

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	
NOREX PETROLEUM LIMITED,	:
	:
Plaintiff,	:
	:
vs.	:
	:
	: Index No. 650591/2011
	: (Commercial Division)
	:
LEONARD BLAVATNIK; VICTOR	:
VEKSELBERG; SIMON KUKES; ACCESS	: Hon. Eileen Bransten
INDUSTRIES, INC.; ALFA GROUP	:
CONSORTIUM; RENOVA, INC; OAO TYUMEN	: I.A.S. Part 3
OIL COMPANY; TNK-BP LIMITED; and BP	:
PLC,	: Motion Sequence Nos. 7-11
	:
Defendants	:
-----X	

AFFIDAVIT OF BERNARD S. BLACK

STATE OF ILLINOIS)
 : ss.:
COUNTY OF COOK)

BERNARD S. BLACK, being duly sworn, deposes and says:

I. Issues Addressed and Summary of Expert Opinions

This report focuses principally on the time period relevant to Tyumen Oil Company (TNK)'s "hostile takeover" of Chernogorneft and Yugraneft, from 1998-2003, but also considers the present time. I was asked by Norex to provide an expert opinion on whether Norex could have obtained, during that time period, an impartial decision from the Russian arbitrazh courts (especially the courts in Tyumen oblast),¹ against TNK. I was also asked whether Norex could

¹ An "oblast" is a Russian geographic and political region, similar to a U.S. state.

obtain such an impartial decision today against TNK or its successor, TNK-BP.² In my opinion, Norex could not obtain an impartial decision against TNK then or against TNK or TNK-BP now.

I will focus on the Russian commercial or “arbitrazh” courts, which hear disputes between legal entities such as Norex and TNK, but would reach similar conclusions for the Russian courts of general jurisdiction. I accept as true the factual allegations in the Norex complaint. This section summarizes my opinions. The factual bases for them are set forth in the body of this Affidavit.

1. A “hostile takeover” in Russia refers to an outside “raider” using corrupt court decisions, and often physical force, to wrest control and ownership of a profitable company from a majority shareholder for little or no consideration. The raider effectively steals the company from its current owner(s). A Russian takeover is not at all similar to a U.S. “hostile takeover,” in which a raider lawfully offers to buy a majority of the shares of a target company from their current owners at a premium to their current market value.

2. Hostile takeovers are common in Russia. They often include the “ordered bankruptcy” of solvent firms (Russian: заказное банкротство), in the sense of “ordered by someone powerful,” and the opaque sale of their assets at low prices to the persons who ordered the bankruptcy.

3. In my opinion, a small company, especially a foreign company such as Norex, cannot expect to obtain an impartial decision from the Russian courts against a major oligarch-

² TNK refers narrowly to the initials of defendant Тюменская Нефтяная Компания (Tyumenskaya Neftyannaya Kompania), which translates as Tyumen Oil Company. This company was controlled by Alfa Group (whose principals include co-conspirators Mikhail Fridman and German Khan, as well as Pyotr Aven), defendant Access Industries (controlled by defendant Leonard Blavatnik), and defendant Renova, Inc. (controlled by defendant Viktor Vekselberg). Alfa, Access, and Renova together own TNK, work closely together, and refer to themselves by the acronym AAR – *see* www.aar.ru. Defendant Simon Kukes was the CEO of (Russian company TNK). I will use the term TNK to refer to all defendants other than BP plc and TNK-BP. TNP-BP is the joint venture between (Russian company TNK) and BP, formed in 2003, which now owns the assets, including Yugraneft shares, previously owned by (Russian company TNK). TNK-BP is jointly owned by BP (50%) and AAR (50%), with the AAR stake held by Alfa (25%), Access (12.5%) and Renova (12.5%).

controlled company once the major company decides to complete a hostile takeover of the small company's Russian assets. More specifically, Norex had no reasonable possibility, either during TNK's takeover of Yugraneft or now, of obtaining an impartial decision from the Russian arbitrazh courts (especially in Tyumen oblast) against TNK once TNK controllers decided to take over Yugraneft. On the contrary, judicial corruption was central to TNK's takeover strategy.

4. Corruption, by its nature, can rarely be proved directly. Instead, the likelihood of corruption must be inferred from all relevant evidence. For the reasons set forth below, the likelihood of corruption in the Russian litigation between Norex and TNK, including the so-called "Know-How" case is very high.

5. I will offer specific evidence of the role of corruption in Russian hostile takeovers; the prevalence of the tactics that TNK used against Chernogorneft and Yugraneft; and TNK's conduct as a raider in other takeovers. I will use this evidence as a basis for opinions as to whether *this plaintiff* had a fair chance of obtaining a fair decision against TNK and the other defendants, in *this case*; and whether the decisions of the Russian courts, in this case, deserve deference.³

6. A core factor in assessing likely corruption in a particular case is background conditions. One important element: Many Russian government officials were at relevant times (and are today) thoroughly corrupt. Then and future President Putin, current President Medvedev, and the chairs of the Russian Supreme Court and Supreme Arbitrazh Court have acknowledged that corruption extends to the judiciary.

³ I offer no opinion as to whether the Russian arbitrazh or general courts can provide a fair forum for a business dispute between two companies of similar size and political connectedness. I address whether *this plaintiff* could obtain a fair hearing in a case against *these defendants*, and whether Russian court decisions in *this case* merit deference.

7. A second important background element: The Russian economy is dominated by a handful of extremely powerful “oligarchs” who control large industrial empires. It is difficult to overstate the oligarchs’ power. They strongly influence the central government and often control regional and local governments. The oligarchs often achieved their power by being tough, nasty, and willing to use all available means to further their own ends, including bribes, threats, and physical force. Judicial corruption is especially likely when an oligarch is on one side of a dispute.

8. The controllers of TNK (including Leonard Blavatnik, Viktor Vekselberg, German Khan, and Mikhail Fridman) are among the most wealthy and powerful Russian oligarchs. TNK is notorious for its aggressive (even by Russian standards!) takeover tactics. It is understood to largely control the government and courts in Tyumen oblast and the Khanty-Mansiysk region within Tyumen oblast.

9. The partiality of the Russian courts (which I term “corruption”) in hostile takeovers arises from three sources: bribes; threats, and government pressure (often induced by bribes and threats).

A. One source is classic corruption -- payments to judges (or their family members) to reach particular decisions, or payments to chief judges to hear a case themselves or assign a case to a pliable judge. Such payments are common at all levels of the arbitrazh courts.

B. A second source of partiality is political pressure. Judges in regions where a major firm dominate the economy (as TNK does in Tyumen oblast) are unlikely to issue decisions against the company or the government. The interests of major companies and regional governments are often closely aligned. In particular, the governors of Tyumen

oblast and Khanty-Mansiysk region sat on TNK's board of directors at relevant times. It is widely understood that Russian judges, as in the Communist era, often take orders from politicians on how to decide cases.

C. A third source of partiality is threats against judges or their families, if they render unsatisfactory decisions. These threats can involve both physical harm and criminal charges brought by compliant prosecutors based on manufactured evidence. Lawyers who represent clients who oppose oligarchs risk reprisal against themselves or their families.

10. The principal facts alleged in this case involve a hostile takeover of Yugraneft by TNK, including diluting Norex's controlling stake in Yugraneft. This takeover was one in a series of hostile takeovers by TNK of other companies, including an earlier takeover of Chernogorneft, Norex's joint venture partner in Yugraneft.

11. Defendant BP has been more than once the victim of TNK's extreme tactics. The first time was in 1998-1999, when BP was a major shareholder of Sidanko, which controlled Chernogorneft. BP was a victim of TNK's takeover of Chernogorneft through ordered bankruptcy. BP ran afoul of TNK's Russian controllers again in 2008, when they sought greater control over the TNK-BP joint venture, and yet again in 2011. BP's public protests about its mistreatment by TNK, the Russian courts, and Russian government officials are consistent with Norex's allegations about TNK's actions.⁴

12. TNK's tactics in taking over Chernogorneft and Yugraneft included:

- ordered bankruptcies;

⁴ This history likely explains one notable aspect of this case: BP filed a separate motion to dismiss, and declined to join in the motion by the Russian defendants, thus distancing itself from any claim that Russia provides an adequate forum or that Russian judicial decisions deserve deference.

- flagrantly wrong and partial court decisions (for which corruption is the natural explanation);
- physical threats against judges and target managers;
- flagrantly partial decisions by the Chernogorneft bankruptcy manager;
- influence over regional authorities;
- not allowing Chernogorneft to emerge from bankruptcy by paying its debts in full;
- allowance in Chernogorneft of false debt and disallowance of valid debt;
- faked notice of court proceedings;
- court orders blocking the voting of shares;
- faked shareholder meeting minutes;
- criminal proceedings and threats against the target's personnel;
- quashing investigations of its own unlawful conduct;
- armed takeover of the target's offices; and much more.

These tactics are consistent with TNK's tactics in other hostile takeovers and with hostile takeover tactics generally.

13. I largely formed my views on Russian corruption, ordered bankruptcies such as Chernogorneft, and TNK's own conduct prior to my involvement in this case. My views, while strong, are within the mainstream of views of others, including BP itself. I consider myself to be a careful scholar, and would not make the strong statements in this Report unless I had a firm basis for them.

14. This Report proceeds as follows. Part II summarizes my qualifications. Part III provides an overview of the Russian oligarchs' power. Part IV reviews the "ordered" (by TNK) bankruptcy of Chernogorneft. Part V discusses the Yugraneft takeover. Part VI discusses BP's repeated run-ins with TNK. Parts VII and VIII discuss the role of judicial and official corruption in hostile takeovers more generally. Part IX concludes.

II. Qualifications

15. I am the Nicholas J. Chabraja Professor at Northwestern University, with appointments as Professor of Law in the School of Law, Professor of Finance in the Kellogg

School of Management, and Faculty Associate at the Institute for Policy Research. My curriculum vitae is attached as Appendix A to this Report.

16. I was a policy advisor from 1993-1997 to the State Property Committee of the Russian Federation and the Russian Federal Securities Commission. I was a principal drafter of the Russian Law on Joint Stock Companies (the JSC Law); an advisor on the Russian Law on Limited Liability Societies (1998); a co-drafter of a Presidential Decree On Unit Investment Funds, which later developed into a Law on Investment Funds (2002), and an advisor on Part 1 of the Russian Civil Code. I was subsequently (2005-2006) an advisor on corporate and securities law reform to the Russian Federal Service on the Securities Market. As my CV indicates, I have published extensively on Russian legal reform, in both English and Russian. A partial list of my scholarly writing on Russia, relevant to this case:

- Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 Harvard Law Review 1911-1981 (1996);
- Bernard Black, Reinier Kraakman & Anna Tarassova, *Guide to the Russian Law on Joint Stock Companies* (1998 in English and Russian);
- Gainan Avilov, Bernard Black, Dominique Carreau, Oksana Kozyr, Stilpon Nestor & Sarah Reynolds, *General Principles of Company Law for Transition Economies*, 24 Journal of Corporation Law 190-293 (1999) (in English and Russian);
- Bernard Black, Reinier Kraakman & Anna Tarassova, *Russian Privatization and Corporate Governance: What Went Wrong?*, 52 Stanford Law Review 1731-1808 (2000);
- *The Corporate Governance Behavior and Market Value of Russian Firms*, 2 Emerging Markets Review 89-108 (2001);
- Bernard Black & Anna Tarassova, *Institutional Reform in Transition: A Case Study of Russia*, 10 Supreme Court Economic Review 211-278 (2003); and
- Bernard Black (main author), with co-authors Anastasiya Farukshina, Brian Cheffins, Martin Gelter, Hwa-Jin Kim, Richard Nolan, Matthias Siems and Linia Prava law firm, *Legal Regulation of the Liability of Members of Management Organs: An Analysis of International Practice* (Alpina Publishers 2010) (in Russian)

17. I have been an expert witness or advisor in disputes involving a number of major Russian oil companies, including Komineft, Kondpetroleum, Samaraneftegaz, Sidanko, Sibneft,

Surgutneftegaz, and Yukos.⁵ I have given research seminars and speeches on Russian privatization, reform, and corruption at the International Monetary Fund, the Organisation for Economic Co-Operation and Development (OECD), and the World Bank. I have direct knowledge, independent of this case, about TNK's behavior in its takeovers of Chernogorneft and Kondpetroleum.

18. I consider myself to be an expert in Russian company law and securities law. I also have expertise on Russian corruption, including judicial corruption, both from my legal reform work in Russia and from acting as an advisor or expert witness in disputes involving Russian companies. I know many coauthors, colleagues, and friends, who have similar personal knowledge of Russian corruption. I have not been personally threatened, but I know people who have, and I have been personally warned to be careful in what I say publicly.

III. The Power of the Russian Oligarchs

19. Shortly after the collapse of the Soviet Union in 1991, Russia privatized most of its major companies. The major oil and other natural resources companies were privatized at knock-down prices through a plan, known as "loans-for-shares," promoted by some of the then-newly wealthy Russian oligarchs, including Mikhail Fridman and Pyotr Aven of Alfa Group. Most of the oligarchs, including Fridman and Aven, acquired their initial wealth and power through connections with the Russian government. They then often leveraged that initial wealth through, among other things, loans-for-shares and hostile takeovers of smaller, less-connected companies.

20. The Russian economy was, by the late 1990s, and remains today, dominated by extremely powerful oligarchs who control large industrial empires. It is difficult to overstate the

⁵ I also provided an expert report in the prior federal litigation by Norex against TNK and many of the other defendants in this action.

oligarchs' power, especially in regions where they own major businesses. The oligarchs meet regularly with senior government officials, including the Russian President. Ample evidence of the oligarchs' power can be found in the well-researched books about them by Western authors.⁶

21. TNK is especially powerful in Tyumen oblast. Mikhail Fridman, who controls Alfa Group, which owns 50% of TNK, is one of the most powerful oligarchs in Russia. Viktor Vekselberg and Leonard Blavatnik, who control the other 50% of TNK's shares, are also major oligarchs, as are TNK's German Khan and Alfa's Pyotr Aven.⁷

22. In cases involving two parties of roughly equal power and influence, it may be possible to obtain a fair decision from the Russian arbitrazh courts. There is conflicting evidence on how strong a possibility this is.⁸ However, this case involves a small, foreign company, facing the full artillery of one of Russia's most powerful oligarch groups, known for its aggressive takeover tactics, which are often accompanied by inexplicable court decisions. The likelihood of a fair decision in such a case as very low. The flagrantly pro-TNK decisions in the Know-How Case, discussed below, support that assessment.

⁶ See, for example, Rose Brady, *Kapitalizm: Russia's Struggle to Free Its Economy* (Yale University Press, 1999); Crystia Freeland, *Sale of the Century: Russia's Wild Ride from Communism to Capitalism* (Times Books, 2000); Marshall Goldman, *The Piratization of Russia: Russian Reform Goes Awry* (Routledge 2003), Thane Gustafson, *Capitalism Russian-Style* (Cambridge University Press 1999); David Hoffman, *The Oligarchs: Wealth and Power in the New Russia* (Public Affairs, 2002); Paul Klebnikov, *Godfather of the Kremlin: Boris Berezovsky and the Looting of Russia* (Harcourt, 2000) (Klebnikov was later murdered, presumably by someone displeased by his reporting). My overview in this section relies on these books and personal knowledge.

⁷ The 2011 *Forbes Magazine* list of billionaires includes Fridman (\$15.1B), Vekselberg (\$13B), Khan (\$9.5B), Blavatnik (\$10.1B), and Aven (\$4.5B) (Blavatnik on the U.S. list, the others on the Russia list). In 2003, *Forbes* listed Fridman (\$4.3B) and Vekselberg (\$2.5B) among the world's billionaires. See <http://www.forbes.com/wealth/billionaires/list?country=225&industry=-1&state=www.forbes.com/wealth/billionaires/list?country=195> and www.forbes.com/static_html/bill/2003/rank.html (exh. 1).

⁸ On the more optimistic side, see Kathryn Hendley, Peter Murrell & Randi Ryterman, *Law Works in Russia: The Role of Legal Institutions in the Transactions of Russian Enterprises*, in Peter Murrell ed., *Assessing the Value of Law in Transition Economies* (March 31, 1999) (exh. 2). For a less optimistic view, see Timothy Frye, *The Two Faces of Russian Courts: Evidence from a Survey of Company Managers*, *EAST EUROPEAN CONSTITUTIONAL REVIEW*, Winter/Spring 2002, at 125-129 (exh. 3), and World Bank, *World Business Environment Survey*, discussed below.

23. As Russian lawyer Pavel Astakhov writes in his book, *Defensive Measures Against Seizure by Raiders*, often there are no defenses against a raid by a major company:⁹

[I]n most cases, it will be impossible to affect the course of events This is because the union of administrative (government) apparatus and large capital is the most powerful force that can swallow any business in our country. . . .

In today's Russia, a company becomes a potential target of a hostile takeover when: (1) it is a small or medium-size firm in an industry that is currently being monopolized by large market participants; (2) it has lesser access to administrative (government) apparatus than the raider does. . . . The success of the raider's business hugely depends on an instrument that we tellingly named "administrative resources"; unfortunately, today, there are no barriers to their use by raiders. . . . The methods used by Russian raiders during takeovers are linked to judicial abuse and based on corruption.

IV. The Ordered Bankruptcies of Chernogorneft and Kondpetroleum

A. TNK's Takeover of Chernogorneft and Kondpetroleum

24. I summarize here TNK's use of bankruptcy proceedings to acquire cheaply Chernogorneft and Kondpetroleum, the principal oil producing subsidiaries of Sidanko – in effect, to steal them from Sidanko and BP (which had made a major investment in Sidanko). I focus principally on Chernogorneft because of its relevance to this case: It gave TNK a minority stake in Yugraneft, which TNK used to take over Yugraneft. Both cases graphically illustrate TNK's takeover tactics.

25. The Chernogorneft and Kondpetroleum takeovers are among the best known, "textbook" examples of hostile takeovers through ordered bankruptcy.¹⁰ In a 2000 article, my coauthors and I summarized them as follows:¹¹

A recent example [of judicial corruption]: the bankruptcy proceedings for Sidanko, an oil holding company owned by kleptocrat Vladimir Potanin, and Chernogorneft and Kondpetroleum, two key

⁹ Павел Астахов, Противодействие Реудерским Захватом (Эксмо 2008) [Pavel Astakhov, *Defensive Measures Against Seizure by Raiders* (Eksmo Press, 2008), at 7-8, 15 (my translation)].

¹⁰ The paragraph structure of quotations, citation form within footnotes, and the spelling of Russian names is sometimes altered for readability and consistency. I cite English language sources where available.

¹¹ Bernard Black, Reinier Kraakman & Anna Tarassova, *Russian Privatization and Corporate Governance: What Went Wrong?*, 52 STANFORD LAW REVIEW 1731-1808 (2000) (exh. 4). My basis for these statements includes sources cited in this article, plus personal knowledge as I was an advisor around this time to a Kondpetroleum shareholder.

Sidanko subsidiaries. . . . In the Chernogorneft bankruptcy proceedings, 98% of the creditors voted for one external manager, but the local judge appointed a different manager with ties to Tyumen Oil, owned by kleptocrat Mikhail Fridman, which wanted to acquire Chernogorneft cheap. The court also rejected a Chernogorneft offer to pay all creditors in full!¹² Tyumen was able to buy Chernogorneft for \$176 million and Kondpetroleum for \$52 million (a small fraction of actual value), in what Potanin publicly called “an atmosphere of unprecedented pressure on the court system.”¹³ Which apparently means that Tyumen didn’t merely bribe judges (Sidanko could have offered its own bribes), but threatened them as well. Indeed, a judge who issued an early ruling against Tyumen was beaten for his troubles.¹⁴

26. BP was vocal about its distress at TNK’s conduct. Its CEO, John Browne, later described this incident in his memoirs and called BP “a naïve foreign investor caught out by a rigged legal system.”¹⁵ BP prevailed on British Prime Minister Tony Blair to write to his Russian counterpart, Vladimir Putin, to express concern.¹⁶ EBRD, a Chernogorneft creditor whose claim was partially disallowed, was no happier. It complained to Russian Prime Minister Stepashin that:¹⁷

EBRD is very concerned that the bankruptcy of [Chernogorneft] is not being conducted in a proper and transparent manner. . . . [T]here have been many irregularities in procedure and various legal challenges to the process by entities affiliated to large oil interests [read: TNK] aimed at disenfranchising EBRD and [the United States Export-Import Bank] as creditors . . . [including actions] in violation of the Federal Bankruptcy law.

¹² I currently understand that this offer was made by BP and other Sidanko shareholders, rather than Chernogorneft itself. The core point is that the offer was credible and was unaccountably rejected by the court.

¹³ Jeanne Whalen & Bhushan Bahree, *How Siberian Oil Field Turned into a Minefield*, WALL STREET JOURNAL, Feb. 9, 2000, at A21 (quoting Potanin) (exh. 5). For other pieces of the Chernogorneft bankruptcy story, see Igor Semenenko, *Siberian Oil Company Fights Hostile Takeover*, MOSCOW TIMES, May 29, 1999 (exh. 6); Alan S. Cullison, *Russia’s Tyumen Oil Seeks to Expand with Some Assets of Troubled Sidanko*, WALL STREET JOURNAL, July 8, 1999, at A12 (exh. 7); Neela Banerjee, *From Russia, With Bankruptcy*, NEW YORK TIMES, Aug. 13, 1999, at C1 (exh. 8).

¹⁴ See *Rules of War*, ECONOMIST, Dec. 4, 1999, at 65 (Tyumen rival [Sidanko, one infers] alleges that Tyumen intimidated local judges and complains that “[i]f they just stuck to bribing judges, we could play that game too.”) (exh. 9); Lee Wolosky, *Putin’s Plutocrat Problem*, FOREIGN AFFAIRS, Mar./Apr. 2000, at 18, 30 (reporting the beating) (exh. 10).

¹⁵ John Browne, *Beyond Business: An Inspirational Memoir from a Visionary Leader* (2011), at 140. As the title suggests, humility was not one of John Browne’s stronger characteristics. (excerpt attached as exh. 11).

¹⁶ Letter From U.K. Prime Minister Tony Blair to Russian Prime Minister Vladimir Putin (Sept. 7, 1999) (exh. 12).

¹⁷ Letter from Noreen Doyle, Deputy Vice President of EBRD, to Russian Prime Minister Sergei V. Stepashin (29 July 1999) (exh. 13).

27. A later EBRD letter to Director Georgi Tal of the Russian Federal Bankruptcy Service stated:¹⁸

It now has to be questioned whether OAO Chernogorneft should be considered a bona fide bankruptcy case because it is generating substantial cash flow and . . . [BP] has offered to purchase all creditor claims at full value. Certain creditors [read: TNK] . . . have blocked this action

28. After TNK acquired Chernogorneft, *EBRD* termed the bankruptcy auction “a sham” and “wholly contrary to the concepts of fairness and transparency.”¹⁹

29. In response to pro-TNK partiality by a court-appointed Chernogorneft bankruptcy manager, the Federal Bankruptcy Service removed his license. In one of a series of manifestly partial actions, the local Tyumen oblast courts ignored this order.²⁰ The Bankruptcy Service director, Georgi Tal, later described the Tyumen arbitrazh courts as “the legal department of TNK,”²¹ and called the Chernogorneft bankruptcy proceedings a “fraud.”²² (Mr. Tal was later gunned down in Moscow in 2004; likely “in connection with [his] work at the [Bankruptcy Service]”.²³)

30. All this effort was to no avail. The influence of Sidanko’s controller, oligarch Vladimir Potanin, was similarly unavailing. TNK acquired Chernogorneft and Kondpetroleum

¹⁸ Letter from Charles Frank, First Vice President of EBRD to Chairman Georgy Talj of the Russian Federal Bankruptcy Service (15 Oct. 1999) (exh. 14); *see also* Mark Milner, *Sale of Bankrupt Russian Oil Firm a Travesty, say BP Amoco and EBRD*, *GUARDIAN* (Nov. 26, 1999) (exh. 15) (EBRD terms the auction a “travesty” and a “perversion of justice”).

¹⁹ David Hoffman, *Auction of Russian Oil Firm Angers Investors*, *WASHINGTON POST*, Nov. 27, 1999 (exh. 16).

²⁰ Report on Foreign Affairs to U.K. House of Commons (28 Feb. 2000), at note 72, available at www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmcaff/101/10102.htm (relevant excerpt attached as exh. 17).

²¹ *Id.* ¶ 36.

²² Alexei Nikolsky, *Former Director of the Federal Financial Recovery Service Murdered*, *VEDOMOSTI*, April 29, 2004 (translation attached as exh. 18).

²³ *Id.*

for laughably low prices, in opaque bankruptcy “auctions.”²⁴ The extreme facts let BP persuade the State Department to order that the U.S. Export-Import Bank (ExIm Bank) cancel a loan guarantee to Tyumen.²⁵ As part of that effort, BP provided a detailed report to the CIA on TNK’s actions. The CIA verified the principal claims and conveyed the report to the ExIm Bank. The report alleged, among other things, that TNK CEO Simon Kukes admitted bribing local officials; and Sidanko was blocked by armed force from delivering court orders postponing the Chernogorneft “auction.”²⁶

31. Having stopped the loan guarantee, BP then used TNK’s desire for the guarantee to negotiate a deal with TNK, which I discuss below.

32. My opinions on the Chernogorneft takeover and TNK are consistent with those of others observers. I offer here two examples. First, Lee Wolosky, Deputy Director of the Economic Task Force on Russia of the Council on Foreign Relations wrote in 2000:²⁷

In a highly publicized case, Fridman’s Tyumen Oil Company (TNK) allegedly stole Sidanko’s most valuable assets by manipulating the bankruptcy process. According to defrauded Sidanko shareholders (who include BP-Amoco), the theft was carried out through the corrupt appointment of a TNK-friendly receiver, the unlawful reduction of the claims of major creditors such as the European Bank for Reconstruction and Development (in which the United States holds shares), and a rigged bankruptcy “auction” in which only TNK-affiliated companies could bid. . . .

²⁴ As BP Chairman John Browne later wrote, Browne (2011), *supra* note 15, at 140: “A farcical ‘competitive’ auction was then held. . . [Chernogorneft] had been sold for what we thought was one-tenth of its value. The company’s so-called “debts” could easily have been settled by BP We were a naïve foreign investor caught out by a rigged legal system.” At the time, BP termed the bankruptcy process “manipulated,” “invalid”; “a travesty,” and “intended only to achieve the transfer of the enterprise to a third party at a fraction of its value”. (exh. 11); Mark Milner, *Sale of Bankrupt Russian Oil Firm a Travesty, Say BP Amoco and EBRD*, *Guardian* (Nov. 26, 1999) (exh. 15); Jeanne Whalen, *Peril Grows for BP’s Russian Investment*, *Wall St. J.* (Nov. 26, 1999) (exh. 19).

²⁵ See David Ignatius, *The Strange Case of Russia, Big Oil and the CIA*, *Wash. Post* (Jan. 9, 2000) (exh. 20).

²⁶ Letter [responding to Freedom of Information Act request] from Robert Herman, Information and Privacy Coordinator, U.S. Central Intelligence Agency, to Gene Burd, Esq. (Sept 2, 2003) (exh. 21). The CIA’s verification of the underlying report is reported in Ignatius (2000), *supra* note 25. I presume that the full underlying report will become available through discovery in this case, and am puzzled as to why it has not yet been produced. Tyumen’s effort to take control of Chernogorneft is discussed in the Letter from Leonard Blavatnik (on TNK letterhead) to Stephen Glazer of ExIm Bank (Apr. 14, 1999) (exh. 22).

²⁷ Lee Wolosky, *Putin’s Plutocrat Problem*, *FOREIGN AFFAIRS*, Mar./Apr. 2000, at 18 (exh. 10). I know Mr. Wolosky personally and understand him to have personal knowledge of many of the situations he writes about.

In cases involving the oligarchs, trial and appellate court judges are routinely bribed. Failing that, judges who evince a dangerous predisposition to impartiality are reassigned without explanation by superiors who are presumably on the take. . . . The oil oligarchs are extremely ruthless. People who get in their way -- even ministers of the Russian Federation -- are routinely threatened. A senior TNK official involved in the Sidanko-BP-Amoco dispute allegedly waved a pistol in the face of the major of Nizhnevartovsk. A local judge who had made a decision adverse to TNK was reportedly beaten in the street. . . .

Second, noted Russian scholar Marshall Goldman, of Harvard University, wrote in his 2003 book, *The Piratization of Russia*.²⁸

Alfa [Group] and its subsidiary Tyumen Oil have been among the more notorious users of the Russian bankruptcy courts. It used them to seize assets from several Western investors, including [BP] and Norex. . . . To [BP]'s amazement, in October 1998 a minor creditor sued Chernogorneft for an unpaid bill of a mere \$50,000. Other suits followed and in December 1998 Chernogorneft was suddenly declared bankrupt by a regional judge appointed by [Tyumen governor] Leonid Roketsky . . . [who] also just happened to be Chairman of TNK at the time. Try as they might, there was no way for either Sidanko or [BP] to step in to pay off the overdue bills.

33. TNK worked hard to maintain strong ties to “administrative resources.” Its board of directors also included Aleksandr Filipenko, head of the Khanty-Mansiysk region, and the governors of two other oblasts where TNK had major operations. TNK’s former general counsel had since become Deputy Chairman of the Supreme Arbitrazh Court; his replacement as general counsel was a former Deputy Minister of Justice.²⁹

B. The General Practice of Takeovers Through Ordered Bankruptcies

34. TNK’s takeovers of Chernogorneft and Kondpetroleum were unusual only in that the target was another oligarch-controlled company, with a major foreign investor in BP. This made them more visible than many hostile takeovers. But TNK’s tactics were quite ordinary. During the period from 1998-2002, there were hundreds, perhaps thousands of similar takeovers;

²⁸ Marshall Goldman, *The Piratization of Russia* 144-45 (2003).

²⁹ When Sergei Sobyenin replaced Leonid Roketsky as governor of Tyumen oblast in 2001, he also replaced Roketsky as Chair of the TNK board of directors. Главной проблемой “Фридман и компании” является “многоцентризм,” политком.ру (13.03.2002) [Multicentricity are Friedman and Company’s Biggest Problem, Politkom.ru (Mar. 13, 2002)] (Russian original and English translation: exh. 23).

enough to give rise to the term “ordered bankruptcy,” and to public descriptions of typical tactics. I briefly review that evidence here, relying on quotes from credible sources.

35. Russian economists Ariane Lambert-Mogilansky, Constantin Sonin & Ekaterina Zhuravskaya describe misuse of the bankruptcy process, with participation by arbitrazh judges, writing:³⁰

Abstract: Laws that work well in a country with the rule of law may produce unexpected outcomes in a corrupt environment. This paper argues that the Russian legal system is impaired by the capture of regional arbitrazh courts and analyzes the consequences of this capture. . . . [Regional] governors in alliance with managers of large regional enterprises use bankruptcy to expropriate the federal government and outside investors. . . .

Text of the article: [Arbitrazh court judges] have large discretionary power . . . [including power] to overrule the creditors’ nomination of [an external] manager. . . . There is a voluminous anecdotal evidence suggesting that the decisions of the judges in the regional arbitrazh courts were often politically captured by the regional governments. . . .

[The authors develop a theoretical model, and supporting evidence, in which regional arbitrazh courts are corrupt and controlled by regional governors; companies bribe governors to obtain desired outcomes. Many solvent firms are put into bankruptcy, and their value is expropriated from investors.]

36. Coudert Brothers, a major international law firm at the time (it has since dissolved), published in 2003 a remarkable report on takeovers of Russian companies through misuse of the courts. They wrote:³¹

An unprecedented wave of hostile takeovers is sweeping over Russia. . . . The main tool employed in [these takeovers] is the judicial branch of government, plus “administrative resources.” In these transactions, the owners of controlling stakes in many Russian enterprises have discovered that court orders have been issued . . . that result in the forced sale of a controlling interest in their companies, together with the loss of all investments made into such companies. A group of specialist consulting firms [assists] in structuring hostile takeover attacks and motivating members of the judiciary and regulatory branches of government to make expedited decisions that are favorable to their clients. . . . Most acquisitions of control of

³⁰ Ariane Lambert-Mogilansky, Constantin Sonin & Ekaterina Zhuravskaya, *Capture of Bankruptcy: Theory and Russian Evidence* (Center for Economic and Financial Research Working Paper, 2003) (exh. 24). The authors are affiliated with the Center for Economic and Financial Research at the New Economic School in Moscow – probably the leading independent economics research organization in Russia. I know personally Constantin Sonin, Ekaterina Zhuravskaya, and the Center’s director, Sergei Guriev.

³¹ Coudert Brothers LLP, *Corporate Takeovers, Russian Style, and Necessary Legal Reform* (Mar. 28, 2003) (exh. 25). One impetus for this report was Coudert’s role in a (rare) successful defense of a target, Ilim Pulp, against a hostile takeover. I know personally two Coudert partners who devoted substantial time to work involving Russian clients, Barry Metzger and Olga Sirodoeva, and have confidence in their judgment and in the accuracy of this report.

Russian corporations today involve the use of “administrative resources,” i.e., improper intervention by judicial and government agencies. . . .

Russia’s judicial system is very ill. . . . Almost all corporate takeovers today involve[] local judicial decisions influenced by corporate raiders. . . . [K]ey government and judicial offices are frequently reported to be nominees of the leading local business figures. We are not aware of an instance in which a judge who rendered illegal judgments and issued unjustified orders in support of an abusive hostile takeover has been removed from his or her office by local judicial oversight boards.

A top Russian sociologist, Prof. Vadim Volkov, explained:³²

The hallmark of enterprise takeovers was the use of state courts, of special police forces, and of regional administrations. . . . Enterprise takeovers were most frequently framed as either bankruptcy proceedings . . . or as legal actions in defense of rights of minority shareholders [An ordered bankruptcy involves] the decision of a court that has been prepared (usually through substantial bribes) to quickly issue the required decision. The key point in the court decision is the appointing of an external manager who has already been selected by the “aggressor.”³³ . . . In most cases, a special police contingent arrives at the gate of the enterprise just two or three days after the court decision has been issued. . . . In case the previous owners and managers resist, the “aggressor” has a hard lever to neutralize resistance: criminal prosecution. . . . [Prominent examples include] several takeovers of ore-, gas-, and oil-processing plants by the [Alfa] group led by Mikhail Fridman, including the notorious case of the bankruptcy takeover of the oil company [C]hernogorneft in 1999

V. The Yugraneft Takeover and the Know-How Case

A. Takeovers Involving Manipulation of Share Ownership

37. A second popular takeover approach matches more closely the approach that TNK used to take control of Yugraneft and falls under the general heading of schemes involving manipulation of shareholder meetings. A pretext is found to disallow the controller from voting its shares. The raider then holds a sham meeting, at which it purports to oust the old management. This meeting is then used as legal “cover” for a physical attack on the target’s

³² Vadim V. Volkov, *The Selective Use of State Capacity In Russia’s Economy: Property Disputes and Enterprise Takeovers, 1998-2002*, in Janos Kornai & Susan Rose-Ackerman eds., *TRUST IN POST-SOCIALIST ECONOMIES* (2003) (attached at exh. 26); *see also* Vadim V. Volkov, *VIOLENT ENTREPRENEURS: THE USE OF FORCE IN THE MAKING OF RUSSIAN CAPITALISM* (2002). Dr. Volkov is Vice-Rector and professor of economics and at European University of St. Petersburg. He was recently ranked among the 10 most influential economists and sociologists in Russia. *See журнал «Русский репортер», 10 идей десяти лет: Самые влиятельные экономисты и социологи 2000–2010* (Russian Reporter Magazine, Ten Ideas over Ten Years: Most Influential Economists and Sociologists, 2000-2010), at www.rusrep.ru/2010/20/ekonomisty/ (exh. 27).

³³ In many cases the debtor enterprise would not even be notified about the meeting of creditors that has to elect the external manager. A widespread trick is sending an empty envelope by recorded delivery mail service, which is subsequently used in court as evidence that the debtor has been notified by mail.

headquarters by armed men (often ostensibly police or security forces), who evict the old managers. As Thomas Firestone of the U.S. Department of Justice explains in his article, *Criminal Corporate Raiding in Russia*:³⁴

In [one] scheme, raiders call a shareholders' meeting but fail to provide other shareholders adequate and timely notice, either by mailing notices to the wrong address, sending the notices only a short time before the meeting, or holding the meeting in a remote, inaccessible location.³⁵ At the meeting, they exploit the artificially created majority to vote in a new board of directors. Another scheme involves filing a frivolous lawsuit in order to obtain a court judgment temporarily restricting the voting power of other shares, thus giving the raiders a temporary majority, which they then use to change the board of directors.

As Firestone notes, judicial corruption is a central element of most takeovers:

One expert even concluded that presentation of false evidence in civil proceedings is a “required element” of raiding schemes. In addition, raiders often exercise corrupt influence – through bribery, political pressure, or other means – over the judge(s) presiding over the case. According to statistics compiled by a non-governmental organization, the National Anti-Corruption Committee (NACC), judicial decisions are easily bought

38. As Astakhov notes, one defense to manipulation of shareholder meetings is to maintain 90% ownership, thus ensuring that the raider cannot obtain the 10% of shares needed to demand a shareholder meeting.³⁶ Once a meeting has been validly demanded, the target is in trouble. And so it would prove for Yugraneft.

B. TNK's Takeover of Yugraneft

39. TNK's takeover of Yugraneft relied on decisions by the same Khanty-Mansiysk and Tyumen oblast courts that supported its takeovers of Chernogorneft and Kondpetroleum. The most significant of these decisions were in the Know-How Case. Among other things, TNK

³⁴ Thomas Firestone, *Criminal Corporate Raiding in Russia*, 42 Int'l Lawyer 1207, at 1212 (2008) (exh. 28).

³⁵ I have personal knowledge of similar tactics involving oil company Komineft. A shareholder meeting was scheduled in Syktivkar, which is effectively reachable only by air. Air service to Syktivkar was mysteriously interrupted (not by weather) for two days before the meeting, preventing any unwanted shareholders from attending or voting.

³⁶ Pavel Astakhov, *Defensive Measures Against Seizure by Raiders* (Eksmo Press, 2008), *supra* note 9, § 2.2.1.6 (titled работа с акционерами, Working with Shareholders). This is not to suggest that holding 90% of the shares provide very strong protection. Another common takeover strategy involves creating a second, false share registry, and then bribing a court to recognize the false registry. Firestone (2008), *supra* note 34; Astakhov (2008), 9.

demanded a shareholder meeting, and then, when Norex held a shareholder meeting in response to the demand, obtained an ex parte court order just before the meeting, barring Norex from voting its Yugraneft shares. This order was patently without basis in the Russian Joint Stock Company (JSC) law.

40. At the meeting, Norex had a majority of votes because TNK's shares were recorded on Yugraneft's share register as owned by Chernogorneft, so these shares could not be voted by TNK. TNK responded by fabricating minutes of this meeting, presumably obtained a court order recognizing the fake minutes,³⁷ and used the court order as cover for an armed takeover of Yugraneft's offices the day after the meeting. An armed raid on Yugraneft's principal production facility soon followed.³⁸ Corruption is the most likely explanation for the pro-TNK decisions, taken ex parte and with astonishing speed,³⁹ by the Khanty-Mansiysk courts.⁴⁰

41. Norex persuaded the Khanty-Mansiysk prosecutor to send a warning letter to TNK concerning the fabricated minutes.⁴¹ The investigation was quickly closed, and the prosecutor who sent the letter was reprimanded by his superior and soon fired.⁴²

³⁷ In most hostile takeovers, the armed attack on the target's offices is supported by a court order, to provide a veneer of legality. I do not know whether TNK obtained such an order in the case.

³⁸ TNK's President, Simon Kukes, appeared shortly thereafter at Yugraneft's production facility and told employees that TNK now controlled Yugraneft, and told them that they needed to either sign new employee agreements with TNK or lose their jobs. Norex First Amended Complaint ¶ 155, *Norex Petroleum Ltd v. Access Indus., Inc.*, No. 02 Civ. 1499 (S.D.N.Y.).

³⁹ TNK filed suit against Norex on June 25, the court barred Norex from voting on June 26, the meeting was held on June 28, TNK then presumably obtained later on June 28 a second court order authorizing the seizure of Yugraneft's offices, and TNK invaded Yugraneft's offices on June 29, 2001.

⁴⁰ This report focuses on Norex's basis for seeking a hearing on its claims in the U.S., not the merits of those claims. For this reason, plus the page limit on this Affidavit, I do not provide details on TNK's violations of the JSC law in its takeover of Yugraneft, nor the flagrantly wrong judicial decisions in the Know-How Case.

⁴¹ Letter from Deputy KhantyMansiysk Prosecutor V.A. Belan to TNK-Nizneartovsk General Director N.G. Smolyar, WARNING: Legal Violations Cannot Be Tolerated (July 6, 2001) (capitals in original) (Russian original and translation: exh. 29).

42. Norex, supported by the Canadian Ambassador to Russia and later the Canadian Minister of Finance, persuaded the Ministry of Internal Affairs to investigate. The Ministry concluded:⁴³

It was determined that on June 29, 2001, [TNK] fabricated the Protocol of the shareholder meeting of [Yugraneft]. Using this fabricated protocol, [TNK] invaded [Yugraneft's] head office and the production facilities . . . [TNK] made a duplicate corporate seal that was actively used [to conduct Yugraneft's business].

43. The Ministry of Internal Affairs referred this matter to the prosecutors' office for criminal proceedings; but this investigation was soon quashed too.⁴⁴

44. The Moscow arbitrazh court similarly concluded that TNK had fabricated the minutes that it used as a pretext to seize Yugraneft's offices:⁴⁵

Taking into account that it was impossible to hold two shareholder meetings of the same legal entity at the same place, the same time and with the same agenda . . . and also taking into account that the shareholder meeting at which the authority of L.V. Kondrashina was confirmed, with court marshals present, took place in reality, the court concludes that the meeting indicated in the [shareholder meeting agenda and resolutions created by TNK] did not take place and A.V. Berman was not elected as general director of Yugraneft.

As best I can tell, TNK and the Tyumen courts simply ignored this decision.

45. In Russia, a company cannot operate without its corporate seal, and can have only one seal, which Kondrashina took with her when TNK occupied Yugraneft's offices.⁴⁶ So TNK fabricated a seal too.

⁴² On the reprimand, *see* Letter from N.N. Korotkov, Head of the Ural Federal District General Prosecutor's Office to L.V. Kondrashina and A. Rotzang of Yugraneft (18 July 2001) (exh 30).

⁴³ Letter from R.G. Nurgaliev, First Deputy Minister, Head of the Department of Criminal Militia, Ministry of Internal Affairs of the Russian Federation, to Alexander Yurievich Voronin [of the Russian Ministry of Foreign Affairs] (exh. 31).

⁴⁴ *Id.*

⁴⁵ Decision dated 15 November 2001 of Presnensky regional arbitrazh court, Moscow (Judge M.A. Bolonina) (exh. 32). This was an ex parte proceeding, held after the court concluded that "the interested party [TNK] . . . had no good reason for being absent." But the judgment was not appealed, and the court's assessment of which set of minutes was the true set was simple: among other indicia, the Norex set included the Yugraneft seal and was attested to by a notary; the TNK version had neither the Yugraneft seal nor a notary attestation.

⁴⁶ Letter from former Yugraneft General Director Lyudmila Kondrashina to BP p.l.c. (June 1, 2004) (exh. 33).

46. Under the JSC law, all significant dealings between a parent company and a non-wholly-owned subsidiary can only be completed with the approval of both the noninterested members of the company's board of directors (if any) and the minority shareholder(s).⁴⁷ Following TNK's takeover of Yugraneft, Norex had veto power over all significant transactions between TNK and Yugraneft. TNK and BP ignored (and continue to ignore) this rule.

C. Common Themes in TNK's Takeovers

47. TNK's takeovers of Yugraneft fit within a pattern of tactics used by TNK and others in these and other hostile takeovers.⁴⁸ To summarize, these tactics include the following:

- TNK acquired Chernogorneft through an "ordered bankruptcy."
 - Ordered bankruptcies were a common takeover method, and TNK was a known, notorious user of this method.
- The Governor of Tyumen oblast, where the Chernogorneft and Yugraneft takeovers occurred, was the Chairman of TNK's board.
 - Many hostile takeovers rely on close connections between the raider and regional governments; TNK has enormous influence in Tyumen oblast.
 - The Director of the Federal Bankruptcy Service, Georgi Tal, later described the Tyumen regional court as the "legal department of TNK."
- In Chernogorneft, the Tyumen courts rejected an offer by BP to pay all creditors in full, chose an external manager with ties to TNK when 98% of creditors favored another

⁴⁷ JSC Law ch. 11; see Bernard Black, Reinier Kraakman & Anna Tarassova, *Guide to the Russian Law on Joint Stock Companies* (1998).

⁴⁸ Two other examples of TNK's actions involve the privatization of Slavneft and an attempted hostile takeover of Rospan. For Slavneft, another bidder, state-owned oil company Rosneft, publicly offered \$2.5 billion. TNK obtained a court order barring Rosneft from bidding, and won the auction at \$1.9 billion. The *New York Times* explained that "The sale [of Slavneft] gave new meaning to the word opaque" and termed the court order "baffling." Sabrina Tavernese, *Oil Auction in Russia: Some Scowl, Others Giggle*, N.Y. Times, Dec. 19, 2002 (exh. 34); see also Catherine Belton, *Sibneft, TNK Snap Up Slavneft for \$1.8 Bln*, Moscow Times, Dec. 19, 2002 (exh. 35).

In 2002, TNK attempted an ordered bankruptcy takeover of oil and gas producer Rospan, but settled for a 44% stake plus the right to manage Rospan, with Yukos acquiring the other 56% stake. As Coudert Brothers explained, "Both parties used [physical] force on the basis of decrees by various courts." Coudert Brothers, LLP, *Examples of "Power Take-Overs" in 2001-2002* (May 2003) (submitted in the *Duma Takeover Hearings* discussed below) (exh. 36). Rospan, like Chernogorneft, involved TNK blocking the company from paying its debts in full, aided by an obviously improper decision by the Moscow appellate arbitrazh court that reversed a lower court decision that allowed the payments. See Sergei Zankovsky, *Theory and Practice of Bankruptcy*, *Izvestia*, April 27, 2002 (Russian original and translation: exh. 37) (Prof. Zankovsky is Director of the Center for Business Law at the Institute of State and Law of the Russian Academy of Sciences).

manager, and ignored a Federal Bankruptcy Service order removing the pro-TNK manager.

- Blatant favoritism in court decisions is a routine aspect of corporate raids.
- In Yugraneft, the courts blocked Norex from voting its shares and accepted the results of a patently invalid shareholder meeting.
 - Hostile takeovers often rely on highly odd court decisions favoring the raider. Blocking the target from voting its shares is a common tactic.
- TNK failed to properly serve Norex in the Know-How Case.
 - Many takeovers involve improper or no service, followed by *ex parte* proceedings. One common tactic, used against Yugraneft, is sending an empty envelope.
- TNK forged Yugraneft documents
 - As the Moscow courts recognized in the suit by Yugraneft's CEO, discussed above, there was only one Yugraneft shareholder meeting on June 28, 2001, at 12:00 p.m., at 627 Old Arbat Street, Room 627, Moscow, Russia, which did not result in the minutes which TNK created.
 - Use of falsified documents in court is common in hostile takeovers.
- TNK used armed militia to occupy Yugraneft's offices.
 - Raiders commonly use armed force in hostile takeovers.
- Decisions by courts and regulators that were adverse to TNK were reversed or ignored. Investigations were quashed.
 - Local force and influence counts. Even if the target can persuade some court to rule in its favor, or persuades a prosecutor to investigate, this matters little in the end.
- TNK engaged in improper related party transactions with Yugraneft.
 - Hostile takeovers often involve ignoring legal restrictions on related party transactions, designed to protect creditors and minority shareholders.

48. More generally, there have been thousands of hostile takeovers in Russia over the last decade or so.⁴⁹ These takeovers routinely involve the procured assistance of courts, bankruptcy trustees, and often police and prosecutors. One might say that a hostile takeover in

⁴⁹ See, for example, Volkov (2003), *supra* note 32 (“the practice of hostile takeovers [through ordered bankruptcies] began to spread in the beginning of 1999 and reached nation-wide scale by 2001, involving thousands of cases each year”). Astakhov (2008), *supra* note 9, at 75, lists roughly 2,000 companies in 10 industries (including oil and gas) that were acquired in 2006 alone, often after hostile takeover raids.

Russia fought without corruption is like a war fought without guns. One can concede the theoretical possibility of such cases, while doubting their existence in fact.

VI. TNK's Aggressive Tactics Against BP

A. The Creation of TNK-BP

49. Hoping to rescue something from its investment in Russia, BP responded to TNK's theft of Chernogorneft and Kondpetroleum by "doubling down" on its investment. BP agreed in 2001 to up its stake in Sidanko, by then controlled by TNK, from 10% to 25% in return for TNK returning Chernogorneft to Sidanko, and agreeing to later buy a 25% stake in TNK.⁵⁰ In 2003, BP expanded its planned 25% investment in TNK into a full 50-50 joint venture, which became TNK-BP. TNK-BP received TNK's oil and gas assets, including its stake in Yugraneft.⁵¹ BP was aware, when it entered the joint venture, of TNK's reputation and tactics, applied to Chernogorneft, Yugraneft, and other takeover targets.⁵²

B. TNK's Ouster of Robert Dudley as CEO of TNK-BP

50. The negotiated truce between TNK and BP did not last. TNK became displeased with the way in which the BP-selected CEO, Robert Dudley, was managing TNK-BP, and

⁵⁰ Browne (2011), *supra* note 15, at 142-143 (exh. 11).

⁵¹ See, e.g., Sabrina Tavernese, A Rocky Road Led to Big Russian Oil Deal, N.Y. Times, Feb. 19, 2003 (noting that Alfa chairman Mikhail Fridman "does not hesitate to apply bare knuckles to the country's ramshackle legal system, pioneering the use of the bankruptcy courts as a corporate takeover tool". (exh. 38)

⁵² With regard to Yugraneft, a BP internal email explains that Norex's fight is with the "notorious" TNK and its "even more notorious" senior executive, German Khan, and that BP's "official response should be that this is nothing to do with us." Email from Sam Bennett to others within BP (Feb. 27, 2002). (exh. 39). With regard to other TNK takeover targets, which BP surely was aware of as part of due diligence for its \$6.8 investment in TNK-BP, see the discussion above of Rospan and Slavneft; see also Goldman (2003), *supra* note 6, at 144 (noting Rospan, Rospan Nosta, Black Sea Energy, Niznevartovsk Neftegaz (known as NNG), and Tagmet); Multiple Centers Are Fridman and Company's Biggest Problem (2002), *supra* note 29 (discussing Orenburg Oil Company, known as ONAKO). On TNK's takeover of Black Sea Energy, see Grace C. Allen and Dorothee J. Feils, *A Russian Investment that Ends Up in the Courts, not in the Money: The Case of Black Sea Energy Ltd.*, 6 Journal of the International Academy for Case Studies 83 (2000).

resorted to strong-arm tactics to evict him from Russia, along with most other BP-appointed personnel.⁵³

51. TNK's displeasure with Dudley was no secret. What happened next was, one might say, unusual. BP relied on expatriates to, among other things, ensure that TNK-BP's procurement decisions were merit based. TNK had other preferences. A leaked U.S. Embassy evaluation, reported by the *Telegraph*, discussed BP's concerns:⁵⁴

According to a western TNK-BP official, the raids should be seen as the latest in this multi-year attempt to drive out or scare away the foreign managers of the company, which made nearly \$9 billion in profits last year. [TNK senior executive German] Khan has traditionally led the charge to get rid of the western managers who have brought to the company western business practices such as accountable corporate governance, transparency, and fiscal discipline. In particular, senior western TNK-BP executives have pointed to the company's procurement as a sore point for Khan and to a lesser extent the other billionaires. TNK-BP spends several billion dollars a year on equipment and supplies. The BP half of TNK-BP has been able to limit directed purchases and kick-backs, much to the chagrin of some of their business partners.

TNK arranged for most of the expats' visas not to be renewed, forcing them to leave Russia. BP responded with strong words. BP Chairman Peter Sutherland saw TNK's actions as:⁵⁵

a return to the corporate raiding activities that were prevalent in Russia in the 1990s. Prime Minister Putin has referred to these tactics as relics of the 1990s, but unfortunately our partners continue to use them and the leaders of the country seem unwilling or unable to step in and stop them.

52. TNK intensified its attacks, which included tax and Labor Code investigations of TNK-BP (targeting Dudley and other expats), lawsuits by persons ostensibly unrelated to TNK, denial of Dudley's visa renewal, and what BP called a "sham proceeding" in which Dudley was

⁵³ One source of displeasure: TNK wanted TNK-BP to do business with unsavory counterparts, including Cuba, Iran and North Korea, which Dudley opposed, and which would have created public relations and perhaps legal problems for BP. Mark Franchetti, *BP Has Only Held Us Back, Says Russian Oligarch Mikhail Fridman*, *Sunday Times* (July 20, 2008) (exh. 40).

⁵⁴ *What's Behind the Raids on TNK-BP and BP*, *Sunday Telegraph* (March 28, 2008) (exh. 41).

⁵⁵ David Litterick, *BP Vents Its Frustration on Russian Partners*, *Telegraph* (June 6, 2008) (exh. 42).

barred from working in Russia for having violating the Labor Code.⁵⁶ Law firms representing BP were raided by police.⁵⁷ Dudley left Russia hurriedly and secretly and, worried about personal safety, went into hiding. He was willing to tell colleagues only that he was not in the US, and would move around “as a precaution.”⁵⁸ Sutherland explained:⁵⁹

[TNK] orchestrated ‘a campaign of harassment’ to gain control of TNK-BP, [including] ‘manipulation of elements of the Russian state.

BP eventually caved in and agreed to replace Dudley with someone acceptable to TNK, as the new CEO of TNK-BP, and to remove *all* BP-seconded employees from TNK-BP.⁶⁰ That someone was Mikhail Fridman, thus achieving TNK’s goal of having day-to-day control over TNK-BP.⁶¹

C. BP’s Efforts to Deal with Rosneft Instead of TNK

53. Having failed to work with TNK, BP then tried to work around it. That effort failed too. In early 2011, BP announced a huge Arctic exploration deal with Rosneft. TNK blocked the deal, claiming that BP could invest in Russia only through TNK-BP. As usual, TNK’s tactics were unusual. They included: A suit by AAR (owner of TNK), and separate suit in Tyumen oblast by a minority shareholder (with TNK’s approval and likely at its prompting),

⁵⁶ *Court Bars Dudley from Post for Sham Labor Violations*, Telegraph (Aug. 18, 2008) (posted Jan. 31, 2011) (exh. 43).

⁵⁷ Sofia Lind, *Lawyers Wary Despite TNK-BP Deal*, Legal Week (Sept. 11, 2008) (exh 44).

⁵⁸ Tim Ross and Steven Swinford, *BP boss Bob Dudley blamed new Rosneft partner Igor Sechin for ‘black’ plot against him*, Telegraph (Feb. 1, 2011, but based on March 28, 2008 US Embassy internal document)) (exh. 45); Russell Hotten, *TNK-BP Chief in “Secret Location” Amid Safety Fears*, Telegraph (July 25, 2008) (exh. 46). A story a month later described Mr. Dudley as in a “secret hiding place somewhere in Central Europe.” Louise Armitstead, *TNK-BP’s Chief Accuses Russians of Power Abuse*, Telegraph (Aug. 23, 2008) (exh. 47).

⁵⁹ Robert Pagnamenta, *TNK-BP Chief Executive Robert Dudley Quits Russia*, [London] Times (July 25, 2008) (exh. 48).

⁶⁰ *BP Pulls Staff as AAR Ratchets Up Pressure* (July 24, 2008) (posted Jan 31, 2011) (exh. 49).

⁶¹ See Joint BP-AAR Press Release, *BP and AAR Agree on New Management Structure for TNK-BP* (Oct. 21, 2011), at <http://www.aar.ru/en/press/news/item/636-bp-and-aar-agree-on-new-management-structure-for-tnk-bp.html> (Fridman to continue as CEO until 2013; Vekselberg and Khan also on management committee) (exh. 50).

each of which claimed billions of dollars in damages against BP.⁶² The minority shareholder suit was followed by official raids on BP's Moscow office to seize documents in support of the lawsuit. A source "close to" BP told the *Wall Street Journal* that the suit had no merit but "such suits often proceed in Russian courts, particularly if they have powerful local sponsors."⁶³ BP prevailed on British Prime Minister David Cameron to speak publicly about Russian corruption and to discuss the raids directly with Russian President Medvedev.⁶⁴

54. TNK's actions against BP support the credibility of Norex's allegations about corruption in the Yugraneft takeover. TNK's ready resort to aggressive tactics is, if nothing else, consistent.

VII. The General Problem of Russian Judicial and Administrative Corruption

55. TNK's ability to manipulate Russian judicial and administrative resources, even against powerful opponents such as Sidanko, Potanin, Rosneft, and BP, fits within a broader pattern of widespread Russian corruption, and the ability of corporate raiders to harness administrative resources. I review that larger problem here.

A. Statements by Russian Leaders

56. Early in the Putin era, Russian President Putin made some initial efforts to curtail judicial and other official corruption. By 2003, these had worse than petered out – Putin decided

⁶² On the suit and AAR's endorsement of it, see *BP Faces New Threat from Russian Partners*, *Guardian* (Oct. 19, 2011) (exh. 51).

⁶³ For pieces of this story, see Gregory White and Guy Chazan, *Russia Raids BP's Moscow Office*, *Wall St. J.*, Sept. 1, 2011 (exh. 52); Charles Clover and Sylvia Pfeifer, *Armed forced raid BP's Moscow Offices*, *Fin. Times* (Aug. 31, 2011) (exh. 53). Cameron's intervention was followed by a Russian court ruling suspending raids on BP's offices. *Russian courts step into TNK-BP, BP row*, *United Press International* (Sept. 14, 2011) (exh. 54).

⁶⁴ Louise Armitstead, *David Cameron: 'UK Companies Put Off Russia Because of Corruption,'* *Telegraph* (Sept. 12, 2011) (exh. 55).

to attack oligarch Mikhail Khodorkovski and dismantle his empire, in ways that both highlighted and increased the pressure on judges to reach politically approved results.⁶⁵

57. But early on, President Putin acknowledged that the Russian courts were often corrupt, with the oligarchs among the corrupters. In his 2001 speech to the legislature, he stated

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Today, it is extremely necessary that we have a judicial reform. . . . Not only for entrepreneurs, but also for many people, trying to restore their rights in a legitimate way, legal proceedings have failed to become either quick or just or fair. I am not saying this is always the case, but in many cases, regrettably, this is so. . . .

Now about the business climate in the country. Regrettably, the ownership rights are still poorly protected. . . . The wars of claimants to property does not end even after court decisions are passed, while decisions themselves are often based on the pressure of interested sides rather than on laws.

In 2003, he called “making judges’ work more transparent” a crucial reform goal, but did not expect a quick solution, saying only that “[w]e are going to keep working on this.”⁶⁷

58. Incoming Russian President Dmitri Medvedev complained in 2008 about “legal nihilism” which involved “corruption in the power bodies,” and called for an anti-corruption campaign. Once he was in office, his rhetoric ceased and a serious reform proposal never came.⁶⁸

59. Other sources, including opposition politicians when they still existed, were blunter. For example, former Presidential candidate Grigori Yavlinsky commented in 2002:⁶⁹

⁶⁵ For general discussion of the dismantling of Yukos, see Richard Sakwa, *The Quality of Freedom: Khodorkovsky, Putin, and the Yukos Affair* (2008).

⁶⁶ Annual message of President Vladimir Putin to the Federal Assembly of the Russian Federation on April 3, 2001, official translation available at www.strana.ru (exh. 56).

⁶⁷ *Putin Calls for More Transparency in Russia’s Judicial System*, INTERFAX, Jan. 24, 2003 (exh. 57); see also Torrey Clark, *Tycoons Talk Corruption in Kremlin*, MOSCOW TIMES, Feb. 20, 2003 (exh. 58).

⁶⁸ See Richard Sakwa, *Dmitry Medvedev’s Challenge*, Open Democracy (May 7, 2008) (discussing Medvedev’s speeches), at www.opendemocracy.net/article/governments/dmitri_medvedev_s_challenge (exh. 59).

⁶⁹ Sabrina Tavernese, *An Executive-Suite Coup in Russia*, N.Y. TIMES, July 2, 2002 (exh. 60).

Paying money, you can hire any authority for any purpose. You can hire the OMON [special police] for money. You can initiate a court case against someone. The entire system is being used. . . . [This battle is] a fight between the oligarch groups, and the Russian government partially belongs to them.

Pyotr Mostovoy, former Deputy Minister of the State Property Committee, explained in 2003:

I often witness situations which are even worse than those when an unjust decision is made in favor of one of the disputing parties when both parties are in the same weight. . . . I regularly see such situations when unjust decisions are made in favor of the state when the state disputes with a company. It's a usual practice. Even if there are no grounds [for the court's decision]. At the [trial court level] such decisions are made in absolutely all cases, and if a dispute goes higher, then it's a toss-up.⁷⁰

B. Statements by Senior Russian Judges and Scholars

60. The Chairs of the Supreme Arbitrazh Court, Venyamin Yakovlev, and the Supreme Court, Vyacheslav Lebedev, have both spoken about corruption. In a 2003 speech, Mr. Yakovlev discussed the “critical problem” of judicial corruption in hostile takeovers:⁷¹

Speaking of the reasons for corruption in the courts, Mr. Yakovlev named three main methods used in the country to take over somebody else's property: illegal bankruptcy, illegal creation of the management organs and structures of joint-stock companies, and illegal use of security measures. “These illegal means are utilized by the judges,” the head of the Supreme Arbitrazh Court stressed. “Using them, one can paralyze the work of any well-functioning enterprise.

In a story about this speech, another judge discussed partiality on the Supreme Arbitrazh Court.

Mr. Lebedev viewed arbitrazh court corruption in hostile takeovers as “routine,” saying:⁷²

Corruption among “district judges in adjudicating claims brought by shareholders against corporations, especially . . . security measures (i.e. injunctions against conducting of [shareholder or board] meetings of corporations, etc.) has become routine.”

61. Other respected former Russian judges have also spoken strongly and publicly about judicial corruption. For example, arbitrazh court procedure expert and former judge Sergey Pashin submitted an expert declaration on likely corruption in the Eastern District of New York decision *Films By Jove*, which the court cited with approval, noting his “impressive expert

⁷⁰ Remarks of Pyotr Mostovoy, *Duma Takeover Hearings* (exh. 61) at 52.

⁷¹ Ekaterina Zapodinskaya, *Judges Help to Capture Property*, KOMMERSANT, June 19, 2003 (exh. 62)

⁷² Ekaterina Zapodinskaya, *Judges Held a Peer Court Session*, KOMMERSANT, June 17, 2003 (exh. 63).

credentials.”⁷³ The *Films By Jove* court, based on Judge Pashin’s declaration and other evidence, found it “apparent that the [Supreme] Arbitrazh Court’s . . . decision was strongly influenced, if not coerced, by the efforts of various government officials.”⁷⁴

62. Dean Yevgeni Sukhanov, Head of the Civil Law Department of Moscow State University, and a principal drafter of the company law provisions of the Civil Code, testified:⁷⁵

I see two main reasons for the [takeover] conflicts that have inundated our country. . . . [T]he most important reason is that there are numerous cases where unlawful decisions are passed. Including, I regret to say, court decisions. Indeed, almost all of these conflicts flare up with decisions passed by courts of the first instance. . . . When I read those court decisions, my hair literally stands on end.

C. Reports by Non-Russian Governmental and Quasi-Governmental Agencies

63. Government agencies and quasi-governmental agencies like the World Bank and the EBRD are usually careful in their language. But for Russian corruption, even normally circumspect sources make strong statements. I discuss the EBRD’s views above. Similar statements have been made by other credible sources. I offer here examples from the World Bank, the Organisation for Economic Co-operation and Development (OECD), the State Department, and the Council of Europe. All support the existence of pervasive corruption in Russia, both at the time of the Yugraneft takeover and now.

64. A 2002 World Bank report, evaluating the Bank’s Russian assistance, notes in the Executive Summary that Russia suffers from a “weak rule of law,” including “corruption [and]

⁷³ *Films By Jove*, 250 F. Supp. 2d 156, 197 (E.D.N.Y. 2003). Declaration of Sergie Anatolievich Pashin in *Films by Jove, Inc. v. Berov*, No. Civ. A. 98-CV-7674 (DGT) (Docket 116) (E.D.N.Y.).

⁷⁴ *Id* at 216. Judge Pashin submitted a declaration on likely corruption in the Yugraneft takeover, in the federal predecessor to this case (exh. 64).

⁷⁵ Duma Takeover hearings at 13-14 (exh. 61).

unreliable enforcement” and an “unreliable judiciary.”⁷⁶ World Bank President James Wolfenson publicly commented on judicial “[c]orruption by powerful economic interest groups.”⁷⁷

65. A 2002 OECD *White Paper on Russian Corporate Governance* discussed abuses of the bankruptcy process, noting “numerous instances where bankruptcy procedures have been abused as a means to acquire assets or entire companies . . . to eliminate competitors, to strip assets or to exclude certain shareholders.”⁷⁸ Stilpon Nestor, head of OECD’s Corporate Affairs Division, wrote that Russian “courts are often described as corrupt and slow. Part of the capture issue in Russia is related to the very strong dependence of courts on local authorities.”⁷⁹

66. The State Department’s 2003 *Background Note* on Russia observed that “Russia’s judiciary and justice system are weak . . . [and] subject to political influence”:⁸⁰ U.S. Ambassador to Russia Alexander Vershbow decried favoritism toward local interests, “exacerbated by the weak and often corrupt judicial system,” as “all too frequent” in cases involving foreign investors.”⁸¹

⁷⁶ World Bank, *ASSISTING RUSSIA’S TRANSITION: AN UNPRECEDENTED CHALLENGE*, at x, 3, 46 (2002) (exh. 65).

⁷⁷ Andrew Jack, *Former Soviet Union Warned on Corruption*, FIN. TIMES, July 10, 2001 (exh. 66).

⁷⁸ OECD, *White Paper on Corporate Governance in Russia* ¶ 103-104 (2002), available at www.oecd.org (exh. 67). I participated in the process leading to this White Paper and have confidence in its conclusions.

⁷⁹ Stilpon Nestor, *Corporate Reform in Russia and the Former Soviet Union: The First Ten Years* (working paper 2002), available at www.oecd.org (exh. 68). I know Mr. Nestor personally, worked with him on several corporate governance reform projects, and have confidence that he would not lightly write such strong words. See, e.g., Gainan Avilov, Bernard Black, Dominique Carreau, Oksana Kozyr, Stilpon Nestor & Sarah Reynolds, *General Principles of Company Law for Transition Economies*, 24 JOURNAL OF CORP. LAW 190-293 (1999), English version at <http://ssrn.com/abstract=126539>; Russian version at <http://ssrn.com/abstract=127208>.

⁸⁰ United States Department of State, Bureau of European and Eurasian Affairs, *Background Note: Russia* (May 2003), at www.state.gov/r/pa/ei/bgn/3183.htm (exh. 69). See also UNITED STATES DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2002 (Russia) (Mar. 31, 2003), at www.state.gov/g/drl/rls/hrrpt/2002/18388.htm (“the judiciary continued to lack resources, suffered from corruption, and remained subject to influence from other branches of the Government, and judges were inadequately protected by the Government from threats by organized criminal defendants”) (exh. 70).

⁸¹ Speech by Ambassador Vershbow at New Economic School, Moscow (May 22, 2003) (exh. 71).

67. In a strongly worded 2009 report, the Parliamentary Assembly of the Council of Europe reported, with specific examples, multiple instances in which Russian judges who resisted instructions from superiors or government officials on how to rule (a practice known as “telephone justice”) were sanctioned and sometimes removed or forced to retire.⁸² The Council report discusses a hostile takeover case involving TogliattiAzot (known as ToAZ), in which a Kremlin official, Valeri Boyev, threatened a Supreme Arbitrazh Court judge, Yelena Valyavina, with nonrenewal if she didn’t rule as instructed. For me, the only surprise is that Judge Valyavina was willing to name Mr. Boyev. A second Arbitrazh court judge in Samara oblast was dismissed after ruling for ToAZ.⁸³

68. When sources like this speak so bluntly, one can be confident that there is a sound basis for their statements. Indeed, in *Films By Jove*, a federal court found significant “the willingness of the State Department to state publicly such conclusions [about Russian judicial corruption].”⁸⁴

69. Quotes and stories like those above can be replicated, essentially without limit. The sources I cite provide many more examples, as does my prior expert report in the federal action by Norex against many of the defendants in this action.⁸⁵

D. Actions Against Lawyers and Journalists

⁸² Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Allegations of Politically-Motivated Abuses of the Criminal Justice System in Council of Europe Member States* (adopted by the Committee on June 23, 2009), available at <http://assembly.coe.int/Documents/WorkingDocs/doc09/edoc11993.pdf>, at 4 (exh. 72). The report focuses on criminal justice, but also discusses pressure on judges in takeover cases. I also have no reason to think pressure is less in civil than in criminal cases. The term “telephone justice” refers to the common practice, in the Soviet Union, of judges taking instructions from Communist Party officials on how to decide politically sensitive cases.

⁸³ The story is reported in Natalya Krainova, *Judge Tells of Kremlin Threat*, *Moscow Times* (May 14, 2008) (exh. 73). On dismissal of the regional judge, see Council of Europe Report (2008), *supra* note 52, at 26.

⁸⁴ *Films by Jove*, 250 F. Supp. 2d 156, 207 (E.D.N.Y. 2005).

⁸⁵ Expert Declaration of Prof. Bernard Black, *Norex Petroleum Ltd v. Access Indus., Inc.*, No. 02 Civ. 1499 (S.D.N.Y.) (exh. 74).

70. Lawyers who oppose oligarchs also face risks. Their offices often get raided, as with BP's lawyers in its 2008 battle with TNK over control of TNK-BP. Some are disbarred or threatened with criminal prosecution. Some flee, as did Canadian lawyer Robert Amsterdam, who had been part of Khodorkovski's defense team.⁸⁶ Some are arrested. Some are killed. In one well-known case, U.S. investor William Browder had his visa revoked (likely because he asked too many questions as a minority director), and faced a coordinated attack on his Russian investment fund, Hermitage Capital.⁸⁷ Several of his lawyers fled the country. One who didn't, Sergei Magnitsky, was arrested, held for over a year without charges, and died in jail at age 37 after being denied medical treatment.⁸⁸ Journalists who report on the oligarchs and corruption are often threatened, beaten, or killed as well.⁸⁹ Those who were killed include Paul Klebnikov, a reporter for *Forbes* who had written about the oligarchs, including a book on Boris Berezovsky.⁹⁰

E. Raiders' Advisors and Bribe Lists

71. A particularly wonderful (or awful) source is a candid interview with Alexander Volkov, President of a Russian firm that assisted in hostile takeovers. Mr. Volkov proudly lists Alfa Group as among his clients. He explains:

⁸⁶ On Amsterdam and disbarment and other actions against Khodorkovski's Russian counsel, see Fred Weir, *Lawyers Who Defended Jailed Russian Oil Tycoon Feeling Heat from Kremlin*, Canadian Press (Oct. 19, 2005) (exh. 75); Christopher Stewart, *Enemy of the State*, Portfolio (Aug. 2008). (exh. 76).

⁸⁷ The extraordinary Hermitage facts are summarized in a declaration by Hermitage's counsel, Declaration of Neil Micklethwaite, *In re Application of Hermitage Capital Mgmt Ltd for Judicial Assistance to Conduct Discovery for Use in a Foreign Proceeding*, Civ. No. M19-116 (LTS) (S.D.N.Y.) (exh. 77). The Council of Europe Report (2009), *supra* note 52, also discusses what it calls the "almost unbelievable (but well documented) story of the attack." I was an advisor to Hermitage Capital during the 1990s with regard to two of its Russian investments.

⁸⁸ See Gregory White, *U.S. Investor's Lawyer Dies in Moscow Jail: Death of Attorney for William Browder's Heritage Capital Stokes Concerns About Reforms in Russia's Judicial System*, Wall St. J. (Nov. 18, 2009) (exh. 78).

⁸⁹ See, e.g., Lynda Edwards, *Russia Claws at the Rule of Law*, ABA Journal (July 2009) (exh. 79). For additional examples, see Black, Kraakman and Tarassova (2000), *supra* note 11, at 1774 n.79.

⁹⁰ On Klebnikov reporting on the oligarchs and his murder, see Otto Pohl, *The Assassination of a Dream*, New York Magazine (May 21, 2005) (exh. 80).

It is not possible to work in the bankruptcy sphere without giving bribes, that is why we use Arbitrazh Courts, which developed a price list for the decisions regarding declaring a company bankrupt.

Q. Please, name approximate [bribe] rates

They are different in different regions. On Kamchatka it is \$10,000. In Moscow, of course prices are much higher. . . .

Q. Who are your customers?

Actively developing [industrial groups] such as MDM, Alfa. [Last summer we] developed the [Rospan] Nosta bankruptcy project for Alfa. . . .

Q. Who, in your opinion, [supports] the present version of the [Bankruptcy] Law

Three groups, which shared between them administrative resources: MDM, Russian Aluminum and Alfa Group. Some of the heads of the regions, where not everything is stolen yet.⁹¹

72. Standard bribes have developed for particular actions. The chart below was published in 2003 and cited as realistic by key Duma members in 2003 hearings on hostile takeovers (these hearings provide a good overview of the views of Duma members on the pervasiveness of hostile takeovers, and the central role of judicial corruption in these takeovers):⁹²

Department	Type of Service	Cost
Prosecutor	close a criminal case	\$15-350,000
	bring a criminal case to order	\$50,000
	seize a shareholder register	\$20,000
Arbitrazh court	Win a hopeless case	\$10-100,000
	Seize property	\$5-15,000
Court levy	Speed up legal process	7% of the value of the suit
State Duma	A favor from a deputy	\$1-5,000
Government apparatus	Arrange a government regulation	from \$100,000 to 2% of the value in question
Ministry of Internal Affairs (security police)	illegal administrative prosecution	from \$500
	arrest with planting heroin	\$10,000-\$30,000
	forcible seizure of offices	from \$20,000

⁹¹ Olga Solovyanenko, *Price-List for Bankruptcy*, NEZAVISIMAYA GAZETA, Sept. 28, 2001 (Russian original and translation: exh. 81).

⁹² MERGERS AND ACQUISITIONS (April 2003) (exh. 82), republished in *How Much Does a Hostile Takeover Cost*, KOMMERSANT, May 13, 2003 (Russian original and translation: exh. 83), and Ilya Gorbunov, *Suppression of Swallowers: Deputies Intend to Take Control of Courts*, FINANSOVYE IZVESTIA (Business section of Izvestia (Moscow) (May 13, 2003) (Russian original and translation: exh. 84). The translation in text is “loose,” to capture meaning rather than precise wording. This price list was mentioned with approval in the *Duma Takeover Hearings* (2003) (exh. 61) at 6, 18, by Sergey Generalov, Chairman of the State Duma Committee for the Protection of Investor Rights (“[T]hese price lists are . . . close to reality, to what people, including entrepreneurs, write to us about”); and Nikolai Kovalyov, Chairman of the State Duma Committee for Combating Corruption (“You have seen the price list, it is real.”).

Tax police	arrange an audit and search	from \$10,000 to \$50,000
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73. In Moscow, I have personal knowledge of sources that advise lawyers of the bribes expected by particular judges. If both parties have similar political stature and both pay similar bribes, the judge will hopefully decide the case “fairly.”

VIII. Evidence from Multi-Country Surveys

74. The excerpts in Part VII provide a qualitative picture of the Russian judiciary. I turn next to quantitative evidence from multi-country surveys. Russia ranks poorly on all of these surveys. I report both the most recent available scores and those for the period relevant to this case. These surveys reflect the likelihood of partiality in a typical dispute, and *understate* that likelihood when an oligarch with TNK’s track record is on one side, with a small foreign company is on the other.

Transparency International Corruption Perceptions Index (CPI): In 2001, Russia ranked 82 out of 99 ranked countries, with a corruption rating of 2.4 (scale from 1 to 10, a lower score indicates *higher* corruption). As of 2010, it had fallen to 154 of 178, with a 2.1 score.⁹³

Transparency International Bribe Payers Index (BPI): In 2002, Russian companies ranked last out of 21 countries in their propensity to pay bribes to government officials. In 2008 (the most recent survey available), it again ranked last, out of 22 countries.⁹⁴

International Country Risk Guide (2002) gives Russia a “1” ranking for corruption (on a 0-6 scale, low scores are worse). Of 140 surveyed countries, only Zimbabwe earned a “0”; 19 countries shared Russia’s “1” rating.⁹⁵

Global Competitiveness Report. The 2002-2003 report ranked Russia 71 out of 80 countries for “contracts and law,” which includes a component on judicial independence, and 61/80 for corruption. In the 2010-2011 report, Russia ranks 118 of 139 for “institutions,” which includes components for corruption and judicial independence.⁹⁶

⁹³ The surveys are available at: http://www.transparency.org/policy_research/surveys_indices/cpi (the 2001 and 2010 surveys are attached as exhibits 85 and 86, respectively).

⁹⁴ http://www.transparency.org/policy_research/surveys_indices/bpi (the 2002 and 2008 surveys are attached as Exhibits 87 and 88).

⁹⁵ PRS Group, *International Country Risk Guide* (updated monthly, excerpts from May 2002)

⁹⁶ Recent Reports are available at www.weforum.org/reports (2002-2003 and 2010-2011 reports: exhs. 89 and 90).

Freedom House: In 2002, Russia ranked 5 on a 1(best) to 7 (worst) scale for political and economic liberty, which includes components for judicial independence and general corruption. In 2011, it ranked 5 for the civil liberties subindex, which includes judicial independence, corruption and other “rule of law” questions.⁹⁷

World Bank, Governance Matters: The *Governance Matters* series aggregates data from all available surveys. In the most recent (2008) survey, Russia scored -0.91 (on a -2.5 to +2.5 scale) for Rule of Law, including judicial independence, and -0.98 for control of corruption in general. In 2002, its scores were 0.89 and -0.91.⁹⁸

IX. Conclusion

75. There is no reasonable basis for doubting that:

- TNK’s controllers are among the most powerful oligarchs in Russia;
- TNK is a notorious and aggressive user of “administrative resources” [read: judicial and administrative corruption];
- TNK is a notorious and aggressive practitioner of hostile takeovers, in which judicial corruption is an essential element;
- Corruption, as practiced by TNK, includes both bribes and threats. Bribes alone would not have allowed TNK to defeat Sidanko in the battle over Chernogorneft and Kondpetroleum;
- TNK fabricated minutes of a Yugraneft shareholder meeting, and used these fake minutes as cover for an armed takeover of Yugraneft’s offices and oil fields;
- The flagrantly pro-TNK decisions in the Chernogorneft and Yugraneft takeovers were without basis in Russian law and bear the hallmarks of corruption;
- Parties with far more clout than Norex, including BP, Rosneft, and Sidanko, have found themselves unable to get fair decisions in the Russian courts in disputes with TNK.

76. Corruption, violence, and use of administrative resources have long been central to the power and wealth of TNK and its principals. Blavatnik and Vekselberg were survivors of Russia’s notorious “aluminum wars” of the 1990s (fought with gun battles for control of plants and assassination of opponents). These battles led to consolidation of this industry under Rusal

⁹⁷ The 2000 report (exh. 91) notes that “[t]he judiciary is not fully independent and is subject to political interference, corruption, inadequate funding, and a lack of qualified personnel.” Data and index descriptions are taken from various pages on the Freedom House website, at www.freedomhouse.org.

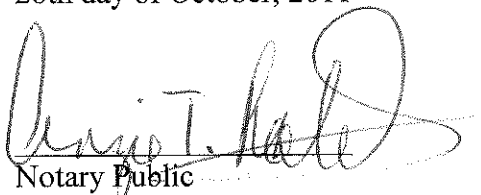
⁹⁸ Daniel Kaufmann, Aart Kraay & Massimo Mastruzzi, *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008* (working paper 2009), at <http://ssrn.com/abstract=1424591> (exh. 92).

(Russian aluminum), in which they were major shareholders.⁹⁹ Their connections with Privatization Minister Alfred Koch were central to AAR being chosen to acquire (Russian company TNK) during its privatization. TNK then had to fight off a raider, Mikhail Cherniy, to retain its principal Samotlor oil field, in a battle fought with guns, assassinations, and manipulation of shareholder meetings.¹⁰⁰

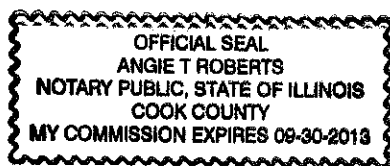
77. Based on everything I know about TNK and its principals, their power and connections (especially but not only in Tyumen oblast); their tactics in attacking and acquiring other companies and defending against attacks by other oligarchs, the bizarre decisions by the Tyumen and Khanty-Mansiysk courts in the Chernogorneft, Kondpetroleum and Yugraneft takeovers; and more generally, the power and wealth of the major Russian oligarchs, the nature of Russian hostile takeovers, and Russian judicial and administrative corruption, I believe that Norex could not have obtained a fair decision in Russia against TNK at the time of the Yugraneft takeover, nor could it obtain a fair decision today.

Sworn to me before this

26th day of October, 2011


Notary Public


Bernard S. Black



⁹⁹ Timofey Dzyadko, Valeriy Igumenov and Nikolai Kononov, *Advantages of an Emigrant: How Leonard Blavatnik Built a \$10 billion Business with the Help of an American Passport*, Forbes Russia (Nov. 3, 2011), at <http://www.forbes.ru/forbes/issue/2011-11/75305-preimushchestvo-emigranta-kak-leonard-blavatnik-postroil-biznes-v-10-mlrd> (Russian original and English translation: exh. 93).

¹⁰⁰ *Id.*

Appendix A: Curriculum Vitae

CURRICULUM VITAE

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EMPLOYMENT

- | | |
|------------|--|
| 2010- | Northwestern University: Nicholas D. Chabraja Professor, School of Law and Kellogg School of Management |
| 2004-2010 | University of Texas: Hayden W. Head Regents Chair for Faculty Excellence, School of Law, Professor of Finance, McCombs School of Business, and Director, Center for Law, Business, and Economics |
| 1998-2004: | Stanford Law School: Professor of Law (George E. Osborne Professor 2003-2004) |
| 1988-1998: | Columbia Law School: Professor of Law (Assoc. Prof. 1988-1991) |
| 1994-1995: | Senior Policy Advisor (resident in Moscow, Russia), Harvard Institute for International Development, Russia Legal Reform Project |
| 1987-1988: | Counsel to Commissioner Joseph A. Grundfest, Securities and Exchange Commission |
| 1983-1987: | Private practice with Skadden, Arps, Slate, Meagher & Flom, New York, specializing in mergers and acquisitions, securities law, and corporate law |
| 1982-1983: | Law clerk to Judge Patricia M. Wald, U.S. Court of Appeals, District of Columbia Circuit |

PRINCIPAL COURSES

Corporations
Corporate Finance
Corporate Acquisitions
Health Law
Law and Economics

PROFESSIONAL BOOKS

Bernard Black, David Hyman, Charles Silver, Kathryn Zeiler & William Sage, **To Sue is Human: A Profile of Medical Malpractice Litigation** (Yale Univ. Press, forthcoming 2012)

Бернард Блэк, с соавторами Брайан Чевфинс, Мартин Гелтер, Матиас Симс, Ричард Нолан, Хва-Джин Ким, Анастасия Фарукшина, и Юридическая фирма «Линия права,» **Правовое регулирование ответственности членов органов управления: анализ мировой практики** (Альпина Паблишерз, 2010, 332 стр.) (<http://ssrn.com/abstract=1528182>)¹⁰¹

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¹⁰¹ Bernard Black (main author), with Anastasiya Farukshina, Brian Cheffins, Martin Gelter, Hwa-Jin Kim, Richard Nolan, Matthias Siems and Linia Prava law firm (co-authors), **Legal Regulation of the Liability of Members of Management Organs: An Analysis of International Practice** (Alpina Publishers 2010, 332 pp.) (in Russian).

¹⁰² Russian version published as Комментарий Федерального Закона об Акционерных Обществах (Издательство Лабиринт (Labirint Press) 1999, 720 pp.) (Russian version at <http://ssrn.com/abstract=246670>).

¹⁰³ Received Pacific Basic Finance Journal Award as best paper presented at the Asia Finance Association 2007 annual meeting.

Vladimir Atanasov, Bernard Black & Conrad Ciccotello, *Self-Dealing by Corporate Insiders: Legal Constraints and Loopholes*, in Brett McDonnell and Claire Hill, eds., **Research Handbook on the Economics of Corporate Law** (forthcoming 2011) (<http://ssrn.com/abstract=1714591>)

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¹³⁸ Published in French as **Indépendance du conseil et performance corporative**, 1(1) **Gouvernance** 68-95 (2000). Chosen as one of top ten corporate and securities law articles for 1999 (survey conducted by Robert Thompson, at <http://law.vanderbilt.edu/faculty/faculty-personal-sites/robert-thompson/index.aspx>).

¹³⁹ Reprinted in **Corporate Governance Today: The Sloan Project on Corporate Governance at Columbia Law School** 1-36 (1999); Lowell Busenitz, Harry Sapienza & Mike Wright eds., **Venture Capital** ___-___ (2002); Joseph McCahery & Luc Renneboog eds., **Venture Capital Contracting and the Valuation of High Technology Firms** 29-59 (2003), Robert Watson ed., **Governance and Ownership** 68-102 (2005).; and Philip Auerwald and Ant Bozkaya, **Financing Entrepreneurship** xxx-yyy (2008),

¹⁴⁰ Also published in Roy Smith, ed., **The Power and Influence of Pension and Mutual Funds** ___-___ (1998) and in **Corporate Governance Today: The Sloan Project on Corporate Governance at Columbia Law School** 291-316 (1999).

¹⁴¹ Also published in **Corporate Governance Advisor**, Jan./Feb. 1999, at 14-22. Shorter version published as *Does Shareholder Activism Improve Corporate Performance?*, **The Corporate Board** 1-6 (Mar./Apr. 1998).

- 1997 *The Board Game*, **Chief Executive** 82-83 (Oct. 1997)
- 1996 Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 **Harvard Law Review** 1911-1981 (1996) (<http://ssrn.com/abstract=10037>)¹⁴²
- Bernard Black, Reinier Kraakman & Jonathan Hay, *Corporate Law from Scratch*, in Roman Frydman, Cheryl W. Gray & Andrzej Rapaczynski eds., **Corporate Governance in Central Europe and Russia, vol. 2: Insiders and the State** 245-302 (1996) (conference version of *A Self-Enforcing Model of Corporate Law*)
- 1995 *The Russian Civil Code: A Straightjacket for Joint Stock Companies*, **International Practitioner's Notebook** 33-36 (August 1995)
- 1994 *A Proposal for Implementing Retail Competition in the Electricity Industry*, **Electricity Journal** 58-72 (Oct. 1994)
- Bernard Black & John Coffee, *Hail Britannia?: Institutional Investor Behavior under Limited Regulation*, 92 **Michigan Law Review** 1997-2087 (1994) (<http://ssrn.com/abstract=276991>)¹⁴³
- 1993 Bernard Black & Richard Pierce, *The Choice Between Markets and Central Planning in Regulating the U.S. Electricity Industry*, 93 **Columbia Law Review** 1339-1441 (1993), reprinted in 18 **Public Utilities Law Anthology** (1994)
- Next Steps in Corporate Governance Reform: 13(d) Rules and Control Person Liability*, in Kenneth Lehn & Robert Kamphuis eds., **Modernizing U.S. Securities Regulation: Economic and Legal Perspectives** 225-238 (1993)¹⁴⁴
- 1992 *Next Steps in Proxy Reform*, 18 **Journal of Corporation Law** 1-55 (1992), reprinted in 26 **Securities Law Review** 397-451 (1994)
- Institutional Investors and Corporate Governance: The Case for Institutional Voice*, 5 **Journal of Applied Corporate Finance** 19-32 (Fall 1992)¹⁴⁵
- Agents Watching Agents: The Promise of Institutional Investor Voice*, 39 **UCLA Law Review**

¹⁴² Published in Spanish in __ **Revista Argentina de Teoria Juridica** ___-___ (2003). Chosen as one of top ten corporate and securities law articles for 1996 (survey conducted by Robert Thompson, at <http://law.vanderbilt.edu/faculty/faculty-personal-sites/robert-thompson/index.aspx>).

¹⁴³ Reprinted in 37 **Corporate Practice Commentator** 245-337 (1995) and in Kevin Keasey ed., **Corporate Governance** xxx-yyy (1998); conference version published in John Coffee, Ronald Gilson & Louis Lowenstein eds., **Meaningful Relationships: Institutional Investors, Relational Investing, and the Future of Corporate Governance** ___-___ (1998). Chosen as one of best securities law articles for 1994 (survey conducted by Robert Thompson, at <http://law.vanderbilt.edu/faculty/faculty-personal-sites/robert-thompson/index.aspx>).

¹⁴⁴ Also published in **Journal of Applied Corporate Finance** 49-55 (Winter 1993); and 9 **Bank & Corporate Governance Law Reporter** 751-757 (1992).

¹⁴⁵ Reprinted in **Studies in International Corporate Finance and Governance Systems** 160-173 (Donald Chew ed. 1997).

- 811-893 (1992) (<http://ssrn.com/abstract=1132062>)¹⁴⁶
The Value of Institutional Investor Monitoring: The Empirical Evidence, 39 **UCLA Law Review** 895-939 (1992) (<http://ssrn.com/abstract=1132063>)
- 1991 *Disclosure, Not Censorship: The Case for Proxy Reform*, 17 **Journal of Corporation Law** 49-86 (1991)
- 1990 *Shareholder Passivity Reexamined*, 89 **Michigan Law Review** 520-608 (1990) (<http://ssrn.com/abstract=366820>)
Is Corporate Law Trivial?: A Political and Economic Analysis, 84 **Northwestern University Law Review** 542-597 (1990) (<http://ssrn.com/abstract=329240>)
- 1989 *Bidder Overpayment in Takeovers*, 41 **Stanford Law Review** 597-660 (1989); reprinted in 22 **Securities Law Review** 381-444 (1990)
- 1988 Bernard Black & Joseph Grundfest, *Shareholder Gains from Takeovers and Restructurings Between 1981 and 1986*, 1 **Journal of Applied Corporate Finance** 5-15 (Spring 1988)
- 1982 Project, *Law Firms and Lawyers with Children: An Empirical Analysis of Family/Work Conflict*, 34 **Stanford Law Review** 1263-1308 (1982)
- 1981 Note, *A Model Plain Language Law*, 33 **Stanford Law Review** 255-300 (1981)
- 1979 Robert Westervelt, James Culbertson & Bernard Black, *Discovery of the Immobility of Electron-Hole Drops in Germanium at Low Excitation*, 42 **Physical Review Letters** 267-272 (1979)

WORK IN PROGRESS

Zenon Zabinski and Bernard Black, *The Effect of Tort Reform on Health Care Quality: Evidence from Texas* (working paper 2011), at <http://ssrn.com/abstract=xxxxxxx>.

Healthcare Associated Infections and Infection Process Control Reporting

David Hyman, Bernard Black, and Charles Silver, *The Effects of Pretrial Process Reform: Evidence from Texas Medical Malpractice Cases* (working paper July 2008) (<http://ssrn.com/abstract=1xxxxxx>)

Myungho Paik, Bernard Black, David Hyman, and Charles Silver, *Who Pays Punitive Damages* (working paper 2009)

Bernard Black, Hwa-Jin Kim & Woochan Kim, *Korean Corporate Governance: Progress Report and Reform Recommendations* (working paper May 2005) (<http://ssrn.com/abstract=xxxxxxx>)

N. Balasubramanian, Bernard Black, Dhammika Dharmapala & Vikramaditya Khanna, *Does*

¹⁴⁶ Excerpted in Thomas Joo, ed., **Corporate Governance: Law, Theory, and Policy** 282-294 (2004).

Corporate Governance Predict Firms' Market Values: Evidence from India (working paper forthcoming 2008) (<http://ssrn.com/abstract=xxxxxx>)

Бернард Блэк & Анастасия Фарукшина, Размер ответственности членов органов управления общества: международный опыт, **Корпоративные Споры** (forthcoming 2009) (Bernard Black & Anastasiya Farukshina, *The Measure of Damages for Corporate Directors: International Experience*)

Vladimir Atanasov, Bernard Black & Conrad Ciccotello, *Option Megagrants* (working paper forthcoming 2008) (<http://ssrn.com/abstract=xxxxxx>)

The Elements of Corporate Governance Risk: Evidence from Russian Firms (with Inessa Love and Andrei Rachinski)

Outside Director Liability: Market and Regulatory Equilibrium (with Brian Cheffins and Michael Klausner) (plus book project including this and our two prior papers on outside director liability)

Corporate Law and Residual Claimants (working paper May 2001) (partial draft at <http://ssrn.com/abstract=1528437>) (plus book project including the next two papers)

Employees as Residual Claimants: What Control Rights Should They Have?

Path-Dependent Competition for Corporate Charters: Manager Choice, Shareholder Veto (with Reinier Kraakman)

An Information Asymmetry Analysis of Lock-Up Options

LANGUAGES

Native English

Good reading and conversational fluency in Russian

LEGISLATIVE AND REGULATORY TESTIMONY AND ADVICE

Non-U.S. Advice

- Policy advisor to the Russian Federal Service on the Capital Market on (i) a draft law on insider trading and market manipulation, and (ii) amendments to the Civil Code, Law on Joint Stock Companies, and Law on Limited Liability Companies with respect to fiduciary duties of directors, managers, and controlling shareholders, 2006
- Policy advisor to the Ministry of Justice of Indonesia on company law reform, 2000
- Policy advisor to the Ministry of Justice of South Korea on corporate governance, 1999-2000
- Policy advisor to the Government of Mongolia 1996-2001 on company law and securities law; principal drafter for *Law on Companies* (1999)
- Policy advisor (1997-1999) to the Government of Vietnam for *Law on Enterprises* (1999)
- Policy advisor for draft Armenian law on joint stock companies, 1999

- Policy advisor (1998-2000) on company law and mutual fund law to the Ukrainian Securities Commission
- Policy advisor (1993-1997) on company law, securities law, investment fund law, and privatization of state-owned enterprises to the Russian Privatization Ministry (Госкомимущество) and the Russian Federal Securities Commission (Федеральная комиссия по ценным бумагам); advisor on *Law of the Russian Federation on Limited Liability Societies* (1998); advisor and co-drafter for *Law of the Russian Federation on Joint Stock Companies* (1996); advisor and co-drafter of *Decree of the President of the Russian Federation on Unit Investment Funds* (issued 1995), portions incorporated into *Law of the Russian Federation on Investment Funds* (2002)

U.S. and State Advice

- Testimony before Texas State Senate, State Affairs Committee, on medical malpractice reform (2008)
- Written testimony to the Securities and Exchange Commission on proposed amendments to the proxy rules (1997)
- Oral and written testimony on *Electricity Markets - 2005*, before the New York Public Service Commission (1995)
- Oral and written testimony on *What's at Stake in Retail Wheeling*, before the California Public Utilities Commission (1994)
- Written testimony on *Proxy Reform* to Securities and Exchange Commission (1991-1992)
- Participant, Securities and Exchange Commission Roundtable on *Corporate Governance and American Economic Competitiveness* (1992)
- Written testimony on *Unbundled Stock Units* to Securities and Exchange Commission (1989)

OTHER PROFESSIONAL ACTIVITIES

- Managing director (1998-), Social Science Research Network and its Legal Scholarship Network (family of electronic journals that publish abstracts of working papers in different areas of law, and related online database)
- Editor (1995-), Corporate and Takeover Law Abstracts, Corporate Governance Law Abstracts, Law and Finance Abstracts, and Securities Law Abstracts (electronic journals of abstracts published by Legal Scholarship Network)
- Research Fellow, European Corporate Governance Institute (2005-)
- Founding Board Member and Senior Research Associate, Global Corporate Governance Academic Network (2004-)
- Member, Board of Directors of Kookmin Bank (largest Korean commercial bank), and its Risk Management and Management Strategy Committees (2003-2005)

- Co-director, Directors' Consortium (director training program run by Stanford Law School and Chicago and Wharton Business Schools) (2002-2004)
- Editorial board member: *M&A Lawyer; Corporate Ownership and Control*.
- Advisory board member: *Journal of Korean Law; University of Bologna Center for Law and Economics; Fischer Center for Corporate Governance and Capital Markets Regulation at Tel Aviv University*
- Member, Board of Directors of the American Law and Economics Association (2012-2015).
- Member: Society of Healthcare Epidemiologists of America (2011-)
- Member: Quality and Value Interest Group of AcademyHealth (2011-)
- Member (1995-1998) of the Committee on the Independent States of the Former Soviet Union of the Association of the Bar of the City of New York
- Member, Board of Directors (1989-1996) and Chair of the Audit Committee of Homeland Holding Corporation and its principal subsidiary, Homeland Stores (mid-sized publicly traded corporation)
- Chair (1994-1995) and chair-elect (1993-1994) of the Business Associations section of the Association of American Law Schools
- Member (1989-1992) of the Corporation Law Committee of the Association of the Bar of the City of New York
- *Bar memberships*: New York; Washington, D.C.; U.S. Supreme Court
- *Professional associations (not listed above)*: American Finance Association; American Law & Economics Association; American Bar Association; American Society of Law, Medicine & Ethics; New York State and District of Columbia Bars
- *Served as referee for*: Economic Inquiry; Financial Management, International Review of Law & Economics; Journal of Banking and Finance, Journal of Corporate Finance, Journal of Finance, Journal of Financial Economics; Journal of Law, Economics & Organization; Journal of Legal Studies; Journal of Risk and Insurance, Research in Law & Economics; National Science Foundation; Sloan Foundation.

CONFERENCES ORGANIZED

- Founding chairman, *Society for Empirical Legal Studies* (2006-2011)
- Organizer or co-organizer:
 - Workshop on Research Design for Causal Inference* (Northwestern Law School 2010-) and *Research Design for Causal Inference: Bayesian Methods* (Northwestern Law School (2011-)
 - Conference on Empirical Legal Studies*
 - First annual conference: Univ. of Texas Law School, 2006

Sixth annual conference: Northwestern Law School, 2011

Stanford Law School, *Conference on Cross-Listing of Emerging Market Companies on Foreign Exchanges* (2002)

Columbia Law School, *Conference on Alternative Perspectives on Corporate Governance* (1998)

EDUCATION

Stanford Law School -- J.D. 1982: Senior projects editor, *Stanford Law Review*; Sontheimer 3d-Year Honor (2d-highest 3-year GPA); Second-Year Honor (highest 2-year GPA); Johnson & Swanson Law Review Award

University of California at Berkeley: M.A. (A.B.D. in physics) 1977

Princeton University: A.B. 1975 magna cum laude in physics

PRESENTATIONS AT WORKSHOPS AND SEMINARS

(no of times or recent dates shown)

American Bar Association Annual Meeting
American Bar Foundation (2010)
American Law & Econ Ass'n (13) (thru 2011)
ALEA (by coauthor) (7) (thru 2011)
Amer. Soc. Law, Med. & Ethics, Annual Health
Law Professors Conf (3, 2010, 2011)
Asian Institute of Corporate Governance (2)
Association of American Law Schools (5, 2011)
Ass'n for Comparative Economic Studies
Atlanta Finance Forum
Austin Bar Association
Australian National University
BSI Gamma Foundation
Brazil Securities Commission (CVM)
Canadian Law & Econ Association (7, 2011)
CLEA (by coauthor) (5) (thru 2011)
Chicago-Kent Law School
Columbia Business School
Columbia Law School (3)
Columbia Univ. Department of Economics
Conf. on Empirical Legal Studies (1) (2010)
CELS by coauthor) (8) (thru 2010)
Cornell Law School
Dartmouth Univ., Tuck School of Business
Duke Law School (2009)
European Finance Association (2)
EFA (by coauthor) (1)
Euro. Fin. Mgmt Ass'n Annual Meeting (2)
Fin. Mgmt Ass'n Annual Meeting
Fried, Frank, Harris, Shriver & Jacobsen
George Mason Law School (2)
Georgetown Law Center (2)
George Washington Law School
Georgia State Law School
Griffith University Law School, Australia
Harvard Business School
Harvard Law School (3)
Hong Kong Baptist Univ (2009)
Hong Kong Inst. Chartered Pub. Acc'ts (2009)
Hong Kong Securities & Futures Comm'n (2009)
Institutional Investor Forum
International Monetary Fund (2)
Int'l Society for New Institutional Economics
Kellogg School of Management (2009)
Kookmin Bank, Korea
Korea Corporate Governance Service
Korean Securities Law Institute
Korean Stock Exchange
Law and Society Association
Malaysian Securities Commission (2)
Michigan Law School
Moody's
Nanyang Business School, Singapore
National Bureau of Economic Research (2)
New Economic School, Moscow, Russia (2)
New York Stock Exchange
New York Univ., Stern School of Business (2)
Northeastern Univ., Gorbachev Foundation
Northwestern Law School 4 (thru 2011)
Northwestern Univ Inst. Policy Research (2011)
Princeton Univ., Wilson School of Public Affairs
Sao Paulo Stock Exchange, Brazil
Seoul Nat'l Univ, Korea, School of Business
Singapore Conference on Int'l Business Law
Society of Healthcare Epidemiologists of America
(2011)
Stanford Business School
Stanford Center Russian & East European Studies
Stanford Law School (8)
Texas A&M College of Business
UCLA/USC Corporate Gov Roundtable (3)
U.S. Department of Justice, Antitrust Division
U.S. Securities & Exchange Commission
Univ. of Cal.-Berkeley, Boalt Hall of Law (2)
Univ. of Cal.-Berkeley, Haas School of Bus. (2)
Univ. of Chicago Law School
Univ. of Colorado - Boulder, College of Business
Univ of Georgia, Terry College of Business (2010)
Univ of Illinois Law School (2010)
Univ. of Melbourne Law School, Australia
Univ. of Miami Law School
Univ. of Michigan Law School
Univ. of Michigan, Ross School of Business
Univ. of Missouri - Columbia Law School
Univ. of Pennsylvania Law School
Univ. of Rochester, Simon School of Business
Univ. of Sao Paulo, Brazil, Law Faculty
Univ. of Southern California Law Center (2)
Univ. of Southern Calif., Marshall School of Bus.
Univ. of Texas, McCombs School of Business (4)
Univ. of Texas Law School (6)
Vanderbilt Law School
Woo Yun Kang Jeong & Han
World Bank (4)

CONFERENCES, SPEECHES, OP-EDs and COMMENTS

- 2011 Presentation of *Does Hospital Infection Reporting Affect Actual Infection Rates, Reported Rates, or Both?*, Univ. of British Columbia Symposium on Mandatory Reporting of Healthcare Associated Infections: Can U.S. Experience Inform Canadian Policy (May 2011); Quality Interest Group meeting at 2011 Academy Health Annual Conference (June 2011)
- Presentation of *Causal Inference Strategies in Corporate Governance Research*, Keynote speaker, Third International Conference on Corporate Governance in Emerging Markets (Seoul, Korea, 2011); Keynote Public Lecture, Canadian Law and Economics Association 2008 Annual Meeting (Toronto, Canada, Sept. 2008); Keynote presentation, 7th Brazil Finance Society Annual Meeting (Sao Paulo, Brazil, July 2007)
- Presentation on *Due Diligence: Failures and Remedies*, Symposium on Corporate Governance and Ethics in a Post-Crisis World (Notre Dame Law School April 2011); Osler Hoskins lecture at Queen's University Faculty of Law (March 2010); Western Ontario Faculty of Law (Nov. 2010); Abraham Pomerantz Lecture (Brooklyn Law School, March, 2009); keynote speech at European Financial Management Conference on Corporate Governance and Control (Judge Business School, Cambridge Univ., April 2009)
- 2010 Discussant for Martijn Cremers and Allen Ferrell, *Thirty Years of Shareholder Rights and Firm Valuation*, Yale-ECGI-Oxford Conference on Corporate Governance and Performance: Causation? (Nov. 2010)
- Presentation of *Is Delaware Losing Cases*, Vanderbilt Law School Conference on Corporate Law (Oct. 2010)
- Lecture on *Bloopers: How (Mostly) Smart People Get Causal Inference Wrong*, Workshop on Research Design for Causal Inference (Aug. 2010) (<http://ssrn.com/abstract=1663404>)
- Presentation of *The Value of Board Independence in an Emerging Market: A Multiple Identification Strategies Approach Using Korean Data*, 2010 University of Alberta Frontiers in Finance Conference; 19th Annual Conference on Financial Economics and Accounting (Nov. 2008).
- 2009 Lecture on *Interpreting DiD and IV Estimates: ATE, LATE, ATET, and all That*, Conference on Empirical Legal Studies (Nov. 2009) (<http://ssrn.com/abstract=1528462>)
- Organizer of Focus Session on *What Do We Really Know About How Corporate Governance Affects Firm Performance*, and Presentation of *Incentives Not to Know in the Market for Mortgage-Backed Securities, The Effect of Board Structure on Firm Value: A Multiple Identification Strategy Approach Using Korean Data*, and *How Corporate Governance Affects Firm Value: Evidence on Channels from Korea*, Centre for Economic Policy Research, European Summer Symposium in Financial Markets (Gersensee, Switzerland, July 2009)
- Presentation of *Corporate Governance in Brazil*; comment on Qing Yang, Yuning Xue, and Besim Yurtoglu, *Does the Strategic Role and the Control Role of the Board of Directors Exist in Chinese Listed Companies*, Second International Research Conference on Corporate Governance in Emerging Markets (Sao Paulo, Brazil, July 2009).
- Presentation of *How Corporate Governance Affects Firm Value: Evidence on Channels from Korea*, 8th Darden-World Bank International Finance Conference (Darden School of Business, Univ. of Virginia, March 2009)
- 2008 Keynote speaker, Brazilian Corporate Governance Institute, 9th Annual Conference: Ownership In Evolution: New Forms of Corporate Control (Sao Paulo, Brazil, Dec. 2008)
- Commentator on Cecile Carpentier, Douglas Cumming and Jean-Marc Suret, *The Value of Capital Market Regulation and Certification: IPOs versus Reverse Mergers*, Conference on Empirical Legal Studies (Cornell Law School, 2008)
- Presentation on *The (Possible) Link Between Health Care Information and Quality Innovation*, Kaufman Foundation Summer Legal Institute (San Diego, July 2008)
- Presentation on Debt Decoupling, INSOL conference (Chicago, July 2008)

- Presentation of *Private Enforcement of Corporate Law: A Comparative Empirical Analysis of the UK and the US*, ECGI Corporate Governance Conference (Oxford, June 2008)
- Presentation of *Debt, Equity and Hybrid Decoupling*, Conference on Credit Risk Analysis, Mitigation and Transference (Chicago, Feb. 2008)
- 2007 Presentation of *Unbundling and Measuring Tunneling*, Columbia Law School Conference on Berle-Means Revisited (Dec. 2007)
- Presentation of *How Does Law Affect Finance?*; comment on Vidhi Chhaochharia & Luc Laeven, *Corporate Governance Norms and Practices*, International Research Conference on Corporate Governance in Emerging Markets (Istanbul Turkey, Nov. 2007).
- Keynote speaker on *Optimal Board Structure*, Amsterdam Center for Corporate Finance (Amsterdam, Nov. 2007)
- Lecture on *Instrumental Variables: A Simpleminded Introduction*, Conference on Empirical Legal Studies (Nov. 2007) (<http://ssrn.com/abstract=1528459>)
- Presentation of *Private Enforcement of Corporate and Securities Law: A Comparative Empirical Analysis of the UK and the US*, Yale School of Management and Oxford Business School Conference on Shareholders and Corporate Governance (Oxford, Oct. 2007)
- Presentation of *Empty Voting and Other Decoupling Strategies II*, 6th European Company Law and Corporate Governance Conference: Challenges for the Control of Corporate Europe (Lisbon, Spain, Oct. 2007)
- Organizer and presenter (*Empty Voting and Other Decoupling Strategies*), special session on Shareholder Activism and Corporate Governance, European Financial Management Association 2007 Annual Meeting (Vienna, Austria, June 2007)
- Participant, Millstein Center for Corporate Governance and Performance at Yale School of Management and Aspen Institute Business and Society Program Roundtable on *Corporate Governance: Creating Value for the Long-Term* (New Haven, May 2007)
- Comment on Tom Chang and Antoinette Schoar, *The Effect of Judicial Bias in Chapter 11 Reorganizations* (Conference on Financial Contracting: Theory and Evidence, Mannheim, Germany, April 2007)
- Keynote speaker on *Empty Voting*, European Corporate Governance Institute 2007 Annual Meeting (Apr. 2007) (Frankfurt, Germany)
- Presentation of *Can Corporate Governance Reforms Increase Firms' Market Values? Event Study Evidence from India*, Univ. of Virginia Law School Conference on Law and Finance (Mar. 2007)
- Webcast on *Empty Voting - How Borrowed Shares Can Swing Votes*, National Investor Relations Institute (Mar. 2007)
- Comment on Helen Bowers and William Latham, *Information Asymmetry, Litigation Risk, Uncertainty and the Demand for Fairness Opinions: Evidence from U.S. Mergers and Acquisitions, 1980-2002* (Frontiers of Finance conference, Curacao, Jan. 2007)
- 2006: Presentation of *The Value of Board Independence in an Emerging Market: A Multiple Identification Strategies Approach Using Korean Data*, Conference on Mel Eisenberg's The Structure of the Corporation: Thirty Years Later (Columbia Law School, Nov. 2006)
- Presentation of *An Overview of Indian Corporate Governance Practices*, International Corporate Governance Forum-Asian Centre for Corporate Governance International Conference on Corporate Governance: Role of Corporate Governance in Improving India's Investment Climate (Mumbai, India, Nov. 2006)
- Presentation of *Hedge Funds, Insiders, and Empty Voting: Decoupling of Economic and Voting Ownership in Public Companies*, Boundaries of SEC Regulation Conference at Financial Economics Institute,

- Claremont-McKenna College (Feb. 2006); Weil, Gotshal & Manges Roundtable at Yale Law School (Apr. 2006)
- 2005: Invited panelist on *The Future of Corporate Governance Research*, Financial Management Association annual meeting (Oct. 2005)
- Lecture on *Takeover defenses: US/UK Experience and Implications for Korea*, Korea Corporate Governance Service conference on The Market for Corporate Control and Corporate Governance (Sept. 2005)
- Presentation on *Executive Compensation: How to Stop the Pay Spiral*, IC² Institute Conference in 21st Century Governance for Early Stage Companies (Austin, TX, June 2005)
- Presentation of *Korean Corporate Governance: A 2005 Progress Report*, Korea University conference on Korea Toward the Next Hundred Years: Reality and Vision (Seoul, Korea, May 24, 2005)
- Presentation of *Does Corporate Governance Predict Firms' Market Values: Time-Series Evidence from Korea*, 4th Asian Corporate Governance Conference (Seoul, Korea, May 19, 2005)
- Presentation of *Ranking Law Schools: Using SSRN to Measure Scholarly Performances*, in Symposium, *The Next Generation of Law School Rankings* (Apr. 15, 2005)
- Commentator on John Coffee, *Gatekeepers: The Role (and Reform) of the Professions in Corporate Governance*, Columbia Law School, First Annual Deals Roundtable: Gatekeepers and Corporate Governance (Apr. 1, 2005)
- Presentation of *Stability, Not Crisis: Medical Malpractice Claim Outcomes In Texas, 1988-2002*, AEI Health Policy Forum, Is There a Crisis in Medical Malpractice? New Evidence from Texas (March 31, 2005)
- Bernard Black, Charles Silver, David Hyman & William Sage, *False Diagnosis*, **The New York Times**, March 10, 2005 (editorial based on *Stability, Not Crisis: Medical Malpractice Claim Outcomes In Texas, 1988-2002*) (<http://ssrn.com/abstract=xxxxxx>), expanded version published as *Hunting Down the Facts on Medical Malpractice*, **Austin American-Statesman**, March 14, 2005
- Bernard Black, Brian Cheffins & Michael Klausner, *Why Directors Damages May Harm Investors*, **Financial Times**, Jan. 20, 2005, at 19, and **Financial Post (Canada)**, Jan. 21, 2005, at xx (<http://ssrn.com/abstract=xxxxxx>) (editorial based on our work on outside director liability)
- Commentator on Eric Talley & Gudrun Johnsen, *Corporate Governance, Executive Compensation, and Securities Litigation*, First Annual NYU/Penn Conference on Law and Finance (Feb. 2005)
- Interview, *Corporate Governance Ups Co Value*, **Economic Times** (business section of **India Times**), Jan. 27, 2005, at (<http://economictimes.indiatimes.com/articleshow/1001951.cms>)
- Presentation of *Does Corporate Governance Affect Firms' Market Values? Evidence from Korea*, Roundtable on Financing of Early Stage and Emerging Growth Companies, Foreign Investment Capital and the Indian Venture Capital Markets (Bangalore, India, Jan. 2005)
- Presentation of *Predicting Firms' Corporate Governance Choices: Evidence from Korea*, Seminar on Venture Capital and Corporate Governance - India and the USA (Hyderabad, India, Jan. 2005)
- 2004: Commentator on Jerry Davis and E. Han Kim, *Would Mutual Funds Bite the Hand that Feeds Them? Business Ties and Proxy Voting*, Journal of Financial Economics and Federal Reserve Bank of New York conference on Agency Problems and Conflicts of Interest in Financial Intermediaries (Dec. 2004)
- Interview about *Outside Director Liability*, published as *Worried About Shareholder Suits? Fuhgedaboudit!*, **Corporate Board Member**, March/April 2004, at 20-25
- Panelist, Columbia Law School Interdisciplinary Workshop on Law, Finance, and Political Economy (April 2004)
- Presentation of *Liability Risk for Outside Directors: A Cross-Border Analysis*, Across the Board: An

- Interdisciplinary Conference on Corporate Governance, Univ. of Texas, McCombs School of Business (April 2004)
- Comment on Marcus Cole, *The Preference for Preferences*, Willamette Law School Conference on Venture Capital After the Bust (March 2004)
- 2003: Presentation of *Predicting Firms' Corporate Governance Choices: Evidence from Korea*, KDI Conference on Corporate Governance and Capital Market in Korea (Dec. 2003); comments on Sung Wook Joh & Kayoun Yi, *Does Market React to Public Disclosure on Related Party Transactions in Korea*, and Choong-Keel Lee, *The Directors' Duties Regarding Compliance and Governance and the Operation of the Corporate Personality in the Context of a Financial Group*. Comments published in Young-Jae Lim ed., **Corporate Governance and Capital Market in Korea** (forthcoming 2005)
- Commentator on Lawrence Hamermesh, *Premiums in Stock-for-Stock Mergers*, University of Pennsylvania Law School, Symposium on Control Transactions (Feb. 2003)
- Presentation of *Institutional Reform in Transition*, Asian Development Bank Institute, 4th Asian Policy Forum on Corporate Governance in China (Oct. 2002); Stanford Institute for International Studies Conference on Corruption: its Consequences and Cures (Jan 2003)
- 2002: Commentator on Darius Miller, *ADRs, Analysts, and Accuracy*, Stanford Law School, Conference on Cross-Listing of Emerging Market Companies on Foreign Exchanges (Nov. 2002)
- Presentation of *Outside Director Liability*, Columbia Law School Conference on Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals (Oct. 2001; Apr. 2002)
- Participant, National Bureau of Economic Research Conference on Corporate Alliances, Cambridge MA (Nov. 2001) & Islamorada FL (Mar. 2002)
- 2001: Keynote speaker on *The Role of Self-Regulation in Supporting Korea's Securities Markets*, Korea Stock Exchange International Conference on Self-Regulatory Institutions in the Korean Securities Markets (Dec. 2001)
- Commentator, Stanford/Yale Junior Faculty Forum (June 2001)
- Presentation on *The Core Fiduciary Duties of Directors*, Third Asian Roundtable on Corporate Governance (OECD & World Bank, Singapore, April 2001)
- Presentations of *The Corporate Governance Behavior and Market Value of Russian Firms*, OECD Roundtable on Russian Corporate Governance, the Responsibility of Boards, and the Role of Stakeholders in Corporate Governance (June 2001); Conference on The Reform of Economic Law in East Asia, Stanford Law School (Mar. 2001)
- Participant, Dykstra Corporate Governance Symposium, Univ. of California Davis Law School (Feb. 2001)
- 2000: Presentation of *Does Corporate Governance Matter? A Crude Test Using Russian Data*, University of Pennsylvania Law School, Symposium on Norms and Corporate Law (Dec. 2000)
- Participant, University of Pennsylvania Law School Roundtable on Corporate Law (May 2000)
- 1999: Presentation of *Russian Privatization and Corporate Governance: What Went Wrong?*, OECD Conference on Corporate Governance in Russia (Moscow, Russia, May 1999); Davidson Institute at Univ. of Michigan Conference on Corporate Governance Lessons from Transition Economy Reforms (Sept. 1999)
- Participant, Conference on *The Anatomy of Corporate Law: A Comparative and Functional Approach* (Paris, France, July 1999)
- Workshop leader, International Monetary Fund Workshop on Comparative Corporate Governance in Developing and Transition Economies (June 1999)
- Presentation of *The Legal and Institutional Prerequisites for Strong Securities Markets*, OECD Conference on Corporate Governance in Asia: A Comparative Perspective (Seoul Korea, Mar. 1999)
- Participant, Workshop on Innovation in Business Law Education, American Bar Association Section of

- Business Law annual meeting (Apr. 1999)
- Presentation of *The Non-Correlation Between Board Independence and Long-Term Firm Performance*, Directors' College, Stanford Law School (Mar. 1999); Federalist Society Conference on Corporate Governance (NY, Sept. 1998) (remarks published in **Bank and Corporate Governance Reporter** (1999))
- Participant, Conference on Armenian Company Law, Washington DC (Jan. 1999) (conference with drafters of the Armenian company law to discuss concepts of company law)
- 1998: *Shareholder Robbery, Russian Style*, in Institutional Shareholder Services, **ISSue Alert**, Oct. 1998, at 3, 14 (editorial in newsletter for institutional investors) (<http://ssrn.com/abstract=510123>)
- A Test Case for Shareholder Rights*, **Moscow Times**, Jan. 30, 1998 (editorial)
- Participant, Conference on Ukrainian Company Law, Kiev, Ukraine, (Oct. 1998) (seminar for legislators and government officials on draft company law)
- Participant, Corporate Law Bridge Group conference (June 1998)
- Presentation of *Path-Dependent Competition for Corporate Charters: Manager Choice, Shareholder Veto*, Comparative Law Workshop on the Regulatory State and Corporate Governance, Goethe Universitat, Frankfurt, Germany, (May 1998)
- Speaker on comparative and international aspects of corporate law scholarship, Association of American Law Schools, Workshop on Business Associations (May 1998)
- Speaker, U.S. Securities and Exchange Commission, *International Institute for Securities Market Development* (Apr. 1998)
- Presented paper, *Russian Firms: Preventing Manager/Investor Disputes from Arising*, Conference on *The Changing Landscape of Investment in Russia*, Moscow, Russia, (Apr. 1998)
- Invited speaker, *Seminar on the Draft Company Law*, Hanoi, Vietnam (Mar. 1998) (week-long seminar for legislators and government officials on the draft company law, for which I was an advisor)
- Presentation of *The Building Blocks of Corporate Governance*, Columbia Law School Conference on Alternative Perspectives on Corporate Governance (Jan. 1998)
- Speaker, *Seminar on the Law on Joint Stock Companies*, Ulaanbaatar, Mongolia (Jan. 1998) (seminar for legislators and government officials on the Law on Joint Stock Companies, for which I was the principal drafter)
- 1997: *The Struggle for Control of Russia's Securities Markets*, **Moscow Times**, July 9, 1997 (editorial)
- Participant in *Symposium, Check-the-Box and Beyond: The Future of Limited Liability Entities* (Larry Ribstein & Mark Sargent eds.), 52 **Business Lawyer** 605-652 (1997)
- Presentations of *Board Composition and Firm Performance: The Uneasy Case for Majority Independent Boards*, Max-Planck Institute Conference on Comparative Corporate Governance (Hamburg, Germany, May 15-17, 1997); NYU Salomon Center Conference on The Power and Influence of Pension and Mutual Funds (Feb. 21, 1997)
- Lecturer, Open Society Institute workshop for Russian law teachers, on *the Russian Law on Joint Stock Companies* (Moscow, Russia, Nov. 11-15, 1997)
- Presentation of *Information Asymmetry, the Internet, and Securities Offerings*, Lewis & Clark Law Forum, Financing Innovation: The Future of Capital Formation for Small and Emerging Businesses (Sept. 26, 1997)
- Address on *The Struggle for Control of Russia's Securities Markets*, Harriman Institute Conference on Russian Securities on the American and Russian Capital Markets (New York, June 10, 1997)
- Speaker for Plenary Session on *Stranded Costs*, National Conference of State Legislatures Conference, The Electric Industry in the Balance (New York, May 29-30, 1997)

- Participant, USAID-sponsored conference with Vietnamese officials on draft *Law of Vietnam on Partnerships and Companies* (New York, Aug. 26-30, 1997)
- Lecturer, World Bank/Central European University workshop on *Corporate Governance in Eastern Europe and Russia* (Budapest, Hungary, May 12-16, 1997)
- Speaker, World Bank Conference on *Legal Reform and Economic Development* (Apr. 14, 1997)
- 1996: *Corporate Law for Emerging Markets: The Case of Russia*, in **American Society of International Law, Proceedings of 90th Annual Meeting: Are International Institutions Doing Their Job?** 226-231 (1996)
- Presentation of *Corporate Law and Residual Claimants*, Columbia Law School Conference on Employees and Corporate Governance (Nov. 22 & May 15, 1996)
- Address on *The Path-Dependent Evolution of Corporate Law*, George Mason Law School Conference on Strong Managers, Weak Owners (May 4, 1996)
- 1995: Bernard Black, *Legal Reform in Russia*, **Columbia Law School Report** 68 (Fall 1995) (short article for alumni magazine)
- Presentations of *Corporate Law from Scratch*, World Bank Conference on Corporate Governance in Central Europe and Russia (Apr. 22, 1994; Sept 30, 1994; Dec. 16, 1994)
- Address on *Investment Fund Law for Emerging Economies*, OECD Conference on Investment Funds in Ukraine (Paris, France, June 1-2, 1995)
- 1994: *Comment: The Industrial Organization of Market-Making*, on Peter Reiss & Ingrid Werner, *Transacting Costs in Multiple Dealer Markets: Evidence from the London Stock Exchange*, in Andrew Lo, ed., **The Industrial Organization and Regulation of the Securities Industry** 171-174 (1995)
- Address on *The Essentials of Corporate Governance in Privatizing Economies*, World Bank Conference on Creating Capital Markets in Central and Eastern Europe (Prague, Czech Republic, Nov. 17, 1994)
- 1993: Presentations of *Hail Britannia?: Institutional Investor Behavior Under Limited Regulation*: Whittemore Conference on The International Capital Acquisition Process (May 21, 1993); Columbia Law School Conference on Relational Investing (May 6, 1993)
- 1992: *Beyond Proxy Reform*, **Insights: Corporate & Securities Law Advisor** 2 (March 1993) (editorial)
- Participant, *Roundtable on Management Incentive Compensation and Shareholder Value*, **Continental Bank Journal of Applied Corporate Finance** 110-130 (Summer 1992)
- Comment, *Event Studies in a World with Signaling and Partial Anticipation*, on Kleidon & Scott, *The Replacement of Corporate Chief Executive Officers and the Performance of the Board*, American Law & Economics Association (May 16, 1992)
- 1991: Contributor to *Catch 22: The Retired CEO as Company Director* (Institutional Shareholder Services Special Report, July 15, 1991)
- Contributor to Roundtable discussion on *Institutional Investors and Corporate Governance*, published in **Directors and Boards** 9 (Spring 1991)
- Presentation of *Agents Watching Agents*: Columbia Law School Conference on The Future of Corporate Governance (May 11, 1991)
- Address on *Environmental Sanctions: When Does Deterrence Become Overkill?*; Columbia Journal of Environmental Law Symposium on Crimes Against the Environment (Mar. 8, 1991)
- Address on *Taking Long-Term Investing Seriously*; Institutional Shareholder Services Conference for the Proxy Professional (Feb. 22, 1991)
- 1990: Conference presentation on *Hazardous Waste Cleanup Incentives in Corporate Acquisitions*; Columbia Business Law Review Symposium on Environmental Concerns in Business Transactions (Feb. 9, 1990)

- 1989: Address on *The Long Term Profitability of Leveraged Buyouts*; Lowe Institute Conference on the Leveraging of Corporate America, Los Angeles (Apr. 11, 1989)
- 1988: Presentation of *Is Corporate Law Trivial?*, Columbia Law School Conference on Contractual Freedom and Corporate Law (Dec. 9, 1988)
- Address on *Shareholder Gains from Takeovers*, Rutgers Conference on Corporate Takeovers, Restructuring, and the Market for Corporate Control (May 24, 1988)
- Address on *Regulatory Reform after the Market Crash: The Case for Flow Restrictors*; USC-UCLA Conference on The Crash: Causes and Cures? (Feb. 13, 1988)

PERSONAL DATA

Born 1953 in Brooklyn, New York

Wife: Katherine Litvak

Children:	David (1979)	Benjamin (1980)	Samuel (1985)
	Sarah (1990)	Rebekah (1994)	Daniel (2005)
	Jacob (2008)		

Appendix B: Documents Reviewed

In preparing this Affidavit, I reviewed the following documents and other information, in addition to the sources cited in this Affidavit.

- The Complaint and Motions to Dismiss in this case.
- Various books, surveys, academic articles, speeches, and news stories relating to:
 - Russian corruption in general, corruption of the Russian judiciary, and Russian hostile takeovers.
 - The specific conduct of TNK and its principals
- Selected discovery documents (from BP) provided to me by plaintiffs' counsel
- My own prior writing on Russia, included in my CV, and sources cited therein

I was also aware, from my work in the earlier federal case, *Norex Petroleum Limited v. Access Industries* (S.D.N.Y.), of the following documents, and re-reviewed them to the extent relevant to my current opinions:

Complaint and Motion to Dismiss. I assume the facts alleged in this Complaint to be true.

Expert Declarations in the federal case, including declarations by Judge Sergey Pashin, Judge Sergey Zaitsev, and Ms. Marina Telyukina on behalf of Plaintiff.

Declaration of Ethan Burger on behalf of plaintiffs in *Base Metal Trading v. Russian Aluminum*, 2003 WL 1618088 (S.D.N.Y.), and exhibits to this declaration.