First Witness Statement of
Christopher Kenneth Grierson
Filed on behalf of the
Applicant
Dated 21 May 2009
Exhibit "CKG-1 and 2"

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

Folio No[ ] of 2009

BETWEEN:

CHALVA PAVLOVICH TCHIGRINSKI

Claimant

(1)) ORTON OIL COMPANY LIMITED
(a company incorporated in Cyprus)

and

(2) BRONSON PARTNERS CORP
(a company incorporated in the British Virgin Islands)

Defendants

FIRST WITNESS STATEMENT OF CHRISTOPHER KENNETH GRIERSON

I, Christopher Kenneth Grierson of Atlantic House, Holborn Viaduct, London EC1A 2FG, do say as follows:

1. I am a partner in Lovells LLP ("**Lovells**"). Lovells has been instructed to act on behalf of Mr Chalva Tchigirinski ("**the Claimant**"). I am the partner with primary conduct of this matter and I am duly authorised by the Claimant to make this witness statement on his behalf.

2. I make this witness statement on behalf of the Claimant as the person best able in all the circumstances, and in light of the urgent need for relief described below, to set out for the

benefit of the Court the information contained herein. The facts and matters set out herein are either based on documents provided to Lovells by the Claimant, or are based on information provided to Lovells by the Claimant or third parties acting on behalf of the Claimant. I have not, in the time available, and given the urgent nature of this application, had the opportunity to verify all of the information provided by reference to independent or multiple sources if available. However, the facts and matters referred to in this witness statement are true to the best of my knowledge, information and belief.

3. Save where expressly indicated, nothing in this witness statement is intended to waive privilege in any matters to which I refer.

4. There is now produced and shown to me and exhibited herewith as "**CKG-1 and CKG-2**" bundles of true copy documents to which I will refer in this witness statement. CKG-1 is a file of the relevant security documents; CKG-2 is a file of the relevant correspondence and other documents referred to in this statement.

OUTLINE OF RELIEF SOUGHT

5. This application for relief arises in the context of a dispute relating to the ultimate ownership and control of a large stake in Sibir Energy Plc ("**Sibir**"), a public company incorporated in England. The Claimant is the ultimate beneficial owner of around 90 million shares in Sibir, (the "**Sibir Stake**"). Those shares are conservatively valued by the Claimant at £450 million. Their value has been used to provide security for a loan of some US$190 million, as well as other indebtedness (albeit that there remains a significant amount of equity value owned by the Claimant). The loan of US$190 million is now in default following a failure to pay interest when it became due and payable. A purported charge over the shares of the Claimant in a company called Gradison Consultants Inc ("**Gradison**"), the borrower of the US$190 million and the entity through which the Claimant indirectly owned the Sibir Stake, has now been enforced by Bronson Partners Corp ("**Bronson**"), the Second Defendant. Bronson has purported to exercise those rights following an alleged assignment by Orton Oil Company Limited ("**Orton**"), the First Defendant, of its rights under the loan and security documentation which is said to have occurred on 12 May 2009 (but in respect of which I have not yet seen any documentation, despite numerous requests to those acting for the Defendants).

6. The Claimant now seeks an urgent interim injunction on a without notice basis from this Honourable Court pursuant to Section 44 of the Arbitration Act 1996 (the "**Act**") in support of proposed arbitral proceedings to be brought by the Claimant against Orton and Bronson under the terms of the security documentation in issue. The Claimant believes (and has been advised) that the charge is unenforceable, and that Bronson has wrongly taken steps to enforce the security contrary to the Claimant's rights. Furthermore, the Claimant has a

justifiable fear that Bronson will (in breach of the Claimant's rights) take steps to sell the shares in Gradison at a price significantly below the market value with a view to avoiding the need to account to the Claimant for the surplus equity value. The Claimant believes that such steps form part of an attempt by various powerful Russian business persons to take control of the Sibir Stake without paying full value to the Claimant for his interest.

7. The security relied upon by the Second Defendant is governed by the laws of the British Virgin Islands, but is subject to an LCIA arbitration clause. The Claimant proposes to commence arbitral proceedings in London as soon as possible in accordance with the arbitration clause, in which proceedings it will seek declaratory and injunctive relief, and seeks interim injunctive relief from this Honourable Court pending the commencement and grant of relief by the arbitrators.

8. Both Orton and Bronson are parties to this claim because Bronson appears to be the equitable assignee of the security rights originally granted to Orton, such that both should be parties to this claim and the arbitration proceedings.

9. As set out further below, the relief is sought on an urgent basis because Bronson has already taken steps to enforce the security. Furthermore, undertakings were requested from the Defendants in a letter sent by this firm to the Defendants' representatives at about 7.40 pm on 18 May 2009 (see **CKG-2 pages 197-200**) That letter requested the Defendants provide undertakings to my firm in respect of the conduct of any sale of the shares, and asked that this be provided by noon on 20 May 2009. At the time of making this statement, no undertakings have been provided.

10. The remainder of this statement is structured as follows:-

    (a) Section A: The Parties and other relevant Persons;

    (b) Section B: The commercial background To the Loan Transactions;

    (c) Section C: The Loan Transactions;

    (d) Section D: Default under the Orton/Gradison Loan;

    (e) Section E: Assignment of the benefit of the Orton/Gradison Loan and Gradison Charge;

    (f) Section F: Enforcement;

(g) Section G: Disputes relating to the Gradison Charge/Good Arguable Case

(h) Section H: Threatened Infringement of the Claimant's rights;

(i) Section I: The Claimant's financial interest

(j) Section J: Balance of convenience and Inadequacy of Damages

(k) Section K: Arbitration Clause

(l) Section L: Section 44 Arbitration Act 1996

(m) Section M: Litigation in 2009 - Proceedings commenced by Sibir;

(n) Section N: Cross Undertaking in Damages;

(o) Section O: Other Disclosure Issues;

(p) Section P: Service out of the Jurisdiction.

SECTION A: THE PARTIES AND OTHER RELEVANT PERSONS

11. The Claimant is a Russian businessman who has, until the events of the last few days, been one of the two largest shareholder in Sibir owning (through the structure explained below) 23.5% of Sibir's shares. Sibir's website describes the company in the following terms: *"Sibir Energy plc was formed in 1996 to look for opportunities to invest in the former Soviet Union, particularly in Russia. The founders had for some time recognised the attractions of Russia's huge oil and gas reserves, and their availability at prices considerably below the valuations of comparable reserves elsewhere in the world. Today, Sibir is celebrating 10 years of successfully doing business in Russia and the future has never looked brighter."*

12. The Claimant initially acquired a shareholding in Sibir in the late 1990s and through a series of transactions, he built his stake up so that by 2000 he held 51% of the issued share capital of Sibir through an Isle of Man company, Bennfield Limited (**"Bennfield"**). Sibir is a public company and its shares are listed on the London Stock Exchange on the Alternative Investment Market (**"AIM"**). Before the recent fall in oil prices, its shares were trading on AIM at over £8 per share valuing Sibir in excess of £3.5 billion, making it the largest company on AIM.

13. Subject to the effect of the documents delivered in Zurich on 18 May 2009 (see below), Gradison was, until 18 May 2009, the corporate vehicle through which the Claimant held his shares in Bennfield and, through Bennfield, in Sibir. Gradison is a company incorporated in the British Virgin Islands and until 18 May 2009 the directors of Gradison

were the Claimant and Mark Bruppacher ("**Dr Bruppacher**"), a Swiss lawyer appointed as director by the Claimant.

14. Orton is a company under the control of Igor Kesaev ("**Mr Kesaev**"). Orton is the joint owner of Bennfield (along with Gradison) following its acquisition of 50% of the shares in Bennfield from Gradison in 2005.

15. Bronson is a company incorporated in the British Virgin Islands said to be controlled by Ruslan Baisarov ("**Mr Baisarov**"), a Russian businessman. The Claimant understands, as explained below, that Mr Baisarov acts as a nominee or "front" for Yelena (aka Elena) Baturina ("**Ms Baturina**"), possibly by virtue of some assignment or agency arrangements, the details of which are not known to the Claimant. As explained below, Bronson claims to have acquired Orton's rights and interests in the shares held by the Claimant in Gradison by means of an assignment by Orton to Bronson. The Claimant's fear is that the assignment and enforcement of the security is an attempt by Ms Baturina (via her corporate vehicle, Bronson) to take control of the Sibir Stake via a charge which is unenforceable, and an attempt to do so in a manner which will not properly compensate the Claimant for the full value of his equity in the Gradison shares.

SECTION B: THE COMMERCIAL BACKGROUND TO THE LOAN TRANSACTIONS

16. In 2005, the Claimant needed to raise cash to finance the purchase of a rights issue of shares by Sibir. Sibir sought such funding for the purpose of the development of oil projects. The Claimant therefore agreed with Ms Baturina that he would sell 50% of his shareholding in Sibir, then held by Gradison to Mr Kesaev. Mr Kesaev paid to Gradison more than US$200 million to acquire 50% of the shares of Sibir that were owned by Bennfield (the total Bennfield shareholding then represented approximately 51% of the issued share capital in Sibir).

17. The arrangements between the Claimant and Mr Kesaev were formalised pursuant to an agreement dated 8 December 2005 made between the Claimant, the First Defendant, and others, a copy of which is at **CKG-1 pages 1-33**. As noted in the recitals, the Claimant was at that stage the beneficial owner of Gradison and the beneficial owner of the entire issued share capital of Bennfield, and Bennfield was the owner and registered holder of 99.5 million ordinary shares in Sibir. Gradison agreed to sell to Orton 1 ordinary share in Bennfield for US$215 million and Bennfield then agreed to subscribe for a further 81 million shares in Sibir for consideration of US$404.6 million, funded equally by Gradison and Orton Oil. Once those arrangements had been completed, Bennfield then owned 180 million shares in Sibir of which 50% was owned by Gradison (for the Claimant) and 50% by Orton Oil (for Mr Kesaev).

18. The Claimant and Mr Kesaev (and their respective companies) also entered into a controlling shareholders' agreement in late 2005 with Sibir pursuant to which the Claimant, Gradison, Mr Kesaev, Orton and Sibir agreed to provide certain assurances to Sibir to ensure that the company was able to operate independently of the majority shareholders. A copy of that agreement is at **CKG-1 pages 34-43**.

19. Prior to October 2008, Gradison's principal bank and credit provider had been Merrill Lynch International. Merrill Lynch International had made available to Gradison a facility of some US$330 million (the **"Merrill Lynch Facility"**) in order to finance the acquisition of certain real estate projects in Moscow. The Merrill Lynch Facility was secured by charges granted by Beenfield over its shares in Sibir (the **"Merrill Lynch Charge"**).

20. By autumn 2009, some US$188 million remained outstanding under the Merrill Lynch Facility and Gradison was facing margin calls from Merrill Lynch International. As a result, under the terms of the Merrill Lynch Charge, Merrill Lynch International was in a position to enforce its security leading to the alienation of Gradison's shares in Sibir. The Claimant was concerned about Merrill Lynch International's margin calls and decided to refinance the Merrill Lynch Facility.

21. I understand that the Claimant discussed his intentions to refinance the Merrill Lynch Facility with Mr Kesaev. Mr Kesaev agreed to investigate alternative sources of funding through one of his Russian bank contacts. Having made some investigations, Mr Kesaev suggested that the Claimant obtain the monies required to repay the Merrill Lynch Facility from Sberbank.

22. Mr Kesaev (or certain entities beneficially owned by him) already had a substantial funding line with Sberbank. In particular:

    (a) Sberbank had granted a non-revolving credit facility to Orton on 5 October 2007 in respect of a line of credit of US$648,710,051 (the **"Orton Facility"**) (see **CKG-1 pages 44-75**);

    (b) Security had been provided in respect of the Orton Facility, including:

        (i) a mortgage and first fixed charge granted by Orton on 27 November 2007 over its shares in Bennfield (the **"Orton Charge"**) (see **CKG-1 pages 76-99**); and

        (ii) a first fixed charge granted by Bennfield on 27 November over 90,168,321 shares in Sibir (the **"Bennfield/Orton Charge"**) (see **CKG-1 pages 100-111**).

23. The full set of relevant documentation evidencing Orton's line of credit with Sberbank is exhibited to this statement at **CKG-1 pages 44-130**.

24. Initial discussions took place between Sberbank and Mr Kesaev at which I am told it was indicated that Sberbank would be willing to refinance the Merrill Lynch Facility. It was suggested that Sberbank would lend US$200 million at around 11-12% interest per annum. It was agreed that the facility would be provided to Orton, which already had a substantial funding line with Sberbank, and the monies would then be on lent by Orton to Gradison.

25. Discussions continued with Sberbank and the proposed interest rate was increased to 16% per annum. Despite the increase in the interest rate, I am informed that Mr Kesaev urged the Claimant to accept the facility being offered by Sberbank.

26. The Claimant has explained to me that at the last moment, he was told that in addition to the interest rate of 16% per annum and the agreed fee of US$2.88 million a premium of US$60 million would be payable by Gradison to Sberbank Capital. Because of the situation with Merrill Lynch International, which was threatening to call a default and to exercise its rights over Gradison's shares in Sibir, the Claimant, concerned that he would lose his shares in Sibir, says that he felt that he had no option but to enter into the arrangements with Sberbank and Orton.

SECTION C: THE LOAN TRANSACTIONS AND ASSOCIATED AGREEMENTS

I. THE OCTOBER 2008 LOANS AND GRADISON CHARGE

27. On 31 October 2008, and for the express purpose of enabling Orton to grant a loan to Gradison in order to effect the refinancing of Gradison's obligations to Merrill Lynch International, Sberbank agreed to grant Orton a non-revolving credit facility of US192 million (the "**Second Orton Facility**") and Orton agreed to on-lend the US$192 million it had obtained from Sberbank to Gradison (the "**Orton/Gradison Loan**").

28. Various forms of security were provided to Sberbank in relation to the Second Orton Facility. In particular:

(a) The Claimant agreed by way of a suretyship agreement dated 31 October 2008, to act as guarantor in respect of the Second Orton Facility (see **CKG-1 pages 131-150**);

(b) By way of second amendment to the original Bennfield/Orton Charge, in an agreement dated 29 January 2009 (following an amendment by way of additional agreement between Sberbank and the Claimant dated 15 January 2009), Bennfield extended the Bennfield/Orton Charge to cover the Second Orton Facility

and extended the scope of the charge granted to 180,336,643 shares in Sibir (being its entire shareholding in Sibir) (see **CKG-1 pages 226-268**) and

(c) In accordance with the terms of a share charge dated 29 January 2009, Gradison granted a charge to Sberbank over 3 shares in Bennfield (being a 50% interest in Bennfield) and all property rights associated with those shares for the purpose of securing the payment and discharge of Orton's obligations to Sberbank under the Second Orton Facility.

29. The Gradison/Orton Loan was personally guaranteed by the Claimant pursuant to the terms of a written guarantee dated 31 October 2008 (see **CKG-1 pages 198-207**).

30. In addition, in accordance with the terms of a security over shares agreement dated 25 December 2008, the Claimant granted a charge to Orton over his entire shareholding in Gradison (the "**Gradison Charge**") for the purpose of securing the payment and discharge of Gradison's obligations to Orton under the Gradison/Orton Loan (see **CKG-1 pages 208-220**). The Gradison Charge is the security document which forms the basis of the proposed arbitral proceedings. It is governed by the law of the British Virgin Islands and, as set out at below, contains an LCIA arbitration clause.

31. The Claimant has informed me that, although all of the value of the shareholding in Sibir (held through Gradison's shareholding in Bennfield) was to be pledged to Sberbank, it was agreed between himself and Mr Kesaev that, in the event that Sberbank exercised any rights of sale under the security documents, the Bennfield shares that secured the Orton part of the indebtedness to Sberbank (i.e. US$648 million) would be used to pay off Orton's indebtedness and the Bennfield shares that secured that part of the indebtedness that was on lent by Orton to Gradison (i.e. US$192 million) would be used to pay off the Gradison debt with the result that the Claimant would be left with all of the equity relating to his portion of the Sibir shares. This agreement is not documented but the Claimant has informed me that he discussed these arrangements with, and they were approved by, Ms Baturina.

32. Subject to that point, what I believe to be a complete set of the documentation evidencing the October 2008 loans described above, and associated security, is exhibited to this statement at **CKG-1 pages 131-291.**

II. 31 OCTOBER 2008 SHARE PURCHASE AGREEMENTS

33. As an integral part of the refinancing transactions executed on 31 October 2008, Gradison also entered into two linked agreements concerning the sale and repurchase of 8.5743% of the shares in Bennfield held by Gradison.

34. The documentation evidencing the sale and repurchase of 8.5743% of the shares in Bennfield held by Gradison, exhibited to this statement at **CKG-1 pages 292-323**, is as follows:

(a) Preliminary Share Purchase Agreement between Savings Bank Capital LLC ("**Sberbank Capital**") and Gradison dated 31 October 2008 (the "**Preliminary Share Purchase Agreement**");

(b) Memorandum between Sberbank Capital and Gradison dated 31 October 2008 (the "**First Memorandum**");

(c) Memorandum between Sberbank Capital, Gradison and Bennfield dated 1 November 2008 (the "**Second Memorandum**");

(d) Letter from Orton to Sberbank dated 26 February 2009;

(e) Letter from Orton to Gradison dated 26 February 2009; and

(f) Letter from Sberbank to Orton dated 27 February 2009.

35. Pursuant to the terms the Preliminary Share Purchase Agreement, Gradison agreed with Sberbank Capital that it would enter into an agreement before 30 November 2008 whereby it would sell to Sberbank Capital 8.5743% of the shares that it held in Bennfield for US$1 (the "**Bennfield Stake**").

36. Sberbank Capital is a company incorporated pursuant to the laws of the Russian Federation, and, I understand, a wholly owned subsidiary of Sberbank. The Preliminary Share Purchase Agreement is expressly governed by the law of the Russian Federation, and provided inter alia the material conditions which would be incorporated in the envisaged share sale agreement.

37. Pursuant to the terms of the First Memorandum, Gradison agreed with Sberbank Capital that they would enter into a binding agreement pursuant to which Gradison would be obliged to repurchase from Sberbank Capital the Bennfield Stake for the greater of US$60 million or the value of a 4% holding in Sibir as at the date of the demand for repurchase (by reference to the quoted price for Sibir shares on the London Stock Exchange). The First Memorandum is also governed by the law of the Russian Federation.

38. The recitals to the First Memorandum included the following statement:

"*The Company [Bennfield] beneficially owns 47 ... percent of shares in Sibir Energy Plc, which is 180,336,643 ... shares.*

The Company will pledge 23.25 ... percent of shares in Sibir Energy Plc, which is 90,168,321 ... shares (hereinafter the "Shares Pledged") to the Joint-Stock Commercial Savings Bank of the Russian Federation (OAO) (hereinafter the "Bank") as security for obtaining a credit facility by Orton Oil Company for the amount of 192,000,000 ... US Dollars based on agreement No. 5061 of 31 October 2008, from the Bank."

39. Although Bennfield was not a party to the First Memorandum, Clause 2.8 thereof provided that:

"*The Repurchase Agreement which the Parties undertake to enter into must contain the following essential conditions:*

...

2.8 Should the Seller do not perform[sic] its obligations to enter into the Repurchase Agreement or do not fulfil the terms of the agreement on repurchase of the shares in the Company from the Seller, the Seller shall be entitled to levy execution upon the Shares Pledged."

40. On 1 November 2008, a further memorandum, the Second Memorandum, was entered into between Gradison and Sberbank Capital to which Bennfield was made a party. I understand that the Second Memorandum was intended to supersede the First Memorandum. The Second Memorandum again provided that Gradison agreed with Sberbank Capital that they would enter into a binding agreement pursuant to which Gradison would be obliged to repurchase from Sberbank Capital the Bennfield Stake for the greater of US$60 million or the value of a 4% holding in Sibir as at the date of the demand for repurchase (by reference to the quoted price for Sibir shares on the London Stock Exchange). The Second Memorandum was expressly governed by the law of the Russian Federation. The terms of the Second Memorandum differed from those of the First Memorandum in certain respects, and included:

(a) By Clause 3.5, an agreement that the repurchase agreement that would be entered into would provide for repurchase of the Bennfield Stake by 1 May 2009; and

(b) By Clause 4, an undertaking by Bennfield to enter into an agreement with Sberbank Capital for the pledge of 4% of the shares in Sibir owned by Bennfield for the purpose of securing the performance by Gradison of its obligations to enter into the repurchase agreement and the fulfilment of its obligation under the repurchase agreement.

41. Notwithstanding the terms of the Preliminary Share Purchase Agreement, no share sale agreement was entered into between Gradison and Bennfield (by 30 November 2008, or at all). No repurchase agreement as envisaged by the First or Second Memorandum has been entered into between Gradison and Bennfield. No pledge agreement has been entered into between Bennfield and Sberbank Capital as envisaged by the Second Memorandum.

42. In two letters dated 26 February 2009, sent by Orton to Sberbank and Orton to Gradison respectively, Orton acknowledges the connection between the Orton/Gradison Loan and the envisaged sale and repurchase of 8.5743% of the shares in Bennfield held by Gradison.

43. In the time available the Claimants have taken advice from a Russian law expert (Alexander Igorevich Muranov of Muranov, Chernyakov and Partners) on the enforceability of the US$60 million premium payable by Gradison to Sberbank Capital **(CKG-2 page 370-378)**. In summary the advice is:

(a) Memorandum would be regarded by a Russian court as governed by the law of the Russian Federation;

(b) The Share Purchase Agreement and the Memorandum should be deemed null and void. Any transactions with Bennfield's shares based on these documents will not have any legal effect; and

(c) Clauses 1.2 and 1.3 of the Facility Agreement are valid, yet unenforceable.

SECTION D: DEFAULT UNDER THE ORTON/GRADISON LOAN

44. Gradison was required in accordance with the terms of the Orton/Gradison loan to make interest payments to Orton. Gradison has failed to make any payments to Orton in 2009 and, at the time of this statement, has failed to rectify this event of default. The Claimant believes that such a failure to make payment constitutes an event of default within Clause 7.1, and that (in accordance with Clause 7.2) Orton was entitled to declare the loan amount together with accrued interest immediately due and payable by notice in writing to Gradison.

45. However, to date, the Claimant does not believe that any notice of default has been served on Gradison and does not therefore believe that the Loan Amount (as defined in the Orton/Gradison Loan) has become immediately due and payable.

SECTION E: ASSIGNMENT OF ORTON'S RIGHTS UNDER THE ORTON/GRADISON LOAN AND THE GRADISON CHARGE

I. ASSIGNABILITY

46. The Orton/Gradison loan is governed by the laws of England and Wales, and is subject to an LCIA arbitration clause. In accordance with Clause 15 thereof, Orton reserved the right to sell or assign all or any part of, or any interest in, its rights and benefits under the Orton/Gradison loan. Clause 15 also provided that, in connection with any sale or assignment, Orton could, upon 30 days' prior written notice, disclose all documents and information which it possessed relating to Gradison or its business or any security required thereunder, subject to the execution of a confidentiality agreement reasonably acceptable to Orton and Gradison.

47. The Gradison Charge is, as already noted, governed by the law of the British Virgin Islands and is subject to an LCIA arbitration clause. Although the Gradison Charge contains no express power of assignment, Clause 15 thereof deals with Successors in interest to Orton and provides that the definition of the Secured Party was intended to include any assignee or successor in title of Orton.

48. Orton has sought to assign its rights under both the Orton/Gradison Loan and Gradison Charge in the circumstances set out in the following paragraphs. I set out the lengthy history to the Claimant's discovery that such an assignment had occurred, because it is but one example of the apparently contrived dealings regarding the shares in issue which have served to give the Claimant cause for concern as to the need to protect his rights. It remains the case that, as at the time of this statement, no copies of the assignment documents have been provided to the Claimant (despite numerous requests that they be provided).

II. EVENTS LEADING UP TO 18 MAY 2009

49. On 10 May 2009 I contacted by e-mail Mr David Roberts (**"Mr Roberts"**) of Taylor Wessing, the solicitors acting for Mr Kesaev and Orton. In a call and e-mail on 11 May 2009 I asked Mr Roberts to confirm whether, as had been stated in the Russian press, Orton had assigned to any third party its rights in respect of the Loan Agreement between Orton and Gradison Consultants dated 31 October 2008, and the related security over the shares of Gradison. By e-mail dated 12 May 2009 Mr Roberts denied that any such assignment had taken place (see **CKG-2 pages 165-166**)

50. On 12 May 2009 I responded to Mr Roberts' e-mail and asked with whom he had spoken regarding the matter. This email is at **CKG-2 page 165**.

51. On 15 May 2009 a press article stated that a company called Rossini had regained control over the Claimant's stake in Sibir, and would withdraw its claim in the Isle of Man (being the Rossini proceedings to which I refer below). By e-mails dated 15 May 2009 I asked Mr Roberts again whether any of Orton's rights had been assigned, bringing the article to his attention. By email of the same day Mr Roberts confirmed his instructions that no assignment of the loan had taken place. The article and emails are at **CKG-2 pages 168 and 172-173** respectively. In the circumstances, if an assignment had taken place on 12 May 2009 as is now relied upon by Bronson, then it appears that those instructing Taylor Wessing had lied to them about the giving of the assignment.

52. On 16 May 2009 a further article in the Russian press stated that an assignment by Mr Kesaev of Orton's security rights was in progress. By an e-mail of that date I brought this article to Mr Roberts' attention and asked him for information and documents to clarify the position. By an e-mail of 17 May Mr Roberts confirmed he would take instructions on the point, and in my response I noted the urgency of the situation. The article and emails are at **CKG-2 pages 171-172**.

III. EVENTS OF 18 MAY 2009

53. On 18 May 2009 a further article in the Russian press confirmed in detail the appropriation by Mr Baisarov of the Claimant's shares in Gradison pursuant to the Loan Agreement described in **paragraph 27**, and his withdrawal of the proceedings in the Isle of Man (which are described at paragraph 94 below). This article is at **CKG-2 pages 175-176**.

54. I was telephoned by Dr Bruppacher at about 11am English time. He informed me that he had been visited that morning by representatives on behalf of Mr Baisarov; Mr Philipp Studhalter of Studhalter Treuhand AG and Mr Gadzhiev. I was told that they had delivered to Dr Bruppacher the following documents, found at **CKG-2 pages 177-184**:

(a) Two unsigned copies of Dr Bruppacher's resignation as Director of Gradison, intended to be tendered by him;

(b) A resolution of the Members of Gradison, signed by Mr Baisarov, removing Dr Bruppacher and the Claimant as directors of Gradison and appointing Mr Ulrike Moser-Steiner in their place;

(c) A delivery and acceptance certificate recording delivery by Mr A. M. Kobzev on behalf of Orton to Mr Baisarov on behalf of Bronson Partners Corp, pursuant to a Deed of Assignment dated 12 May 2009, of various documents including:

(i) Memorandum and Articles of Association of Gradison;

(ii) Certificate of Incorporation of Gradison;

(iii) A resolution to appoint Dr Bruppacher as director of Gradison, dated 30 April 2003;

(iv) Copy of Initial Consent Actions of the sole director relating to the approval of Registered Office, Registered Agent, corporate seal, issued share certificates and sole signatory power of Dr Bruppacher as of 15 May 2003; and

(v) Copy of Consent Actions of Board to the appointment of Mr Urs Josef Haener and the Claimant as directors of Gradison from 3 September 2004.

(d) Share certificates No.1 and No.2 of Gradison Consultants, Inc; and

(e) A delivery and acceptance certificate recording delivery by Mr A. M. Kobzev on behalf of Orton to Mr Baisarov on behalf of Bronson Partners Corp, pursuant to a Deed of Assignment dated 12 May 2009, of the original share certificates No.1 and No.2 of Gradison Consultants, Inc.

55. In e-mail correspondence Dr Bruppacher informed me that he had not signed the resignation letter or any other document. No resignation letter had been prepared or presented for the Claimant. Mr Studhalter and Mr Gadzhiev stated that Dr Bruppacher's firm was no longer the client's registered representative, and requested that Dr Bruppacher inform the local agents of the change in directorship. Dr Bruppacher said that he and his firm had had no influence on any share transfer that may have taken place, and that he did not know where the seals of Gradison were deposited. This correspondence is at **CKG-2 pages 185-186**.

56. In further e-mail correspondence Dr Bruppacher requested my firm's confirmation that the necessary formalities had been complied with and that his firm could validly resign as Gradison's registered representative, as he did not wish to be obliged to act pursuant to the instructions of the new director. I noted that I had not seen the assignment documentation nor been provided with any other information, and so could not confirm its effect. I later suggested that if Dr Bruppacher were to resign, it should be without prejudice as to whether Mr Baisarov and Bronson are entitled to the rights they assert. This correspondence is at **CKG-2 pages 187-188**.

57. I forwarded to Mr Emerson a copy of the documents provided to me by Dr Bruppacher, pertaining to the purported takeover of Gradison by Mr Baisarov. I requested confirmation that an assignment of the Gradison security had taken place, information as to the

circumstances of the takeover and identification of the parties involved. In particular, I requested that the identity of Mr Baisarov's principal be confirmed. This email is at **CKG-2 page 191**.

58. I also forwarded to Mr Roberts a copy of the documents provided to me by Dr Bruppacher. I asked that he provide urgently the previously requested documents pertaining to any assignment of Orton's rights. By return, Mr Roberts said that he had sought instructions, and in a further email I confirmed the urgency of the situation. These emails are at **CKG-2 pages 192-193**.

59. At 19:40 I sent by e-mail to Mr Roberts (copied to Mr Kobzev of Orton) a letter before action in this matter. This letter is at **CKG-2 pages 197-200**. Referring to the security given by Gradison to Orton, I noted the apparent assignment of the security rights to Bronson (without prejudice as to whether Orton or its assignees might be entitled to enforce such security). I requested that Orton and any assignee of its rights (including Bronson and Mr Baisarov) undertake that in the event of any enforcement of the security, the Gradison shares would be sold at the best price reasonably obtainable. I asked for a further undertaking namely that the Claimant's rights in the equity in the Gradison shares would be fully respected, and that Orton or any assignee would account fully and accurately to our client for the proceeds of sale of the Gradison shares. I also gave notice of an issue as to the enforceability of certain arrangements between Gradison and Sberbank/Sberbank Capital. I noted that if, upon enforcement of the security, Sberbank/Savings Bank Capital sought to obtain payment of any surplus proceeds of sale, the Claimant would seek to challenge payment over of any such surplus before the Court. I requested an undertaking that Orton and its assignee would give the Claimant 3 business days notice of any proposed dealing with the Gradison shares, the Sibir holding or their proceeds. By copy email to Mr Emerson, Elaine Dobson and Philipp Studhalter I asked that Mr Baisarov and Bronson also give the undertakings requested.

IV. EVENTS OF 19 MAY 2009

60. At 15.03 on 19 May 2009 (**CKG-2 pages 201 to 202**), I received an email from Elaine Dobson at Birchams which said:

> *"I have spoken to those that instruct us and I can confirm that we are not instructed in relation to the matters set out in your correspondence of yesterday and of today. We understand that you should receive communication from those that are so instructed.*
>
> *Further we have been asked to point out to you that Dr Studhalter is likewise not instructed with regard to these matters.*

As a consequence we cannot comment on the correspondence nor provide you with the reassurances/ undertakings you seek".

Given the urgency of this matter I regard the failure to provide copies of the assignment agreements and failure to disclose details of the persons from whom we would be hearing is a matter of grave concern.

61. For completeness I should mention that my colleague Neil Dooley was informed on 19 May 2009 that Ms Dobson (then at Withers) acted for Ms Baturina on the purchase of her house in London, further suggesting that it is Ms Baturina who is the driving force behind all of these transactions as the Claimant alleges.

62. During the course of the afternoon of 19 May 2009, two faxes were received from Taylor Wessing:

(a) In their first fax (see **CKG-2 pages 203-206**), Taylor Wessing enclosed a copy of:

(i) a notice to Gradison of the assignment from Orton to Bronson. This was dated 12 May 2009 and refers to an assignment dated 12 May 2009, but was signed by Orton on 19 May. I also note that the handwritten date appears to have been changed at some point (it appears to have been 13 May before it was altered), and that it is unclear when it was signed by Bronson. The receipt of this fax gave the Claimant cause of concern in circumstances where Mr Roberts had repeatedly told me during the course of the week of 11 May 2009 that there was no such assignment;

(ii) a notice of assignment to the Claimant of the assignment from Orton to Bronson. This is also dated 12 May 2009 and refers to an assignment dated 12 May 2009. It was, however, signed by Orton on 19 May. It is unclear when it was signed by Bronson.

(b) In their second fax (**CKG-2 pages 207-208**) Taylor Wessing stated that the assignment was "*executed by Orton's representative today*", i.e. on 19 May 2009, despite the statement in the acknowledgments enclosed with their first fax which stated that the assignment is dated 12 May 2009. They also declined to provide any undertakings to the Claimant and indicated that contact should be made with the assignee, Bronson (of course in circumstances where Bronson's English lawyers now say they are no longer instructed on this matter).

63. I attach copies of my replies to Taylor Wessing and Birchams which continued to request copies of the assignment, a request that has been made in a series of emails over the last 7-10 days (**CKG-2 pages 209-218**).

V. EVENTS OF 20 MAY 2009

64. I did not receive any reply to my correspondence requesting the undertakings be provided by 12 noon or in relation to a Notice of Change of Solicitor for Gradison.

65. At 12.40 I received an email from Mr Roberts of Taylor Wessing (the solicitor instructed by Orton) in which he said: "*Your correspondence of the 18th May suggested you knew who is acting for Bronson, namely the lawyer you have copied into your e mail below. May I suggest you direct all enquiries to her on this matter, including any request for documentation*". It appears that Mr Roberts was referring to Elaine Dobson of Birchams (she being one of the addressees to my earlier correspondence). (**CKG-2 page 212**)

66. I replied to Mr Roberts (copied to Ms Dobson) at 13.26 as follows:

"*You obviously know for certain who it is, so why not tell me? Bircham Dyson Bell are playing games suggesting that they are not dealing with this issue when Neil Emerson told me on 8 May that they act for Mr Baisarov and Bronson. By the way, I am aware that Elaine Dobson (copied on this email) acted when she was at Withers for the real party in interest who is behind Mr Baisarov. In any event, why can you not provide copies of the documents and answer my questions? This exchange will be referred to in any court application we make.*" (**CKG-2 page 211**)

67. Ms Dobson replied at 14.28 as follows:

"*I refute any suggestion that BDB are 'playing games'. We have not said that we are not instructed by Bronson or Mr Baisarov. With respect you have previously misreported the conversation between Neil and yourself. I would ask you to re-read my emails as I believe they are quite clear but, for clarification, what we are saying is that we are not instructed in relation to the matters set out in your emails. I am sure you will acknowledge it is entirely possible to receive limited instructions from clients and that is the case in this matter. Further Neil Emerson has made it quite clear to you the identity of the person, and the entity, for whom Bircham Dyson Bell are acting and this is not something that requires further comment.*" (**CKG-2 page 211**)

Ms Dobson did not refute the point I had raised in my email that she had acted for Ms Baturina on the purchase of her London house.

68. By way of a further email from Taylor Wessing received at 16.59 they stated: "*We have now spoken to our client's Russian lawyers and they inform us that they have dealt with a Russian lawyer called Grẹgory Concharskiy who, as they understood it, works for Bronson. As requested by Elaine Dobson, we confirm that we act for Orton.*" (**CKG-2 page 215**)

69. Despite asking for contact details for Mr Concharskiy, no information has been forthcoming from either Taylor Wessing or Birchams. (**CKG-2 page 215**)

70. I received a call from Neil Emerson at Birchams at about 5.30pm. He said that he wanted to clarify the role of his firm. He said that he was not being difficult or playing games with us but he wanted to reiterate that his firm had received very limited instructions from Bronson initially to deal with any English issues that arose from the Isle of Man proceedings commenced by Rossini. He had no further instructions from Bronson. To try to be helpful he said that he had passed on to Bronson everything that we had send to Birchams on the issues we had raised and that we should correspond direct with Bronson going forward at its registered address in the BVI (despite me pointing out to him that this was just a PO Box number). Mr Emerson said that he would revert to his client contacts to see if he could obtain instructions to provide us with an alternative contact at a more practical level (I suggested to him someone on behalf of his client in Russia).

71. It remains a matter of grave concern to the Claimant that no undertakings in relation to the sale of the shares have been provided and that (as the recent exchanges demonstrate) Bronson and Orton continue to be evasive: no assignment has been provided; Orton (through Taylor Wessing) say that we should correspond with Bronson's lawyers; and Bronson's London lawyers say they have no instructions on this issue (despite clearly being involved in, and on notice of, the assignment). This is, to say the least, most unsatisfactory.

SECTION F: ENFORCEMENT

72. As far as the Claimant is aware, Bronson appears by way of purported enforcement of its rights as assignee of the Gradison Charge to have (i) appropriated the Gradison shares (presumably in reliance on Clause 9 of the Gradison Charge); and (ii) as shareholder of Gradison, removed the Claimant and Dr Bruppacher as directors of Gradison. In this regard, I refer to **CKG-2 page 179**. In short, Bronson has now asserted full control over Gradison. The Claimant is unaware of whether Bronson has sought to procure Gradison to deal with Gradison's assets i.e. the shareholding in Bennfield.

73. For the reasons set out in the following sections of this statement, the Claimant maintains that Bronson is not entitled to enforce the Gradison Charge in this manner or at all. Furthermore, the Claimant believes that, even if the Gradison Charge was enforceable, the steps being taken by Bronson are part of a scheme which wrongfully threatens his rights and is aimed at depriving the Claimant of his right to the considerable equity in the Gradison shares which would be available to him if a sale was conducted in a proper manner.

SECTION G: THE DISPUTES RELATING TO THE GRADISON CHARGE/GOOD ARGUABLE CASE

74. The Claimant wishes to raise a number of disputes regarding the ability of Bronson to enforce the Gradison Charge. I consider that the Claimant has a good arguable case in respect of the disputes set out in the following paragraph which collectively or individually will demonstrate that the Gradison Charge is unenforceable and that Bronson is infringing the Claimant's rights.

75. There is a significant issue and dispute as to whether Bronson is entitled to enforce the security granted by the Gradison Charge in circumstances where no formal written demand was made under the Orton/Gradison Loan as required by Clause 7.2. Further and in any event, the Claimant does not accept that the purported exercise of any rights by Bronson pursuant to the Gradison Charge prior to 19 May 2009 was effective in circumstances where any such exercise of rights occurred prior to the execution of the assignment. Both of these disputes give rise to a proper basis to question whether the Bronson's current conduct is an infringement of the Claimant's rights.

76. Furthermore, the Claimant has been advised by Ogier (see pages **), that the Gradison Charge should in any event be regarded as invalid and unenforceable as a matter of the law of the British Virgin Islands. This is, I am told, because Section 66(2) of the Business Companies Act 2004 (the "**2004 Act**") provides that "*a mortgage or charge of bearer shares is not valid and enforceable unless the certificate for the share is deposited with a custodian.*" A custodian for these purposes is a person authorised to act as such by the BVI Financial Services Commission: see Section 67 of the 2004 Act. The Claimant does not believe that the share certificates relating to Gradison were ever deposited with an authorised custodian, as appears to be clear from the certificate evidencing handover of the shares direct from Orton to Bronson: see **CKG 2 pages 310-315**. Ogier have expressed the view that they are not convinced that this breach is capable of rectification by lodging the share certificates with an authorised or recognised custodian at this stage as the failure to comply appears to be a fundamental flaw.

77. Ogier have also advised that, even if the Gradison Charge is (contrary to their views) generally to be regarded as valid and enforceable, there is a serious issue as to whether Clause 9 thereof (which provides for "a right of appropriation") is enforceable as a matter of the law of the British Virgin Islands. In this regard, Ogier have drawn our attention to the decision of the Privy Council of 5 May 2009 in *Cukurova Finance International Limited and another v Alfa Telecom Turkey Limited* [2009] UKPC 19 (see **CKG 2 page 314**). I am told that there is no provision under the laws of the British Virgin Islands which is equivalent to the provisions of European Directive 2002/47/EC on Financial Collateral Arrangements, and that those regulations have not application in the British Virgin Islands.

78. In these circumstances, the Claimant disputes the enforceability of the Gradison Charge generally, and of Clause 9 thereof in particular.

79. Ogier have also advised that::

(a) Even if the Gradison charge is valid and enforceable, any enforcement steps taken by Bronson may not have complied with Section 66(7) of the 2004 Act. As noted by Ogier, Section 66(7) of the 2004 Act provides that the remedies available to a secured party under BVI law may not be exercised until default has occurred and has continued for a period of not less than 30 days (or such shorter period as may be provided for in the instrument creating the charge), and that the default has not been rectified within 14 days (or such shorter period as may be provided for in the instrument creating the charge). Ogier have indicated that it is questionable whether the terms of Clause 7 of the Gradison Charge provide for such a short period, and that the enforcement steps taken in this case may therefore have contravened the terms of Section 66(7).

(b) The validity of the transfer of the bearer shares from Orton to Bronson may be questionable because the transfer does not appear to have been made to a custodian (for it to hold) or to the company/registered agent for the conversion of the bearer shares to a registered shares as is required as a matter of general principle under the 2004 Act. As such, the Orton to Bronson transfer is arguably ineffective.

(c) There is a significant issue ask to the effectiveness of the resolution purporting to remove the directors. In particular, it is necessary for any written resolution passed by the holder of a bearer share certificate to comply with Regulation 3.4.2 of the articles of association, and that this require authentication of the signature. That process requires the bearer shares to be presented before an "authorised person" who would endorse the document bearing the signature. Ogier note that there is no indication on the face of the resolution that such authentication took place. Furthermore, Ogier note that the resolution passed appears to have been executed by Mr Baisarov in his personal capacity rather than on behalf of Bronson.

80. In these circumstances, there are a number of additional disputes arising out of or in connection with the Gradison Charge which will need to be determined by the arbitration panel.

81. Furthermore, to the extent that (contrary to the advice of Ogier) Bronson is in a position to enforce the Gradison Charge, and exercise any power of sale or appropriation over the

Gradison shares in issue, Ogier have confirmed that the obligations imposed on a secured creditor when realising assets are the same as those under English law. That is to say, steps must be to obtain the best price reasonably attainable for such assets when sold. For the reasons set out in the following section of this affidavit, the Claimant believes that there is a sufficient threat of infringement of such rights as to give rise to a dispute referable to arbitration pursuant to the terms of the Gradison Charge.

82. Ogier also note that Section 66(6) of the 2004 Act contemplates that any chargee will have to account to the charger for the surplus and the balance of the charged assets once the indebtedness is discharged. In my letter of 18 may 2009 to Taylor Wessing, notice was given of the fact that there was a significant issue as to the enforceability of certain arrangements between Gradison and Sberbank/Savings Capital, and that (if the Gradison Charge was enforced and the shares realised) the Claimant would not be prepared to permit any surplus to be paid over to Sberbank/Savings Capital without a judicial determination of whether the US$60 million "premium" was enforceable. As set out above, the Claimant has been advised that it is not. To the extent that there is a dispute regarding any obligation to account in full to the Claimant in respect of these monies, and bearing in mind the apparent threats to the Claimant's interests, this issue may also need to be determined by the arbitration panel.

SECTION H: THREATENED INFRINGEMENT OF THE CLAIMANT'S RIGHTS

83. In order to explain (at least in part) the concerns that the Claimant now has regarding the enforcement of the security against his shares in Gradison, it is necessary to place the recent events in context. Not only has there been what I consider to be an unreasonable refusal to provide undertakings to the Claimant for the purpose of ensuring that no sale of the Gradison shares will occur at an undervalue, there is a considerable and growing body of evidence which suggests that an attempt is being made to deprive the Claimant of his rights and harm his economic interests. The following paragraphs are based on information provided to me by the Claimant or those acting on his behalf.

84. Ms Baturina is the wife of the Mayor of Moscow, Yuri Luzkhov (**"Mr Luzkhov"**), who has been the Mayor of Moscow since 1992. She is stated by *Forbes* to be the wealthiest woman in Russia and its only female dollar billionaire, and her power and influence are known to be considerable. Ms Baturina is an investor in both Gazprom and Sberbank and has participated in high profile real estate projects (including one with Sir Norman Foster in Moscow); she is active in both the energy and real estate sectors.

85. Ms Baturina, as I explain below, has a network of companies and interests in and outside Russia. The Claimant has explained to me that Ms Baturina's sphere of influence in Moscow is such that no major projects can proceed within the city without her backing.

Ms Baturina has been referred to frequently in the UK press. I have exhibited at **CKG-2 pages 22-29** of CKG 2 some of the more recent articles.

86. The Claimant wanted to develop his oil and real estate interests in Moscow and that in 1999 he and Ms Baturina entered into a partnership as this was regarded as necessary to further that objective, given the power which Ms Baturina wields. Pursuant to that partnership, the Claimant was to provide all of the finance for certain major real estate and oil related projects and Ms Baturina was to ensure that any planning or other bureaucratic issues did not get in the way of the proposed development. It was intended that the partnership would be on a 50/50 basis with all profits and any losses to be split equally between the Claimant and Ms Baturina. However, not only has Ms Baturina never contributed any capital to any project, but rather the Claimant has been obliged to spend large sums on her behalf, amounting to about US$12 million including bills for the maintenance of her private jet.

87. Such was the high public profile of Ms Baturina (being married to the Mayor of Moscow) that Ms Baturina initially wanted to ensure that there were no documents recording the partnership agreement and that all discussions took place face to face in private between the Claimant and Ms Baturina. However, in 2003 Ms Baturina asked the Claimant to formalise the arrangements and, as I describe below, two companies (Rossini Trade Limited ("**Rossini**") and Salvini Trading Corp ("**Salvini**") were formed to hold the oil and real estate interests of the partnership respectively.

88. The Claimant and Ms Baturina formalised their agreement to share equally in the profits and losses of the relevant businesses, providing she would enable business operations by facilitating on an administrative and political level (without which, we are given to understand, an oil or real estate transaction could not hope to proceed in the Moscow region). Ms Baturina undertook to perform various facilitation activities, and the Claimant agreed to transfer into her control one half of his holdings in Bennfield (the company holding 23.5% of the shares in Sibir) and in Kea Enterprises Limited ("**Kea**"), a company holding considerable property assets.

89. On 19 March 2003 the Claimant and Ms Baturina attended a meeting held at the offices of Dr Bruppacher, at which they effected the transfer of Rossini into their joint beneficial ownership. A note of the meeting was produced by Dr Bruppacher and a copy of this note is at **CKG-2 page 18**. The parties, identifiable by their initials, are clearly the Claimant and Ms Baturina. Dr Bruppacher accepted a mandate to become a Director of Rossini.

90. Thereafter, on 25 April 2003 the Claimant signed a declaration of transfer of the rights in the Bennfield shares to Rossini. On 11 July 2003, the Claimant signed a declaration of

transfer of the rights to the shares in Kea to Salvini, another company owned 50% by him and 50% by Ms Baturina. Although the declarations were signed to formalise the understanding between the parties, no subsequent steps were carried out to give effect to their agreement. In particular the shares were not re-registered in the names of Rossini or Salvini, and although Ms Baturina failed to perform her obligations (in that she has not contributed to losses suffered in the real estate business) she continued to participate in the Claimant's business as she previously had. As also noted, she agreed to the sale in 2005 by the Claimant of 50% of the shares in Bennfield to Mr Kesaev and sanctioned this transaction, not claiming at that time any beneficial or legal interest in the Bennfield shares. She also agreed to the arrangements for the Second Orton Loan described in paragraphs 27 to 32.

91. In late 2007, Sheridan, a company owned by Ms Baturina, lent to the Claimant a sum of approximately US$131m. In late 2008 the Claimant repaid US$107m to Ms Baturina, and I am informed by the Claimant that approximately US$42m of principal and interest is currently outstanding in respect of this loan.

92. In December 2008 the Claimant became involved a dispute with Mr Luzkhov, the Mayor of Moscow, in relation to a property transaction the progress of which was prevented by the City of Moscow. As a result, relations between the Claimant and Mr Luzkhov and Ms Baturina have soured.

93. I understand from Dr Bruppacher and the Claimant that, in February 2009, Ms Baturina stressed to Dr Bruppacher that the Claimant had to repay immediately the sums outstanding to Sheridan. However, the Claimant has informed me that he told Ms Baturina that he was undertaking a reconciliation of the profits and losses from their business joint ventures in Rossini and Salvini. It may well be the case that Ms Baturina in fact owes substantial sums to the Claimant on account of the real estate losses. This led to a further deterioration in relations.

94. On 27 April 2009 the Russian press published a news article (a copy of which, with an English translation, is at **CKG-2 pages 19-21**) stating that a High Court claim had been filed in the Isle of Man by Rossini against the Claimant, Mr Kesaev and others. Rossini was said to be asserting an interest in 100% of the shares in Bennfield pursuant to the 2003 declaration. The media had knowledge of the claim details and background. The party bringing the proceedings was identified as Mr Ruslan Baisarov (**"Mr Baisarov"**), described in the press as the beneficial owner of Rossini. Without descending into detail, the Rossini proceedings were accurately described in the aforementioned press article. Mr Basiarov sought to establish (on behalf of Rossini) a claim to 100% of the shares in Bennfield - this apparently being a further attempt to deprive the Claimant of his interest in the Sibir Stake.

95. The Claimant believes Mr Baisarov to in fact be a nominee shareholder of Rossini, acting under direct instructions from Ms Baturina, the ultimate beneficial owner of 50% of the Rossini shares. This belief is corroborated by the fact that at a meeting in Zurich on 6 May 2009, Dr Bruppacher told me that in 2003 Ms Baturina took a safe deposit box at a bank in Zurich to hold copies of the 'partnership' documents and that he subsequently attended a meeting between the Claimant and Ms Baturina at Bank Wegelin at St Gallen, Switzerland on 7 April 2009 when she said that she had "transferred her rights" to Mr Baisarov and where she was provided with all the original documents. She instructed Bank Wegelin at St Gallen to open a safety deposit box for her to hold the documents. He told me that he had another meeting with Ms Baturina on 21 April 2009 at Bank Wegelin at St Gallen, to enable her to access her safety deposit box. This meeting was attended by (amongst others) Ms Baturina, Mr Gadzhiev (on behalf of Mr Baisarov), along with a fiduciary from the Studhalter firm in Lucerne which has acted for Ms Baturina and which acts for Mr Baisarov.

96. Dr Bruppacher said that he was informed by Ms Baturina that, as from 6 January 2009, all of her rights under the declarations in relation to Rossini and Salvini had been assigned to Bronson Partners Corp. The idea of the assignment was to protect her name. She remained as the principal. If she wanted to claim against the Claimant or his companies she did not want to appear personally.

97. Dr Bruppacher told me that he was aware of rift between the Claimant and Ms Baturina and said that he had offered his resignation to them both but that they asked him to remain in place. Dr Bruppacher said he holds papers relating to Rossini, Salvini and Sheridan (Sheridan is believed to be Ms Baturina's company or associated with her).

98. Dr Bruppacher was approached by Mr Gadzhiev and Dr Philipp Studhalter prior to the institution of proceedings in the Isle of Man in April 2009 (see below). He was told that there was concern that the six year limitation period under the Rossini declaration would expire on 25 April 2009. The claim was therefore filed in court at the behest of Ms Baturina/Bronson to preserve the limitation period. Dr Bruppacher understands that it was the plan that Dr Studhalter or Bronson would appear as the new beneficial owner of Rossini in place of Ms Baturina. On 28 April 2009 Dr Bruppacher learned of the commencement of the Isle of Man proceedings. Dr Studhalter asked Dr Bruppacher to sign a trust or assignment document dated 29 April 2009 in relation to Rossini in favour of Bronson. Dr Studhalter showed him the proposed document and left a copy to be signed. The document apparently confirms that the beneficial owner of Bronson is Baisarov but that the shares in Bronson are held by Nico Group SA. Nico is another BVI nominee company managed by Trident. Dr Bruppacher was asked to sign a document dated 29 April 2009 backdated to 6 January 2009 declaring a trust of 50% of shares in Rossini in

favour of Bronson. Dr Bruppacher showed me the original document which he had not signed, that had been left with him by Dr Studhalter (see **CKG-2 pages 367 to 369**). I refer also the letter I sent to Dr Bruppacher on 7 May 2009, which is at **CKG-2 pages 30-31**.

99. In discussions with Dr Studhalter in April 2009, Dr Bruppacher has made the point that if Ms Baturina pressed her claim to Rossini through Mr Baisarov in the Isle of Man proceedings then her name was bound to come out. At that point Dr Studhalter snapped back at him and said that "the clients" were very determined to pursue their interests.

100. In the light of these discussions in April 2009, it is clear that Baisarov was merely being put forward to protect Ms Baturina's name. Mr Baisarov is not the real party in interest and to the extent that the newspaper reports correctly reflect claims by Baisarov that he was the original party to the 2003 documents then he is lying about this to protect Ms Baturina.

101. On 20 May I asked Dr Bruppacher to send me unredacted copies of the documents referred to above, showing that the documents in fact named Ms Baturina. Copies of the documents provided to me by Dr Bruppacher are attached at **CKG-2 pages 32-49**.

102. It appears to be clear, that whilst using a front to act on her behalf, Ms Baturina is the person orchestrating attempts to divest the Claimant of his interest in Bennfield. It appears also that taking an assignment of the Orton loan and security is an alternative (or further) means by which Ms Baturina is seeking to attain the same objective. Given the way in which Ms Baturina has behaved in the manner described in this statement, the Claimant has a genuine and legitimate concern that if Ms Baturina is left in effective control of Gradison, she will ensure that the Claimant does not receive any of the very substantial surplus to which he should be entitled if the Orton security is effective and enforceable, or indeed that he will have any effective recourse if it is found that the security is not enforceable. The Claimant is particularly concerned to ensure that no part of the surplus equity otherwise due to him is retained on the basis of any alleged liability to meet the unenforceable obligation of Gradison to pay Sberbank Capital US$60 million: see paragraph 131 below.

103. That concern has been exacerbated by the information and comments provided to the Claimant by Sibir (see further below). Sibir's representatives have indicated that the "powers that be" desire that the Claimant should not receive one penny from his (indirect) shareholding in Sibir. Taken in conjunction with the proceedings which have been commenced, and attempts to enforce security against the Gradison shares, the Claimant has good reason to believe that there is very real (but unjustifiable) threat to his interests

SECTION I: THE CLAIMANT'S FINANCIAL INTEREST

104. The potential seriousness of the threats to the Claimant's interests should be judged in the context of the potential loss that the Claimant may suffer if his concerns are well-founded.

I. MOVEMENTS IN SHARES OF SIBIR

105. As mentioned above, the Sibir shares are currently suspended on AIM with a stock quote of 174.75p per share valuing the company with a market capitalisation of approximately £675 million. This contrasts with the position as at May 2008 when the shares were valued at more than £8 per share valuing the company at around £3 billion (and the Claimant's shareholding at £750 million/US$1.1 billion).

106. Notwithstanding the quoted price for the suspended shares, there have been a number of major acquisitions of shares in recent times on the grey (i.e. off exchange) market which have been published by Sibir, and which give an indication of the underlying value of the shares held by Gradison in Sibir (through Bennfield) and accordingly the equity of redemption is such shares after payment of the sums that are legitimately charged by Gradison.

107. In particular, on 22 April 2009, the Board of Sibir issued a release to announce that there had been an accelerated book build to buy shares in Sibir by Credit Suisse International on behalf of TNK-BP £4.30 per share **(CKG-2 page 219).** It was noted that Sibir had received an informal approach from another party in relation to a possible offer for Sibir and that discussions with that party were at a very preliminary stage. Had an approach been made to the Claimant to purchase the shares in Sibir that he owned at £4.30 this would have valued his shareholding at approximately £390 million (US$580 million).

108. On 23 April 2009, the Board of Sibir published another statement which referred to an announcement made that day by Renaissance Securities (Cyprus) Limited on behalf of Gazprom Neft (a major Russian oil company) inviting offers for the sale of Sibir shares to them at £5 per share **(CKG-2 page 220).** Sibir also noted that the book build by TNK-BP had been cancelled because of the offer made by Gazprom Neft. Had the Claimant sold his shares in Sibir at £5 per share, this would have valued its holding at £450 million for US$675 million. (Indeed, the Claimant believes that the value of the Sibir shares held by Bennfield in Sibir is likely to be well in excess of £5 per share as the 47% held by Bennfield is effectively a controlling interest in Sibir.)

109. On 27 April 2009, Sibir announced that it had been informed on 24 April 2009 that Gazprom Neft had acquired a total of 65 million shares in Sibir through its open offer, representing an interest of 16.95% in the company **(CKG-2 pages 221 to 222).**

II. THE SURPLUS EQUITY

110. The Claimant is aware that the entire shareholding in Sibir that was previously registered in the name of Bennfield is now registered in the name of Sberbank by way of security for debts due to Sberbank. That 47% shareholding is worth approximately US$1.5 billion (or approximately £800 million) and secures Orton's total indebtedness of Sberbank which comprises:

(a) US$650 million due from Orton (approximately £325 million);

(b) US$190 million (approximately £125 million) due from Orton to Sberbank that was on lent to Gradison and is the subject of the security arrangements described above; and

(c) US$60 (£40 million) million due by Gradison to Orton, which is the subject of a dispute as to whether it is a penalty or not (it being the Claimant's position, based on Russian law evidence, that it is not an enforceable right).

On any analysis, even if the Claimant/Gradison is indebted to Sberbank in the sum of US$250 million (£165 million) there is a significant equity of redemption.

SECTION J: THE ARBITRATION CLAUSE

111. The Gradison Charge contains an arbitration clause in the following form:

"*16.2(a) All disputes arising out of or in connection with this Agreement, including without limitation any issue of its existence, validity, or termination shall be submitted for final resolution to the London Court of International Arbitration ("LCIA") in accordance with its rules, which are deemed to be incorporated into this Clause 16.2 (Dispute Resolution) by reference.*"

112. A copy of the LCIA Rules is exhibited hereto at **CKG-2 pages 353 to 366.**

113. Although Orton was the original counter-party to the Gradison Charge, Orton and Bronson assert that Bronson has acquired all of Orton's rights pursuant to an assignment dated 12 May 2009 but executed on 19 May 2009: see **CKG-2 page 206.** Ogier have advised that the law of the British Virgin Islands does not recognise the legal assignment of chose in action, but that the Gradison Charge is assignable in equity. In these circumstances, it appears to me to be plain that Bronson should be treated as a party to the arbitration clause contained in Clause 16.2., but that Orton should also be joined to the proposed arbitration proceedings.

SECTION K: BALANCE OF CONVENIENCE AND INADEQUACY OF DAMAGES

114. The Claimant understands that the Court is usually unwilling to grant an injunction in circumstances where it is apparent that damages are an adequate remedy and that, prima facie, the exercise of rights by a secured creditor is not an arrangement that the Court is minded to interfere with for obvious reasons because this would impinge on the exercise of contractual rights between commercial parties.

115. However, the Claimant believes that there are a number of factors that give rise to a strong inference that steps are being taken by the Defendants that are designed to frustrate his interest in the surplus equity in the Gradison shares and that unless steps are taken to safeguard his interests, his prospect of reparation is slim. In such circumstances, he strongly believes that the balance of convenience favours continuing the *status quo* and preventing the sale of the Gradison shares. The level of security is such that there is very little prospect of there being insufficient funds to meet the loan payment and interest if the shares are subsequently sold. By contrast, if all of the shares are sold at an undervalue, the Claimant will lose his entire interest in the shares in circumstances where recovery of any damages may be very difficult.

116. In these circumstances, the Claimant believes that damages are unlikely to be an adequate remedy in this case in view of the concerns expressed above, and in particular:

(a) The statements that have been communicated to the Claimant that Mr Baisarov is acting as a front for Ms Baturina;

(b) Ms Baturina's position of influence in Russia;

(c) The statements to the effect that the shares in Sibir would be sold in such a way as to avoid having to account to the Claimant for the equity of redemption;

(d) The statements made to me (no doubt in good faith and on instructions) by the solicitors representing Orton that there had not been any assignment, when apparently this had already taken place; and

(e) The concerns of Sibir (see below).

117. This leads the Claimant to conclude that unless this order is made, arrangements will be made to prejudice the Claimant. In light of the huge sums of money involved, and my knowledge of the virtual impossibility of enforcing any foreign damages award in Russia, it is appropriate for this Honourable Court to grant the relief that is sought.

SECTION L: THE REQUIREMENTS OF SECTION 44 OF THE ARBITRATION ACT

118. I believe that the court has jurisdiction to make the order sought under section 44 because:

(a) this application is an urgent one by a party to proposed arbitral proceedings which is properly made without notice to the Defendants;

(b) the tribunal as yet has no power to act effectively, not having been constituted; and

(c) the order sought is necessary for preserving assets, namely the Claimant's contractual rights under the Gradison Charge.

I URGENCY

119. This application is made on an urgent *ex parte* basis. I draw attention to the fact that the solicitors acting for Orton have **(CKG-2 page 208)** expressly asked that they be given 7 business days' written notice of any application. However, in the circumstances set out above, I am concerned that any delay in seeking relief will enable the shares in question to be sold and render an on notice application entirely nugatory. The fact that an undertaking has either not been provided, or has been refused in the case of Orton, is I believe a strong basis to suggest that the Claimant should seek relief on a without notice basis in order to preserve his position.

120. Further, as set out below, there is currently no arbitration tribunal in place enabling relief to be sought in the arbitration process. By the time that an arbitration has been commenced and a tribunal constituted under LCIA rules, the Defendants could have taken steps to sell the Gradison shares or other steps designed to obtain control of the Sibir stake at an undervalue.

121. Rule 9 of the LCIA rules provides that "*in exceptional urgency, on or after the commencement of the arbitration, any party may apply to the LCIA Court for the expedited formation of the Arbitral Tribunal, including the appointment of any replacement arbitrator under Articles 10 and 11 of these Rules.*"

122. Under Article 9.2, the application has to be made in writing and copied to all the other parties. The Claimant has not invoked this Rule, because there has been insufficient time to commence the arbitration and make the application since the events of Monday 18 May 2009, and because of the concern that notifying the Respondents of the application might prompt them to take the very steps which he fears, namely selling or disposing of the Sibir Stake, directly or indirectly. However the Claimant is willing to undertake, if the court considers it appropriate, to make an application to the LCIA Court under Rule 9 at

the same time as he serves his Request for Arbitration, which is currently in the course of preparation

II THE TRIBUNAL HAS NO POWER OR IS UNABLE FOR THE TIME BEING TO ACT EFFECTIVELY

123. As matters currently stand, the Claimant has not as yet been able to appoint a tribunal and seek relief from the tribunal. The need to seek relief only became apparent following the refusal/failure to provide the undertakings requested on 18 May 2009 by noon on 20 May 2009, and the inconsistency between the date of the purported assignment and execution of the assignment being identified, which could not be done until the receipt of letters from Orton's solicitors on the afternoon of 19 May 2009. The Claimant has confirmed that he will give an undertaking to take steps to have the arbitration tribunal constituted as soon as possible.

III THE ORDER IS SOUGHT FOR THE PURPOSE OF PRESERVING ASSETS

124. The assets in relation to which the Claimant seeks relief consists of the Gradison Shares and the Claimant's rights under the Gradison Charge (including any right arising as an implied term and/or in equity to have the shares sold only at the best price reasonably obtainable).

SECTION M: LITIGATION IN 2009 COMMENCED BY SIBIR

125. I should at this point draw attention to the fact that, throughout the latter part of 2008, the Claimant was also involved in certain transactions with Sibir. Those transactions are now the subject of proceedings that were commenced by Sibir in England on 25 March 2009.

126. On 25 March 2009, Sibir applied without notice to this Honourable Court for a freezing order over the assets of the Claimant and Gradison on account of the alleged misappropriation by the Claimant and Gradison of US$325 million from Sibir. A copy of the affidavit relied upon (without exhibits), and order granted is at **CKG-2 pages 50 to 124.** The other defendants to those proceedings are Henry Cameron, the former CEO of Sibir, and Derbent Management Limited. I understand that Mr Cameron is separately represented by Bird & Bird in those proceedings.

127. My firm has, until recently, been instructed in those proceedings by Gradison and the Claimant. At the date of this statement, the Claimant and Sibir have been involved in certain without prejudice discussions which have been the subject of certain formal releases made by Sibir which are attached **(CKG-2 page 125 to 127).** It does not appear to me to be appropriate to expand upon those discussions. Suffice to say, the formal position in the proceedings is that the time for service of defences of the Claimant

and Gradison has been extended by consent by Sibir until 2 and 11 June 2009 respectively and no admissions are made by the Claimant in respect of the claims.

128. Furthermore, since becoming aware of the details of the Claim by Sibir, the Claimant (and Lovells) has had to focus principally on the significant disclosure obligations and the commercial consequences of the Order. I deal in section N below with certain asset issues that are relevant in terms of the cross undertaking to be provided by the Claimant. The Claimant and Gradison have disclosed their interest in the Sibir shares (through the chain of ownership described above) and those interests are subject to the terms of the Order. I understand from Jones Day that Sibir is intending to give notice to the "new" owners of Gradison of the freezing order.

129. In these circumstances, and at this time, I am not in a position, on behalf of the Claimant, to indicate whether he intends to defend the Claim and, if so, on what basis. It should not, however, be assumed that no defence exists or will be forthcoming. Investigations into the allegations made will continue. The Claimant's position is, in all respects, fully reserved.

130. In light of the developments described in this statement, and because of the freezing order made by the Honourable Mr Justice Burton on 25 March 2009, I have taken steps to disclose to Sibir the purported assignment. Sibir has confirmed that it has no objection to the undertaking being given by the Claimant in this action provided that undertakings are given to it by the Claimant to the effect that he will keep Sibir fully and timeously appraised of any application, or request for consent, to vary such injunctive relief to allow for any dispositions of the shares in Gradison. As these are formal undertakings, this will need to be reflected in an amendment to the freezing Order in the Sibir Proceedings. A draft order that is being settled is attached **(CKG-2 page 379)**.

131. I am informed by representatives of Sibir, who have been closely involved in discussions in Russia (and with numerous Russian parties) over recent weeks, and by the Claimant, that their understanding based on rumours in Russia is that "the powers that be" desire that the Claimant should not receive one penny from his shareholding in Sibir. Indeed, recent press articles **(CKG-2 page 175)** have suggested that Mr Baisarov (who, as set out above, the Claimant maintains is a front for Ms Baturina) proposes to acquire the Claimant's shares in Sibir for the amount required to repay a loan to Sberbank in the sum of US$250 million, ie for a fraction of their true value. I should add that it is my experience and that of my colleagues who have dealt with Russian matters that articles in the press of the type which have recently appeared concerning the Claimant are "sponsored" by those with considerable economic and/or political influence. The modus operandi appears to be that the "sponsors" set out at an early stage to gain control of the shares

and to take steps necessary to achieve it if they have not yet been taken. The aim is then to ensure that the press reports become a self-fulfilling prophecy.

132. In view of the matters referred to below, it is clear that my firm can no longer act for Gradison in the Sibir proceedings. My firm wrote to Taylor Wessing and Bircham Dyson Bell on 19 May 2009 seeking their confirmation that a Notice of Change of Solicitor would be filed and served on behalf of Gradison in those proceedings, without prejudice to whether the assignment is legal and effective as against the Claimant **(CKG-2 page 128 to 129).** At the time of making this statement no response has been received to that letter and so Lovells LLP will apply forthwith on short notice (at the same time as making the application for injunctive relief pursuant to section 44 of the Arbitration Act 1996) for an order in the Sibir Proceedings that this firm is no longer the solicitor off record for Gradison in those proceedings for the reasons articulated in our letter and the facts set out in this statement.

133. At 11.15 this morning I received an application from Sibir for Summary Judgment against Gradison and to amend the Particulars of Claim pursuant to CPR Part 17 and to vary the freezing order in the Sibir Proceedings; I have not had any chance to consider those papers.

SECTION N: CROSS UNDERTAKING IN DAMAGES

134. I have advised the Claimant that it is usual in circumstances where an injunction is sought by a party that the applicant shall provide certain undertakings to the Court, including a cross undertaking in damages.

135. I have explained the undertakings to be provided and the Claimant has authorised me that he is prepared to give them.

136. I have also obtained the consent of Jones Day, acting for Sibir, to enable the Claimant to give the undertakings in circumstances where his assets are subject to the Freezing Order.

137. I anticipate that it will be said by the Defendants that the undertakings are worthless, or ought to be backed by a bank guarantee. However, the position is that if the Claimant is right, and arrangements are put in place to ensure that the sale of the shares takes place in the open market at the best price reasonably obtainable for them, the equity of redemption in the shares will be in the region of £325 million. I recognise that it might be said by Ms Baturina or Mr Baisarov, that any equity should be applied pursuant to the partnership agreement between the Claimant and Ms Baturina described above; but even if that is correct (and assuming for present purposes that it is) this would still mean that the Claimant's equity of redemption in those shares is worth in excess of £160 million.

138. I also summarise below the asset position of the Claimant in broad terms (this is not an exhaustive list, but a summary to assist the Court and it should be noted that certain of these assets may be subject to a claim by the Claimant's ex-wife and or Ms Baturina, pursuant to the partnership agreements referred to above):

(a) **A French Villa**: There is 1st charge in favour of Slocom (€33 million) and a 2nd charge in favour of Sibir (all monies). The property is worth In excess of €280 million (and there are interested parties who might be prepared to pay in excess of that sum).

(b) **London House**: There is a 1st charge in favour of Barclays (£15 million approx) and a 2nd charge in favour of Sibir (all monies). A £33 million offer has been accepted which suggests net equity of upwards of £17 million (subject to quantification of Sibir charge; taxes and charges etc.).

(c) **Moscow Apartment**: This is believed to be worth approximately €5 million.

(d) **Aircraft:** There is a 1st charge in favour of Credit Suisse (€35 million). A €37.25 million offer has been accepted so I expect net equity of around US$2 million.

(e) **Russian Real Estate Projects**: The Claimant has numerous interests, some of which are subject to charges. These interests include:

(i) 50% Interest in New Holland;

(ii) 37.45% interest in Hotel Russia;

(iii) 50% interest in Russia Tower;

(iv) 100% interest in Nikitsky 5;

(v) 80% interest in Old Sovetskaya;

(vi) 100% interest in New Sovetskaya;

(vii) 100% interest in Passage;

(viii) 42.5% interest in Granatniy;

(ix) 80% interest in Mitino.

No recent valuations have been carried out by the Claimant but he is of the view that the net equity, after taking account liabilities, is likely to exceed US$250 million.

SECTION O: FULL AND FRANK DISCLOSURE

139. I am informed by the Claimant's BVI lawyers, Ogiers, that there is no equivalent to s136 Law of Property Act 1925 in BVI law so it is arguable that any proceedings by or against the assignor under the pledge agreements governed by BVI law ought only to be made against the legal owner of such rights, in this case, Orton. I have advised the Claimant that in circumstances where we have not seen a copy of the assignment agreement, despite the plethora of requests, there is a risk that the Court might order there to be separate High Court proceedings commenced against the assignee, Bronson, as arguably it is not a proper party to any arbitral proceedings. To the extent that this Honourable Court considers it necessary, the Claimant will undertake to commence separate proceedings against Bronson relying on the matters set out in this statement.

140. I have referred above to the US$60 million "premium" that is allegedly due by Gradison to Sberbank. Although the expert Russian law expert instructed by the Claimant has opined that this is unenforceable as a matter of Russian law (for being a sham or a penalty) I understand that one effect of this is that it is arguable that this means that the loan became repayable in March 2009, so that Gradison is in default of its obligations to Sberbank.

141. For completeness I should also mention that another creditor, Reachcom, obtained a freezing order in this Honourable Court against the Claimant on 18 May 2009 **(CKG-2 page 223-278**.

142. The Reachcom indebtedness was referred to at length in my affidavit sworn on 3 April 2009 served in the Sibir proceedings **(CKG-2 page 279-298**. It was envisaged that the indebtedness due to Reachcom (Algettar Trading Limited is the principal debtor; the Claimant is the guarantor) would be assumed by a company controlled by Mr Kesaev. An order was made by the Honourable Mr Justice Blair dated 6 April 2009 with the consent of Sibir, after hearings that took place on 6 and 8 April 2009 **(CKG-2 page 299)**. It had been hoped that the transaction would be completed and there have been (in Russia) intensive discussions between Reachcom, Mr Kesaev and the Claimant's representatives to effect completion. Regrettably that did not happen (no doubt tied up with the arrangements entered into between Orton and Bronson) and earlier this month Reachcom made demand for repayment.

143. At this stage there are a number of matters of concern arising from the application made by Reachcom (which may give rise to an application to set aside the order). In particular it appears that the application was based on a misunderstanding of the position based predominantly on unreliable (and inaccurate) Russian press reports on the sale by the

Claimant of the Sibir Stake and a settlement of the claims made against the Claimant by Sibir.

144. The current position is that there is not a settlement of the matters between the Claimant and Sibir nor is it likely that the freezing order in those proceedings will be discharged imminently.

145. It is also not the case that the Claimant is taking steps to sell his shares in Sibir. As noted by this application, the position as alleged by the Claimant is that the Defendants are taking action to seek to deprive the Claimant from the very valuable equity in those shares.

146. These points were made by me to Ms Nairn of Skaddens in a call at about 5pm on 19 May. Ms Nairn noted the points and acknowledged that it was possible that the freezing order had been made on the basis of a misunderstanding of the position. Ms Nairn agreed to extend for 7 days any disclosure obligations made as a result of the order and consented to the sale of two assets (Hugh House in London at a price of £33 million and a Gulfstream Jet at the price of US$37.25 million) which had been approved by Sibir. This has been the subject of correspondence between solicitors **(CKG-2 page 381-382)**.

147. During the course of the afternoon of 19 May Skaddens requested that the order be varied to seek to prevent the registration of the shares in Sibir now held in the name of Sberbank. My firm has not objected to the relief being sought, but has reserved the right to set aside the freezing order in due course, on the basis that it not to have been granted in the first place.

148. I should add that Reachcom has confirmed, via Skaddens, that it has no objection to the Claimant giving the usual undertakings to the Court should the relief sought by this application be granted. I refer to a letter at **CKG-2 page 309** from Skaddens dated 19 May 2009.

SECTION P: SERVICE OUTSIDE THE JURISDICTION

149. The Court is respectfully requested to grant permission to serve Bronson with these proceedings in the British Virgin Islands, and Orton with these proceedings in Cyrpus, in accordance with CPR 62.5(1)(b) (i.e. because an order is sought under section 44 of the 1996 Arbitration Act 1996 for an interim injunction for the purpose of preserving property).

150. The basis for which this application is made is set out in the preceding paragraphs of this statement and, for the reasons explained, it is my belief that the Claimant has a good arguable case. It is intended that these proceedings will be served on:

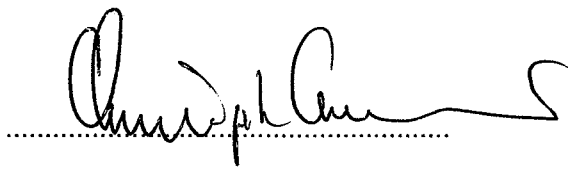
150.1 Bronson at its registered address, being: Trident Chambers, PO Box 146, Road Town, Tortola, British Virgin Islands; and

150.2 Orton at its registered address, being: Agiou Pavlou 15, Ledra House, Agios Andreas, PC 1105, Nicosia, Cyprus.

SECTION Q: CONCLUSION

151. For the reasons set out in this statement, the Claimant seeks the relief set out in the draft order that is attached.

I believe that the facts stated in this witness statement are true.



Signed

21/5/09

Dated