the charters of the Prospect vessels were substantially lower than the market rate for the vessels. They accepted that the rates are higher than the current rates for Aframax vessels without ice-class status. When the rate of hire for the "Nevskiy Prospect" was agreed, CSIW indicated a hire rate of $20,000 per day, and when the rate of hire for the "Ligovsky Prospect" was agreed, the indicated rate had fallen to $17,750 per day. However, the claimants contended that the ice-class status of these vessels should have been reflected in rates of $26,125 for the "Nevskiy Prospect" and of $23,875 per day for the "Ligovsky Prospect". (The claimants did not pursue their pleaded contention for rather higher market rates than these.)

1136. Mr. Pearce supported this contention, and the claimants relied upon the rates of hire that Remmy secured when they sub-chartered the vessels. Remmy sub-chartered each vessel on 24 September 2003 to Dukkar SA ("Dukkar") for six months (from their date of delivery to Remmy, with laycan of between 15 October and 15 November 2003 for the "Ligovsky Prospect" and between 15 October and 30 November 2003 for the "Nevskiy Prospect") at $25,000 per day when trading outside the ice period (which was from 15 December 2003 to 15 May 2004) and $79,000 per day in the ice period. Mr. Nikitin said that he was able to secure these rates on the sub-charters because he could exploit his contact with Mr. Janchev of Dukkar, but there is no reason to think that the sub-charter rates were not negotiated at arms' length. Remmy again were earning high rates for the ice period on sub-charters the next winter. On 14 March 2004 Remmy chartered the vessels to Europetroleum for a year at a rate of $90,000 during the ice period and for $25,000 at other times.

1137. I am not persuaded that Sovcomflot could have obtained such high rates for the vessels or that these sub-charter rates reflected any market rate that was generally available. Mr. van Boetzelaer did not consider that the vessels would command such a high ice premium. In an e-mail dated 10 February 2003 he advised Mr. Skarga that the going rate for a non-ice class Aframax vessel would be $17,500 and "if we can get USD20,500 then [charterers] are paying $3,000 more than for a similar non-ice class vessel". The implication was that he considered that an appropriate uplift. On 23 January 2003 Mr. van Boetzelaer had offered one of the vessels to Gibson for three years at a rate of $21,500 per day, but Gibson did not accept the proposal. There is nothing to indicate that the market rate strengthened between January and April 2003. On 2 April 2003 Sovcomflot concluded a fixture of the "Liteyny Prospect" for three years with Stena Bulk AB ("Stena") at a rate of $20,500. As Mr. Pearce observed, Stena were not granted options to extend the period of hire, but, as I have stated, he and Mr. Huttemeier agreed that in practice such options do not enhance the rates of hire. The charter to Stena suggests that Sovcomflot generally and Mr. Skarga in particular were not agreeing to rates which were especially favourable for Remmy.

1138. Further, Stena promptly sub-chartered the "Liteyny Prospect" to Progetra SA for three years at $21,500 per day. Mr. Pearce did not consider that the sub-charter provides evidence of the market rate because he thought that it was part of a complex deal involving two other vessels, but there is no convincing evidence that this affected the

hire rate in 2003. Although the sub-chartering arrangements are not clear, the sub-charter provides some modest support for the defendants' contention that the rates that Sovcomflot agreed with Stena and Remmy were in line with what the market commanded.

1139. I accept Mr. Huttemeier's evidence about the two other features of these chartering arrangements criticised by the claimants. The charterers had the advantage of options for three extensions of a year each, but Mr. Huttemeier did not consider this arrangement unusual, particularly, as I understood his evidence, for charters with initial period of hire as long as these. He said that between 2000 and 2005, when options were becoming increasingly usual, A P Moller had on several occasions negotiated similar successive options.

1140. The claimants plead that Sovcomflot agreed that the charters should be on "subject time" for long periods (9½ weeks in the case of the "Nevisky Prospect" charter and 5½ weeks in the case of the "Ligovsky Prospect" charter), and that this was "highly unusual for a charterer of the status of Remmy". It is not alleged that the periods were unusually long in themselves. Nor did the claimants rely upon the fact that the dates for the charterers lifting the "subject" were extended from 31 May 2003 to 10 June 2003. In fact, as I understand it, the agreements to charter the vessels were made with PNP although in the end the charterer was Remmy, with PNP guaranteeing the charterers' obligations. Mr. Huttemeier did not consider that the periods for which the vessels were "on subjects" were unusually long, given that the vessels were still under construction and were not to be delivered for some months and given the length of the charters. Mr. Pearce too considered that owners would accept such periods if dealing with major oil companies, but that the periods which Sovcomflot allowed PNP or Remmy were "excessive". There is little, if any, reported information about what periods of "subject time" are usually granted, and no such evidence supports Mr. Pearce's view. Sovcomflot's policy was to promote business with Russian charterers, and they regarded the Standard Maritime defendants as desirable counter-parties. There is no evidence that, during the two years or more that they had been hiring vessels to Standard Maritime defendants on time charters, Sovcomflot had encountered any significant any difficulties in their dealings with them. The claimants have not shown anything about the status of Remmy or PNP that indicates that the subject periods were "highly unusual" or indicates that they were not properly agreed.

1141. I conclude that:

i) The claimants have not shown that the rate of hire or terms of these charters were agreed between Mr. Skarga and Mr. Nikitin.

ii) Sovchart were authorised to enter into these charters by Mr. Skarga and Mr. Terekhin, and I reject the submission that Mr. Terekhin was acting on Mr. Skarga's instructions. The charters were endorsed by the Executive Board.

iii) The claimants have not shown that the rates were below those prevailing in the market or what the vessels would be expected to command, and they were in line with what Sovchart were agreeing with other charterers for Aframax vessels.

iv) The claimants have not shown that the charters' options were so unusual as to suggest collusion or impropriety, or that the "subject periods" that Sovcomflot allowed the charterers were so unusual as to do so.

The stand-alone options of the "Fili", the "Azov Sea" and the "Tropic Brilliance"

1142. On Monday 18 August 2003 PNP, as charterers of the "Fili" and the "Azov Sea", and Henriot, as charterers of the "Tropic Brilliance", requested that the terms of their charterparties be amended and that they be given further options to extend them. In the case of the "Fili" and of the "Azov Sea", PNP requested options declarable by 10 March 2004 for periods of 12 months from 20 April 2004 and 24 April 2004 respectively at a rate of $14,500 per day. Henriot requested an option declarable by 30 November 2003 to charter the "Tropic Brilliance" for a period of 12 months from 14 January 2004 at a rate of $19,000 per day. On 19 August 2003 Sovchart agreed to the charterers' requests. They sent e-mails confirming that they had done so "as per your authority" to Unicom, with copies to Mr. Novikov and Mr. Sharikov, but not to Mr. Skarga or Mr. Terekhin. These were the first "stand-alone" options granted to the Standard Maritime defendants: the requests were not made in the context of other negotiations, and Sovchart agreed to them without any consideration.

1143. The charterers had first approached Mr. van Boetzelaer about these options on 28 May and 29 May 2003, and Mr. van Boetzelaer had sent their requests on to Mr. Skarga and Mr. Terekhin under cover of the request "Please authorise". There is no evidence of a response, and the requests were apparently not pursued until August. They were repeated on 18 August 2003 in e-mails to Mr. van Boetzelaer following telephone conversations, and Mr. van Boetzelaer sent them on to Mr. Skarga and Mr. Terekhin under cover of e-mails addressed to Mr. Skarga that asked that he "Please confirm owners' agreement".

1144. In the weeks of 4 and 11 August 2003 Mr. Skarga had been on his annual leave, and as I have said he was with Mr. Nikitin in Sardinia. Mr. Nikitin denied that they agreed upon the additional options when they were there, but I conclude that they must have had some discussions about them. This explains why the requests were renewed after nearly over two months.

1145. Mr. Skarga returned to Russia, as his passport shows, on Sunday 17 August 2003, and he had returned to the office by 19 August 2003 at the latest. His evidence was that he did not return to work on 18 August 2003 but, having flown into Pulkovo airport, he spent that day on his dacha near St Petersburg. I accept his evidence: he gave this account in his witness statement of 13 February 2009, before the claimants had disclosed documents about when Mr. Skarga was away from the Moscow office. They subsequently disclosed an order dated 1 August 2003 about who should exercise his functions of Director-General in his absence, which stated that it was "In connection with annual leave from 4 August 2003 to 18 August 2003". Although the claimants submitted that it is ambiguous as to when the annual leave ended, in my judgment it supports Mr. Skarga's account. I so conclude although the order appointed Mr. Borisenko to exercise his functions only until 17 August 2003 and no one was appointed to exercise them on 18 August 2003. Mr. Borisenko went on holiday to Sardinia, taking over the accommodation vacated by Mr. Skarga, and so apparently for one day no-one was appointed to be acting Director-General.

1146. This does not, as I see it, show that it was not Mr. Skarga who authorised Mr. van Boetzelaer to agree to the options because he could have done so upon his return on 19 August 2003. Mr. Skarga said that this was unlikely, describing it as a routine matter that would be "below [his] level". I cannot accept that explanation: the first "stand-alone" options to which Sovcomflot agreed were not a routine matter. Mr. van Boetzelaer was undoubtedly authorised to agree to them, but it is impossible to say whether he was authorised by Mr. Skarga or by Mr. Terekhin. He was not authorised by Mr. Sharikov: I accept Mr. Sharikov's evidence that he was on holiday. In any event, Mr. Terekhin had been aware since the end of May 2003 that the charterers were seeking these option arrangements, and there is no evidence that he opposed their requests.

1147. The claimants do not complain about the rate of hire for the additional option periods for the charters of the "Fili" and of the "Azov Sea". They say that the rate of hire of $19,000 per day for the option period for the "Tropic Brilliance" was "substantially lower" than the current market rate for a one year's time charter. The claimants contended that the market rate was $27,187.50 per day: they did not pursue their pleaded claim that the market rate was $28,500 per day. Mr. Pearce's opinion was that the rate for a standard Suezmax was $22,187.50 and that status of the "Tropic Brilliance" warranted an ice premium of $5,000 per day, and that, even without an ice premium, the market rate for the "Tropic Brilliance" would have been $23,500 per day. For reasons that I have already explained, I do not accept that the ice-class specification warranted any premium.

1148. The rate of $23,500 is based upon an average of the rates given by CSIW for a one year's charter of a "modern" double-hulled, 150,000 dwt Suezmax and of a single-hulled 140,000 dwt Suezmax of the early 1990s. It is not supported by any comparator fixtures. (If account is to be taken of the fixtures by NSC of the "Kuzbass" and the "Kaspiy" to which I shall refer, the CSIW index would appear to be high, but my conclusions about this issue do not depend upon that consideration.) However, Mr. Pearce agreed that it is "entirely inappropriate" to compare the rate for an option for a future hire period with the contemporary market rate. Account must be taken of predictions of how the market is likely to move before the option might incept, or at least before it is to be declared. Around August 2003, many respected commentators were gloomy: to take just two examples, on 11 September 2003 J P Morgan predicted "weak freight rates for most of 2004", and on 17 September 2003 Dr Stopford of Clarkson said that "by 2004 the market will be moving into recession again … the scene could be set for a fairly lengthy recession". The claimants have not shown that the rate for the option period for the "Tropic Brilliance" was lower than was to be expected.

1149. I conclude that:

i) Mr. Skarga discussed with Mr. Nikitin these options during their holiday in Sardinia, and on 18 August 2003, after their discussions, the charterers renewed their requests for them.

ii) The claimants have not shown whether Mr. Skarga or Mr. Terekhin authorised Sovchart to agree to the options, and at the least Mr. Terekhin knew of them and concurred in agreeing to them.

iii) The claimants have not shown that the rate of hire for the option for the "Tropic Brilliance" was inappropriately low.

The charter of the "Anichkov Bridge": 15 September 2003

1150. The "Anichkov Bridge" was a newly built double-hulled crude oil or product tanker of 47,842 dwt owned by Integrity Maritime Inc. ("Integrity"), the 26th claimant in the Fiona action. She was one of a series of four ice-strength product carriers built for Sovcomflot by Hyundai Mipo, the others being the "Hermitage Bridge" the "Narodny Bridge" and the "Okhta Bridge". Her ice status specification was ice-class 1A, the highest ice classification, but I accept Mr. Huttemeier's evidence that this would have been of interest only to the limited market of potential charterers who might deal in cargoes from ice-bound ports. On 15 September 2003 the "Anichkov Bridge" was chartered to Remmy for a year at a rate of $18,000 per day. The charterparty provided for the vessel "to break ice or follow ice breakers", and included an option for a further year at the same rate of $18,000 per day, the option to be declared nine months after delivery (which was, in fact, on 23 November 2003).

1151. The claimants contended that the charter rate was agreed between Mr. Skarga and Mr. Nikitin at some time before 18 August 2003. Mr. Skarga said that he had a discussion with Mr. Nikitin "to initiate his interest in this vessel", but that he reached no agreement with him. Mr. Nikitin denied fixing any charter with Mr. Skarga, and said that, at most, he might have mentioned to Mr. Skarga that he was looking for a vessel and what sort of rate he was prepared to pay. They said that, on this and other occasions, the fixture was agreed through Sovchart.

1152. I reject the evidence of Mr. Skarga and Mr. Nikitin, and conclude that they did agree upon the rate at which the vessel was to be chartered, and that they did so when they were on holiday together in Sardinia. This, to my mind, is clear from Sovchart's e-mails. Mr. van Boetzelaer had had some discussions with Mr. Nikitin about the Hyundai Mipo vessels around the middle of August 2003. On 18 August 2003, Mr. van Boetzelaer sent an e-mail to Mr. Skarga stating that Sovchart had offered time charters of two of them to Lukoil for a rate at around $20,000, but that he understood "from Yuri that you fixed, subject charterers' reconfirmation, one vessel to PNP at USD 18,000 per day": he asked whether the agreement was to charter one or two vessels. Mr. Skarga replied on 21 August 2003 that he had agreed initially to charter one vessel. On 22 August 2002 Mr. van Boetzelaer sent an e-mail to PNP setting out his understanding of what had been agreed, and sent the text of this to Mr. Skarga with the introductory text, "Following sent to PNP, which please confirm according to your negotiations".

1153. The terms of the fixture set out in the e-mail of 22 August 2002 provided that the fixture was subject to the approval of the charterers' managers until 15 September 2003. On 3 September 2003 Mr. Sharikov proposed that the Executive Board of Sovcomflot endorsed the charter of the "Anichkov Bridge", and they unanimously did so.

1154. On 19 September 2003 Remmy entered into a sub-charter of the vessel to Dukkar for six months' hire at a rate of $20,000 per day for 40 days after delivery (during most of

which period she would be in ballast from Korea to the White Sea) and at $39,000 per day thereafter. Mr. Nikitin certainly had discussions with Dukkar before Remmy committed themselves to the charter from Sovcomflot, and I accept the claimants' submission that the key terms of the sub-charter had already been agreed.

1155. The claimants said that the rate of hire was "substantially lower" than the market rate of $20,000 per day, especially in view of the charterers' option. I do not consider that, even if the "market rate" for chartering the vessel was $20,000 per day, a rate of $18,000 can be regarded as "substantially" below the market, and I do not accept that the market rate was as high as $20,000 per day. The focus of the claimants' complaint appeared in the end to be that the sisterships of the "Anichkov Bridge" were chartered, for periods of two or three years, for $18,500 per day (on 18 April 2003 in the case of the "Hermitage Bridge" and the "Narodny Bridge", which were both chartered to Dukkar SA, and on 17 October 2003 in the case of the "Okhta Bridge", which was chartered to Gunvor). I do not consider that any inferences can be drawn from such small differences in chartering rates. Indeed, in cross-examination Mr. Pearce accepted that the rate of hire of the "Anichkov Bridge" was "within a reasonable market range". As I have explained, I accept the expert evidence that the option would not have been expected to affect the rate of hire, but in any event the charterers of the three sisterships had options to extend them.

1156. I conclude that:

i) The rate of hire for this charter was (at least provisionally) agreed between Mr. Nikitin and Mr. Skarga, and that Mr. Skarga authorised Sovchart to enter into the charterparty.

ii) The terms of the charter, including the rate of hire, were endorsed by the Executive Board of Sovcomflot.

iii) That the rate of hire was in line with the market.

The second stand-alone option for the "Tropic Brilliance": 17 December 2003

1157. On 28 November 2003 Henriot exercised the option to extend the hire of the "Tropic Brilliance" that had been agreed in August 2003. They proposed that they should have a further option, declarable by 30 November 2004, for one year's hire from 14 January 2005 at the rate of $19,000 per day. In an e-mail dated 28 November 2003 to Mr. Skarga, which was copied to Mr. Terekhin, Mr. van Boetzelaer sought authority to agree to this, and on 30 November 2004 Mr. Novikov authorised him to do so provided that the owners had an option to sell the vessel. Mr. Novikov said that he was directed to give this reply by Mr. Sharikov, and Mr. Sharikov recalled that Mr. Terekhin gave him oral instructions to authorise Sovchart to agree to the option: his evidence was that, whenever he gave Sovchart authority to commit Sovcomflot to a chartering arrangement, he acted on Mr. Terekhin's instructions. The option was accordingly agreed by an addendum to the charterparty dated 17 December 2003. No premium was paid for it. On 23 December 2003 Sovchart sent a fax Sovcomflot for the attention of Mr. Sharikov and Mr. Skarga confirming that the addendum to the charterparty had been agreed "As per your authority".

1158. The claimants originally pleaded that Mr. Skarga had instructed Mr. Novikov to grant the option, but that contention was inconsistent with the evidence and was abandoned. Mr. Skarga said that he had no recollection of authorising this option, and there is no evidence that he did so. The claimants submitted that nevertheless it is to be inferred that, when Mr. Terekhin gave instructions to Mr. Sharikov, he was in turn acting upon Mr. Skarga's instructions. I see no reason to suppose that he was. In his witness statement of 13 February 2009, Mr. van Boetzelaer appeared to suggest that he discussed the rate of hire with Mr. Skarga, but accepted that he did not clearly recall doing so. This evidence was too tentative to be reliable (even if generally Mr. van Boetzelaer's evidence had been credible).

1159. The claimants contended that the rate of hire under this option was substantially lower than the market rate current when the option was agreed for a one year's time charter: that, they say, was $33,312.50. This is based upon Mr. Pearce's evidence that the rate for a one year's charter of a non-ice class vessel (derived from CSIW) was $26,500 and that the appropriate ice-class premium was $6,812.50. Thus, Mr. Pearce's approach to calculating the rate was that which he had used elsewhere, and involved him introducing an ice premium that represented an average of ice premiums supposed to have been attracted by other vessels in other fixtures. For reasons that I have already explained, I am not persuaded that it provides a proper assessment of a chartering rate, and in any case it is not appropriate for assessing the rate for an option period.

1160. The claimants rightly pointed out that the rate of hire for the optional period was the same as that for which the "Tropic Brilliance" was first chartered to the Standard Maritime defendants in December 2002, and that since then the CSIW and other indices had significantly increased. Against that, however, Mr. Huttemeier observed that there were reported fixtures of other vessels well below the rates indicated by the indices. For example, in December 2003 the "Zallaq", a Suezmax built in 2001, was reported to have been chartered for 12 months (or for 6 months with a six months' charterers' option) at a rate of $20,000 and in November 2003 the "Glen Maye", which was of a similar age to the "Tropic Brilliance", was chartered for 12 months at a rate of $23,000 per day. Other vessels commanded higher rates, but the reported fixtures around this period demonstrate the wide differences between time-charter rates for broadly comparable vessels and the difficulty of identifying a "market rate".

1161. The condition of the "Tropic Brilliance" continued to cause problems. There were predictions that there would be a downturn in the market generally and continuing predictions of a drop in charter rates for Suezmax vessels specifically. The rate of hire of $19,000 per day for the further option period was lower than I would have expected on the basis of the evidence before me, but I am not persuaded that it is so low as to indicate that Sovcomflot could not have agreed to it without improper influence.

1162. I conclude that:

i) Sovchart were authorised to agree to this additional option period by Mr. Terekhin. Mr. Skarga did not do so, and there is no credible evidence that he was involved.

ii) Although the rate of hire under the option appears to be low, it was one to which Sovcomflot could have agreed without being improperly influenced.

The transfer of the charters of the "Fili" and the "Azov Sea" to Henriot

1163. By addenda to the charters of the "Fili" and the "Azov Sea" dated 3 December 2003, the Owners agreed that PNP might be replaced as charterers by Henriot. The claimants plead a complaint that the Owners agreed to this without receiving any consideration and without obtaining any guarantee from PNP of the obligations of Henriot. This complaint was not developed by the claimants, and (if it be pursued) I reject it. There was no reason that by December 2003 Sovcomflot should not have regarded Henriot as acceptable charterers, and there is no evidence that Mr. Skarga was involved in authorising this change.

The stand-alone options of September 2004: the "Azov Sea", the "Tropic Brilliance", the "Romea Champion" and the "Anichkov Bridge"

1164. On 28 April 2004 Henriot declared the option to extend the charter of the "Romea Champion" for 12 months from 1 July 2004, and they requested a further option for 12 months from 1 July 2005 at a rate of $19,000 per day. Sovchart reported this to Mr. Terekhin, Mr. Sharikov and Mr. Novikov. On 13 May 2004 Mr. van Boetzelaer sent an e-mail to Mr. Skarga asking how he should respond to the request, and recommending that the rate for the additional option period should be $25,000 per day: "Henriot has declared their option for another 12 months and are asking for the option for an additional 12 months. Believe optional year should be $25,000". The defendants rightly observe that he apparently supported Henriot's proposal that they should have a further option to extend the period of hire, and his concern was only about the rate. However, as far as the evidence goes, Mr. Skarga and others at Sovcomflot did not respond to this request.

1165. By September 2004, therefore, the Standard Maritime defendants had six vessels on time charterparties from Sovcomflot. As well as the Prospect vessels, which had been chartered to Remmy in June 2003 for three years (with charterers' options to extend the periods), Henriot had charters of the "Tropic Brilliance" until 14 January 2005, with a charterers' option to extend the hire for a year, of the "Romea Champion" until 30 June 2005, of the "Azov Sea" until 24 April 2005 and of the "Anichkov Bridge" until 23 November 2004, with an option to extend the hire for a further year.

1166. On 17 and 20 September 2004 Sovchart agreed that Henriot should have further options to extend the hire periods for these four vessels: by an addendum to the charter of the "Tropic Brilliance" dated 23 September 2004 it was agreed that the charterers should have an option for two years' hire at a rate of $30,500 from 15 March 2006, which was to be declared by 15 December 2005; by an addendum to the charter of the "Romea Champion" it was agreed that the charterers should have an option for two years' hire at daily rate of $30,500 from 1 July 2005, which was to be declared by 1 April 2005; by an addendum to the charter of the "Azov Sea" it was agreed that the charterers should have an option for two years' hire at a rate of $18,000 from 24 April 2005 to be declared by 24 January 2005; and by an addendum to the charter of the "Anichkov Bridge" it was agreed that the charterers should have

an option for two years' hire at a rate of $22,000 from 23 November 2005 to be declared by 23 August 2003.

1167. As far as the evidence goes, these options were not discussed before 17 September 2004. On 17 September 2004 Mr. Skarga and Mr. Nikitin were on holiday together in Ischia, and by mid-September 2004, it was widely believed that Mr. Skarga would soon be leaving Sovcomflot. The claimants contended that Sovcomflot had no proper commercial reason to agree to these options and that they were agreed between Mr. Skarga and Mr. Nikitin in order to secure for Henriot the right to continued hire of the vessels after Mr. Skarga had left. The defendants deny that Mr. Nikitin and Mr. Skarga discussed the options at all.

1168. On Friday 17 September 2004 at 15.25, Mr. van Boetzelaer sent an e-mail to Mr. Nikitin advising him that the owners of the "Tropic Brilliance", the "Romea Champion" and the "Azov Sea" offered charterers' options of 2 years. He referred to a conversation that he had had with Mr. Nikitin. In the e-mail, he mistakenly stated a rate of hire of $30,500 for the "Azov Sea" as well as the two Tromso vessels, but he corrected this in a further e-mail sent shortly afterwards, in which he put forward a rate of $18,000. He also sent a separate e-mail offering an option to extend the hire of the "Anichkov Bridge" at a rate of $22,000.

1169. These e-mails did not refer to the existing charterers' option for a one year's extension of the hire of the "Tropic Brilliance", which had been agreed on November 2003. Shortly afterwards at 16.44 Mr. van Boetzelaer sent a further e-mail to Mr. Nikitin stating that because of the existing option it was "premature to discuss a further option for 2006 and 2007", and asking that this part of his earlier e-mail about the "Tropic Brilliance" be ignored. Mr. Nikitin's response was to declare the option to extend the hire of the "Tropic Brilliance" for one year from 15 January 2005 at the daily rate of $19,000 per day, and to ask for a further option for two years' hire from January 2006 at a rate of $31,000.

1170. I infer that Mr. van Boetzelaer had been authorised to put forward this offer some time earlier on 17 September 2004. There is in evidence part of an e-mail that Mr. van Boetzelaer sent to a private e-mail address of his own at 11.08 on 17 September 2004. It is addressed to Mr. Nikitin and set out a proposal "subject management approval" to grant charterers' options for the hire of the "Tropic Brilliance" and the "Romea Champion", and the fragment then breaks off. This must have been a draft that Mr. van Boetzelaer intended to send after discussing the options with Mr. Nikitin and before receiving approval from Sovcomflot to put forward an offer. I conclude that before it was sent Mr. van Boetzelaer received authorisation to put forward the firm offers, and so the draft was never sent.

1171. Mr. van Boetzelaer reported the options which had been agreed in an e-mail to Mr. Skarga timed at 16.24 on 17 September 2004. It was addressed to Mr. Skarga personally ("Dear Dmitry"), and stated "as per our discussion today" Sovchart had agreed to options for the hire of the "Romea Champion", the "Azov Sea" and the "Anichkov Bridge". Mr. van Boetzelaer repeated the mistake of stating a rate of $30,500 for the "Azov Sea". As for the "Tropic Brilliance", Mr. van Boetzelaer stated that Henriot had just declared the option for a year's hire from 14 January 2005, asked for a further option for two years' hire from 2006 at a rate of $31,500, and wrote, "Although I believe that it is premature to grant such an option 2006 and 2007,

kindly advise your thoughts". Mr. Skarga replied after he had returned to Moscow on 20 September 2004, he reprimanded Mr. van Boetzelaer about the error in the rate for the "Azov Sea", and he said of the option for the "Tropic Brilliance" that "if we are talking about 2006 and 2007 ? rates are perfect". The addendum to the charterparty of the "Tropic Brilliance" to include this further option also provided that, since the vessel was to go into dry dock during her current charter period and in view of the declaration of the one year's optional period, the term of the present charter at $19,000 per day should be extended to 14 March 2006 and the two years' option at $30,500 per day should be from 15 March 2006.

1172. On 20 September 2004 Sovchart also sought to include in the charterparty a provision that the owners might cancel it without penalty if they sold the vessel. The charter of the "Romea Champion" included a provision of this kind. Mr. van Boetzelaer sent an e-mail addressed to Mr. Novikov in which he confirmed that this had been requested in respect of the "Tropic Brilliance". In an e-mail to Mr. Skarga on 20 September 2004 Mr. van Boetzelaer advised that Henriot would not agree to this right of cancellation for either vessel unless they were to receive "sufficient notice" of cancellation, and he asked what the period of any notice should be. There is no evidence about what, if any, response he received, but it was apparently decided that the owners should not have this cancellation right. This was reflected in an addendum to the charterparty which provided for the cancellation right to be deleted from the charterparty of the "Romea Champion". In their pleading the claimants complain about the decision in relation to the "Romea Champion", but not about the "Tropic Brilliance". The complaint was not developed in submissions. I do not consider that it assists the claimants. There is no evidence that it was a right that was likely to be of any real value to the owners, or that it was Mr. Skarga who decided not to insist upon retaining it.

1173. Mr. Skarga denied that he discussed with Mr. van Boetzelaer on 17 September 2004 the grant of the options for the "Romea Champion", the "Azov Sea" and the "Anichkov Bridge", and said that he would have been reluctant to do so because he did not have available to him information about the prevailing market rates, details of the charters or Mr. van Boetzelaer's own recommendations. Mr. Sharikov's evidence was that "probably" Mr. Terekhin authorised Sovchart to grant the options or "maybe" Mr. Skarga did so. It was clear that he had no real recollection about it. There is no documentary evidence of any exchange between Mr. van Boetzelaer and Mr. Skarga before 15.25 on 17 September 2004 and there is no relevant record of a telephone call to or from Mr. Skarga's mobile telephone or from Sovchart to an Italian telephone number.

1174. Nevertheless, I think it incredible that Mr. Nikitin and Mr. Skarga said nothing about these options when they were in Italy together on 17 September 2004 and I reject their evidence that they did not do so. I also conclude that Mr. Skarga communicated with Mr. van Boetzelaer about agreeing to the options and authorised him to do so. There is no dispute that at some time on 17 September 2004 Mr. Skarga spoke with Mr. van Boetzelaer, and I cannot accept that, as Mr. Skarga maintained, this conversation took place only because Mr. van Boetzelaer was concerned to speak to him about the undeclared option for a one year's extension of the charter of the "Tropic Brilliance". There would have been no reason for Mr. van Boetzelaer to telephone Mr. Skarga about this if he had previously discussed the options with Mr.

Terekhin or someone else at Sovcomflot. It is far more likely that he reverted to Mr. Skarga about this difficulty because he had been dealing with Mr. Skarga about the options generally. However, the part of his draft e-mail that survives suggests that, before he was authorised to agree to the options, Mr. van Boetzelaer intended to recommend to Sovcomflot the proposed option arrangements, and indicates that he was intending to agree to them subject to the approval of Sovcomflot's "management".

1175. The claimants plead that Mr. van Boetzelaer told Mr. Skarga on 17 September 2004 that the options should not be granted because "some of the vessels should be kept free for the voyage charter market because the market was going up": see para 297.39 of the particulars of claim in the Fiona action. This reflects the evidence of Mr. van Boetzelaer in his witness statement of 13 February 2009, but it is not corroborated and I regard it as unreliable. I conclude that the claimants have not established this contention.

1176. The claimants also plead that the rates of hire in the two years' options of the "Romea Champion", the "Tropic Brilliance" and the "Anichkov Bridge" were substantially below that current market rates "even for a two year time charter (rather than an option)": see paras 297.35, 297.36 and 297.38 of the particulars of claim in the Fiona action. No complaint is made about rate of hire agreed in the option for the "Azov Sea".

1177. I consider first the rate for the "Anichkov Bridge". According to the prevailing CSIW estimates, the rate of hire for a standard (non-ice class) 45,000 to 47,000 dwt modern product carrier was $19,750 for a one year's charter and $17,250 for a three years' charter, which would indicate a rate for a two years' charter of about $18,500. Mr. Pearce considered that the only suitable comparator fixture was the sub-charter of the vessel by Henriot to Dukkar on 5 May 2004 at a rate of $40,000 per day during the ice period but otherwise at a rate of $18,000 per day. On this basis, he estimated that overall the daily rate for the ice-class vessel for a two years' time charter was $25,000. I am not persuaded by that reasoning. There is simply too much uncertainty about what, if any, increase in the rate of hire might have been attracted by her ice-class status. The point can be illustrated by comparing the rates attracted in the autumn of 2003 by the "Anichkov Bridge" and her sistership, the "Okhta Bridge". On 19 September 2003 the "Anichkov Bridge" was chartered for 6 months for $20,000 for the first 40 days of her hire (after delivery in Korea in contemplation of a trip in ballast to the White Sea) and at $39,000 per day thereafter, an average rate of $34,632 for the 6 months' charter period or $26,975 per day averaged over a year. On 17 October 2003 Sovcomflot chartered the "Okhta Bridge" to Gunvor for 3 years (with a charterers' option for a further period of one year) for $18,500 per day. The difference between these rates suggests that the Standard Maritime defendants were able to negotiate particularly favourable terms with Dukkar. In any case, it shows that Sovcomflot did not achieve such high rates for these ice-class vessels when chartering to Gunvor, and undermines the claimants' argument that the rate of hire for the two years' option period for the "Anichkov Bridge" was below the prevailing rate for a fixed charter term.

1178. I come to the rate for the Tromso vessels. The prevailing CSIW Suezmax rates at 17 September 2004 were $31,000 and $27,000 respectively for a one year's charter and a three years' charter of a 140,000 dwt single-hull built in the early 1990s, and were

$38,500 and $33,000 respectively for a one year's charter and a three years' charter of a 150,000 dwt double-hull modern vessel. Mr. Pearce considered that the vessels would by September 2004 be classified with the 140,000 dwt single-hull vessels of the early 1990s, and so, leaving aside any ice premium, a daily rate for a two years' charter of around $29,000 would be indicated. The claimants contended, however, that the rate for the hire of the "Tropic Brilliance" and the "Romea Champion" would have been $41,000 because they would each have attracted an ice premium of $12,000. Mr. Pearce calculated this on the basis of the average of the ice premium that he estimated was paid under two other fixtures, namely the sub-charter of the "Tropic Brilliance" by Henriot to Dukkar on 19 March 2004, under which the ice premium was, he estimated, $20,000 per day, and the charter in April 2004 of the "Primorsk", an Aframax with ice-class 1C status, under which he estimated that a premium of $4,000 was paid. Because he was unable to distinguish which ice premium was more representative of market levels, Mr. Pearce estimated that the Tromso vessels might have attracted an ice premium of the average, $12,000 per day. I am not persuaded by this reasoning: these two fixtures simply demonstrate how uncertain it is whether any, and if so what, ice premium might by attracted under any fixture. Certainly the comparator fixtures show that there is no convincing reason to assume that, if the vessels might have attracted any ice premium, it would have been of more than $4,000 per day.

1179. Moreover, the "Tropic Brilliance" and the "Romea Champion" continued to have problems from cracking and by way of their coating, and they did not have approvals from some major oil companies. For example, in July 2004 Exxon Mobil had rejected the "Romea Champion" pending a full structural review concerning her ballast and cargo tanks, a decision that was based upon an inspection by STASCO (Shell) in May 2004; it appears that they too had required further investigations before approving her. By 30 August 2004, the "Tropic Brilliance" had approvals only from BP and Statoil. I consider that this would have affected the rate of hire that the two vessels commanded, and conclude that the claimants have not shown that for a fixture of two years concluded on 17 or 20 September 2004 the prevailing market rate would have exceeded $30,500 by a significant amount, if at all.

1180. In any case, as I have already observed, the prevailing market rate at the date that an option was agreed is of no real relevance to assessing the rate for an option that was to be declared and might come into effect some considerable time in the future. In so far as the claimants' complaint depends upon the rate at which the options were granted, account must be taken of how the market was expected to move. Sovcomflot were pessimistic: for example, briefing notes to the Executive Board on 27 July 2004, which Mr. Sharikov assisted to prepare, referred to Clarkson's data giving a charter rate on the general index for vessels of all types at $25,932 per day and stated, "Clarkson forecasts that the charter market will start gradually falling in near future. By 2006-2007, according to the estimates provided by the analysts, charter index shall be ca US$10 thousand a day, which is compatible (sic) with the crisis year of 1992". In their report for the first 6 months of 2004 Sovcomflot stated with regard to their Suezmax vessels, "In order to protect guaranteed employment on the edge of an unstable market, vessels of the type "Tromso" and the type "SCF Altai" were freighted in long term charterers". Given that this was the view within Sovcomflot, the rates at which the stand-alone options were agreed are readily understandable and do not indicate impropriety.

1181. I conclude with regard to the stand-alone options agreed in September 2004 that:

i) Mr. Skarga and Mr. Nikitin discussed them before they were agreed on 17 and 20 September 2004.

ii) Mr. Skarga authorised Sovchart to agree to them.

iii) Mr. van Boetzelaer supported the decision to grant the options.

iv) The claimants have not shown that the rates of hire for the option periods were below the prevailing market rates for chartering the vessels, nor (if it be alleged) that they were below the appropriate rate for the option periods.

Conclusions about the Sovcomflot time charters scheme

1182. The claimants' case is that Mr. Skarga acted dishonestly and in breach of fiduciary and other duties owed to the ship owning companies, to Sovcomflot, to Fiona and to Sovchart in "causing or permitting" these chartering arrangements. I do not accept the claimants' contention that he was acting in breach of any duty owed to Fiona or to Sovchart. Sovchart needed authorisation from Sovcomflot in order to agree to the chartering arrangements on behalf of the ship owning companies, and in giving any such authorisation or in allowing other officers of Sovcomflot (such as Mr. Terekhin, Mr. Sharikov and Mr. Novikov) to do so, Mr. Skarga was acting in his capacity of Director-General of Sovcomflot. It seems to me that the claimants who would be entitled to any claim for an account are Sovcomflot and the various owners of the chartered vessels. Any loss from the matters about which the claimants complain was suffered by the owners of the vessels, and they are the claimants who would be entitled to recover any damages.

1183. I reject the contention of Mr. Nikitin and Mr. Skarga that they never discussed these chartering arrangements. I also conclude that on some (but not all) occasions Mr. Skarga authorised Sovchart to make the arrangements with the Standard Maritime defendants. They were made with the knowledge of Mr. Terekhin, who himself authorised Sovchart to enter into some of the charters and charterers' options, and of the Fleet Operations Department, who considered the rates which were agreed. There is no evidence that I accept that Mr. van Boetzelaer had or expressed any unhappiness or concerns about the terms that were agreed.

1184. The claimants have not shown that the rates of hire agreed in the charterparties and in the charterers' options support their allegations. Nor have they established that any support for them is provided by the agreement to grant with-charter options, the periods for which the Prospect vessels were fixed subject to charterers' approval, the change of charterers of the "Fili" and the "Azov Sea" or the decision to abandon the right to cancel the charterparty of the "Romea Champion" in the event of a decision to sell her.

1185. Sovcomflot entered into agreements for stand-alone options on three occasions, in August 2003, December 2003 and September 2004. Mr. Skarga caused the owners to agree to the options in September 2004 in that, as I conclude, he authorised Sovchart to agree to them. It has not been shown that he caused the owners to agree

to the earlier stand-alone options in the same way, but he knew that Sovcomflot were agreeing to them and he concurred in the decision to do so. He can be said to have permitted the owners to agree to them. They were, as is clear from the evidence of the expert witnesses, very unusual arrangements.

1186. Mr. Skarga's evidence was that he regarded options as a "legitimate marketing device" designed to keep the charterers' interest in continuing to hire a vessel, and that this view was shared by other members of the Executive Board and also by Mr. van Boetzelaer. The options were agreed through Sovchart by Mr. van Boetzelaer. The evidence about who within Sovcomflot was party to the decision within Sovcomflot to authorise them does not provide a complete picture. Although the string of exchanges leading to the option for the "Tropic Brilliance" in December 2003 is apparently complete, the documents relevant to the options granted in August 2003 and September 2004 are not: for example, Mr. van Boetzelaer's draft e-mail of 17 September 2004 is incomplete. Mr. Terekhin did not give evidence. Mr. van Boetzelaer's witness statements are unreliable and he did not give oral evidence.

1187. There is no evidence that either Mr. van Boetzelaer or any executive of Sovcomflot opposed the decisions to grant the stand-alone options. I infer that Mr. van Boetzelaer supported them: in May 2003 and August 2003 he asked for authority to conclude the options that were in fact agreed in August 2003, and in May 2004 he questioned only the proposed rate for a further option to hire the "Romea Champion" and not the principle of agreeing to a stand-alone option. The draft e-mail of 17 September 2004 also indicates that he supported the proposal for the options for at least the "Tropic Brilliance" and the "Romea Champion".

1188. I have concluded that Mr. Terekhin was responsible for Sovchart being authorised to agree to the option for the "Tropic Brilliance" in December 2003 and, if he did not himself authorise them, he at least concurred in the decision to agree to the options in August 2003. Mr. Sharikov said in cross-examination that he thought that Mr. Terekhin "probably" authorised Sovchart to agree to the options of September 2004 before accepting that he did not know whether Mr. Terekhin or Mr. Skarga had done so: his initial answer that the authority was given by Mr. Terekhin is not reliable, but it shows that he did not associate stand-alone options with Mr. Skarga rather than Mr. Terekhin, still less did he suggest that Mr. Terekhin would not have contemplated them.

1189. I accept that Mr. Skarga and others considered that there were commercial (or "marketing") advantages for Sovcomflot in agreeing to the options in that they encouraged the Standard Maritime defendants to hire the subject vessel rather than look for a different ship. I also accept that, at least by the time that the first "stand-alone" options were agreed in August 2003, Mr. Skarga and others at Sovcomflot had proper reasons to encourage the Standard Maritime defendants in particular to charter their vessels. They were Russian charterers with some access to Russian cargoes; they had proved reliable in paying hire; they had chartered a number of vessels for some time; and there had not been any significant disputes about (for example) dry-docking schedules or performance warranties. Importantly, there is no convincing evidence that the decisions to enter into the stand-alone options were taken by Mr. Skarga alone or imposed upon Sovcomflot without the concurrence of others who had more experience in chartering vessels than he did. I do not consider that the fact

that Sovcomflot agreed to stand-alone options is in itself evidence that the relationship between Sovcomflot and the Standard Maritime defendants was corrupt.

The NSC time charters scheme

Procedures for arranging charters

1190. As with the Sovcomflot time charters scheme, the claimants' allegations about the NSC time charters scheme and Mr. Izmaylov's dishonesty in conducting it raise questions about both the terms of the chartering arrangements and the part played by the defendant and other executives in bringing them about. NSC's Russian vessels were managed by NSC from Novorossiysk, and their other vessels were managed by NOUK from London, where Mr. Mikhaylyuk dealt with chartering them. The charterparties about which the claimants bring claims were of vessels managed by NOUK, but they also relied in support of their case that Mr. Izmaylov was corrupt upon the chartering of the vessels, the "Kuzbass" and the "Kaspiy", which were managed by the Russian office of NSC.

1191. NSC's procedure at the relevant time for entering into charterparties was set out in a document called the Commercial Fleet Management Guidelines, or, as it was more commonly referred to, the "Standard". The version of the Standard in force for most of the relevant time was Company Standard STP 335.175-03, "Company Management Guidelines" ("the 2003 Standard"), which was introduced by an order dated 27 March 2003, and which replaced a version of the Standard that had been in force since October 1998. The differences between the 2003 Standard and its predecessor are not relevant for present purposes. The 2003 Standard was drafted in accordance with the internationally recognised ISO 900-2000 standards and was approved and endorsed by Det Norske Veritas. It established the structure, organisation, principles and procedures for the commercial management of the fleet and a framework for considering the terms of a proposed charter. Under it, a written recommendation was required for time charterparties which were for longer than three months. In the case of Russian vessels managed from Novorossiysk, it was to be made by the Director of the Commercial Fleet Operations Department, who was Mr. Sergei Senshin until November 2003 and then Mr. Vyvorotnyuk, and in the case of other vessels it was to be made by the General Manager of NOUK, Mr. Mikhaylyuk. The recommendations were reviewed and considered by Mr. Sakovich in his capacity as the First Senior Vice-President of NSC with overall responsibility for chartering vessels in the fleet. If Mr. Sakovich agreed to the proposal, it was presented to Mr. Izmaylov for his approval. The recommendations and approvals were recorded either on an approval form, for charters of Russian vessels, or in e-mail exchanges.

1192. NSC observed this formal procedure, except that sometimes when Mr. Sakovich was away from the office Mr. Izmaylov would consider a proposal before Mr. Sakovich had approved it. The claimants submitted, and I accept, that Mr. Izmaylov's role in making chartering arrangements was not simply one of endorsing decisions in accordance with the Standard which had effectively already been taken. He also chaired weekly management meetings at which the senior executives discussed, among other things, chartering proposals and market rates and trends. Normally opportunities to enter into a chartering arrangement of more than three months would be reported to him, and so he was aware of them from an early stage in any

discussions or negotiations. As far as the Standard Maritime defendants are concerned, Mr. Izmaylov would speak with Mr. Nikitin perhaps twice a week and it is, I conclude, likely that their discussions would have covered chartering proposals. However, they did not, as far as the evidence goes and as I accept, conduct negotiations about specific chartering rates or other terms.

1193. I reject any submission that in practice decisions about chartering arrangements were taken by Mr. Izmaylov alone (or with the concurrence of only Mr. Mikhaylyuk) or that he either bullied others into silence or drove decisions through despite their opposition. No credible evidence supports this, and the evidence of Mr. Sakovich and Mr. Vyvorotnyuk in cross-examination did not support these parts of their witness statements. Both these executives had a wealth of experience of chartering matters. Mr. Sakovich had been the First Senior Vice-President of NSC since October 1995 and his duties included overall supervision of NSC Group chartering activities. Mr. Vyvorotnyuk had been employed by NSC since 1986 and employed in the Chartering Department as an in-house broker between 1996 and 2003 before becoming the Acting Head of the Commercial Department in November 2003 and then its Head in June 2004. I cannot believe that either would be overborne if they disagreed with Mr. Izmaylov on chartering matters. It was clear when he gave evidence that Mr. Sakovich in particular is too powerful a character to have allowed that.

1194. Before he left NSC on 6 January 2004, Mr. Oskirko was also involved with chartering vessels in that Mr. Mikhaylyuk would send him details of proposed arrangements and, after discussion with Mr. Sakovich and Mr. Izmaylov and possibly others, he would respond to them. Although chartering was not primarily his responsibility, he had the knowledge and experience to form his own view about whether a proposal should be supported.

1195. No contemporaneous complaints or concerns about the chartering arrangements with Henriot are recorded. The Commercial Fleet Operations Department made monthly reports to NSC's Executive Board about such matters as the market rates and what rates were being achieved by NSC. These reports did not, apparently, lead anyone to express concerns about these fixtures. In their oral evidence Mr. Sakovich and Mr. Vyvorotnyuk did not say that they thought the chartering rates were below the market or less favourable than should have been negotiated. Their only criticism was that the "Kuzbass" and the "Kaspiy" should not have been fixed on time charters in September 2003 when they were, because NSC should first have obtained more approvals from oil companies and should not have chartered them during the summer lull in the market. This is not a criticism which, as I understand it, the claimants pursue in these proceedings, and there is no evidence that this view was expressed contemporaneously.

1196. Mr. Sakovich made an assessment of the charters to Henriot in a report that he wrote and was dated 2 September 2005 ("the Sakovich report"). It was prepared at the request of Mr. Igor Tyamushkin, a member of NSC's General Board. Mr. Sakovich was assisted in preparing it by, among others, Mr. Mikhaylyuk and Mr. Vyvorotnyuk. He considered all the charters of which the claimants complain, and he concluded that the arrangements were commercially justified. When his report was presented to the General Board in September 2005 few questions were asked of Mr. Sakovich, and no member of the Board challenged his views or criticised the report. Mr. Sakovich's evidence was that his report accurately stated the position at the time that the

chartering arrangements were concluded, and it was clear from his cross-examination that he had tried to conduct a thorough and honest investigation. Although in his witness statement Mr. Sakovich had said that Mr. Izmaylov had told him that his report should "show the management's good work and justify the company's activity and results", I conclude that nothing that Mr. Izmaylov said was designed improperly to influence the report, and he did not prevail upon Mr. Sakovich to express anything other than his true views.

1197. The only evidence of an executive of NSC expressing concern contemporaneously about the chartering rates or terms was given by Mr. Oskirko. He said that in September 2003 he telephoned Mr. Mikhaylyuk to discuss a proposal to charter the "Kuzbass" and the "Kaspiy" to Henriot. Mr. Izmaylov had asked him to authorise the fixtures, and he enquired of Mr. Mikhaylyuk whether the rates were in line with the market. According to Mr. Oskirko, Mr. Mikhaylyuk advised him that the rates could be higher, that he had tried to persuade Mr. Izmaylov to insist on rates close to $20,000 per day, but that Mr. Izmaylov had threatened him with dismissal if the vessels were not fixed at rates that he directed. Mr. Izmaylov denied having told Mr. Mikhaylyuk this, and Mr. Mikhaylyuk denied having this telephone conversation with Mr. Oskirko.

1198. Until July 2009 the claimants' pleaded case was that Mr. Oskirko and Mr. Mikhaylyuk had had a conversation along these lines in relation to the hire of the "Kaluga" and the "Kazan", and this is what Mr. Oskirko had told Ince & Co on 16 January 2006. He could not have had such a conversation about the charters of those vessels because they were fixed on charter to Henriot in March 2004, and Mr. Oskirko had left NSC in December 2003. He was re-employed by NSC in December 2005, shortly before he reported the conversation to Ince & Co.

1199. Ince & Co prepared a draft witness statement for Mr. Mikhaylyuk which contained an account of such a conversation about the charters of the "Kaluga" and the "Kazan", and asked Mr. Oskirko to have Mr. Mikhaylyuk sign it. Mr. Oskirko did not tell Ince & Co that the statement referred to the wrong vessels, and Mr. Oskirko's explanation was that he had not read it. I reject that evidence, because I do not accept that he would not have gone about persuading Mr. Mikhaylyuk to sign a statement that he had not read.

1200. Mr. Oskirko met Mr. Mikhaylyuk for dinner on 23 March 2006 and again at a meeting on 24 March 2006. According to Mr. Oskirko, Mr. Mikhaylyuk accepted in the course of the dinner that Mr. Izmaylov had threatened him as described in the draft statement. Mr. Mikhaylyuk denied that he and Mr. Oskirko had had this conversation at dinner, and said that he first saw the draft statement at the meeting on 24 March 2006. I reject Mr. Oskirko's evidence. Mr. Mikhaylyuk would not have said that the draft statement was correct since, on any view, Mr. Izmaylov did not threaten him about the charters of the "Kaluga" and the "Kazan", and in any case, if Mr. Oskirko had not read the statement, the conversation that he described seems to me an improbable one. Moreover Mr. Oskirko's evidence is inconsistent with an affidavit by him dated 5 December 2006, which he swore in support of an application by NOUK against Mr. Mikhaylyuk for a freezing order, and in which he stated that he did not recall what Mr. Mikhaylyuk said about signing the statement on 23 March 2006. Mr. Oskirko had no coherent explanation for this inconsistency, and I am

unable to accept his attempted explanations. I conclude that Mr. Oskirko's evidence about this was dishonest and untruthful.

1201. I therefore reject Mr. Oskirko's account of the telephone conversation about the rate of hire for the "Kuzbass" and the "Kaspiy" in September 2003, and his evidence that in January 2006 he simply made a mistake about which vessels were concerned. I conclude that no such conversation took place in relation to any charters. Apart from the inconsistency about the vessels' names, there is a further reason that I cannot accept Mr. Oskirko's evidence. He said that the telephone conversation took place when he (Mr. Oskirko) called Mr. Mikhaylyuk in London. The sequence of events shows that any such conversation would have been on 1 September 2003, but it is clear from Mr. Mikhaylyuk's passport that he had not returned to the United Kingdom by 1 September 2003 and did so only on 3 September 2003. It was suggested that Mr. Oskirko might have mistakenly thought that Mr. Mikhaylyuk was in London because he telephoned him on his mobile telephone, but I reject that. I cannot believe that such a misunderstanding would not have become apparent during a conversation such as Mr. Oskirko described. In any case, Mr. Mikhaylyuk was, as I conclude, in NSC's offices on 1 September 2003 and working from Mr. Oskirko's room. There would have been no reason for them to speak by telephone about the chartering rates or anything else.

1202. Before considering the specific chartering arrangements about which the claimants complain, I refer to some considerations which, as I accept, influenced NSC's chartering decisions during the relevant period. First, NSC executives discussed and assessed how the market was likely to move, and their views informed their chartering decisions in that, as Mr. Sakovich and Mr. Vyvorotnyuk both confirmed, they tried to arrange time charters if they expected the market to fall. They used market forecast reports to assist them in their market assessment. Although at one time Mr. Pearce seemed to suggest that it would have been irresponsible to make chartering decisions in reliance upon market forecasts, he did not, I think, maintain this view, and in any case I cannot accept it.

1203. Secondly, NSC were concerned to ensure that they had a stable income stream, which they needed to meet their loan repayment obligations and to continue their fleet renewal programme. As I understood Mr. Sakovich's evidence, NSC's "financial people" therefore encouraged a conservative chartering policy with long-term arrangements rather than the pursuit of increased profits through a more speculative approach.

1204. Thirdly, NSC, like Sovcomflot, were a state owned corporation and their policy was to encourage business with Russian charterers who were carrying Russian cargoes. For example, the Standard stated, "Fleet marketing is carried out along the following lines … Development of priority freight areas (Russian exports and imports first of all)". Mr. Sakovich confirmed in his evidence that, other things being equal, NSC preferred to deal with Russian charterers, and the Sakovich report referred to NSC's policy to develop business by way of transporting Russian cargoes.

1205. The claimants plead that, when chartering to Henriot, NSC should have included a "risk premium" because they were a "BVI company with no capital reserves" and "a new participant in the time charter market with no established track record of honouring its obligations under time charters": see para 10D(1)(c) of the particulars of

claim in the Intrigue action. I reject that submission. I accept Mr. Izmaylov's evidence that NSC's policy was not to deal at all with charterers whom they did not regard as reasonably reliable, rather than to try to agree an additional "risk premium". I have already rejected Mr. Pearce's attempt to place charterers into four categories and his evidence that Henriot should be treated as less reliable than PNP. It is clear from the Sakovich report that the NSC executives did not distinguish between PNP and Henriot, and regarded them both as reliable counterparties. Mr. Sakovich wrote, "Henriot Finance Ltd. (HF) is a chartering subdivision of Premium Naphtha Products (PNP) which specialises in long-term tanker chartering. Relations between [NSC] and HF/PNP were built on the same principles as those with other charterers". He observed that business between NOUK and PNP began in 1999, and continued, "During the period 1999-2003, 36 vessel-chartering agreements were concluded and executed, and no claims arose in relation to PNP (including with regard to freight payments). During the same period, according to our information, PNP time-chartered a number of Sovcomflot vessels transferring some of its cargoes to them … [NOUK] checked the reliability of the charterer through other sources … As there were no doubts on the market that PNP was a first-class charterer, [NSC] sanctioned negotiations on the part of [NOUK]". This view was consistent with the evidence given by Mr. Sakovich and Mr. Vyvorotnyuk, and reflects, as I conclude, NSC's contemporary assessment. I conclude that it was a reasonable one. I certainly reject any argument that it was dishonest or otherwise improper for Mr. Izmaylov not to seek to charge a "risk premium" when NSC were chartering to Henriot.

The charter of the "Trogir" in January 2003

1206. The "Trogir" was one of NSC's "T" range of vessels, which were handymax coated product carriers. She was built in Croatia in 1995, was of 40,727 dwt, and was owned by Trogir Shipping Ltd., a subsidiary of NSC and the 46th claimant in the Intrigue action. On 8 January 2003, the "Trogir" was chartered to Henriot for a year at a rate of $13,000 per day with a charterers' option for an additional year at $13,500 per day.

1207. On 9 December 2002, Mr. Mikhaylyuk had reported to Mr. Izmaylov, Mr. Sakovich and Mr. Oskirko about possible time charters for their T-type product carriers. For the "Tikhvin" and "Temryuk", two sister ships of the "Trogir", Mr. Mikhaylyuk reported on possible extensions of chartering arrangements with StenTex, a charter for another year at $12,750 or a charter of six months at $13,000 with an option for a further six months at $13,250. For the "Trogir", he reported interest from StenTex in a charter of 6 or 12 months at charterers' option at a rate of $12,500, and "firm interest" in a charter of one year with the option of a second year from PNP, who were said to be ready to pay $12,500. Mr. Mikhaylyuk suggested that NSC deal with PNP "for better money", proposing hire of $13,000 for the first year and $13,500 for the second year. Mr. Sakovich replied on 11 December 2002 that, with regard to the "Trogir", NSC would consider "any possibility with money level just above USD 13,000 pd".

1208. After further negotiations with PNP, Mr. Mikhaylyuk reported to Mr. Izmaylov, Mr. Sakovich and Mr. Oskirko on 3 January 2003 that "seems we get our maximum terms". The reported terms, subject to the Owners' approval, were for a year's hire at $13,000 with an option for a further year at $13,500. Mr. Sakovich replied on 4 January 2003, "Owners confirm the rates and main terms you negotiated. We will be fully satisfied if you try to get hundred dollars more for the first year (at least try)…".

1209. Mr. Izmaylov gave his approval for the fixture, and it was concluded.

1210. It was suggested to Mr. Mikhaylyuk in cross-examination that the rate of hire for the "Trogir" was favourable to Henriot, or at least that Mr. Mikhaylyuk so regarded it, because on 30 November 2002 he had offered to hire the vessel to another potential charterer for $15,000 per day, and when presenting the proposal he wrote, "you are really stretching me". I cannot accept that the use of such an expression in the course of negotiations indicates Mr. Mikhaylyuk's real views about the market rate of hire of the vessel.

1211. In the Sakovich Report Mr. Sakovich wrote that, because of falling rates and the rates that were being forecast, it was "highly advantageous" to place the T type vessels on time-charter, and he justified the rate, observing that the "Trogir" had less cargo tank covering than her sisterships and commanded lower rates by between $500 and $1,000 per day .

1212. The claimants accepted that the "Trogir" was chartered at a rate within the market range. There is nothing unusual about the terms of the charter or how the fixture was concluded, either with regard to Mr. Izmaylov's role or otherwise. The claimants referred to this fixture only because they contended that, since the charter was a result of Mr. Izmaylov's corrupt relationship with Mr. Nikitin and his breach of duty to them, they are entitled to an account of the profits that were earned from the charter. The defendants submitted that everything about the fixture supports their contention that the chartering relationship between NSC and the Standard Maritime Defendants was a normal commercial one, and I accept that nothing about the fixture indicates otherwise.

The Charters of the "Kuzbass" and the "Kaspiy"

1213. In June 2003, NSC, through Kuzbass Shipping Ltd. and Kaspiy Shipping Ltd., bought from Greek owners two second-hand Suezmax vessels, which were named the "Kimolos" and the "Atlantis" and which NSC re-named the "Kuzbass" and the "Kaspiy". The vessels, built in 1998, were of about 150,000 dwt and had double hulls. They were delivered on 17 June 2003 and 2 July 2003 respectively. They were both chartered to Henriot on 11 September 2003 for one year at a rate of $18,500 per day with a charterers' option for a further year's hire at $18,750 per day.

1214. The claimants do not bring any claim in relation to these charterparties. The companies that owned the vessels and entered into the charterparties are no longer in the NSC group, and they are not claimants. However, the claimants argued that these charterparties and the manner in which they were concluded provide evidence that Mr. Izmaylov had a corrupt relationship with Mr. Nikitin, and so that the charters of other vessels were "caused and/or procured and/or permitted by Mr. Izmaylov at an undervalue". Their contention is (i) that the terms of the charters were so favourable to Henriot that I should infer that they were not agreed in a bona fide transaction but as a result of corruption, and (ii) that Mr. Izmaylov was party to that corruption. I reject both parts of that contention. I conclude that the fixtures were not made as a result of impropriety, and in any case I should not have concluded that Mr. Izmaylov was party to it.

1215. The vessels were managed by NSC from Novorossiysk, not by NOUK. NSC's normal practice was that one person had authority to fix vessels, and at the time Mr. Vyvorotnyuk, who then held the position of chartering manager, was so authorised for the "Kuzbass" and the "Kaspiy". Although they were managed in Novorossiysk, Mr. Izmaylov asked Mr. Mikhaylyuk to provide general market information to assist to fix the vessels and to enquire for what rate they might be hired. This is readily understandable: NSC had no recent experience in chartering out Suezmax vessels, and Mr. Mikhaylyuk, being based in London, was better placed than those in Novorossiysk to keep in touch with the market.

1216. After the vessels had been delivered to NSC, they were first traded on the spot market. On 4 June 2003 a broker called Mac Fischer had sent an e-mail to Mr. Anatoly Nelipovich of NSC in which he said that, at Mr. Mikhaylyuk's suggestion, he was making contact about the possibility of arranging time charters. In his response Mr. Nelipovich said that NSC were interested in entering into time charters, but that "our management board is considering hire rate not less than USD 28,000 pd". He continued, "If you have respective (sic: an error for respectable) charterers who are ready to pay around these numbers let me know". Further, on 3 June 2003 there was an e-mail to Mr. Nelipovich to Mr. Gleb Timchenko in the chartering department of NSC forwarding an approach from brokers, Banchero Costa & Co, in which they stated that they had charterers who were willing to hire the vessels and were "speaking about USD 28,000".

1217. The e-mail of 4 June 2003 shows that even in June 2003 NSC were interested in fixing the vessels on time charters, but I accept Mr. Izmaylov's evidence that he knew nothing of any consideration by the Executive Board about the rates that they would accept. When Mr. Nelepovich referred to the rate that the "management board" was considering, he was replying to a brokers' enquiry and he might well have been trying to provoke an offer of a high rate. They were under no immediate pressure to fix the vessels, which had not yet been delivered to them. I do not consider that these exchanges provide any evidence about market rates for the hire of the vessels upon which I can rely. The claimants have not disclosed documents which would give a full picture of these exchanges, and there was no evidence from either Mr. Timchenko or Mr. Nelipovich.

1218. On 4 August 2003, Mr. Mikhaylyuk had sent an e-mail to Mr. Izmaylov setting out what he considered were appropriate voyage charter and time charter rates for Suezmaxes. He wrote of time charters, "During July there were not much of change on the t/c rates on Suezmax, keeping the rates at about $24,000-25,000 levels. There were few fixtures reported at a fixed rates", and he identified some reported fixtures. He also attached reports from Barry Rogliano Salles ("BRS"), which referred to a sharp increase in market rates, and from Poten & Partners, which assessed a rate of $25,500 per day for a one year's charter and a rate of $24,000 per day for three years' hire of a modern Suezmax. But he observed that, because the "Kuzbass" and the "Kaspiy" did not have approvals from major oil companies, this "could have its impact", and in fact in August 2003 the vessels were fixed on the spot market at rates far below those mentioned in the e-mail. When Mr. Izmaylov was cross-examined, it was suggested to him that he had instructed Mr. Mikhaylyuk to send this e-mail to help to justify the rate at which the vessels were later to be hired to Henriot. I reject

that suggestion. There is no reason to think that there was any plan at this time to charter the vessels to Henriot.

1219. In late August 2003 Mr. Izmaylov was told by Mr. Vyvorotnyuk that Henriot had expressed interest to NOUK in chartering the vessels for a year. On 25 August 2003 Henriot sent an e-mail in which they offered to pay rates of $18,000 per day per vessel for a one year's charter with a further year at the charterers' option. Mr. Izmaylov said that this rate seemed to him to be "a low proposal a little bit, but not a long way", and he considered that it was worth exploring it. Mr. Sakovich was away from the office, but Mr. Mikhaylyuk happened to be in Novorossiysk. He had come from London on 12 August 2003 for business followed by a holiday, and from time to time he would come into NSC's offices. Mr. Izmaylov asked him to handle the negotiations with Henriot, working from Mr. Oskirko's office and computer. Mr. Mikhaylyuk told Mr. Vyvorotnyuk that he had been given these instructions by Mr. Izmaylov, and asked Mr. Vyvorotnyuk to transfer to him the authority to fix the vessels.

1220. The claimants submitted that there was no good reason that Mr. Izmaylov should have called upon Mr. Mikhaylyuk to handle these negotiations because, even with Mr. Sakovich away, the Novorossiysk office could have handled them competently, and that his purpose was that Mr. Mikhaylyuk should fix the vessels on terms that were favourable for Henriot. Mr. Izmaylov said that he preferred that Mr. Mikhaylyuk handle the negotiations because they were for time charters with Henriot, to whom NOUK had already chartered the "Trogir". I accept this explanation. Mr. Mikhaylyuk had, after all, already provided guidance about the market for chartering the vessels. Mr. Izmaylov also said that Mr. Vyvorotnyuk advised that Mr. Mikhaylyuk deal with the proposal. This was not suggested to Mr. Vyvorotnyuk when he gave evidence, and, while there is no evidence that Mr. Vyvorotnyuk objected to the decision, I do not accept that it was taken on his advice.

1221. On 28 August 2003 Mr. Mikhaylyuk wrote in an e-mail to Mr. Nikitin that the owners were interested in the proposal to hire the vessels, and had authorised him to indicate rates of $18,500 per day for the first year and $19,500 per day for the optional second year, with $3,500 per day for representation, communications and victualling and an even split of profits. Later on 28 August 2003, Mr. Ivanov of NOUK sent "a brief review of the Suezmax market covering the first three weeks of August 03", and wrote of the time charter market that "It seems like no significant jumps or falls reported within said period and hire rates remain at levels ranging from USD 23,000 pd to USD 25,000 pd depending of vessels age/[fuel oil] consumption and agreed period". There were attached market reports from BRS, Poten & Partners, Braemar Seascope Ltd. and O-J Libaek & Partners AS. The market report of Poten & Partners indicated a rate of $24,750 for one year's hire. This information was sent to Mr. Oskirko's e-mail address and was marked for Mr. Mikhaylyuk's attention, but his evidence was that he did not see it. I do not accept this evidence. The information had been requested and Mr. Mikhaylyuk would have chased for it if he did not receive it.

1222. On 29 August 2003 Henriot, responding to Mr. Mikhaylyuk's offer, proposed rates of $18,100 per day for the first year and $18,500 for the optional second year. Mr. Mikhaylyuk's evidence was that he discussed the strength of the market with NOUK's office in London, he believed on 29 August 2003, and, although he had only

a vague memory of quite what was said, he was told that the market had fallen very substantially to $18,000. I accept that Mr. Mikhaylyuk probably spoke to the London office and it might be that he received more pessimistic advice about the market than that in the report on 28 August 2003, but I cannot accept that he was told of a sudden and substantial fall in the market. There had not been such a change since Mr. Ivanov's report of it on 28 August 2003. However, as I shall explain, around this time many, including NSC executives, were taking a pessimistic view of the market prospects.

1223. On 1 September 2003 Mr. Mikhaylyuk reported by e-mail to Mr. Izmaylov and to Mr. Sakovich that, "Having worked with PNP … this requirement for two Suezmax ships for 1+1 year in CHOP [sc. charterers' option] we managed to get" an offer of $18,500 for the first year and $18,750 for the optional second year. He described the market as follows: "spot market is rather weak at the moment and [time charter equivalent] during August was at around $14,000 per day nearly in all areas. [Time charter] market has been falling and for ice-class ships was reported at low $20,000 [per day pro rata]. While it is usual paid a premium for ice class, the normal ships obtained much lower levels. Due to considerable delay with Iraq oil export there may be further low oil supply for this year and next year as well, thus some weak rates expected on the market." He concluded, "Taking into account the current situation seems reasonable to consider such business possibility".

1224. It was put to Mr. Mikhaylyuk that he did not send this e-mail of 1 September 2003 to Mr. Oskirko so as to prevent him from knowing the rates at which the vessels were fixed. I reject that suggestion because Mr. Oskirko would clearly soon learn the rates anyway, and indeed he did so within the day. I accept Mr. Mikhaylyuk's evidence that the contents of the e-mail had been discussed with Mr. Oskirko before it was sent, and so there was no need to send it to him. I reject Mr. Oskirko's evidence that he did not know about the e-mail. In fact, later on 1 September 2003, Mr. Oskirko responded to it, and I cannot accept that he did so without paying attention to what it said. The reply was that, "Based on your information", the owners agreed with Mr. Mikhaylyuk's recommendation. Mr. Oskirko had spoken with Mr. Izmaylov before sending this reply, and there is no credible evidence that he disagreed with Mr. Mikhaylyuk, or questioned whether the terms should be accepted. Mr. Oskirko authorised the fixtures in his e-mail of 1 September 2003, and I find that he did so because he considered them to be in NSC's interest and because, as Mr. Mikhaylyuk put it, he was "appointed as in charge" of these fixtures, and not, as he claimed, simply because he was instructed by Mr. Izmaylov to authorise them. On 2 September 2003 Henriot advised Mr. Mikhaylyuk that the terms had been agreed subject to confirmation by 8 September 2005.

1225. On 5 September 2003 Mr. Mikhaylyuk sent an e-mail to Mr. Senshin, writing "as discussed I understood that you have instruction from Mr. Izmaylov to liaise with myself enabling conclusion of this [business]. Moreover I have confirmation from Mr. Izmaylov to go on [subjects], and work terms but obviously without information from chartering dept in Novorossiysk have no possibility to complete the deal. If you do not have enough authority to liaise please let me know in order same can be arranged." After further exchanges in which it was agreed that the fixtures should remain subject to confirmations until 15 September 2003, they were confirmed in a

"final recap" communication on 15 September 2003, giving the dates of the charters as 11 September 2003.

1226. A "Standard" approval form was drawn up for the proposed fixture by NSC's chartering department. It recorded that the hire rates compared favourably with those achieved on the spot market ("The time-charter equivalent reached for 2003 for these vessels on 31 August 2003 is: USD 13,503 per day"), and exceeded the break-even point for the vessels by at least $2,200 per day. Mr. Senshin's name appeared at the bottom of the second page of the form, but Mr. Vyvorotnyuk acknowledged that he signed it. It was submitted to Mr. Sakovich and Mr. Izmaylov for them to approve the charters with an implicit recommendation that they should do so. It stated that,

> "Henriot is a subdivision of [PNP], which operates a fleet of time charters. The Novorossiysk and London offices have worked with PNP on scheduled charters since 1997. There has not been any delay in freight payments during this time. At present, the Trogir and a few Sovcomflot vessels have been chartered to the company. According to Novoship UK reports, there have been no delays in rental fees and no unfounded claims have been presented by the charterer .... Negotiations on bargaining for deal conditions have been held by Novoship UK. Higher amortisation rates are proposed for the first 12 months for the Kuzbass at $2,500/day and at $2,200/day for the Kaspiy. The spot market for Suezmaxes currently stands at approximately $15 000-16 000/day and it is not clear in which direction they will evolve. Long-term charters provide guaranteed income and the ability to fulfil credit obligations in a timely manner."

1227. In accordance with NSC's procedures, Mr. Sakovich recorded his approval for the fixtures by signing the proposal form submitted by Mr. Senshin. He could not recall when he did so, and his signature is undated. He was away on holiday between 19 and 29 August 2003, and signed it after he returned to the office on 1 September 2003. Mr. Sakovich understood that he was endorsing fixtures that had already been concluded, whether contractually or by way of only a commercial commitment. He said that he had this impression both from what he was told by NSC's broking department and from a document, but it is unclear whether he recalled seeing the confirmation telex of 2 September 2003 or the final recap communication of 15 September 2003.

1228. The form recorded that Mr. Izmaylov endorsed the fixtures by telephone. I infer, as Mr. Izmaylov supposed to have been the case, that he was away from the office at the relevant time, but told those at Novorossiysk that he agreed with the proposal.

1229. The claimants say that these fixtures were concluded at rates below the market. The index of rates published by CSIW for the hire for one year of a modern Suezmax tanker was at $25,000 for the weeks of 15, 22 and 29 August 2003, and had been at about that rate throughout 2003. There are other indices and brokers' reports in evidence, but it suffices to say that Mr. Huttemeier agreed that there was "a reasonable consensus amongst the indices of a figure of around $25,000". The

fixtures provoked comment in the shipping paper "Trade Winds" on 19 September 2003 that reported (in the mistaken belief that the rates were $21,500 per day):

> "Novoship of Russia is said to have locked two modern Suezmax tankers into 12-month charters at a surprisingly low level. Sources suggest that the 150,000-dwt Kuzbass and Kaspiy (both built 1998) have been fixed by an undisclosed Russian charterer at $21,500 per day. In light of a firmer spot market for Suezmax tankers, brokers expected that the rate for such a period would be higher. London broker Clarkson says average one-year rates for modern Suezmaxes should be $26,000 per day."

1230. However, the market was not as robust as this might suggest. There is some evidence about comparator fixtures, and I conclude that other owners were agreeing to charters at rates below what the indices indicated. I do not propose to discuss all the fixtures examined in the evidence, but generally the rates for these vessels would appear to have been around $22,000 or $23,000. At the beginning of September 2003 the younger and larger tanker, the "Four Smile", was fixed for 30 months at a rate variously reported as $23,500 and $23,375. The "SCF Ural" was chartered to BP for 4 or 6 months at a net rate of only $20,213. Overall the picture is that the brokers' estimates in the indices were, as Mr. Huttemeier said tended to be the case, distinctly at the higher end of the market range.

1231. Other matters are relevant to NSC's decision to enter into these fixtures. First, Mr. Mikhaylyuk referred in his e-mail of 1 September 2003 to the spot market, and so too did the approval form. The rates agreed for the time charters of the "Kuzbass" and the "Kaspiy" were higher than the equivalent rates that they were attracting on the spot market. This might partly reflect a lull in the spot market during the summer months, but I accept that this consideration affected the view of the NSC executives about the time charters. There is no proper basis to think that the comments on the approval form were unreasonable, still less that they were bogus.

1232. Secondly, contemporaneous forecasts predicted that the market would fall, and there were signs that it had started to do so. Cargo rates were dropping and in particular there had been a fall in rates in the mid-Black Sea region, the centre of NSC's operations. The market forecasts to which NSC subscribed were pessimistic: RLA had predicted that there would be a "sharp correction of rates in 2004, bringing prices to a low of $16,000/day", and Marsoft Tanker Market eBrief, which NSC used and Mr. Oskirko himself read, predicted in June 2003 and August 2003 that the tankers market generally and the rate for Suezmax vessels in particular would weaken over the coming year. On 17 September 2003 Dr Stopford of Clarkson Research predicted rates of below $20,000 in 2004. Both Mr. Huttemeier and Mr. Pearce recalled that their own views reflected the prevailing market sentiment at the time, and that this uncertainly particularly affected rates for Suezmax vessels, which Mr. Pearce described as "the class of vessels in which the market volatility was highest".

1233. This perception of the market was shared within NSC. Mr. Vyvotoronyuk said that there was a significant drop in cargo rates for Suezmaxes in this period. Mr. Sakovich considered, as he put it in cross-examination, that "this market is going down". As I have said, the view within NSC was that the vessels should be fixed on

time charters to "guarantee income and help pay off credit obligations…", and it is understandable that in these circumstances they should therefore accept relatively soft rates.

1234. Thirdly, NSC had no presence as owners in the Suezmax time charter market and needed to establish themselves. At the same time, the "Kuzbass" and the "Kaspiy" had lost their approvals from major oil companies when NSC acquired the vessels. Mr. Izmaylov said, and I accept, that this made the vessels less marketable, and it affected the rates that they would command. NSC had taken steps to obtain new approvals, and made some progress towards doing so, although there is no clear picture as to what had been achieved by the end of August 2003. According to Mr. Sakovich, the vessels had "one or two approvals but those were not enough". (BP had approved the "Kaspiy" on 6 August 2003, but did not approve the "Kuzbass" until 2 September 2003. ChevronTexaco had declined to inspect the vessel until NSC had managed her for six months) NSC recognised that the vessels still needed to re-establish themselves with major oil companies, and that this created difficulty in placing them on time charters.

1235. I therefore conclude that, while the rates at which vessels were fixed were lower than the rates that the market was generally commanding, there were genuine and cogent reasons that would explain why NSC accepted them. I reject the submission that the terms of the fixtures and the circumstances in which they were concluded show that they did not result from bona fide dealings. The picture that Mr. Mikhaylyuk gave in his e-mail of 1 September 2003 was gloomier than was justified, but I am not persuaded that it did not represent his genuine views. Even if it did not, I reject the suggestion that Mr. Izmaylov knew that.

1236. Mr. Izmaylov supported the decision to enter into the charters of the "Kuzbass" and the "Kaspiy". So too did Mr. Vyvorotnyuk, Mr. Senshin, Mr. Oskirko and Mr. Sakovich, and there is no suggestion that they were corrupt. The procedures at NSC were designed to ensure that decisions of this kind were taken only with the support of a body of executives and the decision to enter into these charterparties were so taken. For this reason too, I reject the claimants' argument that the fixtures indicate corruption on the part of Mr. Izmaylov.

1237. Mr. Oskirko, as I have said, was the NSC executive who supervised these fixtures and authorised Mr. Mikhaylyuk to accept the terms offered by Henriot. He had told the Russian General Prosecutor's Office on 12 December 2006 that Mr. Izmaylov instructed him "to coordinate this deal without checking it", but that was not his evidence before me. Mr. Oskirko accepted in cross-examination that he wanted "for myself to be aware … what is going on", and I reject any suggestion that he authorised the fixtures without understanding them or being in a position to assess them

1238. Some time after the fixtures were concluded, Mr. Vyvorotnyuk commented upon the article in Trade Winds about the rate of these fixtures. He wrote (in a report the date of which is uncertain but must have been written at some time between June 2004 and February 2005) that the charters were agreed because of concerns about falling freight rates:

> "On 19 September 2003 information that Novoship had chartered out its Suezmax vessels Kaspiy and Kuzbass at a rate of $21,500 a day was published in the Norwegian newspaper, Trade Winds. The newspaper asserted at the same time, with reference to the London brokerage company Clarkson, that the vessels could have been chartered out at a rate of $26,000 a day. Talks regarding the chartering of the above vessels, including the agreement of conditions regarding the value of the freight, were held in August 2003. A significant fall in cargo rates for Suezmax vessels was observed during this period, as shown by the attached data, provided by representatives of the international organisation Intertanko and the same brokerage company, Clarkson. According to Intertanko's information, the average cargo rate in August 2003 was $17,021. Furthermore, a fall in cargo rates was noted during August in the mid Black Sea Region, where the above vessel was working for $21,676 to $12,010 [sic] thousand a day. It was under such circumstances that the vessels were chartered in accordance with the market price conditions, which were even higher than the average market rates, but the information on average rates cited in the newspaper cannot be recognised to be reliable, seeing as it contradicts other data provided by expert sources."

1239. Although Mr. Vyvorotnyuk said in cross-examination that he was presenting the deal "in a positive light", he also confirmed that the note was true and that his assessment in September 2003 had been that NSC should conclude the fixtures.

1240. Mr. Sakovich returned to the office on 1 September 2003 and signed the approval form without making any criticism of them or expressing any reservations. I accept his evidence that, when he did so, he considered that NSC were committed to the fixtures commercially, if not legally, but Mr. Sakovich would, in my judgment, have made his views known if he did not think that they should have been concluded. In his report Mr. Sakovich said with regard to the charters of the "Kuzbass" and the "Kaspiy" that, "Keeping in mind predicted levels around $16,000 plus per day, the time-charter rates of $18,500 + $18,750 per day with Henriot was a protection for the Owners to comply with obligations for loan repayments and to get steady earnings through possible difficult time ahead". He confirmed in his evidence that this conclusion was "really reflecting the situation at the time" as well as other information and analysis, and also reflected his contemporaneous reasons for endorsing the fixtures.

1241. I add that in March 2004 NSC's auditors, Moore Stephens, questioned the rates at which the "Kuzbass" and the "Kaspiy" had been chartered. They were satisfied with the explanation that they were given, and the defendants relied upon this as evidence that the charters were commercially justified. I reject that argument because there is no sufficient evidence about the extent of the auditors' enquiries or the basis upon which their concerns were satisfied. Indeed, after receiving responses to his questions, Mr. Chasty, the audit partner of Moore Stephens, wrote to Mr. Izmaylov that he "assume[d]" that he was "fully satisfied with the explanations given by your

Operations Department", apparently taking the view that, if Mr. Izmaylov was content, further investigations were unnecessary.

The charters of the "Moscow University" and the "Moscow River"

1242. The "Moscow University" and the "Moscow River" were Aframax tankers owned by Fancy Maritime SA and Canyon Maritime Corp, two subsidiaries of Intrigue and the 47th and 48th claimants in the Intrigue action respectively. They were managed by NOUK. They were chartered to Henriot on 2 February 2004 for two years at $18,500 per day with an option for a third year at $18,750 per day. The claimants plead that these rates were "below the lowest contemporary prevailing level for ships of that class": see para 10DD(3) of the particulars of claim in the Intrigue action. However, Mr. Popplewell accepted when he was cross-examining Mr. Huttemeier that that assertion could not be maintained. In the end the case that the claimants pursued was that rates were "very much on the low side" in relation to prevailing market rates.

1243. The charters were concluded as follows: on 20 January 2004 in an e-mail to Mr. Mikhaylyuk Henriot wrote that they were looking for two Aframax vessels for a two years' charter at a rate of $18,000 per day. On 21 January 2004 Mr. Mikhaylyuk replied that, "having checked with Owners on possible candidates", he offered the "Moscow River" and the "Moscow University" at rates of $20,000 per day for two years with an optional third year at $21,000 per day. On 22 January 2004, Henriot offered rates of $18,250 for the first two years, and $18,500 for an optional further year; Mr. Mikhaylyuk responded by proposing rates of $19,000 for the first two years and $20,000 for the optional further year; and on 23 January 2004, Henriot offered rates of $18,500 with $18,750 for the optional period.

1244. On 26 January 2004 Mr. Mikhaylyuk sent an e-mail to Mr. Izmaylov referring to discussions with him "during last week" and reported Henriot's offer, which he said was the product of "very difficult negotiations". He wrote, "This business could help to protect the cash-flow within next two years and allow the newbuilding programme to continue with 8 Aframax deliveries over next 2 years. There is strong anticipation on the market that due to numbers of ships to be delivered the rates would not be that firm as they are now, therefore, hedging could cover such uncertainty of the future. Would appreciate if Owners can consider this proposal and authorize accordingly to complete negotiations. Please advise if Owner's Board is in agreement to such deal enabling us to lift subject on time." Mr. Izmaylov did not dispute that, as is reflected in the words "as discussed" (and possibly the reference to checking with the owners), he spoke to Mr. Mikhaylyuk about these proposals. Mr. Izmaylov wrote to Ms. Spasova (who had taken over some of Mr. Oskirko's responsibilities when he left NSC at the beginning of 2004, but had no responsibility for chartering matters) a note at the top of a printed copy of the e-mail, which reads (in translation), "Confirmed, taking into account the amounts and "programme"": the "programme" was the newbuilding programme to which Mr. Mikhaylyuk had referred. Mr. Izmaylov was involved in approving these proposals at the stage of negotiations because Mr. Sakovich was on holiday. In cross-examination he said that he gave his approval on the basis of what Mr. Mikhaylyuk told him and his own views of the market. On 28 January 2004 Ms. Spasova replied to Mr. Mikhaylyuk, "President approval your message". After some minor changes to the terms, the fixtures were firmly agreed on 2 February 2004.

1245. At the time of these fixtures, CSIW gave daily rates for Aframax vessels of $26,000 for a one year's charter and $20,000 for a three years' charter, which would indicate a rate of around $23,000 for a two years' fixture. Other indices were at similar levels.

1246. The claimants submitted that Mr. Izmaylov and Mr. Mikhaylyuk both knew that the rates agreed with Henriot were low compared with the market. On 16 October 2003 Mr. Mikhaylyuk had written to Mr. Izmaylov that, because the spot market had strengthened, there was not much interest in owners chartering Aframax vessels at rates below $20,000 per day, and that $21,000 per day for a two years' charter could be "very reasonable". Since October 2003 the CSIW indices had reflected a marked strengthening of the market generally and the rate for a one year's charter of an Aframax had increased from $20,000 to $26,000.

1247. The defendants said that Mr. Mikhaylyuk's e-mail of 26 January 2004 set out NSC's reason for agreeing to these fixtures, and that the purpose was to secure a cash-flow in an uncertain market in order to have an income to pay for the newbuilding programme. The claimants plead (at para 10DD(2) of the particulars of claim) that the e-mail was deliberately concocted on Mr. Izmaylov's instructions in order to justify chartering arrangements that he had already agreed with Mr. Nikitin, and that the charterers provided "no real protection for the cashflow" because of doubt about Henriot's ability to meet their obligations. I reject the latter contention because NSC had no real basis to doubt that Henriot would meet their obligations. No evidence supported the assertion that the e-mail of 26 January 2004 was deliberately contrived by Mr. Mikhaylyuk to give a false justification for the fixtures. Mr. Sakovich subscribed to the reasoning in the e-mail in that he considered that the rates were "sufficiently high" and that the charters provided "a continuous income". He expressed that view in the Sakovich report, and it reflected his thinking at the time of the fixtures.

1248. As I have said, the claimants did not pursue their pleaded case that the chartering rates for these fixtures were below the contemporary market range. The defendants justified them by reference in particular to the charter in February 2004 of the "Unique Priority" for a year with two charterers' options of a year each at a rate of $19,500. The "Unique Priority" was of a similar size to the "Moscow River" and the "Moscow University", and Mr. Pearce accepted that she was a "very similar ship". Indeed, in two ways she would have been more attractive to a charterer. She was a newbuild whereas the Moscow vessels were some five years old, and Mr. Pearce accepted that this might be reflected in a slightly higher chartering rates. More importantly, her tanks were fully coated and this would, as I accept, have attracted a premium. (Mr. Huttemeier put the premium at $1,000 to $1,500 per day. Mr. Pearce accepted in his report of 15 May 2009 that coating would attract a slight premium when considering a sister-ship, the "Unique Privilege", but said in cross-examination that he did not think that this feature would increase the rate for the "Unique Priority". I prefer the more consistent evidence of Mr. Huttemeier.) Mr. Pearce considered that the rate of the charter of the "Unique Priority" was not "reflective of the market at the time" and undoubtedly generally Aframax rates were higher. They would indicate that the Moscow vessels might have attracted, say, $22,000 per day. The fixture of the "Unique Priority" does show that the rates for the Moscow vessels were, as Mr. Huttemeier put it, "at the lower end" of the market range, but not below it.

1249. The reasoning put forward in Mr. Mikhaylyuk's e-mail of 26 January 2004 must be considered against this background. Mr. Mikhaylyuk said in cross-examination that he thought it prudent to have regard not only to the CSIW indices of January 2004 but also lower figures representing the average rate for the whole of 2003. I am not convinced that they played any part in NSC's thinking, or reasonably could have done. More importantly, however, it is readily understandable that NSC were concerned to secure the fixtures that were available in view of gloomy market reports and market uncertainty at the beginning of January 2004. For example, Marsoft, which was read by NSC executives, were predicting lower rates for Aframax spot fixtures, and the rates for spot fixtures, of course, influenced the time charter rates, as Mr. Mikhaylyuk had stated in his e-mail of 16 October 2003.

1250. I do not consider that the claimants have shown that Mr. Mikhaylyuk was stating in his e-mail of 26 January 2004 anything other than his true views. In reaching this conclusion I do not overlook that in August 2005 he defended the rates for the fixtures on the basis that Shell and Navion had expressed their thinking that rates for a 12 to 18 months' charter were $18,000 per day, and in cross-examination Mr. Mikhaylyuk was unable to provide any satisfactory support for this. In any case, I conclude that there is nothing in the terms of these fixtures or Mr. Izmaylov's part in concluding them that suggests that he was dishonest or in breach of his duties.

The charters of the "Kaluga" and the "Kazan"

1251. The "Kaluga" and the "Kazan" were large Aframax vessels of 115,707 dwt and 115,626 dwt respectively. They were owned by Kaluga Shipping Inc. ("Kaluga") and Kazan Shipping Inc. ("Kazan"), two subsidiaries of Intrigue and the 49th and 50th claimants in the Intrigue action. They were chartered to Henriot on 30 March 2004 at a rate of $20,800 per day for three years.

1252. On 24 March 2004 Mr. Mikhaylyuk offered to Henriot three years' charters of the vessels at $20,800 per day. Mr. Izmaylov had authorised him to do so, either directly or though Mr. Sakovich. On 25 March 2004, Mr. Mikhaylyuk repeated the offers (with some changes to the terms that did not affect the rates), and they were accepted on 26 March 2004. There is no documentary evidence of negotiations about the actual fixing of these vessels, but on 26 March 2004, Mr. Mikhaylyuk sent an e-mail to Mr. Izmaylov and Mr. Sakovich:

> "As discussed over the telephone and after a week of hard negotiations we managed to put vessels on subjects on following conditions: … In view of the market development this rate is a good hedging against any possible fluctuation and gives us coverage for the next three years on the Aframax tonnage newbuildings against their delivery program (within next 2 years). We think that such rates could be rather beneficial to Novoship, therefore, would appreciate if Owners could give consideration to this business opportunity, and authorise accordingly enabling us to complete the deal."

Mr. Sakovich replied on 29 March 2004, sending a copy of his reply to Mr. Izmaylov: "During performance of previous time-charters there were not any delays with hire payments and non supported claims from Charterers side. Owners lift their subs for

proposed deal to guarantee earnings for next three years." Mr. Izmaylov said that he probably discussed this reply with Mr. Sakovich before it was sent, and I find that he did so. He also said that he relied primarily upon Mr. Sakovich's recommendation about the charterparties, and I accept that at the least Mr. Sakovich supported the decision to conclude them. On 2 April 2004 Mr. Mikhaylyuk reported to Mr. Izmaylov and Mr. Sakovich that Henriot had "lifted the subjects" and the fixtures were concluded.

1253. The claimants plead (at para 10EE(2) of the particulars of claim) that the e-mail of 26 March 2004 (like the e-mail of 26 January 2004 about the chartering of the Moscow vessels) was sent on Mr. Izmaylov's instructions and was "designed to provide an apparent justification" for the fixtures. In support of this, they say that the charters provided no reliable income for NSC because Henriot were not a reliable counterparty and their income depended upon sub-chartering the vessels. I reject that allegation for the same reason as I have rejected it in relation to other charters, and conclude that there was no reason that NSC should have so regarded Henriot. They also argued, as I understand their submissions, that because there is no written record of any negotiations, the inference is that there was no "hard week of negotiations" and the e-mail is misleading. While it is possible that Mr. Mikhaylyuk was exaggerating the efforts that he had made, there is, in my judgment, no proper basis to reject his evidence that he had had negotiations with Henriot before he put forward the offer of 24 March 2004. It would be remarkable if there had not been negotiations, and there is no evidence to support any contention that they were conducted by someone other than Mr. Mikhaylyuk. I reject the suggestion that Mr. Nikitin and Mr. Izmaylov had agreed between themselves upon the rate for these charterers before the e-mail of 24 March 2004 or at any time.

1254. CSIW reported on 29 March 2004 that the rate for a three years' charter of a modern Aframax was $23,000 per day. Mr. Huttemeier preferred to identify the prevailing rate by taking an average of the CSIW rate and the rate in the ACM index, which was $21,500, and put it at $22,250. Mr. Pearce did not support the pleaded case and accepted that the rates for these fixtures were within "the market range", although he placed them at the bottom of it. At the time of these fixtures, there were still pessimistic reports predicting that rates for Aframaxes would fall. I accept Mr. Pearce's evidence, and consider that, if it were necessary to identify a rate at the middle of the market, it would be one of $22,250, which Mr. Huttemeier drew from the indices. I reject the contention that the difference between this and the rate to which NSC agreed reflects any impropriety on the part of Mr. Izmaylov (or anyone else). It reflects that he and others at NSC wanted to secure the fixtures because they were concerned to secure an income in an uncertain market.

The charter of the "Trogir" in October 2004

1255. On 23 December 2003, Henriot declared the option to extend the charter of the "Trogir" for a year. In September 2004 Henriot and NSC agreed to extend the charter of the "Trogir", and on 4 October 2004, the vessel was fixed at a rate of $17,000 for a year, with a charterers' option for a further year.

1256. On 20 September 2004 Mr. Mikhaylyuk wrote in an e-mail to Mr. Izmaylov and Mr. Sakovich that Henriot had asked to extend the hire of the "Trogir" for a year from 28 January 2005, the expiry of the current charter, with an option of the further year, and

that, "after long discussions we managed to obtained from them their final fixing figures". He referred to a rate of $17,000, and he observed that during the charter with Henriot there had not been difficulties over the payment of hire or other disputes. He continued:

> "as per discussions we had tried to have 2 years straight but they are refusing categorically, so I think that we probably have to work along these lines now. We understood there are several different forecasts for the next 6-12-18 months, with more or less steady rates, while due to number of newbuildings the market is expected to go down thereafter. So if the worst scenario 6 months is to take place then we are protected and will have steady income to support our cashflow. Would appreciate if you please consider this business opportunity, give Owners' opinion, and in case agreeing to above please authorise accordingly to complete negotiations in due course."

1257. Mr. Mikhaylyuk wrote to Henriot on 21 September 2004 offering a fixture at $17,000 per day "as per discussions during last several days". Henriot responded later on 21 September with a counter-proposal based on the same chartering rate. On 22 September 2004 Mr. Sakovich sent an e-mail to Mr. Mikhaylyuk, copied to Mr. Izmaylov, thanking Mr. Mikhaylyuk for "the developing of the next long term business opportunity", and stating that the rate and terms were acceptable. He continued, "taking into account the different market forecasts for this segment of the market, we need to protect the steady income and support our cashflow". He authorised Mr. Mikhaylyuk to enter into the fixture. The charterers firmly accepted the offer on 4 October 2004, and on 6 October 2004 Mr. Mikhaylyuk reported to Mr. Izmaylov and Mr. Sakovich that the fixture was concluded.

1258. The claimants' pleaded case (at para 10BB(8) of the particulars of claim) is that the e-mail sent by Mr. Sakovich on 22 September 2004 was written on Mr. Izmaylov's instructions in order to provide an "apparent justification" of the charter. Mr. Sakovich did not support that allegation in cross-examination. He said, and I accept, that the e-mail represented his genuine view about the proposed charter, which he formed in light of what he was told by Mr. Mikhaylyuk, and that nobody put him under pressure to write it. (Mr. Sakovich had some language difficulties with these questions in cross-examination, but the meaning of his answers was, I think, clear.) Mr. Popplewell decided not to put the allegation to Mr. Izmaylov and, as I understand it, it is not pursued.

1259. The claimants, however, submitted that Mr. Mikhaylyuk's e-mail of 20 September 2004 was probably written upon Mr. Izmaylov's instructions "as part of a paper trail to justify the rates" (although this allegation, as Mr. Bryan observed, was not pleaded). There is no documentary evidence of negotiations such as are referred to in the e-mails, but Mr. Mikhaylyuk insisted in cross-examination that they took place. He concluded that he could not persuade Henriot to pay more for the vessel, and he did not think that he could obtain a higher rate of hire from another charterer. The claimants suggested that Mr. Mikhaylyuk had not had "long discussions" with Henriot and that the rate had already been agreed between Mr. Nikitin and Mr. Izmaylov . As with the similar allegations made about other charters, there is no evidence to support these allegations, and I reject them.

1260. The claimants also argued that the vessel was fixed at below the market rate. Before Henriot confirmed the charter on 4 October 2004, they sub-chartered the "Trogir" to Adam Maritime Corp ("AMC") on 1 October 2004 at a rate of $21,250 per day for about 15 months to 28 January 2006 (plus or minus 15 days). The net income to Henriot under the sub-charter was (after brokerage) $20,506 per day, whereas they were paying just $13,500 per day under the old charter until 28 January 2005 and $17,000 per day under the new charter thereafter. NSC could not have entered into the charter with AMC because the "Trogir" was chartered to Henriot until January 2005, but the claimants relied upon the sub-charter to support their contention that the market rate for the vessel was above $17,000 when NSC agreed the charter rate. According to CSIW the market rate had strengthened by about $1,000 during the second half of September 2004, but this does not account for the difference between the charter and the sub-charter rates.

1261. There are few other fixtures that provide evidence about whether the charter of the "Trogir" was at market rates. On 3 November 2004 NSC chartered the "Tambov", a sistership of the "Trogir", to Stena for $18,750, but the market had continued to strengthen since the rate for the charter of the "Trogir" had been agreed. Mr. Pearce accepted that the rate for the "Tambov" was "not hugely inconsistent" with the rate for the "Trogir", although he thought that the Tambov charter was a "better deal" for NSC.

1262. The claimants also pointed to CSIW rates to support their contention that the rate for the "Trogir" was low. They published rates for vessels of 47,000 dwt and 30,000 dwt, and for the week of 17 September 2004 they were at $19,750 and $17,750 respectively: this would indicate a rate of about $18,750 for the "Trogir", which was 40,791 dwt. However, Drewry index for a 10 year old vessel of between 40,000 dwt and 45,000 dwt was at $15,570 for September 2004 and at $18,000 for October 2004.

1263. If it were relevant to identify a market rate for the charter of the "Trogir" I would place it at $18,000 rather than $17,000. However, in my judgment, there simply is not enough market evidence to support the claimants' contention that the rate agreed by NSC was significantly low against the market in so far as they suggest that it indicates that Mr. Izmaylov was in breach of duty, or that he was acting dishonestly or improperly.

Conclusions about the NSC time charters scheme

1264. The claimants claim that the owners of the chartered vessels are entitled to compensatory damages, and that they and NSC are entitled to an account of the profits made by charterers and through them Mr. Nikitin. They pleaded four matters in support of their contention that Mr. Izmaylov was responsible for NSC entering into time charters which conferred substantial benefits on the charterers at the owners' expense. The focus of the complaint as it was developed was that "the rates of hire were at the low end of contemporary rates or well below contemporary rates". I do not accept that the rates agreed by the claimants were below contemporary rates, and, while they were generally towards "the low end of contemporary rates", I do not accept that this indicates impropriety in Mr. Izmaylov's part. They reflected rates for which the responsible executives of NSC together decided to hire the vessels, and Mr. Izmaylov was not solely or especially responsible for NSC agreeing to them.

1265. The claimants also relied upon the facts that some of the charters provided for with-charter options, and that NSC did not require a "risk premium" to reflect Henriot's standing. I have explained why I am not persuaded by these contentions.

1266. The fourth matter that the claimants plead (at para 10D(1)(d) of the particulars of claim in the Intrigue action) is that "all the time charters, with the exception of the first "Trogir" charter, were entered into in breach of NSC's policy regarding the balance to be maintained in letting of the NSC fleet between time and voyage charters". Mr. Popplewell made it clear when opening the case that the claimants no longer relied upon this in support of their contentions as to liability. (The claimants maintain that, if they are entitled to damages in respect of the NSC time charters scheme, they should be calculated on the basis that NSC would, but for the wrongdoing, have kept more vessels than they did on the spot market. I do not consider that the evidence supports this contention, and in any case I do not accept that this would entitle any of the specific owner claimants to increased damages unless it be shown that it would have affected the deployment of their own vessel. However, since I reject the claim, I do not need to consider this argument further.)

1267. I therefore do not consider that the claimants' allegation of corruption against Mr. Izmaylov is supported by the evidence about how the time charters came to be fixed or about their terms.

The allegations that Mr. Skarga was dishonest

1268. I have considered each of schemes and whether there is evidence from the way that it was carried out or otherwise that indicates that Mr. Skarga or Mr. Izmaylov was corruptly engaged in it. I come to consider the other matters that the claimants relied upon as evidence of Mr. Skarga's dishonesty. They alleged that:

i) Mr. Nikitin paid bribes to Mr. Privalov and Mr. Borisenko, and Mr. Skarga was party to arranging them or at least knew of them.

ii) Mr. Skarga himself received bribes from Mr. Nikitin.

iii) Mr. Skarga had records destroyed and concealed records in order to hide what he had been doing.

iv) Mr. Skarga forged documents.

v) Mr. Skarga gave dishonest evidence.

Payments to Mr. Privalov

1269. Between 2001 and 2005 Mr. Nikitin arranged for money to be transferred to Mr. Privalov and companies associated with him. It is the claimants' case that these were improper payments made for Mr. Privalov's benefit because of the part that he played in the various schemes. They have identified certain payments for Mr. Privalov upon which they specifically relied, but submitted that there were probably other payments of which they are unaware. In their pleaded case, they allege that particular payments were made in relation to particular transactions or schemes in which Mr. Privalov assisted Mr. Nikitin, but they also submitted that the payments constituted

bribes or secret inducements whether they were made in respect of specific transactions or generally as rewards for his past assistance and to encourage him to continue to work with Mr. Nikitin.

1270. Mr. Nikitin denied making any payments to Mr. Privalov that could properly be characterised as bribes or that were otherwise dishonest or improper. He said that the payments made to Mr. Privalov and his companies included repayments of money that he had allowed Mr. Privalov to deposit in Milmont's account with Wegelin; and that he made other payments to Mr. Privalov to reward him for work that he had done for him. He submitted that they were proper payments and were made because Mr. Privalov had properly provided him with services and assistance.

Payments to Getwire's account

1271. In the summer of 2001 Mr. Privalov opened with Credit Suisse in Zurich an account in the name of Getwire after Mr. Nikitin had introduced Mr. Privalov to Mr. Philipp Senn of Credit Suisse. Mr. Nikitin's evidence about the introduction was vague and unsatisfactory, but in my judgment he must have realised when he made the introduction, even if he was not specifically told, that Mr. Privalov wanted to open an account with the bank in Switzerland. On 14 December 2001 Milmont, on Mr. Nikitin's instructions, transferred $25,000 to Getwire. It is not clear from the evidence why the payment was made, but Mr. Privalov nominated the account into which Mr. Nikitin had the money paid. Although Mr. Nikitin said that Mr. Privalov might have been directing payment into a third party's account, the most obvious and probable implication was that Mr. Privalov controlled Getwire and the account. I reject Mr. Nikitin's evidence that he did not realise this.

1272. Mr. Privalov's evidence was that Mr. Nikitin did not simply introduce him to Mr. Senn. He said that Mr. Nikitin wanted him to open the account so that he had a Swiss bank account into which he could receive secret payments, and that "everything was done" to open it at a meeting in Mr. Nikitin's room at the Hotel Baur au Lac, Zurich. Mr. Privalov's evidence about how the account was opened was inconsistent, it is not corroborated, it is disputed by Mr. Nikitin and I reject it. I do not need to go through the different accounts in Mr. Privalov's various witness statements. Credit Suisse have disclosed documents about the opening of the account, some of which were dated 3 July 2001, and they show that the account was not opened before that date. Before they were disclosed, Mr. Privalov had said that the meeting at which the account was opened was in "either late May or early June". I also infer from the documents about Mr. Privalov's travel expenses, that he did not travel to Switzerland at any relevant time after 5, 6 and 7 June 2001. He could not have been in Switzerland to meet Mr. Nikitin as he described.

1273. The documents disclosed by Credit Suisse about the opening of the account include a "client profile" form, which states that the "Expected account movements" were "About 1m in the next 6 months", and states that the "Origin of money deposited with the Bank" was "Director of Premium Nafta Products, Russia". According to Mr. Privalov, the information included on the form was provided to Mr. Senn by Mr. Nikitin, and he said that Mr. Nikitin told Mr. Senn that he would provide the money to be paid into the account from funds that he, Mr. Nikitin, generated as a director of PNP. I cannot tell quite what Credit Suisse were told that led them to complete the form as they did, but I reject Mr. Privalov's explanation: it is not what the form says,

Mr. Nikitin was not a director of PNP and he would not have told Mr. Senn that he was. I also reject Mr. Privalov's evidence that Mr. Nikitin mentioned "in a rather casual manner" that it was expected that receipts into the account over the next 6 months would amount to $1 million. If Mr. Privalov had heard that he was to receive so much money, he would have remembered it more clearly than he professed to do.

Payments through Mr. Cepollina's companies

1274. As I have explained, on 3 July 2001 $200,000 was paid into Mr. Privalov's personal bank account at the RBS in the Isle of Man, and I conclude that it was paid by RTB from what they had received from Clarkson in respect of the Athenian transaction, and that the payment was made at Mr. Nikitin's direction. No bank credit advice from RBS or similar document is in evidence, and Mr. Privalov's evidence was that in any case the credit advice did not state who made the payment. He said that he did not know who made it, but he "expected" that it was from RTB, Mr. Cepollina or Mr. Nikitin, and that Mr. Cepollina had told him that he had arranged a payment for him. On 25 June 2001 RTB had received from Clarkson $5.5 million in respect of the Athenian transaction, and on 3 July 2001 they also transferred $2.25 million to Milmont and $3 million to Pollak.

1275. On 29 October 2001 Mr. Nikitin directed Wegelin to transfer $390,000 from Meino to Falbridge International Ltd. ("Falbridge"), a company which, as I infer because Mr. Cepollina asked Mr. Nikitin to pay monies due to him into Falbridge's account, was also associated with Mr. Cepollina. On 8 November 2001 Falbridge paid $300,000 to Getwire and $50,000 into Mr. Privalov's RBS bank account. On 29 November 2001 Mr. Nikitin directed Wegelin to transfer $317,000 from Meino to Falbridge and on 6 December 2001 Falbridge transferred $310,000 to Getwire. Thus, $660,000 of the $707,000 transferred by Meino to Falbridge was in turn transferred to Getwire or to Mr. Privalov. The claimants' pleaded case is that Mr. Nikitin's purpose in making the transfers to Falbridge was to route through the company payments amounting to $660,000 to Mr. Privalov, and that the payment of $50,000 was for assistance in relation to the RCB scheme and the $300,000 was paid in relation to the Sovcomflot Clarkson commissions scheme: see para 11D of their reply and para 79A.23A(3C) of the particulars of claim in the Fiona action.

1276. Thus, it is the claimants' case that the payments to Mr. Privalov and Getwire in July, November and December 2001 were all made at the direction of Mr. Nikitin and that he used Mr. Cepollina's companies in order to disguise them. The allegation that these payments were made by way of bribes for Mr. Privalov was introduced into the claimants' pleading at late stages in the proceedings. The plea about the payments of $200,000 and $50,000 to the RBS account was introduced in July 2009, and the plea about the payments to Getwire was introduced during the trial in November 2009. Mr. Nikitin denied that he knew anything about the payments to Mr. Privalov and Getwire, and said that he arranged the payments to Falbridge because he wanted to reward Mr. Cepollina for his assistance with the RCB scheme "as well as for other transactions such as for various charters that he fixed for PNP", and that he thought that Mr. Cepollina's "RCB fee" would have represented around $300,000 of the payments. Mr. Cepollina nominated the Falbridge account to receive the payments.

1277. Mr. Privalov's evidence did not convincingly explain why he was paid these sums or why some money was paid to his RBS account and some to Getwire. He associated

the payment of $200,000 with Mr. Nikitin only because he could not think who else might have arranged it. He thought that the payment of $50,000 on 8 November 2001 was for his assistance in the RCB scheme and that the payments to Getwire were for his assistance in "Clarksons commissions, Tam commission, and other things that were completed in 2001", but his evidence was vague. Although he explained that he was comfortable about receiving the relatively small payment of $50,000 into his personal account, he gave no convincing reason that Falbridge should transfer the $50,000 and the $300,000 in separate payments. His evidence provided no explanation for the amount of any of the payments.

1278. Mr. Privalov did not refer to the two payments to Getwire in his earlier witness statements and first mentioned them in a witness statement dated 28 September 2009, which he made after he had seen documents about the Getwire account provided by Credit Suisse. His explanation that he had forgotten about such large payments is incredible. I do not consider that I can rely upon the evidence of Mr. Privalov about these payments, or that he provided any reliable evidence in support of the claimants' contentions that these payments represented bribes to him from Mr. Nikitin.

1279. Much about the payments is obscure, but the fact remains that each of them was made shortly after Mr. Cepollina's company had been paid a rather larger amount upon Mr. Nikitin's instructions. I infer that the payments to Mr. Privalov and Getwire were arranged by Mr. Nikitin and he routed them through Mr. Cepollina's companies. I cannot accept that Mr. Nikitin would otherwise have had $250,000 paid to RTB in July 2001 and $707,000 paid to Falbridge in November 2001. Mr. Cepollina had not provided services for which Mr. Nikitin would have paid him so much. Mr. Cepollina's evidence in a witness statement dated 7 November 2006 was that he believed that he was paid something between $50,000 and $100,000 for his contribution to the RCB scheme. It is likely that the payments related to assistance that Mr. Privalov provided to Mr. Nikitin, and it is likely that the payment in July 2001 was made at least in part, for assistance with the Athenian transaction, from which the funds derived, and the associated Tam commissions scheme. It is not possible to explain more specifically the reason for the payments.

<u>The payments of $780,000 and $819,000</u>

1280. Before considering other smaller payments made in 2001 and 2002, I refer next to two payments of $780,000 and $819,000 made on 23 December 2002 into Sisterhood's account at Wegelin. The credit advice for the payment of $780,000 stated that it was a transfer from Mobil Services Inc. Bulgaria under a service agreement no F-124/02 and in payment of an invoice dated 22 November 2002. The credit advice for the payment of $819,000 said that it was a transfer from Mobil Services Inc. Bulgaria under a service agreement no G-84/02 and to pay an invoice dated 28 December 2002.

1281. There are in evidence what purport to be service agreements dated 16 and 20 December 2002, numbered F-124/02 and G-84/02 respectively and made between Sisterhood, who is described as the "Executor", and Mobil Services Inc, who is described as the "Customer". There is no dispute that they are shams. The former provided for the "Executor" to be paid $780,000 for work and services described in such general terms as, for example, "Research of international financial market, analysis of its trends and future prospects" and "Analysis of financial instruments,

providing reports on their advantages and present preference", and the latter provided for the "Executor" to be paid $819,000 for similarly vague "work and services". It was never contemplated that Sisterhood would provide any such services, and there is no real reason to think that a company called Mobil Services Inc. of Bulgaria ever existed.

1282. Mr. Privalov and Mr. Nikitin were party to creating the agreements to disguise the payments of $780,000 and $819,000 to Sisterhood on 23 December 2002. On 21 November 2002 Mr. Pavlov sent Mr. Privalov a form of service agreement. On 22 November 2002 Mr. Privalov sent the form of agreement to Mr. Baum under cover of an e-mail which asked him to arrange for the directors of Sisterhood to sign the agreement and to fax a signed copy to "another Yuri", that is to say to Mr. Nikitin. On 25 November 2002 Mr. Privalov sent Mr. Pavlov an e-mail asking who the counterparty to the agreement was to be. Mr. Nikitin accepted that he instructed Mr. Pavlov that Mobil Services Inc. were to be the counterparty.

1283. Mr. Privalov and Mr. Nikitin give different explanations for these payments, but I cannot accept either account. Mr. Privalov said that Mr. Nikitin had promised to pay him for his assistance with the SLB transactions. Mr. Nikitin also told him that there were to be purported service agreements to disguise the payments, and he received the two agreements from Mr. Pavlov, signed them and sent them on to Mr. Baum. He said that he believed that the first payment of $780,000 related to the "Fili" and the July SLB arrangements and the payment of $819,000 related to the November SLB arrangements.

1284. According to Mr. Privalov, he was promised payments in relation to the SLB transactions at Mr. Nikitin's dacha in Mr. Skarga's presence. I have already rejected his evidence about that meeting (or those meetings), and explained why I reject it. His evidence about the background to the payments into the Sisterhood account was also discredited. In his witness statement of 12 February 2009 he said that in about October 2002 Mr. Nikitin told him that he had incorporated a BVI company to receive the payments for him, and he met Mr. Baum in Zurich to sign the forms to open the Sisterhood account. In cross-examination, he gave evidence that Mr. Nikitin simply introduced him to Mr. Baum. I do not consider either account reliable, and I cannot rely upon Mr. Privalov's evidence about how the payments came to be made.

1285. Mr. Nikitin's explanation for these payments is that the total of (approximately) $1.6 million comprised three elements: $1.2 million represented funds of Mr. Privalov that he had allowed Mr. Privalov to deposit in Milmont's bank account in 2001; $320,000 was by way of reimbursement of sums that Mr. Privalov had spent, or claimed to have spent, upon consultants to arrange bank finance for the Investors in relation to SLB arrangements; and $80,000 was a payment for Mr. Privalov personally for his assistance in relation to the SLB arrangements. The latter two payments were made, according to Mr. Nikitin, because in November 2002 Mr. Privalov spoke to him about consultancy fees of $40,000 per vessel which he said had been incurred for arranging finance with BCV, and also suggested that he should be paid $80,000 for his own services. Having discussed this request with Mr. Malov and Mr. Katkov, Mr. Nikitin agreed to it.

1286. It is clear that the $1.2 million deposited in the Milmont account was from the Tam commissions payments made by Rody in relation to the Athenian transaction.

According to Mr. Nikitin, the circumstances in which these payments were made into the Milmont account were as follows. In 2001, Mr. Privalov told him that he was due to receive payments of about $1 million. He expected to have received it within 6 or possibly 12 months, but he had "not got round to sorting out an off-shore bank account into which they could be paid". He asked to keep the money in one of Mr. Nikitin's accounts, and Mr. Nikitin allowed him to use Milmont's account and provided Mr. Privalov with details of it. He thought no more about this until towards the end of 2002 Mr. Privalov asked to have the money repaid. He did not know when the money was paid into the Milmont account, nor did he suspect that it might have been earned dishonestly or illegitimately. As he explained it, Russians commonly allow others to deposit funds in their off-shore bank accounts, and he had allowed his accounts to be so used on other occasions without being concerned that anything improper was involved. No documentary evidence reflects any such request by Mr. Privalov or any such agreement by Mr. Nikitin.

1287. The claimants submitted that Mr. Nikitin's evidence about the arrangements with Mr. Privalov was too vague to be credible. His account was indeed rather vague, but the arrangements were made some 8 or 9 years ago and I do not regard this in itself as a reason for rejecting it. It was also submitted that the account is incredible because Mr. Privalov would have had ample time to make his own banking arrangements to receive funds that were not to be paid for 6 months, but I consider that this submission was based upon a misunderstanding. Mr. Nikitin's evidence was that Mr. Privalov expected the first instalments that he was to receive at any time, and the full amount was to be paid over a period of 6 or 12 months.

1288. However, there were other, and to my mind more convincing, criticisms of Mr. Nikitin's evidence. First, in his witness statement Mr. Nikitin said that the arrangements for Mr. Privalov to use Milmont's accounts were made "around the end of July 2001". This date is confirmed because on 31 July 2001 Mr. Wettern sent to the Athenian group details of the Milmont bank account to which payment was to be made and advised Mr. Privalov that he had done so, and, once he had arranged with Mr. Nikitin to use the Milmont account, Mr. Privalov would have ensured that Athenian were advised about it promptly. However, in the summer of 2001 Mr. Nikitin had introduced Mr. Privalov to Mr. Senn at Credit Suisse so that he could open an account there, either in his own name or in the name of a company, and Getwire's account had been opened at around the beginning of July 2001. By the end of July 2001 Mr. Privalov could have deposited money in that off-shore account, and Mr. Nikitin knew that he had the account. Further, even if Mr. Nikitin did not know this when Mr. Privalov asked about depositing funds, once the Getwire account with Credit Suisse was opened, Mr. Nikitin would have realised that Mr. Privalov had no proper reason to keep money in Milmont's account. In fact, as I shall explain, on 14 December 2001 Mr. Nikitin signed an instruction to Wegelin for a payment to be made by Milmont to Getwire, and so by then he clearly knew that Mr. Privalov had opened the Getwire account following his introduction to Mr. Senn. Nevertheless, the funds remained in the Milmont account until December 2002.

1289. Secondly, Mr. Nikitin could not give any credible explanation about how he or Milmont could have kept any record so as to be able to repay Mr. Privalov the correct amount. He said that between July 2001 and November 2002 he did not know how much was paid into the account by or for Mr. Privalov, but that, when Mr. Privalov

asked in November 2002 to have the $1.2 million repaid, he checked the position with Mrs Erastova, who dealt with such matters for him from PNP's offices. She confirmed that $1.2 million had been deposited. As far as I could understand Mr. Nikitin's evidence, he suggested that this check was made by identifying all payments into the account that could not be otherwise allocated to "my [Mr. Nikitin's] dealings". I cannot believe that Mr. Nikitin would have allowed Milmont's account to be used so casually to receive such large sums. Further, if, as Mr. Nikitin said, Mrs Erastova was checking what payments were made into Milmont's account, she would have enquired about payments when they were made, and Mr. Nikitin would, contrary to his account, have learned of the deposits. I cannot accept, as he suggested, that the sums involved were too small to merit anyone's attention.

1290. Thirdly, I consider it the more improbable that Mr. Privalov kept the Tam commissions in the Milmont account because he did not deposit with Mr. Nikitin or any of his companies other payments that he received in connection with transactions through Clarkson (or indeed Norstar or Galbraith's).

1291. Fourthly, Mr. Nikitin's account does not explain the further payment of $105,000 from the hull no 1231 commission scheme that he said was paid into Milmont's account with Wegelin. Mr. Nikitin said that he learned of this deposit only in the course of these proceedings, and did not know about it when it was made. He had not, as far as he recalled, been asked to repay or to account for it. This seems improbable. I do not overlook that Mr. Nikitin conjectured (as a suggested explanation rather than as something that he recalled) that payments of $25,000 on 14 December 2001 by Milmont to Getwire and payment of $60,500 on 28 October 2002 by Kosta to Mr. Privalov's RBS account (to which I shall refer below) might have been by way of repayments of some of this $105,000, but, while Mr. Nikitin asserted that he was confident that the balance had been repaid, he was unable suggest how or when it might have been. The significance of this is that, unless the balance was repaid in some unexplained way, Mrs Erastova could not have reconciled the unattributed deposits in the Milmont account to the $1.2 million.

1292. There is another reason that I reject the evidence of Mr. Nikitin about the payment of the $1.2 million into Milmont's account. I have referred to the spreadsheets that, as I have concluded, Mr. Privalov began to supply to Mr. Nikitin in 2001, and have said that the 2001/2002 spreadsheet included entries about payments relating to the Athenian transaction and the purchase of hull no 1231. More specifically, it showed six sums of $200,000 each as payments in respect of the six Athenian vessels to be made to Milmont between July 2001 and August 2002, and it showed a sum of $105,000 to be paid to Milmont against the note "fin", which relates to the financing of the hull no 1231 transaction. The purpose of the spreadsheets was, as Mr. Nikitin put it, "to keep me informed and just – the primary purpose was just to keep me an eye on the cash line". Mr. Privalov would not have included these payments in the spreadsheet if they were only being deposited with Milmont as a temporary convenience. Mr. Nikitin denied that he had examined the spreadsheets in 2001, and said that Mr. Privalov was keeping the records for himself, but even in these circumstances Mr. Privalov would not have included these sums in the spreadsheet as payments to be made to Mr. Cepollina, Horber, Pollak and Milmont.

1293. I therefore am unable to accept Mr. Nikitin's evidence about why $1.2 million of the $1,599,000 was paid to Sisterhood. I conclude that he was party to the arrangement

that the commissions to Rody should be included in the Athenian transaction and transferred from the sellers for payment to Tam or Tam's nominee, and the purpose was that then they should be diverted from the buyers of the Athenian vessels according to his directions. He arranged for them to be paid to Milmont for his own benefit.

1294. I also reject Mr. Nikitin's explanation that the other $400,000 represented payments made as he described in connection with the SLB transactions. He said that, when the first such transaction was discussed, Mr. Privalov advised that financial consultants were needed to "sell the deal to a bank"; that subsequently he advised that the consultants would charge $40,000 per vessel if the deal went through; and that in November 2002 Mr. Privalov told him that the consultants needed to be paid $40,000 for each vessel, a total of $320,000. According to Mr. Nikitin's evidence, he did not ask and was not told who the consultants were (although his pleaded case is that Mr. Privalov said that the consultant was Mr. Sawyer: see para 32(18) of the defence of Mr. Nikitin and the Standard Maritime defendants. Mr. Nikitin's improbable explanation for this was that Mr. Privalov said that the consultant was to be someone like Mr. Sawyer), and he had no credible explanation about what he thought any consultants had done to earn their fees. He paid them, on his account, without asking to see anything of their work. In fact it is clear that no consultants played any part in bringing about the SLB transactions, and I cannot believe that Mr. Nikitin supposed otherwise.

1295. Mr. Nikitin's evidence about the further $80,000, that was said to be for Mr. Privalov's own services, was inconsistent with his pleaded case. It is pleaded that Mr. Privalov had said "at an early stage of the discussions that took place" that he believed that a reasonable fee for his services would be $80,000, but Mr. Nikitin's evidence was that Mr. Privalov said only in November 2002 that he considered that $80,000 would be an appropriate fee: see para 50(4)(c) of the defence of Mr. Nikitin and the Standard Maritime defendants and response 5.5 of the further information provided under CPR part 18 dated 11 January 2006. I reject Nr Nikitin's evidence that he misunderstood the pleadings because of his limited command of English.

1296. Mr. Popplewell argued that this account is also inconsistent with the spreadsheets sent to Mr. Nikitin on 13 September 2002, which showed the anticipated return for the Investors on the November SLB arrangements, and 1 October 2002, which showed the "revised actual" returns on the "Fili" SLB transaction and the July SLB arrangements. This, it is said, is because they all included fees for Mr. Privalov of more than $80,000. The calculations included fees for him of $145,000 per transaction and the calculations in spreadsheets of 1 October 2002 were made on the basis that Mr. Borisenko was to receive $25,000 per transaction. I do not accept that part of Mr. Popplewell's argument. I find it impossible to reach any conclusion about what payments for fees are brought into account in the calculations in the spreadsheets.

1297. This argument of the claimants is based upon electronic versions of the spreadsheets, which showed how the investment returns of $674,819 in the spreadsheet of 13 September 2002 and of $828,016 and $856,828 in the spreadsheets of 1 October 2002 were calculated. The $674,819 is shown to include an item for "other fees" of $170,000. Mr. Privalov's evidence was that, when he started to prepare spreadsheets of this kind, Mr. Nikitin told him that this amount should be deducted in making his

calculations of what Mr. Nikitin was paid or to be paid. He had expected that it would include a fee for him, but he was told only later that he was to be paid $145,000 in respect of the "Fili" transaction and other transactions, and said that Mr. Nikitin spoke only vaguely about what "other fees" were included in the $170,000. The sums of $828,016 and $856,628 included by way of "financing fees" both the $170,000 and a further sum of $25,000. Mr. Privalov's evidence was that Mr. Nikitin told him that the $25,000 should be included in the calculations for the earlier transactions and the November SLB transactions, because Mr. Borisenko would be receiving fees in relation to them.

1298. It was unfortunate that the claimants were very late in disclosing both hard copies of these spreadsheets and the electronic data supporting them. The hard copies were disclosed on 28 September 2009, about 2 days before the trial started, the electronic information was disclosed only in October 2009 and Mr. Privalov's evidence about these documents was given only in a witness statement dated 26 October 2009. Moreover, it is said that the claimants have not been able to recover earlier spreadsheets relating to the "Fili" SLB transaction and the July SLB transactions, which would have shown whether, consistently with Mr. Privalov's account, they included in the calculations fees of $170,000, but not fees of $25,000: that is to say, whether, consistently with his account (i) the sum of $170,000 was included before Mr. Privalov had, as he said, been told that he was to be paid $145,000 for each transaction, and (ii) the sum of $25,000 was added into only later calculations of the return on the "Fili" transaction and July SLB transactions.

1299. I have rejected Mr. Privalov's evidence about discussions in Mr. Skarga's presence at Mr. Nikitin's dacha in which he was promised payments of $145,000. The explanation for the sums included in the spreadsheets as "other fees" and "financial fees" depends upon Mr. Privalov's evidence about them and nothing in the figures themselves appears to me significantly to corroborate it. The defendants' submission was that the most obvious explanation for including the sum of $170,000 in the calculation is that Mr. Privalov recognised that sundry fees would be incurred in transactions of this kind, and he included as a rough guess the equivalent of 1% of the original sale price for the "Fili" to recognise them; that the sum was so approximate that it was not adjusted to reflect the lower sale price of the later vessels; and that the further sum of $25,000 was later added when it appeared likely that the $170,000 would not be enough to cover the expenditure. This is speculation, although I agree that, if it were necessary to speculate, it is a possible explanation for the figures in the absence of credible evidence. However, the figures simply cannot be explained, and they provide no assistance in assessing the credibility of Mr. Nikitin's explanation for the payments to Sisterhood.

1300. I come to Mr. Nikitin's explanation for the sham service agreements between Sisterhood and Mobil Services Inc. According to Mr. Nikitin, when Mr. Privalov requested the agreements, he arranged for his office to produce them. (As he said in cross-examination, "So he asked and we provided, and that's it"). He knew that Mr. Privalov wanted them in connection with the payments to Sisterhood, but he could suggest no reason that Mr. Privalov might wish to be paid under sham services agreements, other than a possible plan to avoid or to evade paying tax. On 1 November 2002 Mr. Privalov sent to Mr. Pavlov details of his account at RBS in the Isle of Man. On 19 November 2002 he sent Mr. Nikitin details of Sisterhood's

account at Wegelin, and I infer that he did so because, for whatever reason, Mr. Nikitin was to pay money to Sisterhood.

1301. As I have said, Mr. Nikitin accepted that he instructed Mr. Pavlov that the counterparty was to be Mobil Services Inc. He said that Mr. Smirnov owed him money amounting, he thought, to "around $2 million", and he asked Mr. Smirnov to pay $1.6 million to Sisterhood. Mr. Smirnov told him that the payment would be made by Mobil Services Inc. Mr. Nikitin did not recall why Mr. Smirnov owed him this money, except that he said that "it may be either an account balancing exercise, or some business which he decided or his partners decided to cut me in…". Mr. Nikitin's pleaded case, however, is different, and is that Mr. Smirnov advised Mr. Nikitin that he would pay a bonus "in an amount which was in excess of US$1,599,000 … on account of various services provided by Mr. Nikitin and his companies to the Kinex Group": see response 3.1 and 3.2 of the further information provided under CPR part 18 dated 11 January 2006. Mr. Nikitin's evidence that the plea was "an attempt to explain how we operated in cutting in the deals", but I am unable to accept that as a credible explanation.

1302. Two other payments were made by Mobil Services Inc. (or from an account in that name). On 5 November 2002, $312,500 was transferred by them to Milmont. Wegelin's credit note referred to another service agreement and invoice, but they are not in evidence. On 6 February 2003, $300,000 was transferred to Laverne. There was a purported agreement dated 3 January 2003 between Mobil Services Inc. and Laverne, which was in terms materially similar to those between Mobil Services Inc. and Sisterhood. Mr. Nikitin said that Mr. Smirnov made these payments to discharge what was due from him to Mr. Nikitin, and the $300,000 was paid to Laverne in accordance with Mr. Privalov's direction to Mr. Nikitin as a reward for introducing him to Galbraith's, and the $312,500 was paid after Mr. Smirnov had told Mr. Nikitin that he was going to pay him "somewhere around $2 million".

1303. I am unable to accept this account of Mr. Nikitin about why these payments were made. Although I recognise that his account is consistent with what Mr. Privalov said at the meeting at the offices of Lawrence Graham on 12 July 2006, there is no documentary evidence or other evidence that supports either his pleaded case or his oral evidence. There is no explanation for why Mr. Smirnov paid not some $2 million, as he had said he would, but $2,212,500. There is no explanation about why he chose to pay $312,500 in November 2002 other than Mr. Nikitin's conjecture that he might have paid money "as and when it was available". The sum of $312,500 is a curious amount to pay on that basis, and Mr. Smirnov had no apparent difficulty in paying $1.6 million a few weeks later. There is no explanation about why Mr. Smirnov decided to use the name of Mobil Services Inc. to make the payments under sham agreements.

1304. I reject Mr. Nikitin's explanation for the payments of the sums of $780,000 and $819,000. I conclude that they were payments made by Mr. Nikitin to Mr. Privalov for assistance that he had given or was going to give (or both) in respect of one or more of the schemes. They were made under the sham agreements in order to conceal them. I shall return to the payment of $300,000 to Laverne when I consider the claimants' allegation that Mr. Nikitin paid bribes to Mr. Borisenko.

<u>The payments in December 2001 and October 2002</u>

1305. I come back to three relatively small payments made in December 2001 and October 2002. On 14 December 2001 Milmont, on Mr. Nikitin's instructions, paid $25,000 into Getwire's account at Credit Suisse. The claimants plead that it was by way of a reward or bribe for his assistance in relation to the Clarkson arrangement and also in relation to the Tam commissions scheme, but there was no evidence that supported the pleaded case. Mr. Privalov's first evidence about this payment, in a statement dated 29 May 2009, was that he had previously forgotten about this payment but that he understood it to have been "a further bonus for all the assistance to Nikitin throughout [2001]". Under cross-examination he said that he had no real recollection about why this payment was made.

1306. On 18 December 2001 Meino paid $30,000 (less bank charges) into the account of Continental at RBS in the Isle of Man. On 14 December 2001 Mr. Privalov had sent to Mr. Nikitin details of the account, and Mr. Nikitin gave Wegelin instructions for the transfer on 17 December 2001. The claimants' case about this payment has not been consistent. They originally pleaded that it was a reward for carrying out Mr. Skarga's instructions in relation to the Tam commissions. They amended this pleading to allege that it was paid in connection with both the Sovcomflot Clarkson commissions scheme generally and the Tam commissions scheme: see paras 79A.23A(5) and 96.4-96.4 of the particulars of claim in the Fiona action. Mr. Privalov's evidence, however, was that this was a "small bonus" which was not made explicitly in relation to any particular transaction, but which he believed was for assistance in relation to the Clarkson arrangement and for "facilitating" payments to Mr. Nikitin. I am unable to accept that explanation. There was no reason that, after Mr. Nikitin had arranged other, generally much larger, payments for Mr. Privalov in November and December 2001, he should decide to pay this additional amount as a "small bonus".

1307. On 28 October 2002 Kosta paid $60,500 into Mr. Privalov's account with RBS in the Isle of Man. The claimants pleaded that this was a payment for Mr. Privalov's assistance in relation to the Clarkson commissions scheme: see pars 79A.23A(6) of the particulars of claim in the Fiona action. Mr. Privalov's evidence, however, was that it was made for assistance "in relation to the Galbraith's arrangement … and in relation to the Clarkson, Norstar and John Sawyer transactions". In cross-examination he accepted that he had no clear recollection of this payment.

1308. I have explained that I reject Mr. Nikitin's evidence that he allowed Mr. Privalov to deposit sums on the Milmont account, and I therefore reject his suggestion that the payments of $25,000 and $60,500 were by way of part repayment of a sum of $105,000 that he had put into Milmont's account from the purchase of hull no 1231. On the other hand, I am unable to place any reliance upon Mr. Privalov's evidence about any of these payments. I infer that Mr. Nikitin arranged these payments in order to pay Mr. Privalov for some services or assistance that he had provided, but I am unable to make any other findings about why they were made.

Grosvenor House Hotel meeting

1309. According to Mr. Privalov's evidence, Mr. Nikitin promised him the payment of $30,000 in Mr. Skarga's presence at the Grosvenor House Hotel in London in December 2001. Mr. Skarga and Mr. Nikitin denied this, and Mr. Privalov's evidence is not corroborated. On the face of it, his account is improbable. He said

that Mr. Nikitin promised this payment, apparently without referring to the other payments that Mr. Privalov or his companies were receiving around this time. His evidence became the less credible when in cross-examination Mr. Privalov described how during the meeting, for no apparent reason, Mr. Nikitin wrote the sum of $30,000 on a piece of paper and showed it to Mr. Privalov. I reject Mr. Privalov's evidence about this. There is no credible evidence that Mr. Nikitin spoke to Mr. Privalov of this or any other payment in the presence of Mr. Skarga.

Payments to Sisterhood in December 2003 and December 2004

1310. On 24 December 2003 Wegelin, upon Mr. Nikitin's instructions, made a payment from Amon to Sisterhood's account of $300,000. The claimants' pleaded case was originally that this was a payment made in respect of the newbuildings scheme. After an amendment made in July 2009 it is now pleaded that it was also paid for help with the Sovcomflot Clarkson commissions scheme: see para 79A.23A(7) of the particulars of claim in the Fiona action. However, Mr. Privalov's evidence did not support a contention that the payment was made in respect of any particular scheme.

1311. Mr. Nikitin's explanation for this payment was that he was paying for work that Mr. Privalov had done for him to reduce the interest paid on the funding for the "Fili" SLB transaction and the July SLB arrangements. The funds to support the transactions had been borrowed from BCV at a fixed rate of interest. In about April 2003 BCV decided to close their shipping desk, and intended to transfer the loans to BNP Paribas. Mr. Privalov learned this and he realised that this provided an opportunity for the Investors to change the terms of the loans to pay interest at a floating rate, which would be more advantageous for the borrowers, without incurring the costs normally charged by banks for such a change. He approached the shipping desk of BCV to prevail upon the bank's treasury desk to change interest arrangements and to bear part of the costs involved in doing so. BCV reached an agreement about this at the beginning of July 2003, as is reflected in an e-mail from Mr. Caze to Mr. Privalov dated 1 July 2003.

1312. Mr. Privalov's evidence was that he dealt with Mr. Caze about this, but he said that it did not take much of his time, and in his witness statement he said that he did not ask to be paid for his work. However, after agreement had been reached with BCV Mr. Privalov sent Mr. Nikitin spreadsheets showing the savings that had been made, which indicated savings of some $884,700 in respect of the funding for the "Fili" SLB transaction and savings of $2.04 million in respect of the funding for the July SLB arrangements. He later sent updated versions of the spreadsheets. (In the event, because the SLB arrangements were terminated in 2004, the savings were less than anticipated, but the change to a floating rate of interest was arranged, the spreadsheets were sent and the payment of $300,000 by Amon on 24 December 2003 was made when it was not known that the SLBs would be terminated early.) Mr. Privalov accepted in cross-examination that he sent the spreadsheets because he was expecting to be paid by Mr. Nikitin, and he wanted Mr. Nikitin to see that his work had been valuable.

1313. On 2 December 2004 Wegelin, upon Mr. Nikitin's instructions, made a payment from Milmont to Sisterhood's account of $200,000. The claimants' pleaded case was originally that this payment was in respect of the newbuildings scheme and the termination of the SLB arrangements: see paras 164.6.3-5, 199.2, 262 and 286 of the

particulars of claim in the Fiona action. However, again Mr. Privalov's evidence did not support the pleaded case. He simply said that the payment was for assistance that he gave in relation to transactions involving Sovcomflot and NSC, but not that it was associated with specific transactions.

1314. Mr. Nikitin's explanation for this payment was that, when Standard Maritime was established in 2003, he was concerned that the arrangements for the group and their accounting procedures should be such as would enable it to raise finance and develop their shipping business; and the payment was for Mr. Privalov's advice in relation to setting up proper accounting arrangements for the Standard Maritime group. There is no dispute that to this end Mr. Privalov introduced Mr. Nikitin to Ernst & Young and attended one meeting with them. Mr. Nikitin said that Mr. Privalov's assistance went further in that Mr. Privalov had helped to "set up and present" the accounts of Standard Maritime, had assisted Mrs Malysheva to have documents prepared in a form in which they could be audited, and had not only consulted with Ernst & Young but found other accountants for Standard Maritime in Geneva. There is no documentary evidence or other corroboration that Mr. Privalov did a substantial amount of work of this kind, and, while he might have done more than attend a single meeting with Ernst & Young, I do not accept that he spent much time dealing with these matters. If he had, documents would have reflected it.

1315. I am unable to accept that the payment to Sisterhood in December 2003 was only for Mr. Privalov's work in relation to changing the arrangements for interest on the borrowings, or that the payment in December 2004 was only for assistance with the accounting arrangements for Standard Maritime. In the case of the payment in December 2003, it was not made until 5 or 6 months after the interest arrangements were revised. While I recognise that any payments for Mr. Privalov's services might have reflected their value to Mr. Nikitin rather than the time spent by Mr. Privalov, I consider that the amounts paid were far more than could credibly be attributed to the services that Mr. Nikitin described. I conclude that these payments were made by Mr. Nikitin to reward Mr. Privalov for the assistance that he was providing to Mr. Nikitin generally, including his assistance in relation to the various dealings that Mr. Nikitin had with Sovcomflot and NSC. Mr. Nikitin had in previous years paid Mr. Privalov in relation to such assistance. I am unable to accept that in 2003 and 2004 Mr. Nikitin no longer arranged payments to Mr. Privalov in relation to his dealings with Sovcomflot and NSC, and confined the payments to other assistance that Mr. Privalov provided.

1316. I conclude that Mr. Nikitin arranged payments of at least some $3 million to be made between 2001 and 2004 to Mr. Privalov and his companies. I reject his explanation for the payments, and conclude that he was arranging them to reward Mr. Privalov for the assistance that he provided to Mr. Nikitin in relation to his dealings with Sovcomflot and NSC, and to encourage him to continue to assist him. Mr. Nikitin went to some lengths to disguise the payments by routing some through Mr. Cepollina's companies and making others under cover of the sham agreements with Mobil Services Inc. There is no credible evidence that Mr. Skarga knew of these payments, and the claimants have not established that Mr. Skarga was party to them being made or that he knew that Mr. Privalov and his companies were receiving payments.

Payments to Sisterhood in 2005

1317. Mr. Nikitin also arranged for Milmont to pay Sisterhood $500,000 on 12 January 2005 and for Kosta to pay Sisterhood $500,000 on 11 March 2005. I shall refer to these payments later. It suffices here to say that, although the claimants plead that they were made by way of bribes for assistance in relation to the transactions (or some of the transactions) which the claimants allege to have been corrupt, there was no evidence that supported this allegation and I reject it. Indeed, this was not the explanation for them that Mr. Popplewell advanced in his closing submissions. As I shall explain, whatever the reason for them, I do not consider that the payments are relevant to what I have to decide.

Mr. Privalov's holidays

1318. I add for the sake of completeness that Mr. Nikitin also provided Mr. Privalov with other benefits, including a holiday in St Moritz in March 2004 and holidays with his wife in Sardinia and in Milan and Rome in 2003 and 2004. Mr. Nikitin paid for Mr. Privalov to go to Saariselka, Finland and to Capri on what were described as "seminars". In view of my conclusions about the payments to Mr. Privalov, Getwire and Sisterhood, I do not need to consider further the holidays and trips, or the fact that Mr. Nikitin paid for them.

The payments to Laverne

1319. In December 2002 Laverne, which was controlled by Mr. Borisenko and incorporated in the BVI, opened an account with Wegelin, and Mr. Borisenko had a mandate to operate it. The signatures on behalf of Laverne to the contract for opening the account were dated 12 December 2002 and Mr. Baum's signature was dated 20 December 2002. Sisterhood paid $444,000 into the account on 21 January 2003; $300,000 was paid into it by (or in the name of) Mobil Services Inc. on 6 February 2003; and $300,000 was paid into it by Milmont on 14 January 2004.

1320. I required Mr. Borisenko and Mr. Privalov to give their evidence in chief about how the account was opened and about the payments made into it orally (and not by simply verifying their witness statements) because they had given inconsistent accounts and because of the importance that the parties attached to the issues about the payments. The claimants say that the payments show Mr. Nikitin and Mr. Skarga were engaged in bribing Mr. Borisenko in order to win his support for their dishonest schemes, but the defendants say that the evidence of Mr. Borisenko and Mr. Privalov shows that they have together concocted dishonest and untruthful accounts to support the claimants.

1321. Mr. Borisenko's evidence about how these payments came about was as follows. In February or March 2002 he complained to Mr. Skarga that he had not received from Sovcomflot bonuses to which he was entitled, and that in 1999, 2000 and 2001 he had been underpaid by roughly $200,000. Mr. Skarga promised to consult with members of the General Board, but Mr. Borisenko did not believe that he did so. Instead, Mr. Skarga told him that he would be compensated "from external sources", which Mr. Borisenko understood to mean that he would be paid by Mr. Nikitin, Mr. Malov and Mr. Katkov because Mr. Skarga was closely associated with them; and Mr. Borisenko

told Mr. Skarga that he would "act accordingly". In his evidence in chief he said that this discussion was in May 2002, but later he placed it earlier, before 22 April 2002, the date when, on his account, Mr. Privalov first told him about the proposed "Fili" SLB transaction. Mr. Borisenko explained that he was prepared to accept money in these circumstances because he thought that he deserved it and because he thought that otherwise Mr. Skarga would have him dismissed. Accordingly, he assured Mr. Skarga that he could rely upon his support; and from that time he assisted Mr. Skarga in the various schemes regardless of Sovcomflot's best interests. He first did so in relation to the "Fili" SLB transaction in May 2002. Thus, it was Mr. Borisenko's evidence, and the claimants' case, that he came to be a party to the conspiracy not because Mr. Nikitin and Mr. Skarga decided to recruit him to it and sought him out to help, but because Mr. Skarga, apparently without consulting Mr. Nikitin, asked for his assistance when an opportunity happened to present itself. On the face of it, this appears to me rather improbable.

1322. According to Mr. Borisenko, towards the end of November 2002 in a conversation in his office at Sovcomflot, Mr. Skarga told Mr. Borisenko that the "partners" had decided to pay him a bonus and asked Mr. Borisenko whether he had an off-shore bank account to receive it. When Mr. Borisenko said that he had not, Mr. Skarga promised to arrange an account for him, and about two weeks later he provided him with Mr. Baum's name and his mobile telephone number. On 4 December 2002 Mr. Borisenko travelled to Switzerland on behalf of Sovcomflot to meet bankers. He met Credit Suisse in Zurich on 5 December 2002 and BNP Paribas in Geneva on 6 December 2006. When in Zurich, Mr. Borisenko telephoned Mr. Baum, who met him in the lobby of his hotel, the Baur au Lac, on 5 December 2002 at about 10.00 am or 10.30 am.

1323. The first account that Mr. Borisenko gave about this meeting in cross-examination was that, to his surprise, Mr. Privalov joined them, and that this was when he first learned that Mr. Privalov had an account with Wegelin and knew Mr. Baum. Although he "realised that [Mr. Privalov had] similar arrangements with Mr. Skarga that I have", he said that he never spoke to Mr. Privalov about this. They went to Wegelin Bank together and had separate meetings with Mr. Baum. Mr. Baum invited Mr. Borisenko to set up Laverne, explaining that the company would have nominee directors but that he would be the beneficial owner. Mr. Borisenko agreed to this proposed arrangement, and signed the necessary papers.

1324. When Mr. Borisenko was first cross-examined, he said that "just after" the meeting with Mr. Baum he and Mr. Privalov had lunch with representatives of Credit Suisse at a restaurant, at quite an old building on the bank of a river which he described in some detail. At around 2.00 pm he and Mr. Privalov took a train to Geneva, where they stayed at the Hotel le Richmonde. However, he was then asked about an e-mail in which arrangements had been made for him to meet Dr Wetter of Credit Suisse for breakfast at 8.00 am. He changed his evidence about these meetings, and accepted that he probably did not have lunch as he had described, and that he was not sure whether Mr. Privalov had been at the meeting with Credit Suisse in Zurich. Mr. Privalov, in his evidence, did not support this account of meeting Mr. Borisenko and Mr. Baum in December 2002.

1325. As I have said, $444,000 was paid into the Laverne account from the Sisterhood account on 21 January 2003. Mr. Borisenko said that he knew that this sum would be

transferred because, shortly after he returned from Switzerland, Mr. Skarga had told him that he would receive a bonus, had written the amount of $444,000 on a "post-it" note, and had showed it to Mr. Borisenko. Mr. Skarga did not tell him who would make this payment, but Mr. Borisenko had supposed that it would be, as he put it, from "Mr. Skarga's partners", that is to say from Mr. Nikitin, Mr. Malov and Mr. Katkov, and that it was to compensate him because he had not received his proper bonuses for 2000 and 2001. Mr. Privalov's evidence was that Mr. Nikitin had instructed him to make the transfer from monies paid into the Sisterhood account by Mobil Services Inc, and that he understood that Mr. Borisenko was being paid for helping Mr. Nikitin, in particular with the SLB arrangements.

1326. According to Mr. Borisenko the payment into the Laverne account of $300,000 on 6 February 2003 followed a further meeting with Mr. Skarga that took place at around the end of January or the beginning of February 2003. At it Mr. Skarga told Mr. Borisenko that he was entitled to a bonus for 2002 and again wrote on a "post-it" note the sum that he was to be paid, on this occasion $300,000. Some time later, Mr. Baum confirmed to Mr. Borisenko that the payment had been made. The further payment into the account of $300,000 on 14 January 2004 followed a similar conversation with Mr. Skarga about a bonus for 2003, Mr. Skarga again indicating the amount on a "post-it note".

1327. Mr. Borisenko said that he considered these payments to be "not normal" and to be "improper", and that he understood that in return he was to co-operate with and support Mr. Skarga's proposals for transactions with Mr. Nikitin. The money remained in the account of Laverne in Wegelin Bank. Mr. Baum had the discretion to invest the money, and from time to time Mr. Borisenko gave him instructions by telephone about that.

1328. According to Mr. Borisenko, after he had opened Laverne's account, he did not meet Mr. Baum again until March 2004 when they met in St Moritz. I reject that evidence, and conclude that on 25 February 2003 Mr. Borisenko and Mr. Privalov both met Mr. Baum and signed forms authorising him to accept investment instructions sent by fax. Mr. Borisenko claimed not to remember that he was in Zurich in February 2003, but Mr. Privalov confirmed that on 25 February 2003 Mr. Borisenko met Mr. Baum there. He said that he had been at the Hotel Baur au Lac with Mr. Borisenko and Mr. Skarga when they were in Switzerland on a trip to Davos at the invitation of Credit Suisse. Mr. Privalov said that on that occasion he and Mr. Borisenko had met Mr. Baum in the lobby of the hotel and gone to Wegelin's offices together. He said that Mr. Skarga "should be aware" of the meeting with Mr. Baum because it was discussed openly. Mr. Skarga was in Zurich on 25 February 2003, but there is no suggestion that he had any dealings with Mr. Baum or Wegelin, and I do not accept Mr. Privalov's evidence that he knew about Mr. Borisenko and Mr. Privalov meeting Mr. Baum. Mr. Privalov first gave this account of meeting Mr. Baum with Mr. Borisenko in a statement served only on 26 October 2009 after Mr. Borisenko's evidence about such a meeting in December 2002 had been discredited in cross-examination, and I conclude that Mr. Privalov's evidence about this was untrue.

1329. Thus, it is the claimants' case that Mr. Skarga was involved in arranging for the Laverne account to be opened and payments to be made into it. The defendants deny this. There was no evidence from Mr. Baum, and no witness from Wegelin gave oral evidence. However, Mr. Nikitin and the Standard Maritime defendants put in

evidence under the Civil Evidence Act 1995 a letter dated 27 May 2009 signed by two officials of the Wegelin bank, Mr. Tihomir Katulie and Mr. Raphael Jaeger, both of whom are attorneys-at-law. The letter states that, "According to our records Mr. Borisenko was introduced to Wegelin & Co by Mr. Yuri Privalov". Mr. Katulie and Mr. Jaeger also stated in a letter dated 19 March 2009 that Wegelin have never held an account in the name of Mr. Skarga or in the name of a company in which he is or was a beneficial owner or in respect of which he holds or has held a Power of Attorney or in respect of which he was or is an authorised signatory. There is no proper reason to doubt what Mr. Katulie and Mr. Jaeger state, and I accept it.

1330. Mr. Skarga denied that he had met Mr. Baum or had any dealings with him or with Wegelin in 2002 or 2003, and denied that he was involved with the payments into Laverne's account or knew anything of these matters. He accepted that he was on holiday in Switzerland in December 2002 and January 2003, but said that he went on holiday on 27 December 2002, after the Laverne account was opened. He also accepted that on 8 and 10 January 2003 he spoke to Mr. Baum by telephone. His explanation for these calls was as follows: he was in Klosters, and Mr. Nikitin had also been at the resort but staying at a different hotel. Mr. Nikitin decided to move to a different resort where there was better snow for cross-country skiing. At about the same time Mr. Gref and Mr. Kozak decided at short notice to join Mr. Skarga in Klosters and they were able to use the rooms that Mr. Nikitin had vacated. Mr. Baum had booked the hotel for Mr. Nikitin, and Mr. Nikitin gave Mr. Skarga the telephone number of Mr. Baum in case the hotel was concerned about Mr. Gref and Mr. Kozak taking over the reserved rooms. Mr. Skarga needed to telephone Mr. Baum twice because, as a result of language differences, he had difficulties in communicating with the hotel receptionist, first about a friend of Mr. Gref arriving at the hotel, and again when Mr. Gref and Mr. Kozak were leaving the hotel and, as I understood the evidence, the receptionist needed reassurance that the account would be paid.

1331. When I first heard Mr. Skarga's explanation for his telephone conversations with Mr. Baum during his cross-examination, it struck me as improbable, but on reflection I accept it. On any view the telephone calls are unlikely to have been about opening the Laverne account, which had already been completed, and I find it difficult to suppose that Mr. Skarga was speaking to Mr. Baum about a banking matter, given that he had no account with the bank and no mandate to operate an account. I cannot accept that Mr. Baum would have discussed with Mr. Skarga the affairs of Mr. Borisenko or Laverne or any other customer without authorisation to do so, and there is no suggestion that he was so authorised. It is possible that Mr. Skarga was simply giving information to Mr. Baum about a payment into the Laverne (or some other) account without seeking any information or response from him, but that does not seem to me probable. Further, Mr. Dunning identified two pieces of evidence which provide some limited support for Mr. Skarga's account. First, a debit advice dated 23 January 2002 shows a withdrawal from Milmont's account with Wegelin of CHF21,774.70, which is described as "Cash withdrawal: Balance Hotel Vereina", a hotel in Klosters. This suggests (although the reference to "cash withdrawal" is rather obscure) that Mr. Nikitin paid from the Milmont account a "balance" of a hotel bill. Secondly, an e-mail sent to Mr. Nikitin on 7 January 2003 shows that Mr. Nikitin had been in Klosters but had left by then.

1332. I reject as incredible Mr. Borisenko's evidence about his complaints about bonuses, about opening the Laverne account and about the payments into it. He said that he first complained to Mr. Skarga about his bonuses because they were not being paid in accordance with the policy that had been adopted by Sovcomflot. In his witness statement he had also said that he was unhappy with his general level of remuneration, but he did not mention this in his evidence in chief and in fact his salary had been increased by more than 20% since August 2000. If Mr. Borisenko really had had a complaint about his bonuses, the other members of the Executive Board would have been in a similar position, but Mr. Borisenko's evidence was that he alone complained to Mr. Skarga and that he did so privately. In fact, Mr. Borisenko had no basis to complain that he was underpaid by $200,000 or any amount, Mr. Borisenko could not have believed that he had been underpaid, and, if he had made a complaint of this kind, Mr. Skarga would simply have dismissed it as unfounded.

1333. On 29 December 1999 Sovcomflot's General Board had adopted a policy ("the Policy") under which members of the Executive Board were to be awarded bonuses at the discretion of the General Board from a "bonus pool" calculated on the basis of specified indicators and set aside on a quarterly basis. The indicators included the profit of the Sovcomflot company (not the group) and the value of their net assets. The bonus fund was calculated in 2000 and the calculations were appended to the Audit Report of the Audit Committee of 28 March 2001. The General Board first decided to award a bonus under the Policy at their meeting on 7 April 2000. At their meeting on 22 September 2000 the General Board decided to make a payment into the pool and also awarded a further bonus to members of the Executive Board. In late 2000 or early 2001 Sovcomflot produced a forecast of management expenditure that included an estimate of the bonus pool in the sum of 19.935 million roubles. This had been duly calculated on basis of the Sovcomflot company's results and not the group's results. Three further bonuses, each of the equivalent of a month's salary, were awarded by the General Board at meetings on 12 April, 11 September and 25 December 2001. At the meeting on 25 December 2001 the General Board also approved estimates of Sovcomflot's expenditure for 2002, and the briefing note stated a bonus pool figure of 20 million roubles calculated on the basis of the accounts of the company, not of the group.

1334. Mr. Borisenko's account of his complaint about not receiving his bonus entitlement must be considered against this background. It became unclear during his evidence quite what his supposed complaint was. Although he said in his evidence in chief that the payments into the bonus pool depended upon the profitability of the company, in cross-examination he said that they should have been calculated on the basis of the group's consolidated accounts. I reject that evidence, and I cannot believe that Mr. Borisenko ever thought that the group's accounts should have been used. In re-examination he said that in fact the "bonus pool" was not established and the General Board did not approve bonus payments by reference to a bonus pool or indeed, as I understood what he was saying, by reference to the Policy at all. Again I cannot accept that Mr. Borisenko believed that either in 2002 or when he gave evidence. In coming to this conclusion I do not overlook that, after Mr. Borisenko's evidence was finished, the claimants served a witness statement of Mr. Khlyunev dated 3 November 2009 which described the bonuses paid to Mr. Borisenko in 2000 and 2001 and how the pool was calculated. He said that, as far as he was aware, the Policy was never

observed when calculating bonuses, and he knew of no calculations of a bonus pool in accordance with the Policy. This evidence was inconsistent with the documents and I reject it.

1335. According to Mr. Borisenko, Sovcomflot paid the executives no bonus in 1999, and they were paid the equivalent of 3 months' salary in 2000 and two months' salary in 2001. He said, however, that he had been paid substantially less than his bonus entitlement and, before complaining to Mr. Skarga, he had calculated that the shortfall might have been some $200,000 for each year. He could not have had any complaint about 1999 since the policy was not adopted until the end of the year, as Mr. Borisenko, being himself the author of the Policy, was certainly aware. In fact Mr. Borisenko and other members of the Executive Board had been awarded in 2000 two bonuses amounting in total to the equivalent of one month's salary and in 2001 three bonuses amounting in total to the equivalent of three months' salary. Mr. Borisenko's evidence was that in his conversation with Mr. Skarga he had complained about receiving only two bonuses in 2001. Whether he meant that he spoke of two instalments of bonus or bonuses amounting to the equivalent of two months' salary, I reject his evidence. Mr. Borisenko sought to explain this in cross-examination by saying that he had been misinformed by Sovcomflot's accounting department and that the payment of the bonus voted by the General Board on 25 December 2001 had been delayed. I cannot accept these explanations because Mr. Borisenko and Mr. Skarga would have known that three bonuses were approved by the General Board in 2001 and would not have discussed any complaint raised by Mr. Borisenko on the false, or at least the unrealistic, basis that Mr. Borisenko described.

1336. Mr. Borisenko's evidence is further undermined by his claim that he calculated the shortfall in his remuneration, however roughly, at $200,000. He could not have done so. If the calculation had been made on the basis of the accounts of the Sovcomflot company in accordance with the Policy, the pool for division between all the members of the Executive Board would have been something like $200,000 per year. If Mr. Borisenko had been making his calculation on the basis of the Group accounts, the underpayment would have far exceeded $200,000 per year.

1337. The different accounts given by Mr. Borisenko about his introduction to Mr. Baum and the opening of the Laverne account were entirely discredited in cross-examination when he was presented with documentary evidence that, as he accepted, showed that he had met Dr Wetter at breakfast and not at lunch. I cannot accept Mr. Privalov's account of a meeting with Mr. Baum and Mr. Borisenko at the Hotel Baur au Lac on 25 February 2003, but in any case that meeting would not have been about opening the account. By then, the account was operating and $444,000 had been paid into it.

1338. The only evidence that Mr. Skarga knew of the payments into the Laverne account was that of Mr. Borisenko and I do not accept it. I accept Mr. Skarga's evidence that he did not introduce Mr. Borisenko to Wegelin, that he had nothing to do with him opening the Laverne account, and that he did not know about it.

1339. Mr. Privalov said in his evidence in chief that Mr. Nikitin directed him to make the payment of $440,000 to Laverne from the monies received by Sisterhood from Mobil Services Inc. However, in cross-examination he contradicted himself and he denied that he gave instructions for the transfer and even that he knew of the payment until he received statements of the Sisterhood account from Wegelin in 2005. I am

unable to accept the evidence of Mr. Privalov and Mr. Borisenko about this payment, and conclude that the claimants have not shown that Mr. Nikitin had any involvement with it or knowledge of it. It was made by Mr. Privalov from Sisterhood. If Mr. Nikitin had wished to make a payment for Mr. Borisenko, there was no reason that he should have channelled it through Sisterhood, rather than paid Laverne directly. The defendants sought to conjecture about why Mr. Privalov had made it, but they had no evidential basis for doing so and I am unable to make any finding about that.

1340. I come to the payment of $300,000 into Laverne's account on 6 February 2003, which was made by Mobil Services Inc. Like the payments by Mobil Services Inc. to Sisterhood there was a fictitious services agreement between Mobil Services Inc. and Laverne, which was dated 3 January 2003 and whereby Laverne (as the "Executor") agreed to provide services of various kinds to Mobil Services Inc. Mr. Nikitin said that he requested Mr. Smirnov to arrange for the payment because Mr. Privalov asked to be paid in respect of the Galbraith's scheme, and Mr. Privalov nominated the Laverne account to receive the money. He denied knowing that Laverne was a company controlled by Mr. Borisenko. With regard to the further payment of $300,000 by Milmont to Laverne on 14 January 2004, Mr. Nikitin said that similarly it was a payment that he made for Mr. Privalov's assistance in relation to his assistance with the Galbraith's arrangement, and that he made the payment to Laverne because Mr. Privalov directed it to that account.

1341. I am unable to accept Mr. Nikitin's explanation that he arranged the February 2003 payment because of the arrangement with Galbraith's. Although Mr. Privalov had introduced Mr. Nikitin to Mr. Rokison and kept him informed about the business that NSC was discussing with Galbraith's, Amon had been paid less than $70,000 under the Galbraith's commission scheme by 3 February 2003. Mr. Nikitin said that he was nevertheless willing to pay Mr. Privalov because further payments from the Galbraith's arrangement were "in the pipeline" and because Mr. Privalov said that he would like to be paid $300,000, meaning, as Mr. Nikitin understood it, that he was in need of the money. It is true that Galbraith's were to pay Amon substantial sums ($192,500 per vessel) in respect of the refinancing arrangements for the Aframax vessels, hulls nos S182, S183, 1466 and 1467, which had been agreed in May 2002, that a memorandum of agreement had been signed for the sale of the "Burgas", which would in due course lead to Amon being paid $25,500, and that other sales were under discussion, but I cannot accept that Mr. Nikitin would have paid $300,000 in advance of receiving payments himself from Galbraith's, or that Mr. Privalov told Mr. Nikitin or Mr. Nikitin would have believed that he needed money so shortly after the large payments to Sisterhood in December 2002.

1342. I therefore reject Mr. Nikitin's evidence about why he arranged this payment, and I also conclude that he arranged for this payment to be made by Mobil Services Inc (or in that name) and under a sham agreement for the same reason as he had so made the two payments to Sisterhood on 23 December 2002, that is to say in order to disguise that it was made by one of his companies. However, it does not follow that Mr. Nikitin knew or intended that the payment should be for the benefit of Mr. Borisenko rather than Mr. Privalov. This part of the claimants' case depends entirely upon the evidence of Mr. Privalov and Mr. Borisenko, and I have concluded that their evidence was untruthful on so many points, including their evidence about the establishment of the Laverne account, that I simply cannot rely upon it. I do not consider that the

claimants have shown that Mr. Nikitin knew that the payment was for Mr. Borisenko's benefit. I add that, even if I had reached a different conclusion about Mr. Nikitin's knowledge about this, it would not have affected my findings about Mr. Skarga.

1343. As for the January 2004 payment, having rejected Mr. Nikitin's explanation that the earlier payment was in connection with the Galbraith's arrangement, I am sceptical of his similar explanation for the later payment. However, the reason that the payment was made is not important because again there is no convincing evidence that Mr. Nikitin knew that the payment was made for Mr. Borisenko's benefit.

1344. Although Mr. Nikitin knew of the two payments of $300,000 to Laverne, the claimants have not shown that he knew that they were for Mr. Borisenko's benefit, rather than for that of Mr. Privalov. I conclude that in any event the claimants have not shown that Mr. Skarga knew of the payments to Laverne, or of any payments for Mr. Borisenko's benefit.

The allegations that Mr. Skarga received bribes

1345. I come to the claimants' allegation that Mr. Skarga received bribes from Mr. Nikitin and the Standard Maritime defendants. Their specific allegations are that he received bribes by way of (i) holidays provided for himself and his family, (ii) use of a credit card for which PNP paid and (iii) a payment of $100,000 or $110,000 in respect of a property at Donino, near Moscow. The claimants also plead (at paras 96.4 and 96.5 of particulars of claim in the Fiona action) that it is to be inferred that Mr. Skarga had an interest in Milmont or Meino or both, but I conclude that there is no proper reason for concluding that he did so. In my judgment, Mr. Nikitin owned Milmont from the date of its incorporation, and while, as I have explained, the ownership of Meino at least before 2003 is unclear, there is no convincing evidence that Mr. Skarga had an interest in it. More generally, the claimants plead that it is to be inferred that Mr. Skarga received further and more substantial benefits by way of bribes, but they have not been able to identify them.

1346. I shall consider the evidence about the payment relating to the Donino property later. Although Mr. Skarga was cross-examined at some length about other properties in which he and Mrs Skarga had lived, nothing indicates any bribery or other wrongdoing with regard to them. In particular:

i) Mr. Skarga was asked about whether Milmont paid part of the price for a flat at Komsomolskiy Prospect in Moscow, which was bought in Mrs Skarga's name in 2004. He denied it, and there is no evidence that they did so.

ii) The claimants disavowed in their opening submissions that any wrongdoing is alleged in relation to a flat in St Petersburg that Mrs Skarga and others in her family bought in October 2001.

iii) When the St Petersburg flat was sold by Mrs Skarga in September 2004, she was helped in dealing with the documentation by Mr. Guskov, who later became the General Manager of Henriot and was then the owner and general manager of Global Marine Logistics. I accept that Mr. Guskov helped her simply as a family friend, and that this is not significant for present purposes.

1347. Mr. Skarga's evidence was that he had no bank accounts outside Russia before he came to live in England. He had and has accounts in different currencies with Bank Rossia and the National Reserve Bank in Russia. Mr. Skarga said in an affidavit dated 12 December 2006 that the credit balances in total amounted to less than the equivalent of $25,000. He also has accounts at the International Bank Moscow, but, as Mr. Skarga explained and I accept because no evidence suggests otherwise, they were only for the hire purchase of a car. He had an account at Vneshtorg Bank, into which his salary from Sovcomflot was paid.

1348. According to Mr. Skarga, he has disclosed all the bank statements that he has, and I accept that. The claimants submitted, however, that he has avoided obtaining from the banks further statements and other banking records because they would show payments from, or other evidence of corrupt dealings with, Mr. Nikitin, and he was cross-examined in some detail about what he had done to obtain documents from his Russian banks. In the case of Vneshtorg Bank, Mr. Skarga had said that he wished to obtain statements, partly in order to be able to demonstrate that he had withdrawn cash in order to reimburse Mr. Nikitin for holidays that Mr. Nikitin had arranged for him and his family. In any case, in view of the claimants' criticisms, towards the end of the trial, he successfully wrote to the bank and obtained statements that have now been disclosed. He explained that Bank Rossia and the National Reserve Bank told him by telephone that he had to attend the banks in person to obtain statements, and that, when he tested this by providing a written authority to his friend, Mr. Shorokhodov, to obtain statements from Bank Rossia in St Petersburg, they refused to provide them. He is not, of course, himself in a position to visit the banks in Russia.

1349. I am not persuaded by the claimants' criticisms of Mr. Skarga for not producing more bank statements or documentation from the Russian banks. I accept that he has had genuine difficulty in obtaining information from them. Moreover, he has been the subject of intense investigation by the Russian authorities as well as the claimants, and he might well have many proper reasons not to provide to the claimants information about his banking affairs. I am sceptical of the claimants' suggestion that an investigation of Mr. Skarga's Russian accounts is likely to provide evidence of corrupt payments. Mr. Nikitin operated through off-shore companies and off-shore bank accounts, and the claimants' case is that he arranged that payments to Mr. Privalov and Mr. Borisenko should be made into Swiss accounts in the names of off-shore companies. Mr. Privalov said that Mr. Nikitin preferred to use Swiss bank accounts to ensure secrecy. If Mr. Nikitin arranged payments to Mr. Skarga, they would not have been made into Russian bank accounts in Mr. Skarga's own name.

1350. Subject to the issues about holidays, the credit card and the payment said to relate to the Donino property, to all of which I refer below, there is no other evidence of payments made to Mr. Skarga or for his benefit. The defendants do not, of course, know and I cannot tell the full extent of the investigations that the claimants have made to find evidence that Mr. Skarga received bribes, but undoubtedly extensive efforts have been made to investigate Mr. Skarga's and Mr. Nikitin's financial affairs both by Sovcomflot themselves (including through the Project Sturgeon investigations) and by the Russian public authorities. For example, on 11 August 2005 the General Prosecutor's Office of the Russian Federation assigned six investigators headed by an "investigator for particularly important cases" to the investigation into "deceit by an organised group on [Sovcomflot]". In the course of

the investigation, on 17 November 2005 and subsequently, the General Prosecutor made requests of the Swiss Authorities under international procedures for mutual legal assistance, and as a result obtained banking information, including bank statements from Wegelin in relation to accounts of Meino, Milmont, Standard Maritime and Sisterhood, from Credit Suisse in relation to accounts of Standard Maritime and Mr. Nikitin and from BCV in relation to accounts of Mr. Privalov. Despite their investigations and the resources available to them, the Russian authorities have apparently not found evidence showing significant financial dealings between Mr. Skarga and Mr. Nikitin. The claimants, for their part, have identified payments to Mr. Privalov and to companies controlled by Mr. Privalov and Mr. Borisenko, but not to Mr. Skarga or any company with which there is credible evidence that he is associated.

1351. The defendants deny that Mr. Skarga received substantial benefits from Mr. Nikitin. Mr. Skarga made disclosure in December 2006 of modest assets, and the claimants have not shown that he has other assets that he concealed. There is, as Mr. Dunning pointed out, no evidence that he lived extravagantly. On the contrary, his wife, a neurologist, still lives in the flat at Komsomolskiy Prospect with their three children, and supports the family with her salary and income from letting out another flat. The flat where she lives was bought in her name in early 2004 for the equivalent of about $600,000 with the help of a loan from a bank of some $500,000. In contrast, I observe in passing, Mr. Privalov lived in a London house that in 2003 was worth some £2 million.

Holidays

1352. Over the years before Mr. Skarga was appointed as Sovcomflot's Director-General, Mr. Nikitin had developed the practice of providing family holidays for Mr. Skarga and his family at his own expense. It has not been suggested that Mr. Nikitin was then doing so for improper reasons or that he was motivated by anything other than friendship and generosity. Mr. Nikitin continued this practice after Mr. Skarga's appointment, the cost of the holidays being paid, at least sometimes, through Milmont and Meino. There is no evidence that, when Mr. Skarga became the Director-General, the holidays became more frequent or more expensive. Mr. Skarga did not reciprocate by providing holidays for Mr. Nikitin.

1353. The claimants rely upon the holidays in their pleading (i) in support of their contention that Mr. Skarga was bribed in order to induce him to favour the Mr. Nikitin and Standard Maritime defendants in the various schemes of which they complain, and (ii) in support of their contention that Mr. Skarga had an interest in Milmont and Meino: see their voluntary particulars dated 18 November 2008. The second point was not developed during the trial, and I reject it. The defendants did not dispute that Mr. Nikitin arranged holidays for Mr. Skarga and his family, but they said that there was nothing improper in this, and that it did not corrupt Mr. Skarga or influence him in his dealings on behalf of Sovcomflot.

1354. It is not necessary to set out details of all these holidays and how much they cost, and in any case the evidence about them is incomplete. The claimants contended that Mr. Nikitin provided further holidays of which they are unaware, but that is speculation. The following details are sufficient to illustrate this part of the clamaints' complaint:

i) Between 28 December 2001 and about 6 January 2002 and again between 7 and 10 March 2002, Mr. Skarga and his family stayed on holiday at the Holiday Club, Saariselka, Finland, and Mr. Nikitin arranged for Meino to pay for the accommodation, and, as I conclude, he also arranged transport by private jet, for which Milmont paid. The plan had been that Mr. Gref and Mr. Kozak and their families should join Mr. Skarga on the first holiday, but in the event they were unable to go. In March 2002, Mr. and Mrs Borisenko were at the resort at the same time as Mr. Skarga.

ii) Between 30 April 2002 and 10 May 2002, Mr. Skarga and his family stayed at Mita Spa Forte Village Resort, Sardinia. I conclude that Mr. Nikitin paid some €22,000 for the holiday and also Meino paid for a private jet to take them to Sardinia. Mr. Gref and Mr. Kozak were also on this holiday with their families.

iii) From 2 to 24 August 2003 Mr. Skarga and his family had a holiday with Mr. Nikitin and his family at the Mita Spa Forte Village. The cost of something over €31,588 was paid by Meino.

iv) In November 2003, Mr. Skarga and his family stayed at the Hotel de la Ville, Milan and the Empire Palace Hotel, Rome at a cost of some €3,253, which was paid by Meino.

v) Between 1 and 6 May 2004, Mr. Skarga and his family stayed at the Blue Palace Resort and Spa, Crete, and the cost of something in excess of €12,000 was paid by Meino. Mr. Gref and his family stayed at the resort over that period, and Mr. Kozak had planned to be there with his family but was not able to go. In May and June 2004 Milmont paid for Mr. Skarga's son to attend a summer school in England.

1355. Mr. Nikitin had intended to pay for these family holidays (or to arrange for Meino or Milmont to do so), but both he and Mr. Skarga said that in practice Mr. Skarga would repay Mr. Nikitin for them, calculating on a rough and ready basis how much they cost. Indeed, at one point in his cross-examination Mr. Skarga said that otherwise he would have considered it wrong, after he had joined Sovcomflot, to have accepted family holidays on this scale at Mr. Nikitin's expense. There is no documentary evidence corroborating that Mr. Skarga reimbursed Mr. Nikitin. I accept that Mr. Skarga on occasions made some repayments, but not that usually he did so or that he repaid anything like the full cost of the holidays. There would simply have been no reason for Mr. Nikitin to have arranged such frequent holidays for Mr. Skarga and his family if in fact Mr. Skarga was bearing the cost himself, and I consider it more likely that, as a general rule, the established practice of Mr. Nikitin providing and paying for holidays for Mr. Skarga and his family continued after his appointment as Sovcomflot's Director-General.

The provision of a credit card

1356. When Mr. Skarga was working for Kinex, he was issued with a credit card, a Eurobank card upon a Swiss franc account with Credit Suisse. It was primarily for business expenses, but he used it from time to time to pay for personal expenditure. The statements for the account were not sent to Mr. Skarga, and the account was

settled monthly by direct debit payments made by PNP, which had the same shareholders as Kinex. After he had left Kinex, Mr. Skarga continued to have a credit card account with Credit Suisse until 2002. He spent about $40,000 to $50,000 on the card, and PNP paid for this.

1357. Mr. Skarga's explanation is that he continued to use the card under an arrangement made with Mr. Smirnov. He said that, when he had left Kinex at about the end of April 2000, he returned his Kinex credit card to Mr. Malov or Mr. Katkov. Although at around that time, Credit Suisse issued to Mr. Skarga a new card and a new account number (no 5404 9020 0265 5510), Mr. Skarga's evidence was that he never received the card or used this account. The claimants disputed this.

1358. Some statements for the account are in evidence. The defendants said that they corroborate Mr. Skarga's evidence, and the claimants said that they cast doubt upon it. Credit Suisse supplied copies of the statements to Mr. Nikitin under cover of a letter dated 22 March 2006, but Mr. Nikitin's evidence, which I accept, was that they did not include statements for June and July 2000. The statements that are in evidence, which are for August 2000 and subsequent months, show no expenditure debited to the account by way of purchases, and therefore I accept Mr. Skarga's evidence that he did not use the card in August 2000 and thereafter. The claimants, however, identified an interest charge that appears in the November 2000 statement, and argued that this reflects use of the card in June or July 2000. I decline to draw that inference because the interest charge is apparently shown to have been reversed in the December 2000. On the other hand, the statements provide no convincing corroboration for Mr. Skarga's evidence that he did not use the card in June and July 2000.

1359. From August 2000 Mr. Skarga did use another credit card account with Credit Suisse, account no 5404 9020 0265 5528. His evidence about this is as follows: he had had some shares in Kinex OJSC, a company whose shares, upon privatisation in 1995, had been distributed to employees including Mr. Skarga. When in 1998, in the wake of the Russian financial crisis, the company had gone into bankruptcy, Mr. Skarga agreed with Mr. Smirnov, the chairman of Kinex, to surrender his shares, but they did not decide how much he should be paid for them. They only reached a tentative understanding that the shares' value was of the order of $50,000. In the summer of 2000 Mr. Smirnov and Mr. Skarga agreed that Mr. Skarga should not be paid cash for the shares, but that Mr. Smirnov should arrange for Credit Suisse to issue Mr. Skarga a credit card upon a Swiss franc account upon the understanding that Mr. Skarga would spend around $50,000 on the card. Although Mr. Skarga had his own Russian bank credit card, it was convenient for him to have a Credit Suisse card, which was more widely acceptable for purchases abroad. He received the card for account no 5404 9020 0265 5528 in accordance with this arrangement, but he never knew, because he did not receive statements, that PNP were paying for it. He used the card until 2002 when he stopped doing so, because he feared that he would exceed the limit of $50,000 which had been agreed with Mr. Smirnov. He had kept a pencil note as how much he spent on the card, and it amounted in total to CHF 74,170, the equivalent of about $40,000. Mr. Skarga estimated that about two-thirds of the expenditure was for private use, and about one third was by way of business expenses: he explained that hotels sometimes erroneously charged his business expenses to this card rather than to a credit card that Sovcomflot provided for him.

1360. Mr. Nikitin said in evidence that he was unaware of the arrangement between Mr. Smirnov and Mr. Skarga. He did not notice that PNP were being charged for the expenditure on the card.

1361. I am unable to accept the evidence of either Mr. Skarga or Mr. Nikitin about this part of the case. I find it far-fetched that Mr. Skarga and Mr. Smirnov should have agreed to pay for the surrender of the shares in this way, and I reject the explanation that Mr. Skarga, although the Director-General of Sovcomflot, needed to make a curious arrangement of this kind in order to have a credit card that would be readily acceptable outside Russia. Further, according to his evidence he stopped using the credit card when he had incurred only about $40,000 expenditure, despite keeping a record of what he spent on the card. He had no credible explanation for writing off the rest of his entitlement, and apparently he could easily have checked his expenditure to avoid overspending it.

1362. Nor can I accept Mr. Nikitin's evidence that he did not know that PNP were paying for a credit card for Mr. Skarga after he left Kinex. He said that from time to time, perhaps every three months, he would go to Credit Suisse and look through a pile of documents relating to PNP, including credit card statements. He explained that he was only interested in "larger items" particularly on his own and his wife's statements, and said that he did not notice Mr. Skarga's name on some of the statements. However, PNP had credit card accounts with Credit Suisse only for Mr. and Mrs Nikitin, Mr. Skarga and possibly Mr. Malov's daughter, and so there were few statements for Mr. Nikitin to examine on his visits to the bank. He would have looked at the names on the accounts in order to find his own and Mrs Nikitin's statements, and even if he only glanced through the statements as he described, he would have seen that Mr. Skarga had a credit card account for which PNP were paying.

1363. I conclude that Mr. Nikitin arranged for Mr. Skarga to be provided, or to continue to be provided, with a credit card paid for by PNP after he had joined Sovcomflot, and Mr. Skarga knew that Mr. Nikitin had arranged this and that one of Mr. Nikitin's companies was paying for the card. There is no evidence about why this arrangement was made, or whether they made any arrangement about how Mr. Skarga was to use the card, and I cannot make any findings about that.

The Donino property

1364. During the trial the claimants introduced by amendment an allegation that Mr. Skarga received a bribe in relation to a payment by Milmont in February 2002 of $110,000 to Rebelate Enterprises Ltd. ("Rebelate"), a Cypriot company owned and controlled by Mr. Evgeny Tsatsoura and members of his family. They say that this payment was made in relation to a purchase made by Mrs Skarga from Mr. Tsatsoura of a plot of land and partly-built house near the village of Donino, near Moscow. They initially pleaded that the payment was part of the purchase price for the property, and further pleaded by way of voluntary particulars dated 12 February 2010 that, "The Claimants will contend that the sum of $110,000 was additional consideration for the purchase of the property and that the payment of this sum was orally agreed by persons unknown on behalf of Mrs Skarga (not by Mrs Skarga herself) with Mr. Tsatsoura or persons unknown acting on behalf of Mr. Tsatsoura in circumstances unknown to the Claimants, but which may well have involved Mr. Skarga doing so on behalf of Mrs

Skarga". Later, on 25 February 2010 the claimants were permitted to amend the allegation so as to plead (at para 79.3A of the particulars of claim) that Mr. Tsatsoura agreed to accept a sum of either $110,000 or $100,000 as part of the purchase price or to accept a sum of either $110,000 or $100,000 to "procure and/or facilitate" the sale; and that to the knowledge of Mr. Skarga $100,000 was paid for this purpose.

1365. Mr. Skarga called his wife to give evidence in response to this allegation. The claimants accepted that Mrs Skarga was not "deliberately dishonest" in her evidence, although they qualified this, somewhat enigmatically, by stating that "she would naturally be inclined to put the best aspect on her evidence which would assist her husband". I consider that the claimants were right to accept that Mrs Skarga was an honest witness and, despite the claimants' apparent qualification of their position, I do not consider that in any significant way she distorted her evidence to support Mr. Skarga. In particular, this means that Mrs Skarga was unaware of the payment of $110,000. She denied that she knew of it and she could not have forgotten about it.

1366. The claimants introduced this allegation about the Donino property shortly before Mr. Nikitin gave evidence. Their explanation for this was that they had only recently received relevant information from the Russian prosecuting authorities. The defendants argued that the timing was a deliberate ploy on the claimants' part. I can certainly understand the defendants' suspicions, but there is no sufficient basis to conclude that the claimants intentionally delayed their application to amend (or giving notice of it), and in any case, having permitted the amendment, I must decide whether the allegation is proved, and if so whether it assists the claimants' case.

1367. Mrs Skarga agreed to buy the land by a contract dated 6 March 2002, and a certificate of registration of her title was dated 12 March 2002. She dealt with a Mr. Maxim Sorokin, who had authority to act for Mr. Tsatsoura. The price stated in the contract was 900,000 roubles, which Mrs Skarga paid in cash at the registration office when formally making the purchase. Mr. Skarga was aware of the purchase, and indeed by a document dated 12 February 2002 he gave his consent to it, as is apparently required under the Russian system of land purchase. As I have said, when the property was bought, the house was not fully built: it had no permanent roof, doors or windows. After the purchase, Mr. and Mrs Skarga continued the building works, paying for them in cash. There were no written contracts for much of this work, but Mrs Skarga entered into a written contract for internal and decorative works dated 5 January 2003 with a company Tisa Ltd. ("Tisa"), for whom Mr. Sorokin apparently worked.

1368. Mrs. Skarga explained in evidence that they had the works done as and when they could afford it. They paid for the works from the wages that she and Mr. Skarga earned. She said, "That was the situation. So we had the money, we repaired things. We didn't have the money, we didn't do anything". It took Mr. and Mrs. Skarga over two years to complete the house. I do not understand that evidence of Mrs. Skarga to be challenged, and in any case I accept it.

1369. As Mr. and Mrs Skarga told me and I accept, Mrs Skarga came across the property as a result of a conversation with Mr. Smirnov on 23 January 2002, which happened to be both Mr. Smirnov's birthday and the wedding anniversary of Mr. and Mrs Skarga. Mrs Skarga had mentioned to Mr. Smirnov that she was interested in buying a dacha outside Moscow. She had been looking at advertisements and published details about properties that were for sale, but had not yet visited any properties. Mr. Smirnov

suggested the development at Donino and gave her a telephone number to enquire about it. She went to see the property, met Mr. Sorokin, and agreed to buy it. Mr. Skarga did not inspect the property before the purchase.

1370. There is no dispute that $100,000 was paid by Milmont from their account at Wegelin to an account at Bank of Cyprus Ltd. in Nicosia for the credit of Rebelate. The payment was made pursuant to an instruction given to the bank by fax late on 14 February 2002 and the transfer was made on 15 February 2002 with a value date of 19 February 2002. The fax message received by Wegelin Bank provided details of the payee's account in typescript, and Mr. Nikitin wrote on the message in manuscript "To Michael Baum. Pls [please] pay $100,000 from Milmont", and he signed this instruction. It is apparent from the header on the bank's copy of the fax that the account details were faxed from Tisa on 6 February 2002 at 5.23 pm, and were faxed from "Skarga home" on 14 February 2002 at 11.46 pm.

1371. The claimants submitted that it is to be inferred (i) that both Mr. Skarga and Mr. Nikitin were aware that this payment was being made, and (ii) that it was connected with the purchase of the property near Donino because the instruction was connected with Tisa (as is indicated by the fax record dated 6 February 2002) and because it was made shortly before the purchase. They also adduced evidence that was obtained from the Russian prosecuting authorities by way of records of interviews of Mr. Tsatsoura and other documents, including documents obtained from the Ministry of Justice and Public Order of Cyprus under a letter of request for legal assistance. The defendants unsuccessfully objected to these documents being admitted in evidence. The claimants proved them by evidence from Ms. Anna Fomina, a solicitor employed by Ince & Co, who had in December 2009 and January 2010 obtained the relevant documents from Investigator Maltsev of the Investigative Committee of the Office of the Prosecutor of the Russian Federation. In light of her evidence, the defendants did not in the end contend that these documents were not properly proved, or that there was no admissible evidence of what Mr. Tsatsoura had said in the interviews.

1372. The documents obtained by the Russian prosecutor from Cyprus establish that Rebelate was incorporated on 8 June 1999 and that on 22 June 1999, at the request of Mr. Tsatsoura and his wife and son, it opened the account at the Bank of Cyprus into which the payment of $100,000 was made. Mr. Tsatsoura was interviewed by the Russian authorities on 26 November 2007 and on 13 and 14 July 2009. In the last of these interviews, Mr. Tsatsoura confirmed that he founded Rebelate and opened the bank account. I do not understand that this is disputed, and I find that he did so.

1373. In the interview on 14 July 2009 Mr. Tsatsoura also said that he sold the property at Donino to Mrs Skarga, but he never met her and that all negotiations were handled by Mr. Sorokin of Tisa. Again, I accept this evidence, which is consistent with that of Mrs Skarga and is not, as I understand it, controversial. There is in evidence a power of attorney dated 18 February 2002, whereby Mr. Tsatsoura authorised Mr. Sorokin to deal with the sale and "to sell at such price and on such terms as he sees fit".

1374. The claimants also relied upon the statement of Mr. Tsatsoura in his interview of 14 July 2009 that, although he did not know of Milmont, he believed that the payment by Milmont was "an additional payment to the cost of the house", that "Under our verbal agreement, in addition to the cost in the contract [Mrs Skarga] was to pay me

USD110,000", and that before the contract was completed he was telephoned by someone who introduced himself as an acquaintance of Mrs Skarga and who asked for and was provided with the details of the Rebelate Bank account. He observed that he was paid $10,000 "less than expected", but he said that he did not remember whether he "monitored the receipt of money into the account of Rebelate".

1375. The defendants submitted that this evidence is vague and unreliable. Mr. Tsatsoura said nothing of this in his interview of 26 November 2007 (in which he simply said that he never met the buyer, that Mr. Sorokin dealt with all the formalities of the sale and that he sold the property for 900,000 roubles) or in that of 13 July 2009. On 14 July 2009 he referred to "our verbal agreement" about the additional payment without giving any details about when or how or by whom it was made. Mr. Tsatsoura was being interviewed after his house had been searched by the Russian authorities on 31 March 2009. He was not, of course, cross-examined. He was not asked why he had incorporated Rebelate in 1999 and why he had opened a bank account in Cyprus for the company, and it is not clear whether he would have had reason to be concerned that the Russian authorities knew about it. In the interview on 14 July 2009 he gave no satisfactory explanation for the discrepancy between the agreed payment of $110,000 and the transfer to Rebelate of $100,000. I cannot accept that Mr. Tsatsoura might not have known whether or not a payment to facilitate a land purchase had been made because he might not have been "monitoring" what was paid. I accept that the defendants' submission that the evidence from Mr. Tsatsoura's interview is not reliable. Too little is known of the circumstances in which he was being questioned.

1376. This part of the claimants' case therefore heavily relies upon the fact that Milmont, having received payment details from a source associated with Tisa, paid $100,000 to Rebelate at about the same time as Mrs Skarga was negotiating the purchase of the property, and their submission that the defendants' evidence about the purchase and Mr. Skarga's explanation for sending the fax with details of Rebelate's account are incredible.

1377. Although the timing and association with Tisa are certainly consistent with the payment being linked to Mrs Skarga's purchase of the property, there is no reason to suppose that Rebelate were only concerned with selling this property. As Mr. Dunning pointed out, the name of the property, "Village of Donino Lesnoye Podvorye individual developers' cooperative, plot 34", suggests that Mrs Skarga was buying one property in a development, and Rebelate probably had business interests other than this development because it was incorporated some time before the property was bought.

1378. Moreover, I consider it improbable that an additional $100,000 was paid for, or in order to bring about the purchase of, the property that was being bought by Mrs Skarga without her being party to the payment and with her knowing of it or suspecting that it was being made. Mrs Skarga had set herself a limit of a million roubles to spend on a dacha, and, after considering various types of property in areas around Moscow and looking at prices, had visited the Donino property to decide whether it would be within her budget. She agreed upon the price of 900,000 roubles for the property with Mr. Sorokin, and considered the price that she negotiated was a reasonable one. Mrs Skarga is an intelligent woman, who would not have completely misjudged the value of the property that she was buying, and she rejected Mr. Popplewell's suggestion that she knew that, by reference to comparable

properties in the area, she could have expected to pay something like 4 million roubles or more for the property. There is no reason to suppose that the property was not worth roughly what Mrs Skarga agreed to pay, but the claimants' case is that the vendor was paid the equivalent of 4 million roubles, more than four times the price that Mrs Skarga agreed. There is, as I have said, no suggestion that Mrs Skarga was other than honest, either in the purchase of the property or in her evidence, but I cannot reconcile the claimants' contention about the payment with her undisputed honesty.

1379. Mr. Popplewell contended that Mr. Skarga was not able to give a convincing account of the circumstances in which the property was bought. He submitted that he was evasive in his evidence about the purchase being handled by Mrs Skarga and his account that he did not visit the property before it was purchased, and that he had no explanation about how Mrs Skarga had the money to make the purchase and why it was bought in her name. I was not convinced by these arguments. Mrs Skarga was clearly capable of dealing with the purchase, and there is no reason to think that she should not have bought it in her name or that she did not have the means to do so.

1380. Mr. Skarga's account of the circumstances in which he faxed the details of the Rebelate account is, on the face of it, more surprising. His evidence was that he faxed the details of the Rebelate account from his home not to Wegelin Bank or to Mr. Baum but to Mr. Nikitin, and that he did so at the request of Mr. Smirnov. He said that, from the time when he worked for Kinex, Mr. Smirnov would sometimes ask him to deliver documents when he was going to St Petersburg. In February 2002 Mr. Smirnov asked him to help in this way, and Mr. Skarga arranged to collect the delivery from a courier in a car park near to his flat in Moscow because traffic conditions made it difficult for the courier to deliver it to the flat. He was given a package containing a number of envelopes in an elastic band. Mr. Skarga did not have a precise recollection of the sequence of events, but believed that he then spoke to Mr. Smirnov on the telephone. In that or an earlier conversation he told Mr. Smirnov that he would not be going to St Petersburg immediately, and so Mr. Smirnov asked him to find an envelope marked as a payment instruction and to send the instruction that it contained by fax to Mr. Nikitin. Mr. Skarga identified a thin unsealed envelope or file containing the paper with the details of the Rebelate account, and faxed the paper from his home, as Mr. Smirnov had asked him to do. Mr. Skarga denied that he associated this with the purchase of the land at Donino or thought that Mr. Smirnov might be making a payment to the vendors of the land.

1381. There is no reason to suppose that Mr. Skarga sent the account details to Mr. Baum or Wegelin, rather than to Mr. Nikitin, and I consider it most likely that Mr. Nikitin, having received the details, added the manuscript instructions and sent them to Wegelin. The claimants submitted that, whether the instructions were sent to Mr. Nikitin or to Wegelin, Mr. Skarga's account is so improbable that I should reject it as an elaborate fiction designed to cover up that the vendor of the property (whether Mr. Tsatsoura himself or someone acting on his behalf) provided him with the details of Rebelate's account through Tisa, and that he faxed them to Mr. Nikitin so that he could make a payment to Rebelate. I have to decide whether Mr. Skarga invented this account to explain the fax that he sent to Mr. Nikitin or whether the claimants have seized upon the faxed instruction to build their allegation that Mr. Skarga was receiving a bribe.

1382. I confess that I initially found Mr. Skarga's account improbable, but on reflection I consider that there is no good reason to do so. First, although it seemed surprising that a man in Mr. Skarga's position should collect documents from a courier in a car park as he described, this detail is not important to his account, and there is no reason that Mr. Skarga should have invented it in order to explain the fax. Secondly, Mrs Skarga's evidence corroborates that Mr. Smirnov had some dealings with Rebelate or the development. He told her that he was involved in some development work and "recommended a chap who has been working with him", and he provided her with a telephone number to call to discuss buying a property in the area. Thirdly, and importantly, before the claimants had alleged that the payment was associated with Mrs Skarga's purchase, Mr. Skarga had pleaded on 9 July 2009 his explanation for sending the fax: that Mr. Smirnov had delivered the account details to take with other documents to St Petersburg; that he had asked Mr. Skarga to send them by fax when Mr. Skarga told him that he was not planning to travel for several days; and that, when the document was faxed, it did not include the manuscript instructions. Therefore, Mr. Skarga did not invent an explanation tailored to involve Mr. Smirnov because Mr. Smirnov had suggested the purchase to Mrs Skarga. He had given it before the claimants introduced the allegation against him.

1383. Mr. Nikitin's evidence was that he knew nothing about Mrs Skarga buying the Rebelate property. Indeed, at one point he said that he knew nothing of the acquisition until 2004, which I find difficult to accept in view of his friendship with Mr. and Mrs Skarga. According to Mr. Nikitin, Mr. Smirnov had asked him to pay $100,000 to Rebelate, and he agreed to do so. He gave no convincing explanation for Mr. Smirnov making this request. I cannot accept that, as Mr. Nikitin suggested, Mr. Smirnov might not have had easy access to bank accounts, or that the payment was a "routine way" of distributing profits from PNP. I therefore do not consider that Mr. Nikitin gave candid evidence about why the payment to Rebelate was made. However, it does not follow that the payment was made in connection with Mrs Skarga's purchase of the Donino property. Mr. Nikitin's affairs were such that there might well have been another reason for the payment, which might or might not have involved Mr. Smirnov in some way and which Mr. Nikitin was unwilling to reveal.

1384. I do not consider that the claimants have shown that the payment to Rebelate was made in connection with Mrs Skarga's purchase or that the payment was arranged by or known to Mr. Skarga.

Conclusion about whether Mr. Skarga was bribed

1385. I therefore conclude that the claimants have shown that Mr. Nikitin provided and paid for holidays for Mr. Skarga and his family while he was the Director-General of Sovcomflot, and that until 2002 he arranged for a credit card to be provided for Mr. Skarga's use. I do not accept the claimants' allegations about the Donino property.

1386. The defendants submitted that English law would not regard these holidays or the provision of the credit card as bribes or secret commissions. I reject this submission, but I do not consider this issue important to my decisions in this case, firstly because (as I have explained) I conclude that the relevant issues would be governed by Russian law, and secondly because the relevant claims are pursued only on the basis that Mr. Skarga acted dishonestly in relation to Sovcomflot's transactions under the

various schemes and not simply on the basis that he received benefits from Mr. Nikitin by way of bribes.

1387. There are three questions to be considered. First, the defendants argued that the benefits were not of sufficient value to be regarded as bribes, that is to say that in the circumstances they did not give rise to a real risk of a conflict (still less an actual conflict) between the interests of Mr. Skarga as an agent receiving a bribe, and his duties to his principal, Sovcomflot, or other companies in the group to whom he owed the duties of an agent or other fiduciary duties. I accept, as the defendants submitted, that in the circumstances of this case, in deciding whether a family holiday in an expensive resort would amount to a bribe, it is relevant that, as I conclude from the evidence, Mr. Skarga and other senior executives of Sovcomflot were accustomed to receiving generous hospitality in the course of their work and so the less likely to be impressed by such hospitality. It would be also relevant that sometimes Mr. Skarga made some limited contribution towards the costs. Nevertheless, the benefit of the series of holidays and the benefit of the credit card seem to me sufficient to give rise to a potential conflict of interest and so to be regarded in English law as bribes.

1388. Secondly, in the case of the holidays, the defendants submitted that they were not concealed from Sovcomflot: that is to say, that they were not secret from Mr. Skarga's principal, as would be required if they were to be regarded as a bribe for the purposes of English civil law. I accept that Mr. Skarga did not attempt to conceal from Sovcomflot that he and his family were taking these holidays, that Mr. Nikitin had arranged them or that sometimes they were on holiday with Mr. Nikitin. I accept that these matters were known to Sovcomflot: Mr. Kozak, the Chairman of the General Board of Sovcomflot, and Mr. Gref, the Minister of Economic Development and Trade and a member of the General Board of Sovcomflot, were Mr. Nikitin's guests on some of the same holidays or were invited to be so. Although there is no evidence that Mr. Skarga deliberately concealed anything about the holidays from anyone at Sovcomflot, English law does not require active concealment in order for there to be liability when an agent receives a bribe. There is liability unless there has been full and proper disclosure to the principal of all the relevant circumstances. In this case, the relevant circumstances would include that Mr. Nikitin was largely bearing the cost of the holidays, and there is no credible evidence that this was disclosed or known to Sovcomflot.

1389. The third question is whether the holidays and the credit card were provided to Mr. Skarga in his capacity as an agent (of Sovcomflot or another claimant), and if not whether this means that they were not received by way of bribes. The question arises because the law of bribery is concerned with payments to agents or others who owe a fiduciary duty. Thus, in Bowstead & Reynolds on Agency (19th Ed) at para 6-084 it is said that the liability arises when an agent receives or arranges to receive any money by way of a bribe or secret commission "in the course of his agency". I have already set out the definition of a bribe in Anangel Atlas Compania Naviera SA v Ishikawajima-Harima Heavy Industries Co Ltd. (cit sup) in which it was said that the payment must be to the agent "as such", and in that case Leggatt J held that no payment was made to the agent "as such" but because he (Mr. Campbell) was entitled to payments of design royalties and promotion costs for his work as a naval architect. So too in this case Mr. Berry submitted on the basis of Mr. Nikitin's evidence that his payments for Mr. Privalov were not made to him as Sovcomflot's or Fiona's or

FML's "agent as such", but for work that he did for Mr. Nikitin and the Standard Maritime defendants in relation, for example, to Standard Maritime's accounts and the arrangements with BCV for interest payments, they were not payments to Mr. Privalov as an "agent as such". I have rejected the factual basis of this submission as far as payments for Mr. Privalov are concerned.

1390. In relation to the holidays and provision of the credit card for Mr. Skarga, a similar question arises as to whether English law would decline to categorise them as bribes because they were not provided to Mr. Skarga in his capacity as agent. I accept that Mr. Nikitin provided the holidays not because Mr. Skarga was the Director-General of Sovcomflot, but because he was continuing the pattern of generosity that he had shown to Mr. Skarga's family long before 2000. Whatever the reason the credit card was provided until 2002, I am not persuaded that PNP continued to provide and pay for it because of Mr. Skarga's appointment or his position.

1391. There is little guidance in the authorities about how the requirement that, if it is to be regarded as a bribe or secret profit, a payment or promise must be made to, or some other benefit conferred on, an agent as such. However, I cannot accept that this argument provides a defence to the liability of an agent, or of one who pays an agent, where the payment gives rise to an actual or potential conflict of interest. The law imposes what Mummery LJ in Imageview Management Ltd. v Jack, [2009] 1 Lloyd's Rep 436, 446 called a "precise and firm line" against payments to agents where they compromise either of the two aspects of the duty to account of an agent or other fiduciary, which were stated by Lord Herschell in Bray v Ford, [1896] AC 44, 51-2: "It is an inflexible rule of a Court of Equity that a person in a fiduciary position … is not, unless otherwise expressly provided, entitled to make a profit; he is not entitled to put himself in a position in which his interest and his duty compete".

1392. As I see it, often both aspects of the duty to account converge when a bribe is paid to an agent, but a payment that compromises either is treated as a bribe. If the complaint is on the basis that the fiduciary must not benefit from his fiduciary position, the question will arise whether the payment was to the agent or other fiduciary "as such", because the mischief is that the fiduciary must not profit by reason of or in virtue of his fiduciary position. Here the complaint of the claimants is that the benefits by way of holidays and credit cards gave rise to a conflict of interest or the realistic potential for one, and the law does not excuse an actual or potential conflict of interest because it arises from a payment made to the fiduciary in some other capacity and not because he was an agent or other fiduciary: it still regards the payment as a bribe, unless there has been full disclosure.

Destruction of documents and concealing records

1393. The claimants argued that, from the time when he realised that he was likely to lose his position as Director-General, Mr. Skarga sought to destroy or remove records of Sovcomflot's dealings with Mr. Nikitin and with the Standard Maritime defendants in order to avoid his involvement in them being detected and in order to impede investigations of the schemes; and that to this end (i) he instructed that charterparties in the Moscow offices should be destroyed; (ii) he sought to ensure that electronic records of his dealings were removed from his computer; and (iii) with Mr. Nikitin, he was concerned to destroy data that was on the computer that Mr. Privalov used at FML.

1394. First, the allegation that Mr. Skarga ordered that charterparties should be destroyed: the claimants allege that in May or June 2004 Mr. Skarga instructed Mr. Borisenko that all copies of time charters that were in Sovcomflot's office should be destroyed. It is said that Mr. Borisenko summoned Mr. Sharikov and, in Mr. Skarga's presence, Mr. Borisenko gave him instructions as Mr. Skarga had asked. Before he acted on them, Mr. Sharikov spoke to Mr. Terekhin, who advised him that he had to accept the instructions of Mr. Skarga, and therefore Mr. Sharikov told Mr. Novikov and Ms. Galina Kovyrova, an accountant in the Fleet Operations Department, to destroy all hard copies of time charters. Mr. Novikov said that he gave all charters from his files for Ms. Kovyrova to destroy.

1395. Although this account is supported by the evidence of Mr. Borisenko, Mr. Sharikov and Mr. Novikov, I am unable to accept it. The instruction would have made no sense at all. As far as the evidence goes, the instruction was to destroy all time charters, not only those with Standard Maritime charterers. On the other hand, there is no suggestion that Mr. Skarga arranged to have destroyed other documents relating to the charterparties, such as recaps or correspondence, and so the terms of the charterparties would still have been readily available to anyone examining Sovcomflot's files. According to Mr. Sharikov, this occurred to him at the time and he therefore thought the instruction "stupid", but, despite being a member of the Executive Board with responsibilities in relation to chartering the fleet, he did not, apparently, mention his bewilderment to anyone. Mr. Skarga could not have thought that an instruction of this kind would have prevented investigation of the charterparties. On the contrary, it would have drawn attention to them, and associated him with any concerns about their terms.

1396. Neither Mr. Borisenko nor Mr. Sharikov nor Mr. Novikov mentioned Mr. Skarga's instructions to Mr. Frank when in October or November 2004 he made enquiries about the time charters. Nor was this incident mentioned in the first witness statements which the three witnesses gave. Mr. Sharikov said that he was prompted to recall it because Mr. Skarga stated in his witness statement that, when the Executive Board was asked to give approval to a charterparty, the members of the Board would be provided with a copy of the fixture recap and, if it was available, of the charter. Mr. Borisenko said that he recalled the matter only when Mr. Sharikov mentioned it to him. I find it incredible that they would have forgotten about such an extraordinary instruction, and I am driven to conclude that the story was invented by them in order to support the claimants' case against Mr. Skarga.

1397. I come to the claimants' allegation that, in order not to leave any record of his corrupt dealings with Mr. Nikitin, Mr. Skarga had all data deleted from his computer when he left Sovcomflot. Mr. Alexander Yadov, who works as a Network Administrator in Sovcomflot's IT Department, said that, when he was Director-General, Mr. Skarga had frequently deleted e-mails and other data from his laptop, including from its recycle bin; and that, shortly before he left Sovcomflot, Mr. Skarga had asked him to delete all the contents from his computer and to confirm that this meant the information could not be recovered. Mr. Yadov found that in fact everything had already been deleted.

1398. I would not have considered it remarkable if Mr. Skarga had from time to time deleted unnecessary material from his computer or if, when leaving Sovcomflot, he wished to delete what was on his computer. Mr. Yadov's evidence was that, when employees

left Sovcomflot, they would ask to "clear their data" and to delete "personal and non-personal files", that in his experience this would be "nothing strange", and that he himself would delete data if he left a company. Given that this was usual within Sovcomflot, it would not have suggested corruption if Mr. Skarga had done as Mr. Yadov described.

1399. However, Mr. Skarga denied Mr. Yadov's evidence, and I do not accept Mr. Yadov's account that Mr. Skarga deleted records and asked for data to be deleted. Mr. Yadov was not a reliable witness. The history of the disclosure of information that had been on Mr. Skarga's computer was confused (partly because of a genuine misunderstanding about it on the part of Ince & Co), but it eventually emerged that information from his computer had been retained. I conclude that:

i) the data in (at least) the "my documents" file of Mr. Skarga's computer was backed up on to Sovcomflot's server in September 2004;

ii) on 20 and 21 October 2004, after he had left Sovcomflot, some files from his computer were compressed and copied on to a DVD;

iii) on 5 November 2004, a CD was created of some of the data from Mr. Skarga's computer;

iv) the information was not stored in this way because of problems with the computer; and

v) some, but not all, of the data on the DVD and the CD were later copied by Mr. Yadov (alone or with others) on to a "compilation DVD".

Mr. Yadov has from time to time made contrary statements: for example, that the CD was created because Mr. Skarga "experienced problems with his laptop", and that he (Mr. Yadov) knew nothing about how the "compilation DVD" came to be made, and that it was made in September 2004.

1400. I reject the claimants' allegation that Mr. Skarga sought to delete information from his computer. No credible evidence supports it. Mr. Dunning submitted that the inference from the evidence about information being copied and stored in October and November 2004 is that, by that time, the claimants had started their investigation into what Mr. Skarga had done, and that they will have retained all the relevant electronic records, including deleted data that could have been recovered from his laptop and e-mails backed up on to their server. Accordingly, he argued that the claimants have not made proper disclosure of these records because full disclosure would not show that Mr. Skarga was involved in impropriety and would undermine their case. Despite the unhappy history of the claimants' disclosure of the information from Mr. Skarga's computer and Mr. Yadov's misleading explanations, I regard this as speculation. There is no proper basis to reject the claimants' evidence that, after Mr. Skarga had left Sovcomflot, other employees used his computer and it was re-formatted, and that e-mails on the server were not preserved but were over-written.

1401. Thirdly, the claimants allege that Mr. Nikitin and Mr. Skarga were also concerned to destroy data from the computer that Mr. Privalov had at FML. The position about this too became confused because of the way in which the claimants disclosed

relevant material. Initially they disclosed what were described as "data fragments" of e-mails from the hard drive of his computer because they believed that data from the disk had been deleted, but later they discovered that the data survived in active, undeleted form. The error has not been explained satisfactorily, but the essential facts about Mr. Privalov's computer were eventually uncontroversial. Between January 2001 or earlier and about February 2004 Mr. Privalov used at FML an IBM computer, in about February 2004 it was replaced by a Dell computer, and at least some data from the IBM computer was copied on to the Dell computer. The data on the IBM computer was deleted. On 7 January 2005 the data from Dell computer was copied on to the hard drive from which there were later recovered the documents that were disclosed. On 10 February 2005 Mr. Privalov bought the Dell computer and removed it from FML's offices. For a short time the old IBM computer was used in its place. After a while the Dell computer was returned to FML, but by then the hard drive had been replaced. It appears that someone using the Dell computer at least investigated at some stage how material could be permanently deleted from it, but there is no proper basis to associate that investigation with Mr. Nikitin or with Mr. Skarga. The claimants learned in April 2008 that Clarkson had a copy of the hard disk, which Mr. Privalov had asked Mr. Gale to make in January 2005.

1402. As I understand it, the claimants' allegation that Mr. Nikitin and Mr. Skarga attempted to prevent Sovcomflot having access to information that was on the hard disk of the Dell computer depends mainly, if not entirely, on two pieces of evidence of Mr. Privalov. He said that when he was in St Moritz in about January 2005 Mr. Skarga and Mr. Nikitin told him to buy his computer before he left FML. This is denied by Mr. Nikitin and Mr. Skarga. In the event, on 7 January 2005, when he had returned from St Moritz, a copy was made of the data from the computer. Mr. Privalov would not have needed to have the copy made if he planned to buy the computer. Secondly, Mr. Privalov said in cross-examination (but not before) that at about the end of 2004 or early 2005 Mr. Skarga had told him to throw his computer into the Thames. Mr. Skarga denied this. In my judgment, Mr. Privalov was lying in this part of his evidence. If Mr. Skarga had said this, Mr. Privalov would have given evidence about it earlier.

1403. More generally, Mr. Privalov's evidence about the information on the Dell computer was inconsistent and wrong. In his witness statement of 12 February 2009 he said that the copy was made by Mr. Gale between 27 and 29 January 2005. In cross-examination he said that it was made after he had bought the computer on 10 February 2005. After the hard drive was examined, it was agreed between the parties that the copy was made on 7 January 2005. I infer that Mr. Privalov and Mr. Gale were involved in making the copy because there is in evidence an e-mail dated 4 January 2005 in which Mr. Gale made a "very confidential" enquiry of a computer expert on behalf of a "client", who was described as being "currently (and as far as they know permanently) at FML". He was clearly referring to Mr. Privalov. There is no credible evidence that Mr. Skarga or Mr. Nikitin was involved in destroying or attempting to destroy documents on Mr. Privalov's computer or in having them copied.

1404. I conclude that all three parts of the claimants' allegations that Mr. Skarga attempted to destroy records and evidence around the time that he and Mr. Privalov left

Sovcomflot were discredited when proper disclosure was made and the claimants' witnesses were cross-examined.

Forged and back-dated documents and other allegations of impropriety

1405. I have already found that Mr. Nikitin and Mr. Skarga were party to creating fraudulent and back-dated documents. In January 2005 Mr. Nikitin and Mr. Skarga created two other documents, to which I have referred above, that the claimants say were fraudulent. Mr. Skarga signed them on behalf of Fiona and FML, notwithstanding, when he had left Sovcomflot some months earlier, he had ceased to be a director of both companies.

1406. The first was referred to as the "Supplemental Agreement". It was purportedly made between Fiona and Standard Maritime, dated "as of" 23 March 2004 and signed by Mr. Skarga purportedly on behalf of Fiona and by nominee directors who acted on Mr. Nikitin's instructions on behalf of Standard Maritime. In fact the first draft of the agreement was produced on 5 January 2005, and it was signed on some date between 14 and 19 January 2005.

1407. As I have said, when Fiona guaranteed the contractual obligations to the yards in respect of newbuildings for the purchasing companies, the relevant company agreed to indemnify Fiona and the indemnities were secured by Standard Maritime depositing shares with WFW as Fiona's solicitors. By January 2005 Mr. Nikitin, as he said in his evidence, needed to raise funds to pay the instalments of the price of the vessels which were to fall due on delivery. In the case of the HHI hulls nos 1564 and 1565, delivery was due to take place on 31 May 2005, and the other vessels were to be delivered later. Mr. Nikitin also wished to be able to sell the vessels upon delivery. Accordingly, he sought to have the shares released from securing the indemnities. By the Supplemental Agreement, Fiona agreed to release them. No replacement security was provided, but the purchasing companies were to provide letters in which they recognised that, if Fiona were required to pay under their guarantees, Fiona would become subrogated to the rights that the yards had against the purchasing companies, letters which were, as Mr. Wettern told Mr. Nikitin, provided "for cosmetic reasons". They provided no greater protection than the personal rights against the purchasing companies that Fiona would in any event have had under English law.

1408. Mr. Nikitin and Mr. Skarga accepted that the Supplemental Agreement was concluded when they knew that Mr. Skarga had no authority to act for Fiona. They sought to explain and excuse it on the basis that they were merely engaged in documenting an arrangement that they had reached while Mr. Skarga was still in office, and that Mr. Wettern had been instructed to prepare documents to implement it, but that he neglected to do so. The arrangement was said to be that Fiona should release the shares provided that at least 30% of the price had been paid to the yards. In practice this would have meant, under the terms of the shipbuilding contracts, that there had been paid the first two instalments of the price, which in the case of the two Daewoo vessels in fact amounted to 40% of the price. Even if such an arrangement had been reached, it would not, of course, have justified them in entering into the Supplemental Agreement, and I still would have concluded that Mr. Nikitin and Mr. Skarga knew that and were dishonest in making it. I cannot accept Mr. Nikitin's explanation that,

because Mr. Wettern, a solicitor, was involved, he considered it proper for Mr. Skarga to sign the document.

1409. The accounts of Mr. Nikitin and Mr. Skarga were vague and in some ways inconsistent about when and where the arrangement had been made, and about the instructions to Mr. Wettern to prepare documentation, but Mr. Popplewell had other, and to my mind more powerful, arguments that the defendants' evidence about the background to Supplemental Agreement was untruthful.

1410. First, Mr. Nikitin and Mr. Skarga said that they first discussed the release of the shares at around the time of the Banking Conference in Cyprus in May 2004, when the value of the newbuildings had so much increased that they considered the security by way of the shares to be redundant. They did not suggest that the matter had been discussed by 23 March 2004 and they provided no explanation that the Supplemental Agreement should have been dated "as of" 23 March 2004. (The first draft of the agreement was dated "as of 15 April 2004". The change of date remains a mystery, but the April date was also before any discussions are said to have taken place.)

1411. The defendants were unable to provide any convincing reason that Mr. Nikitin should have been concerned in mid-2004 to have the shares released. In his witness statement Mr. Nikitin said that in the spring of 2004 he began to think about the funding required to pay the instalments of the price for the vessels due on delivery and only then did he realise that the shares were pledged as security. I cannot accept that because Mr. Nikitin is far too astute a businessman to have overlooked the deposit of the shares. Mr. Wettern had explained it to him clearly in an e-mail dated 23 February 2003, and Mr. Nikitin himself had explained the position to Mr. Malov and Mr. Katkov. Further, there is no credible evidence that Mr. Nikitin was looking for funding for the delivery instalments in the summer of 2004 or earlier. Since the first delivery date for any of the vessels was 31 May 2005, it would have been too early to do so.

1412. I also find it incredible that, if Mr. Nikitin and Mr. Skarga had reached an agreement as they claimed, Mr. Nikitin would not have ensured that it was documented before Mr. Skarga left Sovcomflot. By July 2004 it was widely known that he might be leaving. On his account, Mr. Nikitin understood that Mr. Skarga had given Mr. Wettern instructions to draft the documentation at the Banking Conference in Cyprus, but thereafter, as far as he recalled, Mr. Nikitin only once raised the matter with Mr. Wettern before the end of the year. Then he accepted Mr. Wettern's vague reassurance, "leave it to me". I found unconvincing Mr. Nikitin's explanation that "there was still some time before delivery, so I had some time". That would have been a reason not to have discussed the release of the shares with Mr. Skarga in the first place. It does not explain why, having secured a favourable arrangement, he should run the risk that Sovcomflot would not recognise it if Mr. Skarga ceased to be Director-General. I also reject Mr. Skarga's evidence that he was expecting Mr. Privalov to bring the agreement to Moscow for signature on 8 or 9 October 2004, but that Mr. Privalov did not do so because, as he explained, Mr. Wettern had been too busy to deal with it. If that had happened, Mr. Skarga would certainly have reported the position to Mr. Nikitin and there is no suggestion that he did so.

1413. The correspondence which led to the Supplemental Agreement demonstrates that Mr. Wettern had not been instructed to draft an agreement for the release of the shares

before the end of 2004. On 24 December 2004 Mr. Wettern, who had been instructed to arrange for shares to be registered in the name of Standard Maritime, sent an e-mail to Mr. Nikitin's office in St Petersburg in these terms: "Because of the protocols with Fiona, if the share certificates are going to be issued in registered form in the name of Standard Maritime, then in the "spirit" of the agreements under which the shares were transferred but the Fiona guarantees were maintained to [the yards], Standard Maritime should create a pledge over those shares which would terminate on delivery, but which would give Fiona security in case Standard Maritime did not arrange the payments to [the yards]. What do you think of this?". Mr. Nikitin's evidence was that he might not have seen this e-mail when it was sent to his office because he was already in Switzerland, but, even if he did not see it, Mr. Wettern would not have written in these terms if he had already been given instructions to draft an agreement to arrange for the release of the shares.

1414. Mr. Wettern wrote in similar terms on 4 January 2005: "… I do think that something is needed for Fiona to replace the share pledge deposits that are presently in place. If they are abandoned without any replacement then there is no sense in Fiona having agreed to the release so it will look really 'smelly'". Mr. Nikitin accepted that he read this e-mail, and his evidence was that he realised only then that Mr. Wettern had not drawn up an agreement for the release of the shares as he had been instructed to do many months earlier, and that he complained to Mr. Wettern about this in a telephone conversation on 4 or 5 January 2005. However, I find it incredible that Mr. Wettern would have written in these terms if he had been so instructed. It is apparent from the e-mail of 4 January 2005 that Mr. Wettern had been discussing the matter with Mr. Privalov and he reported to Mr. Nikitin the suggestion of Mr. Privalov that "Fiona could agree that there should be no security from the time that the second instalment [for the vessel] has been paid". This suggestion would have been pointless had it already been agreed, as Mr. Skarga told me that it had been, that the security should be released when 30% of the price had been paid. Mr. Nikitin was unable to explain why he did not tell Mr. Wettern this. Mr. Skarga's evidence was that Mr. Privalov had known of the terms of the agreement reached in the summer of 2004 with Mr. Nikitin, but, had he known this, he would not have made this suggestion to Mr. Wettern to which Mr. Wettern referred.

1415. Moreover, by the agreement dated "as of 15 June 2004" it was agreed between Standard Maritime and Fiona that the shares of Hayes should stand as security in respect of the guarantee of the obligations relating to hull no 1757. Although it is not clear quite when the agreement was made, it cannot have been made before 15 June 2004. Mr. Nikitin sought to explain this on the basis that he simply was trusting Mr. Wettern to ensure that the proper documentation was signed, but I cannot accept that he would have authorised this agreement if he had already arranged for the shares to be released.

1416. After the Supplemental Agreement was signed, there was an elaborate attempt to corroborate that it had been signed in 2004. There were created what purported to be a covering compliments slip from Wegelin to Mr. Wettern dated 8 July 2004 referring to "Standard Maritime supplemental agreement", on which Mr. Wettern wrote "original sent to Privalov for signature by Skarga when available", and a compliments slip dated 3 September 2004 upon which Mr. Privalov wrote "To Andrew Wettern. Here is [Standard Maritime] supplemental agreement which D

Skarga now signed". They were designed to suggest that the Supplemental Agreement had been signed on behalf of Standard Maritime by 8 July 2004 and by Mr. Skarga by 3 September 2004.

1417. Mr. Wettern also created and sent to Mr. Baum a "chronology" which sets out a false history of the circumstances in which the Supplemental Agreement was signed. It states, among other things, that Mr. Wettern had prepared a draft of the Supplemental Agreement and discussed it with Mr. Privalov by 7 June 2004, and that at some time between 7 and 11 June 2004 he provided it to Mr. Nikitin on a floppy disk so that he could make changes after discussions with Fiona. Mr. Nikitin said in evidence that he knew nothing of this chronology, but I find convincing the claimants' response to this. Mr. Wettern would not have sent a false chronology to Mr. Baum without knowing that Mr. Nikitin approved of him doing so because there was every probability that Mr. Baum would speak to Mr. Nikitin about the matter. I conclude that the most likely explanation for the chronology is that it was created in order to persuade Mr. Baum to provide the Wegelin compliments slip of 8 July 2004

1418. I reject the explanation given by Mr. Skarga and Mr. Nikitin for the Supplemental Agreement. I conclude that in December 2004 or January 2005 Mr. Nikitin, concerned about the shares being deposited with Fiona and, realising that the new management of Sovcomflot might well be unwilling to release them, sought to recover them through fraud and forgery, and that Mr. Skarga lent himself to the scheme.

1419. In reaching this conclusion I do not overlook the evidence from Mr. Latham, the IT manager at WFW, about when the Supplemental Agreement was created by Mr. Wettern in their system. I accept Mr. Latham's evidence. At the least, in my judgment, it provides no support for the account of Mr. Nikitin and Mr. Skarga, and is certainly at least consistent with the claimants' contention that Mr. Wettern first went about producing a draft of the Supplemental Agreement in January 2005. It suggests that he then sought to manufacture evidence designed to corroborate that it was created in the summer of 2004, but there is no reason to suppose that Mr. Nikitin or Mr. Skarga were involved in this part of the fiction or knew that Mr. Wettern was doing this.

1420. First, Mr. Latham's evidence was that the electronic data from the system shows that, when drafting the Supplemental Agreement, Mr. Wettern used the template of an earlier agreement for the sale of shares which bore the date "as of 14 August 2003" and which had been created on 28 November 2003 and printed on 5 January 2004. Mr. Wettern worked on this document on 5 January 2005, when he sent a draft of the agreement to Mr. Nikitin. He produced other versions between 6 and 14 January 2005, when the document was printed. In February 2005 all versions of the document were deleted from the system except for the original version, that is to say the version of the document dated "as of 14 August 2003".

1421. Secondly, there is in evidence a document headed "Draft (1): WETA1/6 June 2004 … Supplemental Agreement", which begins "This Agreement is entered into as of 23 March 2004 …". (The heading and the date were not created automatically by the system.) Mr. Latham explained that the document was first created on WFW's system on 2 June 2004 by a temporary secretary, but after that date the document was not edited until February 2005. It is clear that the draft was not created before 6

January 2005 because of the reference to the date "as of 23 March 2004" (and not "as of 15 April 2004"), and also because the document included a provision for letters from the purchasing companies that recognised that Fiona should be entitled to the rights against them if Fiona paid under the guarantees, letters which Mr. Wettern suggested should be provided "for cosmetic reasons" only on 6 January 2005.

1422. The second fraudulent document that Mr. Nikitin and Mr. Skarga created in January 2005 was what purported to be an employment contract between FML and Mr. Privalov. Mr. Privalov had entered into a contract of employment dated 23 February 2004, which provided that his employment would continue for a rolling period of 5 years (that is to say, it provided that the term was automatically extended on a day-to-day basis so that there was always a mutual commitment to a future five years' term) and that, if FML terminated it by notice, he should receive five years' salary. If, however, Mr. Privalov terminated it, he was not to receive any compensation. There was also a provision that Mr. Privalov should not be permitted to carry on or be interested in or be employed by another company carrying on a competitive business during the period of six months after termination of his employment. The agreement had been drafted by WFW.

1423. In January 2005 Mr. Wettern drafted a replacement employment contract. It falsely stated, "This employment contract is signed on 23 February 2004". It released Mr. Privalov from the restraint about involvement with a competitive business after his employment was terminated, and it provided that he should receive a year's salary and benefits if he terminated his employment. Mr. Skarga signed it purportedly on behalf of FML.

1424. Mr. Skarga accepted that it was dishonest of him to sign the agreement. His evidence was that he did so against this background: Mr. Privalov approached him shortly after he had left office, on about 10 October 2004, and said that he wished to leave FML (and the Sovcomflot group) but was concerned about the restrictions in his employment contract. Mr. Skarga suggested that he seek advice from Mr. Wettern. Mr. Skarga met Mr. Privalov again in November 2004 on Mrs Privalov's birthday and found him "quite depressed and disorientated". In December 2004 he told Mr. Privalov that he would be willing to help him by signing a revised employment contract if there was "no harm to Sovcomflot" When he and Mr. Privalov were together in St Moritz at the beginning of 2005, Mr. Privalov was, according to Mr. Skarga, "in kind of unstable situation" Mr. Wettern had told Mr. Privalov that he would prepare a new contract of employment, and Mr. Privalov presented it to Mr. Skarga. Mr. Skarga signed it without reading it through and therefore without appreciating that it did prejudice FML. He said that Mr. Privalov was "a nervous wreck", and probably "close to suicide". Mr. Nikitin also said in his evidence that in December 2004 Mr. Privalov was "really depressed" and that he seemed to be "close to committing suicide".

1425. Neither Mr. Skarga nor Mr. Nikitin had referred in their witness statements to Mr. Privalov being in such a state of mind, and this was not suggested to Mr. Privalov when he was cross-examined. I can readily accept that Mr. Privalov was under great stress around this period. He must have realised that his dishonest dealings might be investigated, and indeed he accepted in his witness statement of 12 February 2009 that he knew that transactions in which he had been involved were likely to come under scrutiny that they would not bear. However, I do not accept that this as

the real explanation for Mr. Skarga signing the replacement agreement. Had it been, Mr. Skarga and Mr. Nikitin would have said so before they were cross-examined.

1426. Mr. Privalov's evidence was that, after Mr. Skarga left Sovcomflot, he thought that his future was not with the group, and then in late 2004 Mr. Nikitin asked him to work with him. He reached an understanding with Mr. Nikitin that he would do so, but he needed to free himself of the restrictions in his employment contract. After speaking to Mr. Nikitin and Mr. Skarga, he asked Mr. Wettern to draft a replacement contract. Mr. Wettern's first draft, although much in the style of the original agreement of 23 February 2004, was considered to be too long and formal, and Mr. Privalov asked him to produce a shorter and less formal document that did not appear to have been drafted by a lawyer.

1427. Mr. Wettern sent Mr. Nikitin a draft of the replacement contract on 4 January 2005 under cover of an e-mail which read as follows:

> "As I am sure [Mr. Privalov] mentioned to you, please see attached for your review … Revised draft employment contract for YP with Fiona Maritime. This is for you and him to have a look at before I send you a final version. I would particularly like to discuss what to write in Clause 20 [which was about post-employment restraints upon Mr. Privalov]. It would be abnormal to have nothing, but I assume you do not want it to be too restrictive in relation to what Yuri [Privalov] plans to do. There are a number of ways we can keep this clause with an appearance of protecting Sovcomflot but without it actually harming future plans for YP's activity…".

1428. Mr. Wettern obviously understood that Mr. Nikitin was interested in the restrictions upon Mr. Privalov if he left FML. As is apparent from another e-mail that Mr. Wettern sent to Mr. Nikitin on the same day, he thought that Mr. Privalov might be working for or with Mr. Nikitin in order to sell vessels. He wrote that he would be "delighted to give unofficial advice to yourself and YP" in relation to the sale of the "first four Suezmaxes vessels", although he suggested that it would be better "if Lawrence Graham appear on the record". Mr. Nikitin had some discussions with Mr. Wettern about the draft employment contract. On 5 January 2005 he sent Mr. Nikitin another draft of it under cover of an e-mail that referred to "our discussions".

1429. Mr. Nikitin's evidence, however, was that he was not involved with the forged employment contract and denied any intention to employ Mr. Privalov. He said that he was being sent the drafts simply because Mr. Privalov had no access to e-mails in St Moritz, and he was asked to print the communications and provide them to Mr. Skarga. I reject Mr. Nikitin's evidence. It cannot be reconciled with what Mr. Wettern wrote.

1430. As I have said, on 14 January 2005 Mr. Privalov gave notice to terminate his employment with FML on 13 February 2005. Mr. Wettern had provided the draft of a letter dated 10 January 2005 from Mr. Nikitin to Mr. Privalov, which was headed "New Employment", which set out the terms of an offer of new employment "in view of your decision to leave employment of [FML]". The terms included a payment of £1 million as compensation for leaving FML to take up employment with Mr. Nikitin

and an annual salary of £300,000. I conclude that by January 2005 Mr. Privalov had it in mind that he might leave FML to work for Mr. Nikitin, that Mr. Wettern understood this to be the case and that, whether or not he in fact contemplated that Mr. Privalov might work for him, Mr. Nikitin was at least holding out this prospect to Mr. Privalov.

The two payments of $500,000 in January and March 2005

1431. It is convenient to revert to the payments made to Sisterhood in 2005, which the claimants say were connected with Mr. Privalov's employment plans. As I have said, on 12 January 2005 Milmont transferred to Sisterhood $500,000 and on 10 March 2005 Kosta transferred $500,000 to Sisterhood. Further, on 25 February 2005 Mr. Nikitin arranged for Milmont to pay for a laptop computer and a new mobile telephone for Mr. Privalov. Mr. Privalov's evidence was that in the draft letter of 10 January 2005 Mr. Wettern should have referred to compensation of a million dollars, not a million pounds, and the claimants said that the payments in January and March 2005 represented this compensation. He said that in early 2005 there were discussions about him working for Mr. Nikitin through an agency that he was to set up under the name of Berkeley Agencies, but in the event he decided not to do so. Mr. Nikitin's evidence was that he would not agree that Mr. Privalov should work for him on a full-time basis, but that he was lending Mr. Privalov money to start a business organising shipping finance, and the laptop and the mobile telephone were provided "just to improve his mood a bit". As I have said, on 5 April 2005 Sisterhood transferred $1,900,554.80 to Milmont. According to Mr. Nikitin, he learned of this when Mr. Baum told him of the repayment in a telephone call, and that it came "as a bit of a surprise"; and that Mr. Privalov told him that he was repaying the loan and, by way of explanation for the additional $900,000, Mr. Privalov said "all the other money, what you pay me, I treat also as a loan". Mr. Privalov's evidence was that he decided at this time that he did not want to work for Mr. Nikitin and decided to return to him "the balance on the Sisterhood account at Wegelin".

1432. I do not accept Mr. Nikitin's explanation for the two transfers of $500,000. It did not withstand cross-examination. Mr. Nikitin said that he did not address his mind to why Mr. Privalov required a loan of $1 million; nothing was put in writing about the loans; and nothing was said about interest or security or terms of repayment. There was no cogent or credible explanation for advancing the money in two stages. It was not suggested that Mr. Privalov said that he needed the second tranche for business purposes or even that he requested it.

1433. The claimants' pleaded case (at para 263 of the particulars of claim in the Fiona action) is that these payments were bribes for Mr. Privalov's assistance with the various transactions, including assistance in arranging that the shares deposited as security with WFW should be released. In his closing submissions Mr. Popplewell put forward a different explanation for them: that, by making these payments, by providing him with gifts such as the mobile telephone and the computer and by arranging the forged contract of employment, Mr. Nikitin was seeking to persuade Mr. Privalov to leave FML and the Fiona group and so to hamper the investigations that he knew were taking place.

1434. To my mind, the evidence simply does not provide any credible explanation either for the payments of $500,000 or for the payment of 5 April 2005. I cannot unravel why they were made, but in any event, I am not persuaded that the reason for them has any direct or significant bearing upon what I have to decide. These payments were made after the disputed transactions had been completed, and there is no reason to suppose that they had been promised earlier.

The credibility of the Mr. Skarga's evidence

1435. Mr. Dunning submitted that Mr. Skarga was a reliable witness and that I should accept his evidence. I do accept that generally his evidence about the reasons that Sovcomflot entered into the impugned transactions under the various schemes, and his account of the involvement in them of other executives and of discussions within Sovcomflot between the executives, including at meetings of the Executive Board, presented a more credible and coherent picture than that given by the claimants' witnesses in their witness statements and by some of them in their oral evidence. I also accept that on a number of controversial matters of some importance the account given in his witness statements was corroborated by documents that were later disclosed by the claimants (and that should have been disclosed earlier). The examples of this include the following:

i) The claimants' case was that "the bonuses which Mr. Borisenko had been paid in 2000 and in 2001 had not been calculated on the basis of [Sovcomflot's] bonus policy…". Mr. Skarga denied this in his witness statement of 16 June 2009, and later disclosure corroborated his denial.

ii) With regard to the November SLB transactions, Mr. Borisenko had stated in his witness statement of 11 February 2009 that he first became aware of them shortly before the meeting of the Executive Board on 15 November 2002, having not been informed previously that they were in contemplation. Mr. Skarga had stated in his witness statement of 13 February 2009 that, "The terms were put together by Sovcomflot (by Mr. Borisenko, I believe …)". This was corroborated by the subsequent disclosure of the spreadsheet sent to Mr. Borisenko by Mr. Privalov on 27 September 2002.

iii) The expenses documents disclosed during the trial confirmed Mr. Skarga's denial that he met Mr. Bonehill in Geneva in or around October 2001.

iv) The informal description of Mr. Sharikov's job, which was not disclosed until the day that he gave evidence, undermined the evidence in Mr. Sharikov's witness statement that it was not his responsibility to "pay much attention to charters fixed by Sovchart" or to "analyse and criticise charters entered into by Sovchart". It confirmed the contrary evidence that Mr. Skarga had given in his witness statement of 16 June 2009.

1436. Nevertheless, I am unable to regard Mr. Skarga as an honest witness. He readily gave dishonest evidence in order to distance himself from the impugned transactions, including for example some of the time charters, and more generally when he thought that it would support his case or that of Mr. Nikitin and the Standard Maritime defendants. I have already in the course of my judgment identified matters about which he lied, and explained my reasons for concluding that he did so.

Conclusion about allegations against Mr. Skarga

1437. Against this background, I come to the question whether Mr. Skarga acted dishonestly in relation to schemes about which the claimants complain, because, as I have explained, the claims are pursued against him only on that basis. In civil proceedings, the standard of what constitutes honest behaviour is an objective one determined by the court. It is irrelevant whether Mr. Skarga considered his conduct honest (or dishonest), and irrelevant whether there might be a body of opinion that the court sets too high or too low a standard: see Starglade Properties Ltd v Nash, [2010] EWCA 1314 at para 32. The application of this objective standard of honest behaviour requires an assessment of Mr. Skarga's state of mind, including his "personal attributes … such as his experience and intelligence, and the reason why he acted as he did": per Lord Nicholls in Royal Brunei Airlines v Tan, [1995] 2 AC 378 at p.391B. He would have been dishonest if he knew that what he was doing would contravene ordinary standards of honest behaviour, or if he was suspicious that they might do so and deliberately avoided making inquiries that might lead him to know whether they did. The proper approach to a question of dishonesty in a context such as this was stated by Lord Hoffmann in Barlow Clowes International Ltd. v Eurotrust International Ltd., [2006] 1 WLR 1476 at para 10: "although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards".

1438. It is well established that "cogent evidence is required to justify a finding of fraud or other discreditable conduct": per Moore-Bick LJ in Jafari-Fini v Skillglass Ltd., [2007] EWCA Civ 261 at para.73. This principle reflects the court's conventional perception that it is generally not likely that people will engage in such conduct: "where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger", per Rix LJ in Markel v Higgins, [2009] EWCA 790 at para 50. The question remains one of the balance of probability, although typically, as Ungoed-Thomas J put it in In re Dellow's Will Trusts, [1964] 1 WLR 415,455 (cited by Lord Nicholls in In re H, [1996] AC 563 at p.586H), "The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it". Associated with the seriousness of the allegation is the seriousness of the consequences, or potential consequences, of the proof of the allegation because of the improbability that a person will risk such consequences: see R(N) v Mental Health Review Tribunal (Northern Region), [2005] EWCA 1605 para 62, cited in Re Doherty, [2008] UKHL 33 para 27 per Lord Carswell.

1439. The principle requires flexibility in its application because it depends upon the improbability of the specific allegation that is made and the particular circumstances of the case. In some cases, the improbability can be such that the civil standard is akin to the criminal standard of proof beyond reasonable doubt (R (McCann) v Crown Court at Manchester, [2003] 1 AC 787 at para 37 per Lord Steyn and para 82 per Lord Hope), but this is not invariably so. Thus in the Jafari-Fini case at para 49, Carnwath LJ recognised an obvious qualification to the application of the principle, and said,

"Unless it is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct".

1440. In this case, it is not disputed that Mr. Borisenko and Mr. Privalov were dishonest in carrying out their duties for Sovcomflot. Mr. Dunning submitted that the dishonesty of Mr. Privalov and Mr. Borisenko does not make it more probable that Mr. Skarga would have behaved dishonestly or accepted bribes. He observed that in fact Mr. Privalov had acted dishonestly and defrauded Sovcomflot before Mr. Skarga joined the group, and thereafter he continued to act dishonestly in matters which he concealed from Mr. Skarga, including making agreements with Clarkson and Norstar for secret payments. It is impossible to tell from the evidence the full extent of Mr. Borisenko's financial dealings in association with Mr. Privalov, but, as he accepted, Mr. Skarga was unaware of them. I refer, by way of example, to their parallel share dealings through Wegelin, and the manner in which he had his funds paid when he withdrew his investment from Capco. I cannot infer from what Mr. Borisenko and Mr. Privalov did that dishonesty was so prevalent amongst executives in the Sovcomflot group as to affect the inherent probability (or improbability) that Mr. Skarga was similarly dishonest. However, as I conclude, Mr. Nikitin made payments to Mr. Privalov by way of bribes or secret commissions, and that he dishonestly involved him in acting in breach of his fiduciary and other duties. I accept the claimants' submission that this is relevant in assessing the likelihood that he would be prepared similarly to corrupt Mr. Skarga and Mr. Izmaylov, and involve them in acting dishonestly and in breach of their duties.

1441. Moreover, in assessing the allegations against Mr. Skarga, it must be recognised that he did in some ways act dishonestly in relation to Sovcomflot. He admitted, for example, that he was dishonest in signing Mr. Privalov's employment contract, and in my judgment he was certainly dishonest when he signed the Supplemental Agreement. His dishonesty on both occasions involved collusion with Mr. Nikitin and Mr. Privalov, and also with Mr. Wettern. I have also concluded that he has given dishonest evidence. I accept the claimants' submission that this makes it the less improbable that he behaved dishonestly on other occasions and again did so in collusion with Mr. Nikitin, Mr. Privalov and others. I am therefore unable to accept that, in assessing the likelihood that Mr. Skarga colluded dishonestly in relation to the various schemes, my starting point should be that it is inherently unlikely that he would have behaved so improperly.

1442. Standing back from the individual impugned transactions, three broad considerations relied upon by the claimants in support of their contention that Mr. Skarga was dishonest in his dealings with Mr. Nikitin cannot be doubted. First, over 3 or 4 years after Mr. Skarga became the Director-General of Sovcomflot, Mr. Nikitin and the Sovcomflot group entered into a series of ventures and dealings of different kinds. Many involved business activities in which Mr. Nikitin had not previously engaged. He started to take vessels on time charter, he bought newbuildings and he invested in SLB financing, a form of funding which had to be explained to him because he was unfamiliar with it.

1443. Secondly, all of these dealings with Sovcomflot turned out to be very profitable for Mr. Nikitin. I acknowledge that this was to some considerable extent attributable to the extraordinary buoyancy of the shipping market during the years that Mr. Nikitin invested heavily in it. This is why his investments in newbuildings and in time

charters were so profitable, and why he was able to benefit from selling the Arbat vessels in 2004. However, this does not explain all of the profits from his dealings with Sovcomflot. He also, in particular, made large amounts from buying the RCB debt, from the SLB transactions and from the payments that brokers made to his companies.

1444. Thirdly, before Mr. Skarga was appointed as Director-General, Mr. Nikitin had already established a close relationship with him, and had bestowed largesse upon him by way of holidays and other benefits. Mr. Skarga, when he was appointed Director-General, was young and lacked the experience that would generally be expected for so senior a position. After his appointment he remained in close contact with Mr. Nikitin. They met every month or so when Mr. Nikitin came to Moscow, and also when Mr. Skarga went to St Petersburg, and they spoke on the telephone every week or more frequently. Mr. Nikitin continued his generosity by providing family holidays and the credit card for his use. Not only did they remain friends, but Mr. Skarga consulted Mr. Nikitin about plans for Sovcomflot's business.

1445. Mr. Nikitin is a very clever businessman. He has an engaging manner and is persuasive. I do not doubt that, through his relationship with Mr. Skarga and their discussions, he was able not only to learn about how Sovcomflot planned to develop their business but also to influence their decisions. This does not in itself mean that Mr. Skarga acted dishonestly or intended to favour Mr. Nikitin or his companies in dealings with Sovcomflot or sought to do other than to act in Sovcomflot's best interests. On the contrary, this would go some way to explain why Mr. Nikitin was able to take advantage of his relationship with Mr. Skarga and to profit from developing businesses with Sovcomflot without dishonesty of Mr. Skarga's part. It is not enough for the claimants to show that Mr. Nikitin benefited from his relationship with Mr. Skarga.

1446. The claimants recognised this, and their allegations are pursued primarily on the basis that Mr. Skarga was motivated by bribes. The claimants' contention is that under the impugned transactions "substantial benefits were transferred on the instructions of Mr. Skarga … to or for the benefit of Mr. Nikitin and companies which he either owned or in which he was interested"; that "the transfer of these benefits is inexplicable in commercial terms and consistent only with the receipt by ... Mr. Skarga of bribes and/or inducements and/or other benefits from Mr. Nikitin or his companies"; and that it is to be inferred that "Mr. Skarga in fact received such bribes and/or other inducements and/or other benefits from Mr. Nikitin and/or his companies": para 79 of the particulars of claim in the Fiona action. I agree with the claimants that, if Mr. Skarga was dishonestly exploiting his position to benefit Mr. Nikitin on anything like the scale that the claimants allege, the overwhelming likelihood is that he was doing so because he was receiving large bribes from Mr. Nikitin. This would in any case have been probable, but it is the more likely in view of the payments arranged by Mr. Nikitin for Mr. Privalov and Mr. Borisenko. However, Mr. Skarga relied upon the converse of this argument: there is no evidence that he received payment or benefits such as would be expected if someone in his position was involved in widespread dishonesty and corruption. The only benefits that Mr. Skarga has been shown to have received from Mr. Nikitin are far too small to explain conduct of the kind and on the scale that the claimants allege.

1447. The Project Sturgeon and other investigations revealed nothing of any significance. The evidence is that Mr. and Mrs. Skarga did not enjoy great wealth in the years after Mr. Skarga became Director-General. If Mr. Skarga was receiving substantial bribes, he and Mrs. Skarga would not, for example, have needed to complete their dacha slowly as and when they could afford to have some work done. It has not been suggested that in this and in living a generally modest life they were together engaged in some elaborate subterfuge; nor has it been suggested that Mr. Skarga was misleading his wife about how rich he was. If Mr. Skarga were going to such lengths to disguise dishonest activities, it is unlikely that he and Mr. Nikitin would have jeopardised their scheming and risked exciting suspicion by Mr. Skarga and his family enjoying holidays at Mr. Nikitin's expense. The inference is that Mr. Skarga was not receiving bribes to participate in the dishonest schemes that the claimants allege, and this in itself, to my mind, makes the claimants' allegations the less probable.

1448. I have examined in some detail the various schemes in which the claimants allege that Mr. Skarga acted dishonestly. I conclude that two broad themes of Mr. Dunning's submissions are justified. First, I consider that the purposes behind the transactions with Mr. Nikitin and the Standard Maritime defendants are readily understandable in light of the Principal Directions that Sovcomflot had adopted and the business strategy that they were pursuing, and in view of the financial constraints that Sovcomflot faced. In particular, they enabled Sovcomflot to reduce their burden of debt by discharging the RCB debt and the Megaslot and other debts, and at the same time modernise the fleet by realising (through sales or SLB arrangements) the aging vessels and acquiring ships that could serve the new Russian markets, in particular by way of the Primorsk trade and the Sakhalin projects. At the same time, Sovcomflot's relationship with Mr. Nikitin, the other Investors and the Standard Maritime defendants furthered Sovcomflot's strategy for developing their business with other Russian interests, and in particular developing "new and innovative forms of co-operation", as the Principal Directions contemplated.

1449. Secondly, Mr. Skarga was not alone responsible for directing Sovcomflot's dealings with Mr. Nikitin. Mr. Borisenko was corrupt, but Sovcomflot's other experienced executives, against whom allegations of corruption have not been made, were party to the decisions to enter into the impugned transactions. There is no credible and significant evidence either that Mr. Skarga could have overborne other executives and dominated the discussions of the Executive Board or that he tried to do so; or that he distanced himself as Director-General from other executives and worked secretively without involving them in what he was doing; or that he discouraged scrutiny by others of Sovcomflot's business decisions and the contracts that they had made and his part in them; or that other members of the Executive Board or other executives opposed the decisions that he took; or that his activities led to tensions with other executives. Other members of the Executive Board were older than Mr. Skarga and had more experience. For example, it is not said that Mr. Izmaylov, who was a member of the Executive Board until late 2001, was then corrupt, and it was clear when he gave evidence that he has a powerful personality and an energetic and enquiring mind. He would not have been rail-roaded by Mr. Skarga or easily tricked. I also found Mr. Lipka's description of Mr. Terekhin convincing, and I regard it as telling. The picture that the claimants sought to present of a supine Executive Board and executives dominated by Mr. Skarga was not justified and was

discredited in cross-examination. Nor do I accept their picture of the directors of Fiona blindly signing the minutes presented to them.

1450. Many of the specific allegations made by the claimants in relation to the various schemes and the matters relied upon by them in their pleadings and opening submissions were either not developed or not supported by evidence that survived cross-examination. They depended significantly upon the evidence of Mr. Borisenko and Mr. Privalov, both of whom gave dishonest evidence not only, as Mr. Popplewell suggested, in order to minimise their own corruption but deliberately to support the claim against Mr. Skarga with evidence that they had concocted together.

1451. That said, some matters relating to the schemes have not credibly and satisfactorily been explained by Mr. Skarga, or by Mr. Nikitin, and remain troubling. They include, with regard to the newbuildings scheme, the back-dated Co-operation Agreement, the dates "as of" given to the agreements for the transfer of the shares in Titanium, Pendulum and Accent, and the question how the price for the shares in Severn came to be determined. However, to my mind the claimants for their part have not explained in any convincing way how these features of the arrangements might have contributed to a scheme to promote Mr. Nikitin's interests or those of the Standard Maritime defendants at the expense of Sovcomflot, or might have disguised such a scheme. More specifically, it is not apparent to me who might have been deceived by the dating of the agreements or misled by the additional $1 million paid for the shares in Severn. I do not believe that other members of the Executive Board were misled by these matters about the nature and purpose of the arrangements for co-operation over ordering the newbuildings, or that it was the intention that they should be. I am not persuaded that these matters provide convincing evidence that Mr. Skarga was acting in dishonest breach of his duties.

1452. I do not propose to summarise all my conclusions about the various schemes involving Sovcomflot, and refer here to just two matters. I have rejected the claimants' central allegations about the termination of the SLB arrangements scheme relating to Mr. Gale's revised valuation and Mr. Privalov's e-mail of 26 May 2004. It is a striking aspect of the sales to Primal Tankers that Mr. Nikitin was willing for the Standard Maritime companies to commit themselves to the agreements with Primal Tankers without first reaching a firm arrangement with Sovcomflot, but, as I have explained, I am not persuaded that this provides evidence of corruption or collusion on the part of Mr. Skarga.

1453. I have also rejected most of the central allegations relating to the SLB arrangements scheme, but I do not overlook that Mr. Skarga, when he sought SLB funding, did not explore to any useful extent possible sources of SLB funding other than the Investors. The claimants have not shown that others would have provided comparable funding at a lower effective rate of interest, but it would be expected that Sovcomflot would have made enquiries of more conventional sources of such funding. However, I have concluded that there is not sufficient reason to conclude that Mr. Skarga was acting dishonestly in this regard. In particular, although Mr. Skarga conducted the discussions with Mr. Katkov, Mr. Malov and Mr. Nikitin, the claimants have not shown that Mr. Skarga was acting alone in deciding to make that approach or that any other executive suggested that there should be discussions with other financiers.

1454. Although Mr. Skarga was dishonest in some of his evidence about the allegations against him, I conclude that the claimants have not shown that, while he was the Director-General of Sovcomflot, he dishonestly acted in breach of his duties by acting in the interests of Mr. Nikitin or the Standard Maritime defendants or by acting contrary to the interests of Sovcomflot and other companies in the group; or that he conspired with Mr. Nikitin to defraud Sovcomflot or companies in the group.

The allegations that Mr. Izmaylov was dishonest

1455. I come to the claimants' case that Mr. Izmaylov dishonestly acted in breach of his duties by acting in the interests of Mr. Nikitin and the Standard Maritime defendants and contrary to the interests of NSC and other companies in the group when he was President of NSC or in the period between November 2001 and January 2002 when he was the acting President. I have already referred to the principle that allegations of such conduct must be proved by appropriately cogent evidence.

1456. Mr. Izmaylov's position is rather different from that of Mr. Skarga. He has not admitted that he has acted dishonestly (whereas Mr. Skarga did in relation to Mr. Privalov's employment contract), and the proper approach, as it seems to me, is to assess the claimants' allegations on the basis that it is improbable that he would have been dishonest as they contend. However, neither in the case of Mr. Skarga nor in the case of Mr. Izmaylov do my conclusions about whether the claimants have proved their allegations depend upon such questions about the inherent probability of them having behaved dishonestly in relation to their duties. They are based primarily upon the evidence about the schemes themselves, in light of the evidence about whether Mr. Nikitin paid them bribes and the credibility of their evidence.

1457. I consider first the claimants' allegation that Mr. Izmaylov was bribed by Mr. Nikitin, and therefore entered into the NSC Clarkson commissions scheme, the Galbraith's commission scheme, the Sawyer commissions scheme and the NSC time charters scheme. Their case is that it is to be inferred that the "uncommercial transactions … were the result of similar bribery of Mr. Izmaylov by Mr. Nikitin", that is to say bribery similar to Mr. Nikitin's bribery of officers of the Sovcomflot group: see para 10K of the particulars of claim in the Intrigue action. Although NSC engaged private investigators to look into Mr. Izmaylov's financial and private affairs, the claimants have produced no evidence of payments or financial or other benefits provided to Mr. Izmaylov or for him, other than two holidays which Mr. Nikitin arranged for him and his partner and for which, as they say, he paid. The Russian prosecuting authorities have also made investigations into Mr. Izmaylov's affairs, but, as far as the evidence goes, they have not found any incriminating information of this kind. Shortly before Mr. Izmaylov gave evidence, the claimants disclosed some 400 pages of bank statements and information relating to Mr. Izmaylov's financial affairs, which, they explained, resulted from investigations by the Russian prosecuting authorities. These documents were disclosed because nothing in them indicates that Mr. Izmaylov had received bribes or financial inducements, and the claimants' advisers properly recognised that this, in itself, provides some support for Mr. Izmaylov's case that he did not do so.

1458. The claimants plead in general terms that Mr. Izmaylov acted in breach of his fiduciary and other duties "because he had been bribed and/or offered other improper and unlawful inducements or benefits by Mr. Nikitin": see para 10E of the particulars of claim in the Intrigue action. The only benefits or bribes that the claimants have specifically identified in their pleading are two payments in the total of some €41,000 made in connection with a holiday in Crete in June 2004. They do not plead that a later holiday in St Moritz in January 2005 that Mr. Nikitin arranged for Mr. Izmaylov constituted a bribe. While they have adduced evidence only about these two holidays, the claimants submitted that Mr. Nikitin probably arranged and paid for other holidays. I reject that submission. No evidence supports it, and I see no reason to infer that he did so.

1459. Mr. Bryan argued that, on analysis, the claimants' pleading does not allege that the Cretan holiday was a bribe, but that the payments relating to it are material from which it is to be inferred that Mr. Nikitin conferred other bribes or improper inducements upon Mr. Izmaylov; and so that the claimants do not specifically plead any identified bribe. I do not accept that argument. As I read the pleading, it asserts that the payments are evidence that the holiday was funded by way of a bribe. However, many of the impugned transactions took place long before June 2004, and so long before any bribe to Mr. Izmaylov that the claimants claim to have identified.

1460. The evidence about the holiday in Crete was this. In April 2004 Mr. Nikitin suggested to Mr. Izmaylov that he and his partner should join the Nikitin family on a holiday at the Blue Palace Resort in Crete in June 2004. Although it was a holiday, Mr. Nikitin indicated that he had it in mind that he might discuss with Mr. Izmaylov some matters of business while they were away. Mr. Izmaylov indicated that he would like to accept the invitation, if it fitted with his diary. Mr. Izmaylov said, and I accept, that at that stage he had not thought about who would pay for the holiday. Mr. Nikitin arranged the holiday and payment for it. He said nothing to Mr. Izmaylov about payment but, as he said and I accept, he expected that Mr. Izmaylov would offer something towards it, because, as he put it, "that is normally how it goes" between Russians.

1461. This was a holiday, not a business trip, but, while they were in Crete, Mr. Nikitin and Mr. Izmaylov had some discussion about the possibility of NSC selling to Mr. Nikitin some vessels. The vessels were four elderly OBO vessels, referred to as the "Kapitan" vessels (the "Kapitan Putilin", the "Kapitan Zhuralov", the "Kapitan Stankov" and the "Kapitan Koziar"). Mr. Nikitin arranged a survey of the vessels and on 15 January 2005 he offered to buy them for $10 million per vessel, but the offer was rejected as too low. In fact they were sold in March 2005 for some $16 million per vessel, not to Standard Maritime companies, and, the sale being through Galbraith's, Amon were paid $641,000 in total in respect of the sales.

1462. It was the evidence of Mr. Nikitin and Mr. Izmaylov that, as well as paying for meals during the holiday, Mr. Izmaylov offered to make a payment to Mr. Nikitin for the accommodation. Mr. Nikitin protested, but Mr. Izmaylov insisted on making him a cash payment by way of reimbursing what he thought the accommodation might have cost. As he was checking out of the hotel, Mr. Izmaylov pressed upon Mr. Nikitin some $5,000. Mr. Nikitin said that Mr. Izmaylov handed him "the pack of money in dollars". He did not count the money, but took it to meet the cost of the holiday for Mr. Izmaylov and his partner. The evidence about how much was paid was vague,

but this is not surprising given the nature and circumstances of the payment and the wealth of both Mr. Nikitin and Mr. Izmaylov. Mr. Izmaylov did not claim to have carefully calculated the cost of the holiday, but he was pressing Mr. Nikitin to accept what he thought would cover it. It was submitted that this account is incredible because it would have been more straightforward for Mr. Izmaylov to make a bank transfer rather than to pay cash. This seems to me unrealistic given that Mr. Nikitin wanted to treat Mr. Izmaylov to the holiday and Mr. Izmaylov was insisting on paying his way. I found Mr. Izmaylov's evidence about this convincing, and I accept it.

1463. I add that there is no reason to think that the holiday influenced Mr. Izmaylov to favour Mr. Nikitin in his dealings with NSC. I have mentioned that the Kapitan vessels were not in the event sold to Mr. Nikitin or Standard Maritime. Mr. Bryan also pointed out that in June 2004, shortly before the holiday, Mr. Izmaylov was party with Mr. Sakovich to a decision to reject an approach from Henriot to take another NSC vessel on time-charter despite an attractive rate of hire being offered.

1464. In the autumn of 2004, Mr. Nikitin spoke to Mr. Izmaylov about whether he and his partner were intending to go to St Moritz that winter, and Mr. Izmaylov expressed some concern that he might have left it too late to find accommodation. Mr. Nikitin arranged for them to stay at the Hotel Kulm for ten days in January 2005. He and Mrs Nikitin were also in St Moritz, but at a different hotel. In November 2004 Mr. Nikitin arranged for CHF13,400 to be paid for the accommodation, and it appears from the documents that in January 2005 he was charged with an additional CHF2,300 after the holiday because Mr. Izmaylov's accommodation was up-graded. Mr. Izmaylov's evidence was that he insisted on repaying Mr. Nikitin the amount that he thought the accommodation would have cost. He said that he paid in cash about the same amount as he had paid in Crete, "about $5,000, maybe a little bit less, $4,000" Mr. Nikitin was uncertain about how much he was paid, but thought it about $2,000 to $4,000. There was some variation between Mr. Izmaylov's witness statement of 16 June 2009 in which he said that the money was paid when he and Mr. Nikitin met for dinner, and his oral evidence that he made the payment when Mr. Nikitin came to say goodbye as Mr. Izmaylov was checking out of the hotel. Despite what the claimants criticise as the vagueness and imprecision of the evidence, I accept that Mr. Izmaylov insisted on paying to Mr. Nikitin what he roughly estimated the accommodation would have cost. He apparently under-estimated the cost, but he was not asked about that in cross-examination, and I cannot regard that as significant.

1465. I conclude that, on both occasions when Mr. Nikitin arranged holidays for Mr. Izmaylov, Mr. Izmaylov tried to reimburse him the approximate cost and thought that he had done so. I do not accept that in these circumstances he received anything that might have created a realistic risk of a conflict between his interests and his duties to NSC and their subsidiaries, or that would amount to a bribe for the purposes of English law. There is no credible evidence that Mr. Izmaylov received other bribes, and I reject the allegation that Mr. Izmaylov was bribed by Mr. Nikitin.

1466. I have concluded that Mr. Izmaylov gave honest evidence. The claimants submitted that his evidence about the various schemes was incredible. I have considered the issues about that when examining the various schemes, and I am not persuaded that Mr. Izmaylov gave deliberately untruthful evidence. The claimants also relied in support of their submission that Mr. Izmaylov is an untruthful or unreliable witness upon his evidence about investments that he had made in the 1990s through Capco

Trust Jersey Ltd. ("Capco"). The evidence about the dealings with Capco were, as it seems to me, something of a sideshow, but, since the claimants relied upon it, I shall state my conclusions about it.

1467. On 10 January 2005 $263,475.49 was paid into Laverne's bank account by cheque drawn on RBS. Mr. Borisenko said that it came from an investment that he and Mr. Izmaylov made through a company incorporated in Nevis called Prospect Investments Ltd. ("Prospect"), which was managed by Capco. Prospect had been established in February 1996. The funds were invested with Liberty International Money Funds Ltd. in a fund called Liberty Ermitage. Some $220,000 was invested in 1996, and some $119,000 was invested in 1997.

1468. According to Mr. Izmaylov, from the start the investment was made jointly by him and Mr. Borisenko and it represented their earnings from consultancy and advisory work. He said that in about 2000 his relationship with Mr. Borisenko cooled because, when Mr. Borisenko was acting Director-General of Sovcomflot and hoped to be appointed Director-General on a permanent basis, he appeared to Mr. Izmaylov to favour others in preference to him. He withdrew his funds from the joint investment, and by the end of 2000 Mr. Borisenko was alone interested in it. According to Mr. Izmaylov, he had previously told Capco that, although they could treat him as owning the fund for their purposes, in fact another investor also had an interest in it (he cannot remember whether he named Mr. Borisenko), and in 2000 he told Mr. Capco that Mr. Borisenko alone was interested in the fund. From 2000, therefore, until 2004, as Mr. Izmaylov said, he had no dealings with Capco.

1469. Mr. Borisenko's evidence about this was different. He said that he had no involvement with Capco until 2000. By then he had put aside savings from his salary and bonuses, and discussed with Mr. Izmaylov transferring them to an account held by an off-shore company. Mr. Izmaylov offered him help in doing so, and Mr. Borisenko gave him $250,000 in cash, which Mr. Izmaylov arranged to invest through Prospect in the Liberty Ermitage fund. In 2002 or 2003 Mr. Izmaylov advised him that Capco wished to wind up Prospect and that he intended to withdraw, or had withdrawn, the money invested with them. Mr. Borisenko had by then his account with Wegelin in the name of Laverne, but he did not want Capco to know of the Laverne account because Capco were providing services to Sovcomflot. He therefore asked Mr. Privalov whether he had an overseas account in which he would allow the funds to be deposited. Mr. Privalov agreed to provide this facility, and Mr. Borisenko mandated him to arrange for the funds from Prospect to be transferred. On 22 April 2003 Mr. Privalov gave instructions to Capco to transfer the funds held on behalf of Mr. Borisenko to Getwire. According to Mr. Borisenko's evidence, he did not know about Getwire, and did not know what account or vehicle Mr. Privalov was using to help him. The matter was delayed, apparently because over the following months Capco pressed Mr. Privalov for "due diligence" documents, but Mr. Privalov did not respond to their requests. In the event, the funds were never transferred to Getwire. In 2004 Prospect was wound up.

1470. On 4 January 2005 Capco drew a cheque for $263,488.01 payable to Mr. Borisenko, and Mr. Privalov gave them a receipt for it, which he had signed in Mr. Borisenko's name. Mr. Borisenko said that he asked Capco to send it to Mr. Privalov and arranged for Mr. Privalov to pay it to Wegelin Bank because he did not want it sent to Russia.

1471. As I understand the claimants' submissions, they relied upon Mr. Izmaylov's part in this investment and his evidence about it to support their submission that he was dishonest, and they made three points. First, Mr. Izmaylov was willing to invest overseas through what the claimants described as a secret bank account. That is, no doubt, true as far as it goes, but it does not, to my mind, cast any general doubt upon his credibility and (if it be so alleged) it does not provide evidence that he was receiving bribes from Mr. Nikitin through overseas accounts. Secondly, it is said that Mr. Izmaylov was vague in his evidence about the source of the earnings that were paid into the investment in 1996 and 1997. Again, I agree that he was, and it might be that he was seeking to protect a Russian business that had been paying him, and on his account was also paying Mr. Borisenko, but this does not seem me of much significance. Thirdly, the claimants observed differences between his evidence and that of Mr. Borisenko about when Mr. Borisenko first had any interest in the investment and pointed out that there is no indication in the documents made available by Capco that they knew before 2000 that anyone other than Mr. Izmaylov had any interest in the investment. Even after he said that he had withdrawn his investment in the fund, Mr. Izmaylov indicated on documents that he signed for Capco that he was the beneficial owner of the investment. I accept Mr. Izmaylov's evidence that he had made Capco aware of Mr. Borisenko's interest, but that he and they were content that Mr. Izmaylov should deal with the investment on behalf of them both.

1472. I am left with the impression that the evidence does not provide a complete account of the dealings through Capco, and accept that Mr. Izmaylov was reticent about the source of the funds that were paid into it. This does not persuade me that I should prefer Mr. Borisenko's evidence about the investment, or that this should affect my assessment of Mr. Izmaylov's evidence about the claims made against him.

1473. In their pleaded case, the claimants support their case against Mr. Izmaylov with six matters, in addition to their allegations about the schemes themselves and about the holiday in Crete. Two of them depended upon evidence of Mr. Oskirko that I have rejected, namely (i) the allegation that Mr. Rokison told him that the commissions upon the sale of the Uljanik hulls had been agreed by Mr. Izmaylov; and (ii) allegation that Mr. Mikhaylyuk told him that Mr. Izmaylov had been threatened that he would be dismissed if he sought higher chartering rates for the "Kuzbass" and the "Kaspiy". Mr. Popplewell abandoned two other allegations, namely (i) that, when he was an executive with Sovcomflot, Mr. Izmaylov was "likely to have been aware of the corruption of Mr. Skarga, Mr. Borisenko and Mr. Privalov by Mr. Nikitin" (para 10K of the particulars of claim); and (ii) that after Mr. Izmaylov was dismissed in October 2005, it was discovered that before he left Mr. Izmaylov had instructed NSC's Information Technology department to "delete information from the hard drive of his computer and from NSC's company server rendering the retrieval of communications with third parties impossible …", that there was no justification for the instruction and that it is to be inferred that his reason was to prevent or hinder investigations into his dealings when in office (para 10L of the particulars of claim). I must consider the two remaining allegations.

1474. First, the claimants relied upon some e-mails about a suggestion that NSC should enter into a joint venture with Mr. Nikitin: see para 10N of the particulars of claim. The proposal concerned four shipbuilding contracts that NSC had made with a Korean

shipyard, but in fact the proposed joint venture did not proceed. Mr. Izmaylov agreed that he had some discussions with Mr. Nikitin about a possible joint venture concerning the vessels "in general terms", and Mr. Nikitin said that the discussions "stopped at a very early stage".

1475. In June 2004 Mr. Wettern sent two e-mails upon which the claimants relied as evidence of Mr. Izmaylov's involvement in corrupt dealings. The first e-mail is dated 10 June 2004. In their pleading the claimants referred to this as an e-mail to Mr. Privalov, but in fact it was to Mr. Nikitin. (I understood that this was agreed during the hearing, but the claimants' closing submissions repeat that it was sent to Mr. Privalov. In fact, it was directed to one of Mr. Nikitin's e-mail addresses.) Mr. Wettern wrote that Mr. Sawyer had "already discussed with [Mr. Izmaylov], and well understands the need to build-up a story of negotiations, to allow [Mr. Izmaylov] to make a proposal to the board of Novoship that will be accepted".

1476. On 15 June 2004 Mr. Wettern sent to Mr. Nikitin a first draft of a letter that he suggested might be sent to Mr. Sawyer, as adviser to NSC, for him to pass to Mr. Izmaylov and make a counter-proposal.

1477. On 17 June 2004 Mr. Wettern wrote an e-mail to Mr. Sawyer and to Mr. Nikitin and sent a copy of it to Mr. Privalov. He said that he had spoken to Mr. Nikitin and continued as follows:

> "2. He is meeting Tagir again in a few days, to rediscuss the strategy for the establishment of the joint venture. What Yuri is particularly concerned about is that the initial offer which will made [sic] should not be completely unrealistic. I have explained to Yuri the idea of the ball going backwards and forwards across the net a few times before the [Joint Venture] is finally "agreed", which he approves of completely, but his main point is that the very first serve must be justifiable to enable to Tagir to continue discussions. We will be getting further instructions on this after their meeting.
>
> 3. I mentioned to Yuri the idea of the initial approach, coming to you from Richard Gale, and Yuri thought this was a good idea. He thinks, however, it is probably better to wait until he has had the meeting with Tagir before moving this forward, to explain the idea to Richard."

(Mr. Nikitin's expected meeting with Mr. Izmaylov "in a few days" apparently referred to them being on holiday together in Crete between 25 June and 4 July 2004.)

1478. On 21 June 2004 Mr. Wettern sent Mr. Nikitin a draft document designed to present Standard Maritime as a successful oil trader that wished to expand into shipowning activities, which apparently it was thought might assist Mr. Sawyer.

1479. Mr. Izmaylov was not sent any of the e-mails, nor, although the claimants submitted that the nature of his relationship was indicated by an e-mail from Mr. Sawyer, were any relevant e-mails sent by Mr. Sawyer. Nevertheless, the claimants submitted that these exchanges show that Mr. Nikitin and Mr. Izmaylov were planning to build up a fictitious story of negotiations so that Mr. Izmaylov could win the support of NSC's board for the proposal for a joint venture. I was unconvinced by Mr. Nikitin's evidence in which he denied that he knew of any plan that Mr. Sawyer could indicate that the proposal had been negotiated over a series of exchanges. I was also unconvinced by his evidence that he did not know that Mr. Privalov was involved in these discussions because Mr. Wettern copied to Mr. Privalov e-mails that he sent to Mr. Nikitin.

1480. However, the important question is not about Mr. Nikitin's dealings in this matter, but whether Mr. Izmaylov was party to or knew of any fiction of the kind that the claimants allege. Mr. Izmaylov denied the allegation. He said that he and Mr. Oskirko had explained to Mr. Sawyer that, whenever a deal was proposed, Mr. Sawyer needed to make a good presentation to the board about the proposed joint venture, and the correspondence is consistent with Mr. Sawyer, in whose interest it was to promote the proposal, ensuring that he could show to Mr. Izmaylov, as well as others at NSC, a "story of negotiations". I do not infer from Mr. Wettern's reference to Mr. Nikitin planning to "rediscuss the strategy for the establishment of the join venture" that Mr. Nikitin and Mr. Izmaylov were to discuss together how they should create a false story of negotiations. The letter simply indicates that Mr. Nikitin wanted to ensure any initial offer was not one that would be rejected so as to bring discussions to a halt. There is, to my mind, no convincing reason to suppose that Mr. Izmaylov was party to a plot to create misleading exchanges or a false picture of negotiations, and I reject the allegation. Certainly I am not persuaded that these e-mails provide any significant evidence of a corrupt and collusive relationship between Mr. Izmaylov and Mr. Nikitin.

1481. Finally, the claimants plead that Mr. Izmaylov was "a close associate of Mr. Nikitin": see para 10K of the particulars of claim. They also referred in submissions to the fact that Mr. Nikitin is funding Mr. Izmaylov's legal expenses, which they argued is indicative of "the corrupt nature of the relationship" between them. I reject that submission. It is in Mr. Nikitin's interest that Mr. Izmaylov should be in a position properly to defend himself in the Intrigue action, not least because the claimants pursue the claims about the NSC time charter scheme only on the basis of dishonesty on the part of Mr. Izmaylov. It does not indicate that their relationship was corrupt between November 2001 and October 2005.

1482. Mr. Izmaylov was not a close associate of Mr. Nikitin before he moved to NSC to become their President. It was only when he learned that Mr. Izmaylov was to be appointed that Mr. Nikitin made it his business to know him better. He then quickly built up a close relationship with him, and the evidence was that they would speak by telephone twice a week. It is likely that again Mr. Nikitin used his persuasive charm to influence Mr. Izmaylov and to develop their relationship in his own interests. I am not persuaded that this provides any convincing evidence that Mr. Izmaylov acted dishonestly.

1483. Within a few weeks of his move to NSC and before he was formally appointed President, Mr. Izmaylov had set about replacing NSC's brokers, and he replaced them

with other brokers who were to enter into arrangements to make payments for Mr. Nikitin's benefit. I accept that Mr. Izmaylov acted with remarkable speed to do so. It was Mr. Oskirko's responsibility to go about investigating who might replace North South, but Mr. Oskirko was of a very different personality from Mr. Izmaylov. He was hesitant and rather ineffective, whereas the picture of Mr. Izmaylov that emerged when he gave evidence was of an energetic, confident and decisive executive. Mr. Izmaylov considered that North South were inadequate for NSC's purposes, and, as I conclude, was impatient to remove them. I can readily accept that Mr. Nikitin was acute enough to encourage Mr. Izmaylov in this, and perhaps he planted in Mr. Izmaylov's mind the idea that he should do so. However that may be, I do not accept that Mr. Izmaylov was acting dishonestly in having new brokers appointed.

1484. I conclude that the claimants' contention that Mr. Izmaylov acted dishonestly and in breach of his duties in relation to the four NSC schemes has not been established, for the reasons that I have already indicated in my consideration of the specific transactions and allegations. In broad terms, I reject their contention for reasons broadly similar to those for which I rejected their contention about Mr. Skarga. First, the specific allegations relied substantially upon evidence (in this case that of Mr. Oskirko) which did not withstand cross-examination and, in my judgment, was shown to be dishonest. Secondly, I am unable to accept the claimants' case that Mr. Izmaylov dominated the other executives at NSC and they accepted his decisions uncritically. Apart from Mr. Oskirko, NSC's executives who gave evidence were impressive. In particular, Mr. Sakovich, whose evidence was especially relevant to the allegations about the NSC time charters scheme, had a powerful personality and would not have acceded to decisions with which he disagreed. Ms. Spasova, who was a careful and straightforward witness, would not have acquiesced without protest in transactions that troubled her.

Conclusions on the claims against Mr. Skarga and Mr. Izmaylov

1485. The only basis upon which the claims were pursued against Mr. Skarga was that he dishonestly advanced the interests of Mr. Nikitin or the Standard Maritime defendants in relation to the schemes or dishonestly acted in relation to them against the interests of Sovcomflot or other companies in the group. I therefore reject the claims against him. For similar reasons I reject the claims against Mr. Izmaylov.

1486. I add that, even if I had not reached the conclusions that I have about the allegations of dishonesty, the cases against Mr. Skarga and Mr. Izmaylov would have faced formidable, and in my judgment insuperable, difficulties. In brief, leaving aside any time-bar defences under Russian law, I make these observations about the claims against Mr. Skarga:

i) Any claim by Sovcomflot would be governed by Russian law. Sovcomflot would need to show that they suffered loss as a result of some breach of duty on the part of Mr. Skarga, and in my judgment they have not established such a causal connection.

ii) Any claim by other companies in the group on the basis of contract or fiduciary duties would be governed by the law of the country where the claimants was incorporated. Any claim for damages or equitable compensation would face similar difficulties in respect of establishing the necessary causal connection.

iii) The claimants have accepted that there is no material upon which an account could be taken of profits that Mr. Skarga himself has made. There is no evidence that Mr. Skarga has received any profits from breach of duty or from any of the schemes in which he is alleged to have participated, and there is no other reason which, in my judgment, would have justified the court ordering an account of profits that he has received or inquiries about that.

iv) In so far as the claimants would pursue a claim against Mr. Skarga for an account of the profits received by Mr. Nikitin, the Standard Maritime defendants or others who are said to have participated with him in his breach of fiduciary duty, I accept Mr. Dunning's submission that a fiduciary is not liable to account for the profits of joint wrongdoers or of other third parties: see Regal (Hastings) Ltd. v Gulliver, (20 February 1942) [1967] 2 AC 134 at pp.151E-152C per Lord Russell.

v) In so far as the claimants might seek to rely upon a claim in bribery because, under English law, it is presumed that the bribe influenced the recipient to enter into relevant transactions or to cause the principal to do so, any issue about Mr. Skarga accepting a bribe would be governed by Russian law, and the claimants would not be able to rely upon this presumption. They would have to prove influence and causation, and they have not done so.

1487. The claims against Mr. Izmaylov face similar difficulties.

The case against Mr. Nikitin and the Standard Maritime defendants

1488. It also follows from my conclusions about Mr. Skarga and Mr. Izmaylov that some of the claims against Mr. Nikitin and other defendants are to be dismissed because they too were pursued only on the basis that Mr. Skarga or Mr. Izmaylov had acted dishonestly and in breach of duty in favouring the interests of Mr. Nikitin and the Standard Maritime defendants or against the interests of the Sovcomflot group or, as the case might be, the NSC group. This applies to the claims in respect of the RCB scheme, the SLB arrangements scheme, the termination of the SLB arrangements scheme, the newbuildings scheme, the Sovcomflot time charters scheme and the NSC time charters scheme.

1489. For reasons that I have already sufficiently explained, I also reject the claims in relation to the "Romea Champion" commission scheme and the Sawyer commissions scheme.

1490. I come therefore to the claimants' alternative case in relation to the other commissions claims, namely that, even if they have not shown that in any relevant way Mr. Skarga and Mr. Izmaylov were dishonest, nevertheless they are entitled to succeed because

Mr. Nikitin acted dishonestly or improperly in his dealings with the brokers or Mr. Privalov or both. (When I use the term "brokers" in this part of my judgment I do not include Mr. Sawyer.) I must consider this in relation to the hull no 1231 commission scheme, the Sovcomflot Clarkson commissions scheme, the Norstar commissions scheme, the NSC Clarkson commissions scheme and the Galbraith's commissions scheme. For reasons that I have explained, I conclude that the issues relating to these alternative claims are governed by English law.

1491. From the first transactions that Clarkson handled for Sovcomflot, Clarkson acted dishonestly and in breach of their fiduciary duties. In particular Mr. Gale was dishonest. I am not in a position to conclude whether or not others within Clarkson were also dishonest in any relevant way (although Mr. Fulford-Smith's part in producing the 2004 letters has not been explained by Clarkson), and I need not do so. The dishonesty arose from the Clarkson arrangement that Mr. Gale had made with Mr. Nikitin in that the reason for Mr. Gale's dishonest conduct was to ensure that Clarkson should be in a position to make payments for Mr. Nikitin in respect of each transaction. In particular, he was dishonest in these ways:

i) When acting for Sovcomflot upon purchases, Mr. Gale negotiated that the sellers should pay address commissions. He knew that Clarkson should not have done this without their principals' instructions and should in any event have disclosed the address commissions to their principals. Further, having received the address commissions from the sellers, Clarkson knew that the buyers (or their managers) were entitled to be paid them or to direct to whom they should be paid, but, as he had always intended to do, Mr. Gale kept them secret from Sovcomflot, except for Mr. Privalov and possibly Mr. Borisenko, and did not account for them.

ii) In relation to the Athenian transaction, Clarkson arranged, as part of the agreement for the purchase of the ships, that the sellers should transfer the outstanding instalments of the address commissions payable to Rody. They did so without their principals' instructions and they did not disclose this to their principals or account to their principals for the commissions when they were received. Mr. Gale never intended that Clarkson should disclose them or accounted for them.

iii) When acting for Sovcomflot upon sales, Clarkson charged commissions at levels that were sufficient for them to make payments for Mr. Nikitin. They did not disclose this to Sovcomflot. On occasions, including, for example, in relation to the Genmar transaction, the first sales that Clarkson handled for Sovcomflot, Mr. Gale gave untruthful and dishonest explanations to Sovcomflot for the level of commissions that Clarkson were charging; and in relation, for example, to the sales of the "Moscow Mariner" and the "St Petersburg Mariner", Clarkson created fraudulent documents designed to indicate that they had played a part in the negotiations in order to justify them in charging any commission at all.

iv) Clarkson made payments for Mr. Privalov in relation to the business that they handled for Sovcomflot, and they did not disclose this to Sovcomflot but deliberately concealed the payments. Clarkson were not entitled to make secret payments for Mr. Privalov since he was employed in their principals'

group of companies and was acting for their principals on the transactions in respect of which Clarkson were paying him.

1492. I also conclude that Clarkson were in breach of their fiduciary duty to their principals in making payments for Mr. Nikitin under the Clarkson arrangement without disclosing them to their principals. As I have said, I accept that a broker is not always obliged to disclose it to his principal when he pays an introductory commission in relation to a transaction handled for the principal, provided he does not know that the principal would or might object to the payment and does not have reasonable grounds to think that the principal would or might object. However, this leads to the questions whether the payments under the Clarkson arrangement were by way of introductory commissions and whether Mr. Gale knew that Sovcomflot would object to them making such payments or that they might do so.

1493. Although the pleaded case of Mr. Nikitin and the Standard Maritime defendants is that under the Clarkson arrangement Milmont (or another nominated company) would receive an amount of commission in respect of business introduced to Clarkson by Mr. Nikitin, this was not supported by Mr. Nikitin's evidence and was not reflected in the payments that were in fact made to Milmont and other companies to whom Clarkson made payments. I have concluded that in fact they were simply paying him on all business that they handled for Sovcomflot, and it seems likely that they did so because they were under the impression that Mr. Nikitin had influence with Sovcomflot, and maybe with Russian shipowners generally. Whatever the true position, in light of Mr. Nikitin's own evidence, the payments cannot, to my mind, be described as introductory commissions of the kind that Mr. Day explained are commonly paid in the shipping market.

1494. In his closing submissions Mr. Berry submitted that it is not open to the claimants or to Clarkson to advance a case that the true nature of the payments under the Clarkson arrangement was that they were by way of the purchase of influence, such as were described by Waller LJ in Westacre Investments v Jugoimport-SPDR, [2000] 1 QB 288 at p.304F-H, because no such case has been pleaded by them. That submission, as it seems to me, misses the point. If this was the nature of the payments under the Clarkson arrangement, they cannot be said to be introductory commissions of the kind commonly paid, so as to excuse the brokers from informing their principals about them because they are accepted in the market.

1495. In any event, Clarkson were obliged to tell their principals about the payments for Mr. Nikitin under the Clarkson arrangement if they knew that their principals would or might object to payments. I conclude that Mr. Gale did know that Sovcomflot would object to payments under the Clarkson arrangement, even on the basis that it was as Mr. Nikitin described it in his evidence. He described the arrangement as being that Clarkson should make payments which they were to finance from charging "commission for division", which might be above their normal rate of commission, and for which he was to give Clarkson ideas and information about what vessels Sovcomflot might be interested in acquiring for or selling from their fleet. At the start of the trial it had been the pleaded case of Mr. Nikitin and Milmont (at para 3b of the part 20 particulars of claim) that the arrangement was that Clarkson were to charge their standard level of commissions, but this contention was not supported by Mr. Nikitin when he was cross-examined and it was abandoned. It must have been clear to Mr. Gale that, if Sovcomflot knew of payments of this kind, which might increase

the level of commissions that Clarkson might charge, they would be likely to object to them. Any principal would expect that his broker would ascertain his plans and thinking from him and not pay third parties for such information; and in this case any payments made on this basis would be the stranger, and the payments would be the more likely to meet with objection, since Mr. Gale was in far closer contact with Mr. Privalov than with Mr. Nikitin, and was far more likely to learn from Mr. Privalov than from Mr. Nikitin about what sort of proposals might be of interest to Sovcomflot.

1496. I therefore conclude that Clarkson were dishonest and in breach of their fiduciary duties to their principals in the Sovcomflot group. When they acted for the NSC group, they were similarly in breach of their duties. They negotiated the purchase of vessels on the basis that the sellers would pay address commissions, they did not have instructions to do so, they did not disclose to their principals that they were doing so and they did not account to their principals for the address commissions when they received them and did not intend to do so. They were also in breach of their duties in making payments for Mr. Nikitin and Mr. Privalov, and not disclosing them to their principals.

1497. There is relatively little evidence about the Norstar commissions scheme. Mr. Bonehill and Norstar were not defendants to the second Fiona action and they did not make disclosure. It is not pleaded that they acted in breach of fiduciary or other duties. However, Norstar made payments to Sisterhood Associates, for Mr. Privalov, who was effectively employed by and acting for their principals. Further, Norstar made payments for Mr. Nikitin to Milmont. I have concluded that Mr. Nikitin did not introduce Mr. Bonehill to Mr. Privalov or otherwise to the Sovcomflot business. Whatever the precise nature of the arrangement under which Norstar came to be paying Milmont, the payments were not by way of introductory commissions. Norstar should not have made payments to Sisterhood Associates and to Milmont without disclosing them to their principals.

1498. I add that, at the same time as they were acting upon the sales that were said to be subject to this scheme, Norstar were being paid commissions by Clarkson in respect of sales of Sovcomflot vessels to which they had contributed nothing. They must have known that they would not be being so paid if Sovcomflot's business was being properly handled.

1499. I conclude that, through Mr. Rokison, Galbraith's were in dishonest breach of their fiduciary duties to their principals in the NSC group for similar reasons that I conclude that Clarkson were. First, without instructions and secretly they negotiated for address commissions in respect of the refinancing of the Aframax vessels, which they did not disclose to their principals and for which they did not account. Secondly, in relation to the sales of vessels, they deceived NSC about the reasons that they were charging the level of commissions that they were. I have referred, for example, to Mr. Rokison's e-mail to Mr. Oskirko of 8 October 2003 about the sale of Hyundai Mipo hull no 0201 and his e-mail to Mr. Izmaylov of 29 September 2003 about the sale to Hanseatic Lloyd Rederei. In any event they should have disclosed to their principals the payments for Mr. Nikitin and Mr. Privalov for the same reasons as Clarkson should have disclosed the payments that they made.

1500. There is no dispute that Mr. Privalov acted dishonestly and in breach of his fiduciary duties, not only in accepting payments made for his benefit to Shipping Associates,

but also because he was party to the payments for Mr. Nikitin's benefit from Clarkson and Norstar. He knew the details of the payments to Milmont and other companies, and he knew from an early stage in the operation of the schemes that in order to raise the funds the brokers were negotiating for address commissions when their principals were buying vessels and did not intend to disclose them or to account for them, and were increasing the levels of commissions that they charged their principals on sales and providing untruthful explanations for doing so. He did not disclose this to Sovcomflot or to any company in the group as his fiduciary duties obliged him to do. With regard to the hull no 1231 commission scheme, he himself arranged that the sellers should pay address commissions, but that it should not be disclosed or paid to any company in the Sovcomflot group.

1501. The claimants contended that Mr. Nikitin knew that the payments to the recipient companies were made by Clarkson and Galbraith's in breach of their fiduciary duties, and also, in the case of the payments made under the hull no 1231 commission scheme, the Sovcomflot Clarkson commissions scheme and the Norstar commissions scheme, as a result of Mr. Privalov acting in breach of his fiduciary duties. He also acted dishonestly to procure that Clarkson, Galbraith's and Mr. Privalov acted in breach of their fiduciary duties and assisted them to do so. As for the companies to whom payments were made, Mr. Berry accepted that Mr. Nikitin's state of mind is to be attributed to Milmont and Amon. I shall invite the claimants to address me further about whether his state of mind is also to be attributed to Pollak and RTB (who are not represented). They pursue no claim against Horber, which has been dissolved.

1502. For the reasons that I have explained, the claimants require cogent evidence to establish that Mr. Nikitin was guilty of dishonesty and other such conduct. They have provided such evidence, and I conclude that Mr. Nikitin acted dishonestly in arranging for the brokers to make payments for him, and in arranging for Mr. Privalov to assist the brokers to do so and to raise the funds to do so.

1503. I have already explained why I conclude that Mr. Nikitin acted dishonestly in relation to some of his dealings, including the Supplementary Agreement and Mr. Privalov's employment contract. He gave dishonest evidence in the course of the trial, and caused dishonest evidence about the 2004 letters to be given through Mr. Lax in relation to an application for a freezing order.

1504. I also conclude that Mr. Nikitin was dishonest in relation to the commissions schemes, and in arranging for payment to be made to the recipient companies. I have referred to the matters that lead me to this conclusion. They include the payments that Mr. Nikitin arranged for Mr. Privalov, and also the following:

i) Mr. Nikitin accepted the payment of $105,000 from the hull no 1231 commission scheme into the Milmont account. I have rejected his explanation about this as untruthful. He knew about the payment: it was recorded on Mr. Privalov's spreadsheet,. It was made for his benefit.

ii) The same applies to the Tam commissions of $1.2 million, which were also paid into Milmont's account.

iii) Mr. Nikitin, as I conclude, arranged with Mr. Cepollina for money from the Athenian transaction to be paid to Horber and Milmont through RTB. His purpose was to disguise the payment by interposing a broker. He paid Mr. Privalov for his part in the transaction, knowing that Mr. Privalov had acted in his interests and against the interests of the Sovcomflot group.

iv) Similarly, the payment to Pollak in relation to the Genmar transaction was made through a broker, M J Gruber. Mr. Nikitin, as I conclude, knew this and knew that the purpose was to disguise the payment because Clarkson could not properly make it.

v) As Mr. Nikitin acknowledged, there was no proper reason for the brokers to make payments for him upon a transaction unless he had contributed to bringing it about. Nevertheless, he received payments from them in relation to transactions to which he had contributed nothing. He knew that the brokers had no proper reason to make them, and that they could not have been acting in the interests of their principals. I do not accept that he simply left it to the brokers to decide whether to make any payment and its amount. I have concluded, for example, that it was his insistence that led to Clarkson paying commissions of 2⅓% on the Genmar transaction.

vi) Mr. Nikitin accepted the confirmation letters that, as I conclude, he knew had been back-dated and falsely described the payments as introductory commissions.

vii) Mr. Nikitin and Clarkson together concocted and back-dated the 2004 letters.

1505. I add that Mr. Nikitin received information in relation to the business that the brokers were handling which, as he must have realised, was confidential and not properly disclosed to him. For example, on 4 September 2003 Mr. Privalov sent to him an e-mail in which Mr. Gale reported to Mr. Oskirko about negotiations between NSC and Hyundai Mipo. On 2 September 2003, Mr. Privalov sent him a report by Mr. Gale to Mr. Izmaylov of a sale by Swan of hull no 0201. On 25 November 2002 Mr. Privalov sent Mr. Nikitin an e-mail from Mr. Rokison to Mr. Oskirko about a proposal for the sale by NSC of some Mekhanik vessels in which Mr. Rokison gave this false explanation of the level of commission that would be charged: "commissions unfortunately are rather high, buyer takes high address commission and then he has his own in house broking arm, resulting in commission here of 4.5%". Mr. Nikitin gave no credible explanation for these communications between Mr. Privalov and himself. He knew that he was receiving information as a result of the brokers acting in breach of their duties to their principals.

1506. I accept that it is not alleged that Mr. Nikitin knew that Clarkson, and Galbraith's in relation to the refinancing of the Aframax vessels, were generating funds from negotiating for secret address commissions in order to fund payments for him, without accounting to their principals for the address commissions. I also accept that it has not been shown, with regard to sales, that Mr. Nikitin knew of the levels of commissions that the brokers charged, or that, and if he had known, he would have been aware they were charging more than their standard fees. Indeed, there is no evidence that Galbraith's did charge NSC more than their usual level of commissions. Mr. Day's evidence, which I accept, was that commissions as high as 3% to 5% were

not uncommon even upon sales at high prices. I therefore accept that, generally and leaving aside the Tam commissions scheme, Mr. Nikitin probably did not know how the brokers were generating funds with which to pay him. However, he knew that he was participating in arrangements that involved the brokers and Mr. Privalov acting in breach of their fiduciary duties, and he knew that the brokers were profiting sufficiently from the arrangements to pay him large sums. He was not concerned to enquire precisely what the brokers were doing in order to fulfil the arrangements and to profit from them.

1507. He therefore did not know quite how the brokers operated the schemes, but that does not answer the claimants' contentions that he was acting dishonestly and knew that the recipient companies were receiving payments as a result of the brokers and Mr. Privalov acting in breach of their fiduciary duties. As Lewison J observed in the Ultraframe case (cit sup) at paras 1500 to 1508, the liability of a dishonest assistant depends upon him knowing that he was not entitled to do what he was doing and to know in broad terms the design which he was procuring or assisting, but he does not need to know the details of the whole design in which he was participating.

1508. I conclude that Mr. Nikitin collaborated and conspired with the brokers and with Mr. Privalov for his own advantage and with the intention of injuring the claimants for whom the brokers were acting, and knew that this involved the brokers and Mr. Privalov acting in breach of their fiduciary duties. He was acting dishonestly in doing this. Subject to issues about (i) limitation defences to claims in relation to the Norstar commissions claims and the hull no 1231 commission claim, and (ii) claims arising from some transactions involving Maltese companies that have been struck off the Register of Companies, I conclude that Mr. Nikitin and the Standard Maritime defendants to whom payments were made are liable in respect of the hull no 1231 commission scheme, Sovcomflot Clarkson commissions scheme, the Tam commissions scheme, the Norstar commissions scheme, NSC Clarkson commissions scheme and the Galbraith's commissions scheme.

Limitation defences

1509. The claims in respect of the hull no 1231 commission scheme and the Norstar commissions scheme are made in the second Fiona action, that was brought on 12 February 2009. The defendants argued that these claims are time-barred under English law because:

i) The claim in respect of the hull no 1231 commission scheme relates to a conspiracy said to have been made in April or May 2001 and the $105,000 "address commission" was paid into Milmont's account on 11 December 2001.

ii) The claim in respect of the Norstar commissions scheme was made in 2009 and related to transactions that took place between February 2002 and July 2003.

1510. There is no dispute that the claims in respect of the hull no 1231 commission scheme accrued more than 6 years before the second Fiona action was brought. The claimants' response to the defence of time-bar is that they are entitled to pursue their claims because section 32 of the Limitation Act 1980 (the "1980 Act") provides that,

if an action is based upon fraud of the defendant or any fact relevant to the claimant's right of action has been deliberately concealed from him by the defendant, then the period of limitation, which would in this case be of six years, shall not begin to run until the claimant has discovered the fraud or concealment or could with reasonable diligence have discovered it.

1511. The claimants pleaded specifically that they did not discover and could not have discovered with reasonable diligence that payment was made by BCV to Milmont's account at Wegelin until they received documents from the Russian prosecuting authorities in October 2007: see para 5.5.1.1 of the reply to the defence of Mr. Skarga and para 8.4.1.1 of the reply to the defence of Mr. Nikitin and the Standard Maritime defendants. The evidence in support of this assertion is not entirely satisfactory, but the claimants relied upon a letter dated 10 February 2009 from Ince & Co. to the solicitors representing the defendants in the second Fiona action. It stated that the "documents provided to the Claimants by the Russian prosecutor in October 2007" included Wegelin's credit advice relating to the payment by BCV. I am, in the absence of contrary evidence, prepared to infer that until then the claimants had not discovered the payment and could not with reasonable diligence have done so. In any case, the claimants assert more generally that they did not discover before 12 February 2003 (that is to say, until less than six years before the second Fiona action was brought) various matters including the dishonest assistance that Mr. Nikitin and Milmont provided in order for the hull no 1231 commission scheme to be carried out, and that they could not reasonably have done so. Again, there is not evidence directly to this effect, but in view of the nature of the claim, I am prepared to infer that they had not discovered this and could not have done so with reasonable diligence. I reject the time-bar defence to the claims relating to the hull no 1231 commission scheme.

1512. The claimants respond to the time-bar defence in relation to the Norstar commissions scheme by submitting (i) that the claims accrued when loss was suffered and so was suffered in respect of the last three transactions, the sales of the "Rybnovsk", the "Nevelsk" and the "Byelorussia", within the period of 6 years before the claim was brought; and (ii) in any event, the claimants are entitled to rely upon section 32 of the 1980 Act, because the claims are based upon the defendants' fraud and relevant facts were deliberately concealed from them by the defendants, and they did not discover the fraud or the relevant facts until long after February 2003 and could not with reasonable diligence have done so.

1513. The memorandum of agreement of the sale of the "Nevelsk" was dated 10 March 2003 and the memorandum of agreement relating to the "Byelorussia" was, as I have said, dated 10 July 2003. Any cause of action against Mr. Nikitin or Milmont in relation to those sales accrued within six years before the second Fiona action was brought. The claimants submitted that any causes of action with regard to the sale of the "Rybnovsk" similarly are not time-barred on the basis that the sale was made later than February 2003. The sale was not in fact entered into later than February 2003. However, although the memorandum of sale was dated 24 January 2003, it was not signed on behalf of the purchaser of the vessel, Searock Shipping Ltd., until 12 February 2003 (although in error, as I infer, the signature is dated 12 February 2002). Accordingly, the claim was brought within 6 years of when the agreement was made. (In computing a period of limitation, the day on which the cause of action arose is

excluded: Marren v Dawson Bentley & Co Ltd., [1961] 2 QB 135.) In any event, Norstar submitted an invoice for commission on 31 March 2003 and it was paid on 1 April 2003. I conclude that the claims relating to the Norstar commissions scheme and in respect of the sales of these three vessels are not time-barred.

1514. As for their argument that they can rely upon section 32 of the 1980 Act, the claimants specifically contended that they were not aware and could not have been aware of payments made by Norstar to Milmont until they received documents from the Russian prosecuting authorities in October 2007. As with the hull no 1231 commission claim, the evidence about this is exiguous, and is based upon the letter from Ince & Co dated 10 February 2009. In it Ince & Co included among the "Documents provided to the Claimants by the Russian Prosecutor in October 2007" six credit advices from Wegelin bank relating to payments by Norstar arising from the sales of the seven Uglegorsk vessels and the "Byelorussia". Despite the paucity of the evidence, I conclude that this was probably the first reasonable opportunity that the claimants had to discover that Norstar made such payments to Milmont or any payments for Mr. Nikitin's benefit, and before then they had not discovered the payments and could not have done so with reasonable diligence. I would also, if necessary, infer in the absence of contrary evidence that more generally by February 2003 the claimants had not discovered that Mr. Nikitin and Milmont procured or assisted in the breaches of duty involved in the Norstar Commissions scheme.

1515. I reject the argument of Mr. Nikitin and the Standard Maritime defendants that the claims against them in relation to the Norstar commissions scheme are time-barred.

The Maltese companies

1516. A discrete question arises in relation to the NSC commissions scheme claim about the sales of four vessels, the "Mekhanik Yuryev", the "Mekhanik Khmelevskiy", the "Mekhanik Ilchenko" and the "Mekhanik Vraskov". The four Maltese companies that owned these vessels were struck off the Maltese Register of Companies in September 2004 and April 2005. Their only shareholders were NSC and Intrigue, and the causes of action that were vested in the companies were transferred to NSC and Intrigue pursuant to orders of the Maltese Court made on 3 October 2008, rectified schemes of distribution made on 29 October 2008, resolutions of the Intrigue and NSC as shareholders of the companies dated 31 October 2008 and the filing of the requisite documentation at the Maltese Register of Companies on 24 November 2008.

1517. There is no dispute that these causes of action were validly transferred to NSC and Intrigue under Maltese law. Mr. Berry submitted, however, that the question of the validity of the transfers is governed by Russian law, and that they are invalid under Russian law. His submission rests upon characterising the transfers as assignments, and it is contended on this basis that the contracts of assignment between the Maltese companies and Intrigue and NSC were governed by Russian law. I reject that argument because these transfers were not made under a contract of assignment. They were made under the process of the Maltese courts that allows the shareholders of companies struck off the Register to pursue claims which the company had. The transfers relate to the internal management of the companies, and as such are governed by Maltese law as the law of the place of incorporation of the companies: see Base Metal v Shamurin, [2005] 1 WLR 1157 at paras 66-69 per Arden LJ. The

transfers were valid and the NSC commissions scheme claims in relation to these four vessels are not defeated because the selling companies are not party to the proceedings or because they were struck off the Register.

1518. I have also been informed by a letter from Ince & Co dated 28 May 2010 that a similar question arises in relation to the second Fiona action. Four Maltese companies in the Sovcomflot group which had owned four of the vessels sold through Norstar, namely Makarov Shipping Co Ltd., Kurilsk Shipping Co Ltd., Novikovo Shipping Co Ltd. and Nevelsk Shipping Co Ltd., had been struck off the Register and at the time of the trial steps had not been taken to have their litigious rights transferred. I am informed that the necessary steps have now been taken in Malta for these rights to be transferred to Fiona and Capco Nominees Ltd. ("Capco Nominees"), and that Capco Nominees applies to be joined as a claimant in the second Fiona action and to bring a claim together with Fiona to enforce the rights of the four companies in respect of the sales of the "Makarov", the "Kurilsk", the "Novikovo" and the "Nevelsk". As I understand the letter from Ince & Co, the parties are agreed that in view of the conclusions that I have reached in this judgment, the application should be granted, and the claims pursued in the name of Fiona and Capco Nominees should succeed, but I shall hear submissions before determining this.

Relief against Mr. Nikitin and the Standard Maritime defendants

1519. I have concluded, therefore, that Mr. Nikitin and Standard Maritime defendants are liable in relation to the commissions claims, other than the "Romea Champion" commission scheme and the Sawyer commissions scheme. Mr. Nikitin is liable for damages in respect of the claim in conspiracy. He is also liable to pay equitable compensation for dishonestly procuring or assisting breaches of fiduciary duty, that is to say, (i) except in the case of the hull no 1231 commission scheme (where no broker was involved), he is liable because he procured or assisted in the breach by the brokers of their fiduciary duties, and (ii) in the case of the schemes concerning Sovcomflot, including the hull no 1231 commission scheme, he procured or assisted in the breach by Mr. Privalov of his fiduciary duties. I shall revert to the questions whether Mr. Nikitin is liable to account for profits and if so for what profits.

1520. Milmont and Amon are liable for damages for conspiracy in relation to the transactions in respect of which they received payments. They are also either to account for their receipts or to pay equitable compensation because they are liable for assisting breaches of fiduciary duties (on the same basis as Mr. Nikitin) and for knowing receipt of the monies.

1521. I have concluded that Mr. Nikitin and Milmont are liable in conspiracy inter alia in relation to the Norstar commissions scheme. I observe that the claimants plead in the second Fiona action (at para 46 of their particulars of claim) that the conspiracy was between "Mr. Skarga, Mr. Nikitin and Milmont (or two of them)". It is not pleaded that Mr. Privalov was party to the conspiracy, although it is pleaded that the unlawful means involved in the conspiracy included him acting in breach of his fiduciary and other duties. The claimants have not shown that Mr. Skarga was party to the alleged conspiracy, but Mr. Berry did not argue that the relationship between

Mr. Nikitin and Milmont was such that they cannot be said to have conspired together. It is not clear whether for the purposes of a civil action there can in English law be a conspiracy between a company and its sole controller: see Clerk & Lindsell on Torts (20th Ed) at para 24-93. I do not determine the point. It seems likely that, if a pleading point were taken by Mr. Nikitin and the Standard Maritime defendants, the claimants could properly amend their pleading to allege that Mr. Privalov was party to the conspiracy. Given that I conclude that Mr. Nikitin and Milmont are liable on other legal bases, it might be that they regard the pleading point as arid.

1522. Where claims concern purchases of vessels, the claimants who are entitled to recover damages or equitable compensation are the companies who purchased them. (This might not be the company which actually took delivery of the vessel. For example, in the purchase of the "Four Stream", the only purchase in which Galbraith's acted as brokers, Mr. Rokison made an offer "On behalf of a company to be nominated by NSC", and here the inference is that the vessel was purchased by NSC for delivery to a nominee.) It is to be inferred that, but for the wrongdoing, the price that the company paid for its vessel would have been correspondingly lower. Generally, the seller would not have been required to pay the address commission and would have reduced the price accordingly. For similar reasons, the claimants entitled to damages or equitable compensation in respect of the Tam commissions scheme are the purchasing companies, and the same applies to claims under the Galbraith's commissions scheme arising from refinancing the purchase of Samho hulls S182 and 183 and HHI hulls nos 1466 and 1467.

1523. The same companies would also be entitled to an account from these defendants. Sometimes the brokers were, or Mr. Privalov was, acting in relation to a purchase as the agents for another claimant company, as well as for the purchasing company, and therefore they were, or he was, in breach of a fiduciary duty owed to that other company. In these circumstances, that other company, as well as the purchasing company, is entitled to an account. Examples of such cases are:

i) The Tsuneishi transaction, the Hyundai Mipo transaction, the Daewoo transaction, the purchase of the HHI hulls nos 1562 and 1563 and the purchase of the STX hulls, in respect of all of which Fiona entered into a letter of intent with the yard.

ii) The Athenian transaction, in which Fiona were party to the purchase agreement as guarantor.

iii) The purchases of the HHI hulls nos 1564, 1565, 1585 and 1586 and Daewoo hull no 5274, where the prices and address commissions were determined in options agreement made with Fiona and negotiated through the brokers, the purchase agreements being concluded when the options were exercised.

1524. I do not propose in this judgment exhaustively to identify all the cases in which another claimant, as well as the purchasing company, is entitled to an account. In so far as this is of any importance and cannot be agreed, I shall hear further argument. The question might arise in particular in relation to the NSC Clarkson commissions claim arising from the purchase of the "Kaspiy" (formerly the "Atlantis") and the

"Kuzbass" (formerly the "Kimolos") because, as I have said, the companies that bought these vessels are no longer in the NSC group and are not claimants.

1525. Where claims concern sales of vessels, the claimants who are entitled to recover damages or equitable compensation are the selling companies because it is to be inferred that the net prices that they received were reduced by the amount of commissions paid to the recipient company. Those claimants are also entitled to an account. If in the case of any sale it can be shown that the brokers were also acting for another claimant (for example, in the case of Galbraith's, because they entered into a memorandum of agreement with NSC), then that claimant too might well have a claim for an account, but I shall invite further submissions if such a claim is pursued.

1526. The claimant who is entitled to damages or equitable compensation in respect of the hull no 1231 commission claim is Fiona because their account was debited $105,000 in respect of the "address commission" and there is no evidence that they recovered that payment from Glefi XXXI, the company purchasing the vessel, or from anyone else. Fiona and Glefi XXXI are both entitled to an account from Milmont on the grounds of dishonest assistance and knowing receipt.

1527. I understand that the amounts of the sums received by the recipient companies are not controversial. I shall invite submissions if there are any issues about the precise amounts. Subject to this and subject to the claimants giving proper credit for any relevant payments under settlement agreements that they reached with Clarkson, Galbraith's and Mr. Privalov (to which I refer below), I conclude that the claimants are entitled to recover by way of compensation or damages from Mr. Nikitin the following amounts in respect of the various schemes:

i) In respect of payments to Milmont, Horber, Pollak and RTB under the Sovcomflot Clarkson commissions scheme, $30,992,126.

ii) In respect of the payments to Milmont under the Tam commissions scheme, $1,200,000.

iii) In respect of payments to Milmont under the Norstar commissions scheme, $238,637.

iv) In respect of payments to Milmont under the NSC Clarkson commissions scheme, $10,554,120.

v) In respect of payments to Amon under the Galbraith's commissions scheme, $7,326,309.

vi) In respect of the payment to Milmont under the hull 1231 commission scheme, $105,000.

1528. Milmont are liable for the amounts that they received subject to any credit arising from the settlement agreements. Amon are liable for $7,326,309. I shall seek the assistance of counsel in relation to the liability, if any, of RTB and Pollak.

1529. I come to the issue between the claimants and Mr. Nikitin about whether he is liable to give an account for profits, and if so for what profits. If he is liable, he will be liable to those claimants to whom the recipient company is also liable to account in respect of the relevant transactions.

1530. I shall state the conclusion that I have reached about this question, although, as I see it, it will make no practical difference because Mr. Nikitin's liability for an account will probably be no more than his liability for damages or equitable compensation with regard to the claims upon which he is liable. (There would, I think, have been a significant difference between the amount of his liability for damages or compensation and his liability for an account in the case of claims relating to other schemes, including the SLB arrangements scheme, the newbuildings scheme and the time charters schemes.)

1531. The claimants argued that Mr. Nikitin is liable to account for monies paid by the brokers to the recipient companies. Mr. Popplewell did not submit that the corporate veil should be lifted to allow a claim against Mr. Nikitin for an account of the payments made to the corporate recipients by the brokers. The claimants' argument is that they do not need to do so because Mr. Nikitin is liable to account for those profits because he is, or was, the sole beneficial owner of them and the companies' profits were "effectively at his disposal" and so in reality were profits which he had acquired.

1532. Mr. Berry disputed this. He submitted that a defendant's liability to account for profits is limited to the profits shown to have been received by the defendant personally, and not for sums paid to other legal entities; and that there is no evidence that Mr. Nikitin personally received any payments from the brokers, either directly or through the companies who were the direct recipients of the brokers' payments by them distributing profits or otherwise. The only way, he argued, that the claimants could require Mr. Nikitin to account for sums that he did not personally receive would be to lift the corporate veil, which it is not open to them to do on their pleaded case and which they do not argue should be done.

1533. As is observed in Bowstead & Reynolds on Agency (19th Ed) at para 6-042, "There is some uncertainty whether an agent can be made accountable for profits not derived personally, but diverted by the agent to a third party. Where the third party is a company wholly owned by the agent, it may be possible to treat the company as identified with the agent". The uncertainly is reflected in different views taken about this question by judges at first instance. As far as I know, there has been no appellate decision which directly considers it.

1534. In CMS Dolphin Ltd. v Simonet, [2001] 2 BCLC 704 a director in breach of fiduciary duty diverted part of the company's business and some of its business opportunities to himself and to his partnership. In so acting he was regarded as appropriating company property. Lawrence Collins J held that he was liable to account for the profits whether he exploited the opportunity personally or through a partnership, and said (at para 99), "Where a director puts the contract into a partnership, he is fully accountable even if his partners are entitled to part of the profit and are ignorant of his breach of fiduciary duty". He also expressed the opinion, in obiter observations, that the position would be similar if the secret profit was earned by a company "established" by the director

(at para 100), and if the director had "diverted the contracts and business opportunities directly" to the company.

1535. In the Ultraframe decision (cit sup) at paras 1561-1576 Lewison J disagreed with these observations because he considered that they cannot be reconciled with the decision of the House of Lords in Regal (Hastings) Ltd. v Gulliver (cit sup). He recognised that the House of Lords was considering a case in which the accounting part had only a minority interest in the company and was not considering a case in which the company was set up as a mere vehicle to receive the benefit of the property or business acquired as a result of breach of fiduciary duties, but did not consider those proper reasons for distinguishing the case because they played no part in the reasoning of the House of Lords. He therefore concluded (at para 1576), with expressed regret, that "the mere fact that a fiduciary has a substantial interest in a company which knowingly receives trust property does not … make the *fiduciary* personally accountable for the receipt. The case is otherwise where the company is a mere cloak or alter ego of the fiduciary, in which case it may be appropriate to pierce the corporate veil and treat the company's receipt as the fiduciary's receipt. Different considerations may also apply where the fiduciary receives the profit and then diverts it to a company".

1536. In National Grid Electricity Transmission plc v McKenzie Harbour Management Resources Ltd., [2009] EWHC 1817 (Ch) at para 118, Norris J, in an obiter remark, expressed his preference for the opinion of Lewison J over that of Lawrence Collins J.

1537. These observations were directed to knowing receipt claims. Lewison J went on in the Ultraframe case to consider the remedies available against a defendant liable for dishonest assistance. He concluded at para 1600 that, "I can see that it makes sense for a dishonest assistant to be jointly and severally liable for any *loss* which the beneficiary suffers as a result of a breach of trust. I can also see that it makes sense for a dishonest assistant to be liable to disgorge any profit which he *himself* has made as a result of assisting in the breach. However, I cannot take the next step to a conclusion that a dishonest assistant is liable to pay the beneficiary an amount equal to a profit which he did not make and which has produced no corresponding loss to the beneficiary". In coming to this conclusion, Lewison J disagreed with an apparently contrary decision of HH Judge Seymour QC in Comax Secure Business Services Ltd. v Wilson , (unreported, 21 June 2001).

1538. I see the matter rather differently in the case of claims for dishonest assistance. The cause of action for dishonest assistance (unlike the cause of action for knowing receipt) does not require that the assistant has received anything. Here the dishonest assistance for which Mr. Nikitin is liable is (at least in part) that he arranged for the brokers to make payments to the recipient companies in breach of their fiduciary duties. Even if he had no enforceable right to control to whom they made any payment (because his arrangements with the brokers were not contractual and because they would in any case be unenforceable because of illegality), de facto Mr. Nikitin had control over who was to receive any payments made by the brokers.

1539. When an account of profits is ordered, the defendant is obliged to render an account, the account is taken by the court, and the court will generally order the payment of any sum shown at trial to be due when the account has been taken. The fact that it has not been shown that a defendant has himself made a profit from his dishonest

assistance is not necessarily a reason that he should not render an account, although, if it is clear that he has not done so, the court might well decline to order an account because it would not exercise its discretion to make a pointless order.

1540. In this case, the parties requested that I should take an account in this judgment and to order payment of any sum that I determined to be due. If I were to do so on the basis of the evidence that I have heard and the submissions that I have received, I should determine that, upon taking an account, Mr. Nikitin is due to pay, and should be ordered to pay, to the claimants the sums received by Milmont, Horber and Amon from the brokers. My reasoning is this: Mr. Nikitin had de facto control over those sums in that he was able to direct the brokers as to whom they were due to be paid, and he did not relinquish control over them (indeed he probably reinforced his control over them) when he arranged for them to be paid to Milmont, Horber and Amon. Those sums therefore stand as a debit against him on the account. There is no evidence about the terms (if any) upon which the companies received the funds or what they have done with them. If there were, Mr. Nikitin might be able to argue that he is entitled to have some amount or amounts brought into credit against the debit against him on the account.

1541. With regard to the payment to RTB, I conclude that Mr. Nikitin has not profited himself from the amount paid to Mr. Privalov and, apparently, the amount retained by RTB or Mr. Cepollina. Otherwise, as I see it, there is no reason for distinguishing the sums paid by RTB to Milmont and Pollak from the sums paid by the brokers directly for Milmont Horber and Amon, and I would, upon taking an account, order that Mr. Nikitin pay these sums.

1542. I recognise that (through no fault of any counsel) the issue was not approached in this way in the course of submissions. In these circumstances, I shall allow Mr. Berry to address me further about this conclusion if he sees fit and shall allow Mr. Popplewell to address me about Mr. Nikitin's liability upon an account in respect of the whole sum paid to RTB and not only that which was paid on to Milmont and Pollak. In view of my findings about Mr. Nikitin's liability for damages and compensation, they might consider the issue inconsequential and not be concerned to do so.

1543. I add that the claimants in the Fiona actions also argued that FML have a claim for compensation or damages because, through the wrongdoing of Mr. Privalov (and, as they said, Mr. Skarga) as their agent, they incurred liability to other companies in the Sovcomflot group. I am not persuaded that FML have a claim of this kind because, although Mr. Privalov was at times acting on behalf of FML in relation to impugned transactions, he was not always acting in that capacity. In order to show that they have a claim because they have incurred liability because Mr. Privalov acted dishonestly when acting on their behalf, FML would have to identify when Mr. Privalov's actions in that capacity caused damage to other Sovcomflot companies. They have not done so. It is not enough for them simply to observe that at the relevant time Mr. Privalov was FML's managing director. The evidence is consistent with Sovcomflot, Fiona and other companies in the group using his services because he was the individual available to them best placed to help them. In any case there is no evidence that any other company in the Sovcomflot group has made a claim against FML or that even (if any claim is not time-barred) there is any prospect of such a claim.

The claims against unrepresented defendants

1544. I shall invite submission about what orders I should make in light of my conclusions upon the claims that are pursued against unrepresented defendants, that is to say against RTB in the Fiona action and against Shipping Associates in the Intrigue action. I shall also invite submissions about the claims against Pollak.

Settlement monies

1545. The defendants say that, if they are held to be liable in respect of the commissions claims, they are entitled to have brought into account against their liability sums that the claimants received under the settlement agreements that they made with Clarkson, Galbraith's and Mr. Privalov. The settlement agreements are these:

i) An agreement dated 26 June 2008 (the "Fiona/Clarkson settlement agreement"), whereby the claimants in the Fiona action entered into a settlement with Clarkson, Mr. Gale and other companies and individuals who are not defendants to the Fiona action, the second Fiona action or any other relevant proceedings.

ii) An agreement dated 26 June 2008 ("the Intrigue/Clarkson settlement agreement"), by which the claimants in the Intrigue action entered into a settlement with Clarkson, Mr. Gale and other companies and individuals who are not defendants to the Intrigue action or any other relevant proceedings.

iii) An agreement dated 9 April 2009 (the "Galbraith's settlement agreement), by which the claimants in the Intrigue action entered into a settlement with Galbraith's and Galbraith's Holdings Ltd.

iv) The Privalov settlement agreement.

1546. In their pleadings Mr. Skarga, Mr. Nikitin and the Standard Maritime defendants also relied in the Fiona action upon the settlement of potential claims against with Mr. Borisenko: see para 317A of Mr. Skarga's defence and para 170.2 of the defence of Mr. Nikitin and the Standard Maritime defendants. However, that argument was not developed in closing submissions and in view of the conclusions that I have reached in relation to the other settlement agreements and since no other considerations arise in relation to the settlement with Mr. Borisenko, I need only say that the defendants are not entitled to bring anything into account therefrom.

1547. The legal principles that apply to this question are established and illustrated in the authorities of Townsend v Stone Toms (No 2), (1984) 27 BLR 26, Banque Keyser Ullman SA v Skandia (UK) Insurance Co Ltd., [1988] 2 AER 880 and Barings v Coopers and Lybrand, [2003] EWHC 1319 (Ch). They show that the law does not allow a claimant to recover against two defendants who are liable to him for the same damage. If one has paid in satisfaction or settlement of the claim, the other is entitled to credit in respect of the payment. If a claimant receives payment from one defendant who is liable both for claims overlapping with those of another defendant and for other claims against him alone, the claimant is entitled (by the settlement agreement or otherwise) to appropriate any settlement monies either to the overlapping claims or to the other claims and, if the appropriation is made bona fide

and without collusion, it conclusively determines in respect of which claims the settlement monies have been received. The defendants do not allege that any of the settlement agreements was not bona fide or was collusive.

1548. Under the Fiona/Clarkson settlement agreement Clarkson and the companies and individuals associated with them agreed with the Fiona claimants that they would pay a total of $40 million, together with $2.5 million by way of costs. The agreement provided that of the $40 million:

i) $20 million was in respect of moneys that Clarkson either had themselves retained as their own commissions or had paid to one of Mr. Privalov's companies, Shipping Associates, Montrose or Continental, together with interest on the moneys.

ii) $15 million was in respect of "Claims in which Fiona and/or the other Fiona Claimants have alleged that Clarkson wrongfully paid away monies to any company in which Mr. Nikitin is/was alleged to be interested together with interest: US$ 15,000,000 apportioned pro rata as between the principal amounts claimed on each transaction and interest, as particularly identified [in a schedule that stated by reference to each transaction the amount attributed to it]".

iii) $5 million was paid in respect of "All claims which have not been made in the proceedings but which, by virtue of the Agreement, the Claimants agree not to pursue".

1549. The claimants acknowledged that any defendant liable in respect of a transaction to which part of the $15 million has been attributed is entitled to credit against his liability in the amount of the appropriate part or parts of the $15 million. Mr. Berry submitted that account should also be taken of the sums of $20 million and $5 million.

1550. With regard to the $20 million it is observed that the total claims for money retained by Clarkson and paid to Mr. Privalov's companies was some $16.5 million, and said that therefore Clarkson settled them, on the face of the agreement, for 120% of the principal amount, whereas the $15 million represented only some 38% of the principal amount claimed in respect of impugned payments to which it is attributed. This observation overlooks that the settlement agreement covered claims for interest as well as claims for principal sums. It also fails to recognise that the settlement payment covered all commissions retained by Clarkson, including commissions received upon transactions which were not included in the claim for $16.5 million. The allocated settlement payment of $20 million did not fully meet, let alone exceed, the claims or potential claims to which it related. It is not relevant that it represented a larger proportion of them than the $15 million represented of the claims to which it was allocated.

1551. Mr. Berry also complained that the $5 million was attributed by the agreement to claims that had not been made and argued that it was not an apportionment in any meaningful sense. I reject that submission. The settlement compromised potential claims against others associated with Clarkson, including individuals such as, for example, Mr. Fulford-Smith. There is, to my mind, no reason that this part of the settlement payment of $40 million should not have been so attributed.

1552. Under the Intrigue/Clarkson settlement agreement the claimants in the Intrigue action accepted $10 million together with $2.5 million by way of costs in settlement of any claims they had against Clarkson and a large number of associated companies and individuals. The agreement provided that the $10 million was apportioned to "Commissions retained by H Clarkson (excluding commissions paid to Shipping Associates), together with interest thereon … ". Mr. Berry observed that the total amount retained by Clarkson was only some $8 million, but the apportionment in the Intrigue/Clarkson settlement agreement is understandable when account is taken of interest. There is no reason that the Intrigue claimants should give credit for any part of the $10 million against the liability of any defendant.

1553. Under the Galbraith's settlement agreement the Intrigue claimants were to be paid $3 million in instalments of which $1 million is said to be in respect of costs and $2 million "in relation to the Intrigue Claimants' claims for the commissions retained by Galbraith's (excluding commission paid to Shipping Associates)". Since the claim for such retained commissions was for some $4 million, I can see no basis upon which the Intrigue Claimants are obliged to give any defendant credit for any part of the $3 million.

1554. By the Privalov settlement agreement, Mr. Privalov agreed to pay $2 million. The payment was not allocated to any specific claim or claims, but Fiona undoubtedly had claims against Mr. Privalov other than the commissions claims which far exceeded $2 million. No defendant is entitled to credit in respect of what Mr. Privalov agreed to pay.

1555. I conclude that the only credit against their liability to which Mr. Nikitin and the Standard Maritime defendants are entitled is in respect of the $15 million against their liability in the Fiona action.

Southbank action

1556. The claimants in the Southbank action are Southbank, Buckthorn, Titanium, Pendulum, Accent, Severn and Hayes, who entered into contracts with HHI or Daewoo to buy, respectively, HHI hull no 1565, HHI hull no 1564, HHI hull no 1585, HHI hull no 1586, Daewoo hull no 5274, Daewoo hull no 5272 and HHI hull no 1757. They are all owned by Standard Maritime. They allege that, when the vessels were bought, HHI and Daewoo agreed to pay to them address commissions of 1.5% of the total price, in total for the seven vessels $5,179,500. This has not been paid to the Southbank claimants and they claim against Clarkson a declaration that Clarkson hold this sum on trust for them and are liable to account to them for it and also seek other relief including compensation or damages in the amount of the address commissions. It is not disputed that Clarkson paid to Milmont sums amounting to 1.5% of the purchase price in instalments corresponding to their staged payments of commission. They have paid $4,336,200 to Milmont, and a further $843,300, in respect of the later staged commission payments relating to the Daewoo vessel and HHI hull no 1757, has been paid into court. The Southbank claimants say that this does not affect their entitlement against Clarkson.

1557. Clarkson deny that the "address commissions" were held on trust for the Southbank claimants. They also resisted the claims on the grounds that they result from a dishonest conspiracy to which Mr. Nikitin was a party and of which he was the

principal beneficiary, and here they assert two frauds, which they called the "address commission fraud" and the "shipbuilding contracts fraud". The address commissions fraud is based upon the Clarkson arrangement, and Clarkson asserted that "Mr. Nikitin procured Mr. Privalov to implement and administer the collection and payment of address commissions": see para 5 of their defence. The shipbuilding contracts fraud is asserted on the basis that "Mr. Nikitin, through the [Southbank claimants] acquired the benefit of each shipbuilding contract as a result of breaches of fiduciary [duty] by Mr. Privalov and others …": see para 7.1 of their defence. They argued that, if necessary, the corporate veil of the Southbank claimants should be lifted and they should be treated as the alter ego of Mr. Nikitin.

1558. The Southbank claimants admit in their pleadings (at para 8.1 of their reply) that Mr. Nikitin's knowledge is to be attributed to them "in the period following Mr. Nikitin's acquisition of the sole beneficial ownership" of them. Mr. Berry accepted that the effect of this admission is (or should be taken to be) that the Southbank claimants acknowledge that, if Mr. Nikitin were party to either the address commission fraud or the shipbuilding contracts fraud, then "by virtue of the attribution of his knowledge, the Southbank Claimants would not be entitled to recover the address commissions from Clarkson". On this basis, he argued that the submission of Clarkson that the corporate veil should be lifted is inconsequential.

1559. When the Southbank action was listed for hearing at this trial, it appeared that it would not raise major questions for determination that did not arise in the other actions. In fact, it does and the parties to the Southbank action have not fully developed their submissions about them. The questions include whether, when a broker receives monies from a seller in respect of address commission, he holds it on trust, and if so what is the nature of the trust.

1560. Further, in so far as Clarkson rely upon the shipbuilding contracts fraud, a further difficulty arises. The claimants presented their case on the basis that they succeeded in respect of the newbuildings scheme only if they proved dishonesty in relation to it on the part of Mr. Skarga, and I have concluded that they have not done so. As I understand Clarkson's pleading, their contentions about the shipbuilding contracts fraud are not limited to a case involving dishonesty on the part of Mr. Skarga, and, even if Clarkson do so limit their case, I should in any event have to consider whether in the Southbank action the claimants are seeking the court's assistance in recovering benefits from wrongdoing which is attributable to them, through their association with Mr. Nikitin. However, in view of the way the claimants' case was presented and the trial proceeded, it is understandable that Mr. Berry responded to it on the basis that he was dealing with an allegation of dishonesty between Mr. Nikitin and Mr. Skarga. I should not have held in the Southbank action that the claims were defeated on the basis of the shipbuilding contracts fraud without giving the Southbank claimants the opportunity to address me further.

1561. I therefore confine myself to the question whether the so-called address commission fraud in any event defeats the claims in the Southbank action. In response to this argument, the Southbank claimants argued that Mr. Nikitin was not party to, or aware of, Clarkson's dishonest activities with regard to negotiating that the yards should pay address commissions. As I have said, Clarkson did not assert that he did know this, and in any case I accept that that has not been shown. However, he did, as I have concluded, know that Clarkson were acting dishonestly in breach of their duties to

their principals, and nevertheless he left it to Clarkson to generate the funds from which they were to pay Milmont or another company upon his directions. As he put it in cross-examination, his arrangement with Clarkson was that they would generate "commission for division" and it was "up to Clarkson which way they are generating this commission". He did not ask about that. The law will not in this context distinguish between the position of a person with knowledge and that of a person who deliberately decides not to make enquiries that would inform him: dishonesty "may consist of knowledge that the transaction is one in which he cannot honestly participate …or it may consist in suspicion combined with a conscious decision not to make inquiries that might result in knowledge": see Lord Hoffmann in Barlow Clowes International Ltd. v Eurotrust International Ltd., [2006] 1 WLR 1476 at para 10. I conclude that Mr. Nikitin knew that Clarkson were acting dishonestly and refrained from finding out about how they were paying under the Clarkson arrangement. He is to be treated as party to that dishonesty, and the Southbank claimants are not entitled to the court's assistance in enforcing claims to allow them to benefit from it.

1562. I therefore reject the claims in the Southbank action.

Conclusions

1563. I conclude that:

i) The claims against Mr. Skarga are to be dismissed.

ii) The claims against Mr. Izmaylov are to be dismissed.

iii) The claims against the other defendants are to be dismissed in so far as they are based upon these schemes: the RCB scheme, the SLB arrangements scheme, the termination of the SLB arrangements scheme, the newbuildings scheme, the Sovcomflot time charters scheme, the Sawyer commissions scheme, the NSC time charters scheme and the "Romea Champion" commission scheme.

iv) The claims against Mr. Nikitin and the Standard Maritime defendants succeed in respect of the Sovcomflot Clarkson commissions scheme, the Tam commissions scheme, the hull no 1231 commission scheme, the Norstar commissions scheme, the NSC Clarkson commissions scheme and the Galbraith's commissions scheme, and the claimants are entitled to damages and to an account or equitable compensation. I shall invite counsel to address me upon the precise terms of the relief to which the claimants are entitled in light of my judgment, including my conclusion that the claimants are to give credit in respect of $15 million paid under the Fiona/Clarkson settlement agreement, but not in respect of other sums paid under that and other settlement agreements.

v) I shall invite the claimants to address me further about their claims in the Fiona action against RTB and Pollak and against Shipping Associates in the Intrigue action in light of my judgment.

vi) I shall invite the parties to address me further about the application to amend the second Fiona action in order for Capco Nominees to be added as a claimant and for other amendments to the pleadings.

vii) The applications of Mr. Nikitin and Milmont to amend their pleadings in the part 20 proceedings in the Fiona action and the Intrigue action are dismissed.

viii) The claims in the part 20 proceedings in the Fiona action and the Intrigue action are dismissed.

ix) The claims in the Southbank action are dismissed.

1564. I shall ask for counsel's assistance to draft an order to give effect to this judgment.

1565. I am very grateful for the assistance of all counsel in this trial of this demanding litigation in many ways. Throughout the hearing they properly observed the time limits that were imposed upon both cross-examination and oral submissions; while their written submissions were necessarily long and detailed, they were of invaluable assistance; and they displayed great patience and courtesy.

1566. In this judgment I have not mentioned all the arguments that were advanced before me, still less all the references in the evidence that were properly drawn to my attention. I hope that I have expressly considered the main points, but, where I have not specifically dealt with submissions, that is not because I regard them as unworthy of consideration or have dismissed them out of hand. I have tried to weigh all the evidence and submissions, but also attempted to keep this judgment within (relatively) manageable limits.