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

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

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

I, PETER B. MAGGS, being duly sworn, deposes and says:

A. INTRODUCTION AND EXECUTIVE SUMMARY

1. Simpson Thacher & Bartlett LLP, on behalf of its client, Norex Petroleum Limited, has asked me to provide an expert opinion in relation to certain issues of Russian law.

2. In preparing this report, I have been provided with the source materials listed in Appendix A, which include the First Amended Complaint (or the "Complaint"). I have also been asked to assume that a New York court ruling on a motion to dismiss is required to: (a) "accept the facts as alleged in the complaint as true"; (b) "accord plaintiffs the benefit of every possible favorable inference" and (c) "determine only whether the facts as alleged fit within any cognizable legal theory." *ABN AMRO Bank, N.V. v. MBIA Inc.*, 17 N.Y.3d 208, 2011 WL 2534059 (N.Y. June 28, 2011) (internal citations omitted). I refer to this standard

as "the New York Pleading Standard." I have been instructed that the New York Pleading Standard applies to the Complaint's allegations. The questions that I have been asked and a summary of my answers are as follows:

3. **Question 1: Do the Complaint's allegations state a claim for tort liability under Russian law?**

Yes.

4. **Question 2: Do the Complaint's allegations state a claim for unjust enrichment under Russian law?**

Yes.

5. **Question 3: Were Russian procedural rules regarding service of process and notification of the trial date followed in the Know-How Case?**

No, service of process on Norex was not made in accordance with Russian procedural rules. In addition, DHL receipts themselves do not constitute any evidence under Russian law that Norex was notified of the change in hearing date. Even if Norex was notified of the change in hearing date, which is a disputed issue of fact, such notification, as a matter of Russian law, would not cure the defect in service of process.

B. QUALIFICATIONS AND EXPERIENCE

6. I am a Professor of Law and the holder of the Clifford M. & Bette A. Carney Chair at the University of Illinois College of Law, specializing in Russian law, law of the other former Soviet republics, and law of the former Soviet Union. A copy of my CV is attached as Appendix B.

7. I have taught at the University of Illinois since 1964 and have consulted on Soviet and Russian law for government agencies and for lawyers with clients investing in and trading with the USSR and the Russian Federation. I speak, read, and write Russian fluently, and I have visited Russia frequently.

8. I have studied law both in the United States and in Russia. In 1957, I received an A.B. Degree from Harvard College in Classics and Slavic and, in 1961, I received a J.D. Degree from Harvard Law School. During 1961-1962, I was an exchange post-graduate student at the Faculty of Law of Leningrad (now St. Petersburg) State University, where I studied with Professor O.S. Ioffe, a leading expert on Russian civil law. In 1963-1964, I was an associate of the Harvard Russian Research Center and a Research Associate at Harvard Law School. In 1977, I taught as a Fulbright Lecturer at Moscow State University.

9. After the dissolution of the Soviet Union, I worked extensively under the auspices of the United States government on projects designed to help create a legal basis for a market economy in the Russian Federation and the other former Soviet republics.

10. One important part of this effort was the creation of model Civil Code legislation, which eventually became a basis for the civil codes of a number of former republics. In connection with this project I met frequently with civil code drafters from Russia and other former republics during the 1990s.

11. I am the author, co-author, co-editor, translator, or co-translator of a dozen books and numerous articles on Soviet and Russian Law, including a book, Law and Legal System of the Russian Federation, which I co-authored with Professors William Burnham and the late Gennady M. Danilenko.

12. I am also the co-author of a translation of the Russian Civil Code, which has gone through numerous editions and excerpts of which I have attached in Appendix C.

13. In addition to my writings on Russian law, I am also the co-author of several casebooks and the author of various articles on United States law.

C. OVERVIEW OF SOURCES OF RUSSIAN LAW AND THE RUSSIAN COURT SYSTEMS

14. The principal sources of the law of the Russian Federation are the Constitution of the Russian Federation, interpretations of the Constitution by the Russian Constitutional Court,

international treaties binding on the Russian Federation, statutes adopted by the Russian Parliament, and regulations issued by administrative agencies. I discuss below the role of abstract general rulings and individual decisions by Russian courts as additional sources of law.

15. Russia has a Constitutional Court, arbitrazh courts[1] and courts of general jurisdiction.

16. The Constitutional Court plays an important role in enforcing provisions of the Constitution of the Russian Federation. Individuals and legal entities claiming violations of their constitutional rights may bring cases before the Constitutional Court. Arbitrazh courts and courts of general jurisdiction may also seek rulings from the Constitutional Court on constitutional issues that arise in the course of a particular case. Rulings of the Constitutional Court constitute precedents binding on all other courts.

17. The arbitrazh court system has jurisdiction over civil cases in which all the parties are legal entities or registered private entrepreneurs, and also over all bankruptcy proceedings and over some other types of commercial litigation even if private individuals are involved.

18. Procedure in the arbitrazh courts is governed by the Arbitrazh Procedure Code.

19. At the top of the hierarchy of the arbitrazh courts is the High Arbitrazh Court (whose name is often translated as "Supreme Arbitrazh Court"), which has co-equal status with the Supreme Court, which is at the top of the hierarchy of the courts of general jurisdiction. For claims that fall within its jurisdiction, the High Arbitrazh Court is the court of last resort, except for Constitutional issues, which may be brought to the Constitutional Court.

[1] The arbitrazh court system is often called the "arbitration" court system. Additionally, despite its name, the arbitrazh court system has nothing to do with private, voluntary arbitration. Rather it is a regular judicial system with compulsory jurisdiction. Therefore, I use the Russian term "arbitrazh" for clarity. I use the translation "High Arbitrazh Court" for the name of the highest court in the arbitrazh court system. Others use the translation "Supreme Arbitrazh Court." Both translations refer to the same court.

20. The High Arbitrazh Court has the power to give binding resolutions interpreting the law as well as to decide individual cases.

21. In addition to these formal resolutions, the Presidium of the High Arbitrazh Court also issues "Information Letters" for the guidance of the lower courts on the interpretation of the law.

22. In practice, courts treat both the resolutions and the Information Letters as binding. A search in the leading Russian online databank of court decisions showed 21,441 citations to Information Letters of the High Arbitrazh Court.[2]

23. Decisions of the arbitrazh courts at all levels in individual cases are readily available through the High Arbitrazh Court's website and easily searchable in competing private legal databanks.

D. OPINIONS

a. Theories of Liability

24. It is my conclusion that the facts as alleged in the First Amended Complaint state at least two types of claims under Russian law: claims for (1) obligations from causing harm and (2) unjust enrichment.

(1) *Obligations from Causing Harm (Russian Tort Liability)*

25. Russian law does not have individually-labeled torts. All types of torts are covered by a single general article of the Civil Code on causing harm, Article 1064, which provides in relevant part: (1) "Harm caused to the person or property of a citizen and also harm caused to the property of a legal person shall be subject to compensation in full by the person who has caused the harm," and (2) "The person who has caused the harm is freed from compensation

[2] Search for "pis'mo VAS" in http://www.consultant.ru.

for the harm if he proves that the harm was caused not by his fault. A statute may provide for compensation for the harm even in the absence of fault of the person who caused the harm."

26. The Affidavit of Dmitry Borisovich Dyakin provided in support of the Defendants' Joint Motion to Dismiss (the "Dyakin Affidavit") confirms at Paragraphs 62 and 68-69 that specific torts alleged under New York law fall within the general tort provision of Article 1064 of the Russian Civil Code. *See* Dyakin Aff. ¶¶ 62, 68-69.

27. Paragraphs 41-51 of the First Amended Complaint allege that the defendants other than BP caused the initial harm to Norex by intentionally and wrongfully depriving Norex of its shares in Yugraneft. *See* Compl. ¶¶ 41-51.

28. Paragraphs 52-53 of the First Amended Complaint allege that BP caused harm by joining with the other defendants in intentionally depriving Norex of dividends from Yugraneft. *See* Compl. ¶¶ 52-53.

29. Based on my review of the First Amended Complaint, it is my opinion that, in asserting claims for tortious interference with contract, tortious interference with business, and conversion, the First Amended Complaint alleges the causing of harm by all defendants, and thus, Norex's claims fit within Article 1064 of the Russian Civil Code. *See* Appendix C.

30. Paragraph 24 of the First Amended Complaint takes the position that the Know-How Case should not be given preclusive effect because of the way its results were obtained. On the basis of this position and assuming the truth of the facts alleged in Paragraphs 41-53 of the First Amended Complaint, the defendants alleged in those Paragraphs to have participated in obtaining the result in the Know-How Case would be jointly and severally liable under Article 1080 of the Civil Code, which provides that "[p]ersons who have jointly caused harm shall be liable jointly and severally to the victim." *See* Appendix C; Compl. ¶¶ 41-51. Moreover, all defendants would be liable for causing harm by depriving Norex of dividends. *See* Appendix C.

31. Russian court practice supports the application of liability for causing harm under Article 1064 in the context of misappropriation of stock. *See* Appendix C. In a case decided in 2010 by the Federal Arbitrazh Court for the West Siberian District,[3] plaintiff sued for damages for the wrongful transfer of stock from her name to the name of another, allegations that are similar to Norex's allegations that defendants misappropriated Norex's stock in Yugraneft.[4]

32. The Federal Arbitrazh Court, upholding lower court decisions in the case, held that the misappropriation of stock violated the general tort provisions of Article 1064, stating that: "Pursuant to Article 1064 of the Civil Code of the Russian Federation, the injury inflicted on the personality or property of a citizen, and also the damage done to the property of a legal entity, is subject to full compensation by the person who inflicted the damage."[5] Thus, claims that under common law would be classified as tortious interference with contract, tortious interference with business, and conversion are classified under Russian law as violations of Article 1064.

33. The measure of damages for causing harm are specified both by the general provision on damages of Article 15 of the Civil Code and by the provisions on damages for unjust enrichment. *See* Appendix C. The latter are incorporated under Article 1103(4) of the Civil Code. *See* Appendix C. Article 1103(4) itself incorporates by reference Article 1107, which provides that "[a] person who has unjustly received or economized property shall have the duty to return to or compensate the victim for all incomes that he extracted or should have

[3] The Federal Arbitrazh Court for the West Siberian District is just under the High Arbitrazh Court in the Russian hierarchy of courts.

[4] *See* Ruling of the Federal Arbitrazh Court of the West Siberian District, Case No. A27-7510/2007 (Mar. 9, 2010) (English translation and Russian original excerpt attached as exh. 1).

[5] *See id.*

extracted from this property from the time when he learned or should have learned of the unjust enrichment." Appendix C.

34. Claims for recovery based on causing harm are subject under Articles 196 and 200 of the Civil Code to the general limitation period of three years from the day when a person knew or should have known of the violation of his right. *See* Appendix C.

(2) *Unjust Enrichment*[6]

35. Paragraph 43 of the First Amended Complaint alleges that the Know-How judgment was obtained through fraud and bribery on the part of the defendants other than BP. *See* Compl. ¶ 43. Paragraph 24 takes the position that the Know-How Case should not be given preclusive effect because of the way it was obtained. *See* Compl. ¶ 24. On the basis of this position, there would be no lawful bases for TNK's acquisition of Norex's Yugraneft stock. Article 1102 of the Civil Code imposes liability for unjust enrichment upon "[a] person who, without bases established by a statute, other legal acts, or a transaction, has acquired or economized property (the recipient) at the expense of another person (the victim)." Appendix C. This provision applies irrespective of whether the unjust enrichment is a result of the behavior of the person who acquired the property. *See id.*

36. As discussed above, the rules of unjust enrichment may also be applied to persons who were either liable for illegally obtaining possession or causing harm. Article 1103(4) provides "for compensation for harm including that caused by the bad-faith conduct of the enriched person." Appendix C.

37. Under the allegations in Paragraphs 51-53 of the First Amendment Complaint, all defendants would bear liability under these rules, as discussed above, because defendants as

[6] The Russian phrase that I translate as "unjust enrichment" is often translated as "unfounded enrichment." Both translations are equivalent.

joint tortfeasors are jointly and severally liable for any one defendant's receipt of stocks, or dividends paid on those stocks, or other benefits. *See* Compl. ¶¶ 51-53.

38. Claims for recovery based on unjust enrichment are subject under Articles 196 and 200 of the Civil Code to the general limitation period of three years from the day when a person knew or should have known of the violation of his right. *See* Appendix C.

b. *Russian Pleading Rules*

39. I have read the Affidavit of Valerii Abramovich Musin in Support of BP's Motion to Dismiss ("Musin I"). He appears to be answering the questions of what would be necessary under the pleading rules of Russian civil procedure law to avoid dismissal of a claim in tort and unjust enrichment. Russian pleadings rules vary significantly from the New York Pleading Standard and require pleading "the circumstances upon which claims are based and the evidence confirming these circumstances," "the price of the claim if the claim is subject to valuation" and "a calculation of any claimed or disputed monetary amount." *See* Arbitrazh Procedure Code art. 125 (English translation and Russian original excerpt (Appendix C)).

40. In Paragraph 6, Musin is applying the Russian pleading rules when he states that a "plaintiff is required to allege acts unsupported by law that resulted in unjust enrichment" and the "amount of money unjustly acquired or saved by BP at the expense of Norex." *See* Musin I ¶ 6. He also applies the Russian pleading rules in Paragraph 7 when he states that, "in order to state a claim for obligation in tort, plaintiff is required to allege specific illegal acts committed by BP." *See* Musin I ¶ 7. In my view, Musin's conclusions about the legal sufficiency of Norex's Russian law claims sounding in tort and unjust enrichment are wholly predicated on his application of the pleading rules of Russian civil procedure law.

c. *Service of Process and Notification of the Changed Trial Date in the Know-How Case*

41. My conclusion is that service of process on Norex was not made in accordance of Russian procedural rules. In addition, DHL receipts themselves do not constitute any

evidence under Russian law that Norex was noticed of the change in hearing date. Even if Norex was notified of the change in hearing date, which is a disputed issue of fact, such notification, as a matter of Russian law, would not cure the defect in service of process.

42. According to the chronology in Paragraphs 30-53 of the Dyakin Affidavit, proceedings began in the Know-How Case on June 26, 2001. Dyakin Aff. ¶¶ 30-53. The Affidavit cites various notices allegedly given in the period between June 26, 2001 and the end of December 2001. *Id.*

43. At the time of the Know-How Case, the 1995 Arbitrazh Procedure Code of the Russian Federation was in effect. Article 3 of this Code provided, "If an international treaty of the Russian Federation has established other rules of court procedure than those that are provided by the legislation of the Russian Federation, then the rules of the international treaty shall be applied." *See* Appendix C (English translation and Russian original excerpt).

44. During the period from June 26, 2001, through November 30, 2001, the 1954 Hague Convention on Civil Procedure[7] and the 1984 Treaty between the USSR and the Republic of Cyprus on Legal Assistance in Civil and Criminal Cases[8] were in effect.

45. Information Letter No. 10 of the High Arbitrazh Court of the Russian Federation of December 25, 1996 required that "[n]otice to a foreign defendant on the time and place of a court proceeding" be made through the diplomatic channels specified by the 1954 Hague

[7] *See* 1954 Hague Convention on Civil Procedure, available at http://www.hcch.net/index_en.php?act=conventions.text&cid=33, and http://www.hcch.net/index_en.php?act=conventions.status&cid=33

[8] *See* 1984 Treaty between the USSR and the Republic of Cyprus on Legal Assistance in Civil and Criminal Cases ("1984 USSR-Cyprus Treaty") (English translation and Russian original excerpt attached as exh. 2).

Convention, unless other channels were provided by some other treaty in force between the respective countries.[9]

46. According to the terms of the convention, the "diplomatic channels specified by the 1954 Hague Convention" required transmission of documents by consular officers or diplomats, not by courts or private parties. The treaty has no provision for direct service through the courts or unofficial channels. *See* 1956 Hague Convention arts. 1, 3, 6, 9, 10, 15 & 19.

47. The only other relevant treaty in force at the time between Russia and Cyprus was the 1984 Treaty between the USSR and the Republic of Cyprus on Legal Assistance in Civil and Criminal Cases.[10] Article 4 of this Treaty also provided for the use of "diplomatic procedure."

48. According to the narrative in the Dyakin Affidavit, at no time did the court provide service of process in the Know-How Case through diplomatic channels. Therefore, any notifications sent in the Know-How Case before December 1, 2001 were sent in violation of Russian law as stated by the High Arbitrazh Court in Information Letter No. 10, quoted above.

49. On December 1, 2001, the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters came into effect between Russia and Cyprus. Under Articles 22ff of the 1965 Convention, the provisions of the 1965 Convention overrode conflicting provisions of the 1954 Convention. Article 10(a) of the 1965 Convention allowed the sending of judicial documents "by postal channels." As indicated in Paragraph 50 of the Dyakin Affidavit, Russia has interpreted "postal channels"

[9] *See* Information Letter No. 10 of the High Arbitrazh Court of the Russian Federation (Dec 25, 1996) (English translation and Russian original excerpt attached as exh. 3).

[10] *See* 1984 USSR-Cyprus Treaty (English translation and Russian original excerpt attached as exh. 2).

under the 1965 Hague Convention to include private couriers, such as DHL and has interpreted its procedural code to allow sending of documents other than initial service by private courier. *See* Dyakin Aff. ¶ 50. This interpretation of the 1965 Hague Convention, however, would apply only to documents sent on or after December 1, 2001, when the 1965 Hague Convention became effective for Russia. Therefore, these provisions do not apply to the service of process in the Know-How Case.

50. According to Paragraphs 39-40 and Exhibit 38 of the Dyakin Affidavit, two DHL packets were sent by the plaintiff in the Know-How Case to the Defendant and received by Defendant in December 2001. *See* Dyakin Aff. ¶¶ 39-40 & Ex. 38. Exhibit 38 to the Dyakin Affidavit contains no information on the content of these packets. *See* Dyakin Aff., Ex. 38. Russian court practice indicates that mere evidence of sending and a receipt of a packet sent by a private party is no evidence of the content of the packet.[11] Therefore, the DHL receipts are not evidence that Norex was given notice of the changed trial date.

51. Even assuming the DHL packets referenced in Exhibit 38 of the Dyakin Affidavit contained trial date information, which I understand to be disputed by Norex, there can be no doubt that under Russian law there was a fatal defect in service of process in the Know-How Case.

Peter B. Maggs

Sworn to before me this
26 day of October, 2011.

Notary Public

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
R HAUSMAN
MY COMMISSION EXPIRES
AUGUST 16, 2015

[11] *See* Federal Arbitrazh Court of the Ural District Resolution, Case No. F09-2317/02GK (Sept. 26, 2002) (English translation and Russian original attached as exh. 4).

APPENDIX A: MATERIALS CONSULTED

1. In preparing this Report, I reviewed the following documents and other information:

1. Final Amended Complaint, dated June 23, 2011.
2. Affidavit of Dmitry Borisovich Dyakin, dated September 15, 2011.
3. Affidavit of Boris Romanovich Karabelnikov, dated September 15, 2011.
4. Affidavit of Valerii Abramovich Musin, dated September 15, 2011.
5. Affidavit of Nikolay Georgievich Eliseev, dated September 15, 2011.
6. Treaties cited in my report.
7. Laws and Codes cited in my report.
8. Court decisions cited in my report.

APPENDIX B: CURRICULUM VITAE

Peter B. Maggs -- Biographical Information

Office Address:

University of Illinois College of Law, 504 East Pennsylvania Avenue, Champaign, Illinois 61820, USA

Telephones: office: (217) 333-6711, mobile: (202) 413-3213

Fax: (217) 244-1478

Email: p-maggs @ illinois.edu.

Homepage: http://www.illinois.edu/ph/www/p-maggs

Employment:

Clifford M. and Bette A. Carney Chair in Law, University of Illinois at Urbana-Champaign, 2002-present.

Peer & Sarah Pedersen Professor of Law, University of Illinois at Urbana-Champaign, 1998-2002.

Richard W. & Marie L. Corman Professor of Law, University of Illinois at Urbana-Champaign, 1988-1998.

Acting Dean, College of Law, University of Illinois at Urbana-Champaign, fall 1990.

Professor of Law, University of Illinois at Urbana-Champaign, 1969-1988.

Associate Professor of Law, University of Illinois at Urbana-Champaign, 1967-69.

Assistant Professor of Law, University of Illinois at Urbana-Champaign, 1964-67.

Associate, Harvard Russian Research Center and Research Associate, Harvard Law School, 1963-64.

Fellowships, Visiting Appointments, etc.:

Summer 2004. Worked in Serbia for National Center for State Courts evaluating legal education and designing a program for assistance to law schools. Visited law schools, wrote extensive report

Winter 2002-2003. Worked in Russia for USAID evaluating legal education and designing programs for assistance to legal education. Visited law schools, participated in writing extensive report.

Spring Semester 2002. Fulbright Distinguished Chair, University of Trento, Italy.

Summer 2001. Fulbright Senior Scholar, University of Malaya, Petaling Jaya, Malaysia

Spring 1998 - Visiting Professor, George Washington University Law School

January 1995 - present. Consultant for USAID contractors and the World Bank on numerous law reform projects in the former USSR, including legislative drafting and legal education projects in Armenia, Belarus, Moldova, Kazakstan, Kyrgyzstan, Russia, Tajikistan, and Ukraine.

1995-2000; 2005-present. - Member, Panel of Recommended Arbitrators, International Commercial Arbitration Court of the Russian Chamber of Commerce and Industry, http://www.tpprf.ru/ru/main/court/mkac/list_arb/

January 1994 - January 1995. On leave from the University of Illinois to serve as Director/Legal Reform Specialist for the Rule of Law Consortium, Washington, D.C., administering a contract from the United States Agency for International Development to support the "rule of law" in the newly independent states of the former Soviet Union.

Fulbright, Lecturer, Universidade Federal de Santa Catarina, Florianopolis, Brazil, May-August 1982.

Guggenheim Fellow, January-December 1979.

Fulbright Lecturer, Moscow State University, Spring Semester, 1977.

ACLS - Soviet Academy of Sciences Exchange Scholar, Novosibirsk, USSR, August 1972.

Senior Fellow, East-West Population Institute, Honolulu, Hawaii, Spring Semester 1972.

ACLS Summer Language Fellowship, Rumania, June-August 1969.

IUCTG Exchange Scholar, Bulgarian Academy of Sciences, Sofia, Bulgaria, June-August 1967.

Fulbright Scholar, Belgrade University, Belgrade, Yugoslavia, January-June 1967.

IUCTG Exchange Student, Leningrad State University [now St. Petersburg State University], Leningrad, USSR, September 1961 - June 1962.

Education:

A.B., Harvard College, 1957; J.D., Harvard Law School, 1961.

Subjects Taught:

Contracts; Sales, Copyright, Trademark & Unfair Competition, Statutory Interpretation, Russian Law.

Foreign Languages:

Fluent in Russian; good in Portuguese, competent in French; reading knowledge of German, Serbian, Bosnian & Croatian; Bulgarian; Macedonian; Ukrainian; Italian; Spanish; Romanian & "Moldovan".

Major Funded Research Projects Completed:

The Process of Making and Implementing Laws in the Soviet Union in the Gorbachev and Brezhnev Periods, under a contract with the U.S. Department of State, 1988-1989.

Soviet Law Under Gorbachev, under a contract with the U.S. Department of State, 1987-1988.

The Soviet Economy: A Legal Analysis, supported by the National Council for Soviet and East European Research, 1985-1986.

Soviet and East European Law and the Scientific and Technical Revolution, supported by the National council for Soviet and East European Research, 1979-1981.

Talking Computer Terminals for the Blind, supported by the U.S. Department of Health, Education, and Welfare, 1978- 1979, 1980-1981.

Soviet Law Under Khrushchev and Brezhnev, supported by the Ford Foundation, 1975-1978.

Computer-Based Legal Education, supported by the Council of Legal Education for Professional Responsibility, 1973-1975.

Miscellaneous:

Member, Board of Directors, Open Voting Consortium, <http://www.openvotingconsortium.org>, 2004-2006.

Member, Practicing Law Institute Advisory Committee on Intellectual Property Law, 1996-present.

Member, American Law Institute, Members Consultative Group on Uniform Commercial Code, Articles 2 (Sales), 2A (Leases), and 2B (Licenses), 1996-2003.

Member, American Law Institute Members Consultative Group on Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes, 2004-present.

Member, Board of Editors, The Uppsala Yearbook of East European Law, 2004-present.

Member, Board of Advisors, Central and East European Legal Materials, 1990-present.

Corresponding Member, International Academy of Comparative Law, 1988-present.

Member, American Law Institute, Members Consultative Group on Restatement of the Law,

Third, Unfair Competition, 1987-1995.

Member, American Law Institute, 1986-present.

Member, Subcommission on Law, American Council of Learned Societies--USSR Academy of Sciences Commission on the Humanities and Social Sciences, 1986-1989.

Member, Board of Directors, Center for Computer-Assisted Legal Instruction, 1982-1985.

Parliamentarian, American Association for the Advancement of Slavic Studies, 1978-1983.

Editor, Soviet Statutes and Decisions, 1976-1984.

Consultant on Computer Systems, U.S. Department of Justice, 1979-1981.

Chairman, Committee on Soviet Law, American Bar Association Section of International Law, 1975-1981.

Co-Editor-in-Chief, Bulletin on Current Research in Soviet and East European Law, 1974-1981.

Chairperson, Section of Comparative Law, Association of American Law Schools, 1976-1977.

Member, Advisory Committee on Research on Law and Computer Technology, American Bar Foundation, 1975-1977.

Reporter, Uniform Land Transaction and Uniform Simplification of Land Transfers Act, National Council of Commissioners on Uniform State Laws, January 1974 - August 1976.

Guide, American National Exhibition, Moscow, summer 1959; awarded Medal of Merit of United States Information Agency.

Admitted to practice in the District of Columbia.

Peter B. Maggs -- List of Publications

Books

Translator and editor (with cotranslator and coeditor Alexei Zhilstov), *Civil Code of the Russian Federation, First Part* (in parallel official Russian text and English translation by Peter B. Maggs and Alexei Zhiltsov, with introduction by Olga Kozyr, Peter Maggs, and Alexei Zhiltsov). (Moscow & Berlin: Infotropic, 2010).

Translator and editor (with cotranslator and coeditor Alexei Zhilstov), *Civil Code of the Russian Federation, Second Part* (in parallel official Russian text and English translation by Peter B. Maggs and Alexei Zhiltsov) (Moscow & Berlin: Infotropic, 2010).

Translator and editor (with cotranslator and coeditor Alexei Zhilstov), *Civil Code of the Russian Federation, Third Part* (in parallel official Russian text and English translation by

Peter B. Maggs and Alexei Zhiltsov) (Moscow & Berlin: Infotropic, 2010).

Translator and editor (with cotranslator and coeditor Alexei Zhilstov), *Civil Code of the Russian Federation, Fourth Part* (in parallel official Russian text and English translation by Peter B. Maggs and Alexei Zhiltsov) (Moscow & Berlin: Infotropic, 2010).

(with coauthors James Sprowl and John Soma) *Internet and Computer Law: Cases – Comments – Questions*, 3rd ed. (St. Paul: West, 2010.

(with coauthors James Sprowl and John Soma) *Teacher's Manual to Internet and Computer Law: Cases – Comments – Questions, 3rd ed.* (St. Paul: West, 2010.

(with coauthors William Burnham and Gennady Danilenko), Law and Legal System of the Russian Federation, 4th Ed. (Huntington, N.Y.: Juris Publishing, 2009).

Translator and editor (with cotranslator and coeditor Alexei Zhilstov) *Civil Code of the Russian Federation, Fourth Part* (in parallel official Russian text and English translation by Peter B. Maggs and Alexei Zhiltsov, with introductions by Alexander Makovsky and Peter Maggs), (Moscow: Wolters-Kluwer, 2008).

(with coauthors John Soma and James Sprowl) *Internet and Computer Law: Cases--Comments--Questions*, 2nd ed. (St. Paul: West Group, 2005).

(with coauthors William Burnham and Gennady Danilenko), Law and Legal System of the Russian Federation, 3rd Ed. (Huntington, N.Y.: Juris Publishing, 2004).
Translator and editor (with cotranslator and coeditor Alexei Zhiltsov), *Civil Code of the Russian Federation: Parallel Russian and English Texts* (Moscow: Norma, 2003).

(with coauthor Roger Schechter), *Teacher's Manual for Use With Trademark and Unfair Competition, Cases and Comments*, 6th ed. (St. Paul, Minn.: West Group, 2003).

(with coauthors John Soma and James Sprowl) *2002 Supplement to Internet and Computer Law: Cases--Comments--Questions* (St. Paul: West Group, 2002).

Translator and editor, *The Civil Code of the Russian Federation, Third Part* (Armonk, N.Y.: M.E. Sharpe, (2002).

(with coauthors Roger Schechter), *Trademark and Unfair Competition, Cases and Comments*, 6th ed. (St. Paul, Minn.: West Group, 2002).

(with John Soma and James Sprowl) *Teacher's Manual to Accompany Internet and Computer Law: Cases--Comments--Questions* (St. Paul: West Group, 2001).

(with John Soma and James Sprowl) *Internet and Computer Law: Cases--Comments--Questions* (St. Paul: West Group, 2001).

(with A.P. Sergeev) *Intelektual'naia sobstvennost'* ("Intellectual Property") (Moscow: Iurist, 2000). Also published on the Internet by the Open Society Institute (Moscow) (supported by the Soros Foundation) at: <http://www.auditorium.ru/books/343/.

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APPENDIX C: SELECTED EXCERPTS

1. *Civil Code of the Russian Federation Vols. 1 & 2* (2010) (Translated and edited by Peter B. Maggs & Alexei N. Zhitsov).

2. Arbitration Procedure Code of the Russian Federation (2002).

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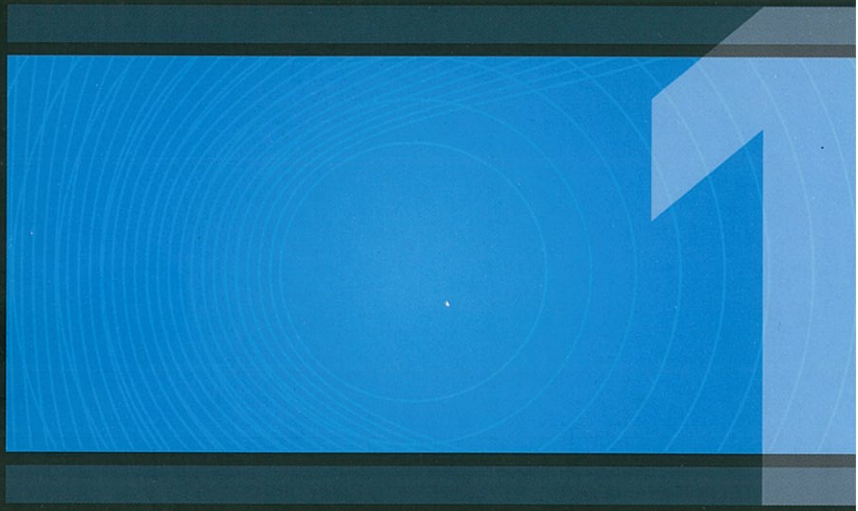

Civil Code of the Russian Federation

First Part

infotropic media

Исследовательский центр частного права
Российская школа частного права

ГРАЖДАНСКИЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ

ЧАСТЬ ПЕРВАЯ

CIVIL CODE OF THE RUSSIAN FEDERATION

FIRST PART

Параллельные русский и английский тексты

Parallel Russian and English Texts

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Настоящее издание является первым полным изданием параллельных русского и английского текстов всех четырех частей Гражданского кодекса Российской Федерации и выпускается в 4-х книгах.

Отличительной особенностью данного перевода ГК РФ является то, что он был выполнен авторами, принимавшими непосредственное участие в работе по подготовке проекта ГК РФ и Концепции развития гражданского законодательства Российской Федерации в Исследовательском центре частного права, один из которых выступал в качестве иностранного консультанта, а другой был членом рабочих групп по подготовке и совершенствованию раздела VI части третьей ГК РФ.

В книгу 1 включены параллельные русский и английский тексты предисловия, части первой Гражданского кодекса РФ, Федерального закона о введении ее в действие.

Для практикующих юристов.

Рекомендовано для студентов и аспирантов юридических вузов, специализирующихся в области гражданского права и активно изучающих юридический английский язык.

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Статья 13.
Признание недействительным акта государственного органа или органа местного самоуправления

Ненормативный акт государственного органа или органа местного самоуправления, а в случаях, предусмотренных законом, также нормативный акт, не соответствующие закону или иным правовым актам и нарушающие гражданские права и охраняемые законом интересы гражданина или юридического лица, могут быть признаны судом недействительными.

В случае признания судом акта недействительным нарушенное право подлежит восстановлению либо защите иными способами, предусмотренными статьей 12 настоящего Кодекса.

Article 13.
Declaration of the Invalidity of an Act of a State Agency or of an Agency of Local Self-Government

A non-normative act of a state agency or of an agency of local self-government and, in cases provided by a statute, also a normative act, not corresponding to a statute or other legal acts and violating civil-law rights or interests protected by a statute of a citizen or legal person may be declared invalid by a court.

In case of declaration by a court of an act as invalid, the violated right shall be subject to reinstatement or to protection in the other manners provided by Article 12 of the present Code.

Статья 14.
Самозащита гражданских прав

Допускается самозащита гражданских прав.

Способы самозащиты должны быть соразмерны нарушению и не выходить за пределы действий, необходимых для его пресечения.

Article 14.
Self-Protection of Civil-Law Rights

Self-protection of civil-law rights is allowed.

The means of self-protection must be proportional to the violation and not go outside the bounds of the actions necessary for stopping the violation.

Статья 15.
Возмещение убытков

1. Лицо, право которого нарушено, может требовать полного

Article 15.
Compensation for Losses

1. A person whose right has been violated may demand full

возмещения причиненных ему убытков, если законом или договором не предусмотрено возмещение убытков в меньшем размере.

2. Под убытками понимаются расходы, которые лицо, чье право нарушено, произвело или должно будет произвести для восстановления нарушенного права, утрата или повреждение его имущества (реальный ущерб), а также неполученные доходы, которые это лицо получило бы при обычных условиях гражданского оборота, если бы его право не было нарушено (упущенная выгода).

Если лицо, нарушившее право, получило вследствие этого доходы, лицо, право которого нарушено, вправе требовать возмещения наряду с другими убытками упущенной выгоды в размере не меньшем, чем такие доходы.

compensation for the losses caused to him unless a statute or a contract provides for compensation for losses in a lesser amount.

2. Losses means the expenses that the person whose right was violated made or must make to reinstate the right that was violated, the loss of or injury to his property (actual damage), and also income not received that this person would have received under the usual conditions of civil commerce if his right had not been violated (forgone benefit).

If the person who has violated a right has received income thereby, the person whose right has been violated has the right to demand – along with other losses – compensation for forgone benefit in a measure not less than such income.

Статья 16. **Возмещение убытков, причиненных государственными органами и органами местного самоуправления**

Убытки, причиненные гражданину или юридическому лицу в результате незаконных действий (бездействия) государственных органов, органов местного самоуправления или должностных лиц этих органов, в том числе издания не соответствующего закону или

Article 16. **Compensation for the Losses Caused by State Agencies and Agencies of Local Self-Government**

Losses caused to a citizen or legal person as the result of illegal actions (or inactions) of state agencies, agencies of local self-government, or officials of these agencies, including the promulgation of an act of a state agency or an agency of local self-

иску лица, право которого нарушено.

Статья 196.
Общий срок исковой давности

Общий срок исковой давности устанавливается в три года.

Статья 197.
Специальные сроки исковой давности

1. Для отдельных видов требований законом могут устанавливаться специальные сроки исковой давности, сокращенные или более длительные по сравнению с общим сроком.

2. Правила статей 195, 198–207 настоящего Кодекса распространяются также на специальные сроки давности, если законом не установлено иное.

Статья 198.
Недействительность соглашения об изменении сроков исковой давности

Сроки исковой давности и порядок их исчисления не могут быть изменены соглашением сторон.

Основания приостановления и перерыва течения сроков исковой давности устанавливаются настоящим Кодексом и иными законами.

right on suit of the person whose right has been violated.

Article 196.
General Time Period of Limitation of Actions

The general time period of limitation of actions is established at three years.

Article 197.
Special Time Periods of Limitation of Actions

1. For individual types of claims a statute may establish special time periods of limitation of actions reduced or longer in comparison with the general time period.

2. The rules of Articles 195 and 198–207 of the present Code extend also to special time periods of limitation unless a statute establishes otherwise.

Article 198.
Invalidity of an Agreement on Changing the Time Periods of Limitation of Actions

The time periods of limitation of actions and the procedure for calculating them may not be changed by agreement of the parties.

The bases for suspending and interrupting the running of the time periods of limitation of actions are established by the present Code and other statutes.

Статья 199.
Применение исковой давности

1. Требование о защите нарушенного права принимается к рассмотрению судом независимо от истечения срока исковой давности.

2. Исковая давность применяется судом только по заявлению стороны в споре, сделанному до вынесения судом решения.

Истечение срока исковой давности, о применении которой заявлено стороной в споре, является основанием к вынесению судом решения об отказе в иске.

Article 199.
Application of the Limitation of Actions

1. A claim for the protection of a violated right shall be taken for consideration by a court regardless of the expiration of the time period of limitation of actions.

2. The limitation of actions shall be applied by a court only on request of a party to the dispute, made before the rendering of a decision by the court.

The expiration of a time period of limitation of actions, that a party has requested to be applied, is a basis for the rendering of a decision by the court to dismiss an action.

Статья 200.
Начало течения срока исковой давности

1. Течение срока исковой давности начинается со дня, когда лицо узнало или должно было узнать о нарушении своего права. Изъятия из этого правила устанавливаются настоящим Кодексом и иными законами.

2. По обязательствам с определенным сроком исполнения течение исковой давности начинается по окончании срока исполнения.

По обязательствам, срок исполнения которых не определен либо определен моментом востребования, течение исковой

Article 200.
Start of the Running of the Time Period of Limitation of Actions

1. The running of the time period of limitation of actions starts from the day when a person knew or should have known of the violation of his right. Exceptions from this rule are established by the present Code and other statutes.

2. On obligations with a defined period for performance, the running of limitation of actions starts at the end of the time period for performance.

For obligations for which the time period of performance is not defined or is defined as the time of demand, the running of limita-

давности начинается с момента, когда у кредитора возникает право предъявить требование об исполнении обязательства, а если должнику предоставляется льготный срок для исполнения такого требования, исчисление исковой давности начинается по окончании указанного срока.

3. По регрессным обязательствам течение исковой давности начинается с момента исполнения основного обязательства.

Статья 201. Срок исковой давности при перемене лиц в обязательстве

Перемена лиц в обязательстве не влечет изменения срока исковой давности и порядка его исчисления.

Статья 202. Приостановление течения срока исковой давности

1. Течение срока исковой давности приостанавливается:

1) если предъявлению иска препятствовало чрезвычайное и непредотвратимое при данных условиях обстоятельство (непреодолимая сила);

2) если истец или ответчик находится в составе Вооруженных Сил, переведенных на военное положение;

tion of actions starts from the time when the right to make a demand for performance of the obligation arises for the creditor and, if the debtor is given a grace time period for the performance of such a demand, then the calculation of the limitation of actions starts at the end of this time period.

3. On subrogation actions, the running of limitation of actions starts from the time of performance of the principal obligation.

Article 201. Time Period of Limitation of Actions on Change of Persons in an Obligation

The change of persons in an obligation does not entail a change in the time period of limitation of actions nor the procedure for calculating it.

Article 202. Suspension of the Running of the Time Period of Limitation of Actions

1. The running of the time period of limitation of actions shall be suspended:

1) if the filing of the action was prevented by an extraordinary circumstance unavoidable under the given conditions (force majeure);

2) if the plaintiff or defendant were in the Armed Forces put in a war status;

Параллельные русский и английский тексты

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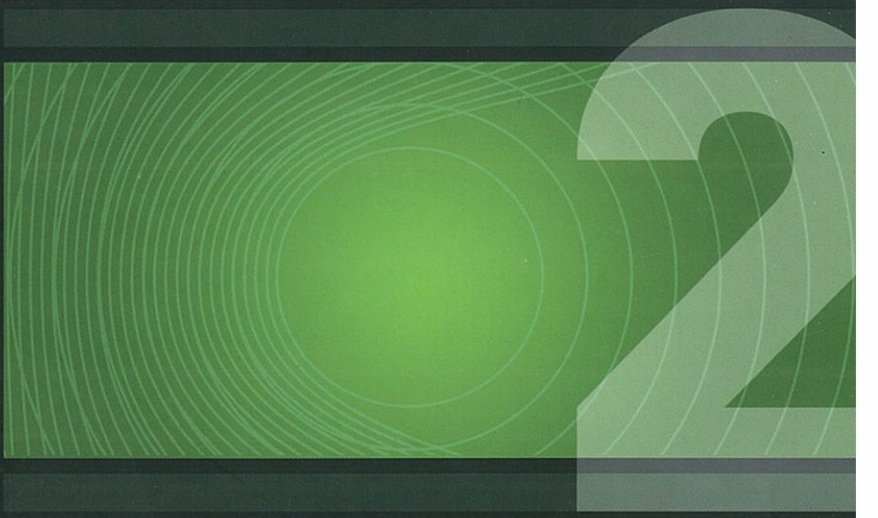

Civil Code of the Russian Federation

Second Part

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Исследовательский центр частного права
Российская школа частного права

ГРАЖДАНСКИЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ

ЧАСТЬ ВТОРАЯ

CIVIL CODE OF THE RUSSIAN FEDERATION

SECOND PART

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А.Н. Жильцова и П.Б. Мэггса

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Настоящее издание является первым полным изданием параллельных русского и английского текстов всех четырех частей Гражданского кодекса Российской Федерации и выпускается в 4-х книгах.

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Для практикующих юристов.

Рекомендовано для студентов и аспирантов юридических вузов, специализирующихся в области гражданского права и активно изучающих юридический английский язык.

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или в натуре) и срок, а если срок в этих условиях не указан, не позднее десяти дней с момента определения результатов игр либо в иной срок, установленный законом *(пункт 4 в редакции Федерального закона от 11 ноября 2003 г. № 138-ФЗ, действующей с 1 января 2004 г., «Российская газета», № 234, 18 ноября 2003 г., «Собрание законодательства РФ», 17 ноября 2003 г., № 46 (ч. 1), ст. 4434).*

5. В случае неисполнения организатором игр указанной в пункте 4 настоящей статьи обязанности участник, выигравший в лотерее, тотализаторе или иных играх, вправе требовать от организатора игр выплаты выигрыша, а также возмещения убытков, причиненных нарушением договора со стороны организатора.

provided by the conditions of the game, or if the time period is not indicated in these conditions, not later than ten days from the time of determining the results of the games, or in another time period established by a statute. *(Paragraph 4 as amended by the Federal statute of 11 Nov. 2003 No. 138-FZ, effective from 1 Jan. 2004, Rossiiskaia gazeta, No. 234, 18 Nov. 2003, Sobranie zakonodatel'stva RF, 17 Nov. 2003, No. 46 (1st part), item 4434).*

5. In case of nonperformance by the organizer of the games of the duty indicated in Paragraph 4 of the present Article, a participant who has won in the lottery, pari-mutuel, or other games shall have the right to demand from the organizer of the games payment of the winnings and also compensation for the losses caused by breach of the contract on the part of the organizer.

ГЛАВА 59. ОБЯЗАТЕЛЬСТВА ВСЛЕДСТВИЕ ПРИЧИНЕНИЯ ВРЕДА

CHAPTER 59. OBLIGATIONS AS A RESULT OF THE CAUSING OF HARM

§ 1. Общие положения о возмещении вреда

§ 1. General Provisions on Compensation for Harm

Статья 1064. Общие основания ответственности за причинение вреда

Article 1064. General Bases of Liability for the Causing of Harm

1. Вред, причиненный личности или имуществу гражданина, а также вред, причиненный имуще-

1. Harm caused to the person or property of a citizen and also harm caused to the property of

ству юридического лица, подлежит возмещению в полном объеме лицом, причинившим вред.

Законом обязанность возмещения вреда может быть возложена на лицо, не являющееся причинителем вреда.

Законом или договором может быть установлена обязанность причинителя вреда выплатить потерпевшим компенсацию сверх возмещения вреда.

2. Лицо, причинившее вред, освобождается от возмещения вреда, если докажет, что вред причинен не по его вине. Законом может быть предусмотрено возмещение вреда и при отсутствии вины причинителя вреда.

3. Вред, причиненный правомерными действиями, подлежит возмещению в случаях, предусмотренных законом.

В возмещении вреда может быть отказано, если вред причинен по просьбе или с согласия потерпевшего, а действия причинителя вреда не нарушают нравственные принципы общества.

a legal person shall be subject to compensation in full by the person who has caused the harm.

A statute may place a duty for compensation for harm on a person who is not the person that caused the harm.

A statute or contract may establish a duty for the person who has caused the harm to pay the victim compensation in addition to compensation for the harm.

2. The person who has caused the harm is freed from compensation for the harm if he proves that the harm was caused not by his fault. A statute may provide for compensation for the harm even in the absence of fault of the person who caused the harm.

3. Harm caused by lawful actions shall be subject to compensation in the cases provided by a statute.

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

Статья 1065. **Предупреждение причинения вреда**

1. Опасность причинения вреда в будущем может явиться основанием к иску о запрещении деятельности, создающей такую опасность.

Article 1065. **Preventing the Causing of Harm**

1. The danger of causing harm in the future may be the basis for a suit for prohibition of actions creating such a danger.

Статья 1080.
Ответственность за совместно причиненный вред

Лица, совместно причинившие вред, отвечают перед потерпевшим солидарно.

По заявлению потерпевшего и в его интересах суд вправе возложить на лиц, совместно причинивших вред, ответственность в долях, определив их применительно к правилам, предусмотренным пунктом 2 статьи 1081 настоящего Кодекса.

Article 1080.
Liability for Jointly Caused Harm

Persons who have jointly caused harm shall be liable jointly and severally to the victim.

On petition of the victim and in his interests, the court shall have the right to impose upon persons who have jointly caused harm liability in shares, defining them according to the rules provided by Paragraph 2 of Article 1081 of the present Code.

Статья 1081.
Право регресса к лицу, причинившему вред

1. Лицо, возместившее вред, причиненный другим лицом (работником при исполнении им служебных, должностных или иных трудовых обязанностей, лицом, управляющим транспортным средством, и т.п.), имеет право обратного требования (регресса) к этому лицу в размере выплаченного возмещения, если иной размер не установлен законом.

2. Причинитель вреда, возместивший совместно причиненный вред, вправе требовать с каждого из других причинителей вреда долю выплаченного потерпевшему возмещения в размере, соответствующем степени вины

Article 1081.
The Right of Subrogation against the Person who has Caused Harm

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

2. A person who has caused harm and who has compensated for jointly caused harm shall have the right to claim from each of those who have caused harm a share of the compensation paid to the victim in an

Статья 1101.
Способ и размер компенсации морального вреда

1. Компенсация морального вреда осуществляется в денежной форме.

2. Размер компенсации морального вреда определяется судом в зависимости от характера причиненных потерпевшему физических и нравственных страданий, а также степени вины причинителя вреда в случаях, когда вина является основанием возмещения вреда. При определении размера компенсации вреда должны учитываться требования разумности и справедливости.

Характер физических и нравственных страданий оценивается судом с учетом фактических обстоятельств, при которых был причинен моральный вред, и индивидуальных особенностей потерпевшего.

Article 1101.
Method and Amount of Compensation for Moral Harm

1. Compensation for moral harm shall be made in monetary form.

2. The amount of compensation for moral harm shall be determined by a court depending upon the nature of the physical and moral suffering caused to the victim and also the degree of fault of the one who caused the harm in cases when this fault is a basis for compensation for harm. In determining the measure of compensation for harm, the requirements of reasonableness and justice must be considered.

The nature of physical and moral suffering shall be evaluated by a court taking into account the factual circumstances under which moral harm was caused and the individual peculiarities of the victim.

ГЛАВА 60.
ОБЯЗАТЕЛЬСТВА ВСЛЕДСТВИЕ НЕОСНОВАТЕЛЬНОГО ОБОГАЩЕНИЯ

CHAPTER 60.
OBLIGATIONS AS THE RESULT OF UNJUST ENRICHMENT

Статья 1102.
Обязанность возвратить неосновательное обогащение

1. Лицо, которое без установленных законом, иными право-

Article 1102.
The Duty to Return Unjust Enrichment

1. A person who, without bases established by a statute, other

выми актами или сделкой оснований приобрело или сберегло имущество (приобретатель) за счет другого лица (потерпевшего), обязано возвратить последнему неосновательно приобретенное или сбереженное имущество (неосновательное обогащение), за исключением случаев, предусмотренных статьей 1109 настоящего Кодекса.

2. Правила, предусмотренные настоящей главой, применяются независимо от того, явилось ли неосновательное обогащение результатом поведения приобретателя имущества, самого потерпевшего, третьих лиц или произошло помимо их воли.

Статья 1103. Соотношение требований о возврате неосновательного обогащения с другими требованиями о защите гражданских прав

Поскольку иное не установлено настоящим Кодексом, другими законами или иными правовыми актами и не вытекает из существа соответствующих отношений, правила, предусмотренные настоящей главой, подлежат применению также к требованиям:

1) о возврате исполненного по недействительной сделке;

2) об истребовании имущества собственником из чужого незаконного владения;

legal acts, or a transaction, has acquired or economized property (the recipient) at the expense of another person (the victim) shall have the duty to return to the latter the unjustly acquired or economized property (unjust enrichment), with the exception of the cases, provided by Article 1109 of the present Code.

2. The rules provided by the present Chapter shall be applied regardless of whether the unjust enrichment was the result of the conduct of the acquirer of the property, the victim himself, third persons, or occurred against their will.

Article 1103. Relation of Claims for the Return of Unjust Enrichment to Other Claims for the Protection of Civil-Law Rights

To the extent not otherwise established by the present Code, other statutes or other legal acts, nor otherwise follows from the nature of the respective relations, the rules provided by the present Chapter shall also be applied to claims:

1) for return of performance under an invalid transaction;

2) for the recovery of property by an owner from another's illegal possession;

3) одной стороны в обязательстве к другой о возврате исполненного в связи с этим обязательством;

4) о возмещении вреда, в том числе причиненного недобросовестным поведением обогатившегося лица.

Статья 1104. Возвращение неосновательного обогащения в натуре

1. Имущество, составляющее неосновательное обогащение приобретателя, должно быть возвращено потерпевшему в натуре.

2. Приобретатель отвечает перед потерпевшим за всякие, в том числе и за всякие случайные, недостачу или ухудшение неосновательно приобретенного или сбереженного имущества, происшедшие после того, как он узнал или должен был узнать о неосновательности обогащения. До этого момента он отвечает лишь за умысел и грубую неосторожность.

Статья 1105. Возмещение стоимости неосновательного обогащения

1. В случае невозможности возвратить в натуре неосновательно полученное или сбереженное имущество приобретатель должен возместить потерпевшему действительную стоимость этого имущества на момент его

3) of one party in an obligation to another for return of performance in connection with this obligation;

4) for compensation for harm including that caused by the bad-faith conduct of the enriched person.

Article 1104. Return of Unjust Enrichment in Kind

1. Property constituting unjust enrichment of the acquirer must be returned to the victim in kind.

2. The recipient shall be liable to the victim for every, including accidental, shortage or worsening of the unjustly acquired or economized property that occurred after he learned or should have learned of the unjust enrichment. He shall be liable only for intent and gross negligence before this time.

Article 1105. Compensation for the Value of Unjust Enrichment

1. In case of the impossibility of the return of the unjustly received or economized property in kind, the acquirer must compensate the victim for the actual value of this property at the time it was acquired and also for the

приобретения, а также убытки, вызванные последующим изменением стоимости имущества, если приобретатель не возместил его стоимость немедленно после того, как узнал о неосновательности обогащения.

2. Лицо, неосновательно временно пользовавшееся чужим имуществом без намерения его приобрести либо чужими услугами, должно возместить потерпевшему то, что оно сберегло вследствие такого пользования, по цене, существовавшей во время, когда закончилось пользование, и в том месте, где оно происходило.

losses caused by later change in the value of the property if the recipient has not compensated for its value promptly after he learned of the unjust enrichment.

2. A person who has unjustifiably made temporary use of another's property without the intent to acquire it or of another's services must compensate the victim for what the person economized as the result of such use at the price existing at the time when the use ended and in the place where it occurred.

Статья 1106. **Последствия неосновательной передачи права другому лицу**

Лицо, передавшее путем уступки требования или иным образом принадлежащее ему право другому лицу на основании несуществующего или недействительного обязательства, вправе требовать восстановления прежнего положения, в том числе возвращения ему документов, удостоверяющих переданное право.

Article 1106. **Consequences of Unjustified Transfer of Rights to Another Person**

A person who has transferred by way of assignment of a claim or in another manner a right belonging to himself to another person on the basis of a nonexistent or invalid obligation shall have the right to demand re-establishment of the former position, including the return to him of documents evidencing the right transferred.

Статья 1107. **Возмещение потерпевшему неполученных доходов**

1. Лицо, которое неосновательно получило или сберегло

Article 1107. **Compensation to the Victim for Income not Received**

1. A person who has unjustly received or economized proper-

имущество, обязано возвратить или возместить потерпевшему все доходы, которые оно извлекло или должно было извлечь из этого имущества с того времени, когда узнало или должно было узнать о неосновательности обогащения.

2. На сумму неосновательного денежного обогащения подлежат начислению проценты за пользование чужими средствами (статья 395) с того времени, когда приобретатель узнал или должен был узнать о неосновательности получения или сбережения денежных средств.

Статья 1108. Возмещение затрат на имущество, подлежащее возврату

При возврате неосновательно полученного или сбереженного имущества (статья 1104) или возмещении его стоимости (статья 1105) приобретатель вправе требовать от потерпевшего возмещения понесенных необходимых затрат на содержание и сохранение имущества с того времени, с которого он обязан возвратить доходы (статья 1106) с зачетом полученных им выгод. Право на возмещение затрат утрачивается в случае, когда приобретатель умышленно удерживал имущество, подлежащее возврату.

ty shall have the duty to return to or compensate the victim for all incomes that he extracted or should have extracted from this property from the time when he learned or should have learned of the unjust enrichment.

2. Interest for the use of another's assets (Article 395) shall be calculated on the sum of unjust monetary enrichment from the time when the acquirer learned or should have learned of the unjust receipt or saving of monetary assets.

Article 1108. Compensation for Expenditures on Property Subject to Return

Upon the return of the unjustly acquired or economized property (Article 1104) or compensation for its value (Article 1105), the acquirer shall have the right to claim from the victim compensation for necessary expenditures borne for the maintenance and preservation of the property from the time from which he had the duty to return incomes (Article 1106 [*sic – reference apparently should be to Article 1107 – translators' note*]), setting off the benefits received by him. The right to compensation for expenditures shall be lost in the case when the recipient intentionally withheld property subject to return.

“ARBITRATION PROCEDURE CODE OF THE RUSSIAN FEDERATION” (APC RF)

dated July 24, 2002, No. 95-FZ

Article 125. Form and content of statement of claim

1. The statement of claim shall be filed with the court of arbitration in writing. The statement of claim shall be signed by the plaintiff or the plaintiff's representative. The statement of claim may also be filed with the court of arbitration by completing the form posted on the official website of the court of arbitration on the Internet information and telecommunications network.

2. The statement of claim shall set forth:

1) The name of the court of arbitration in which the statement of claim is filed;

2) The name and location of the plaintiff; if the plaintiff is a citizen , the plaintiff's place of residence, date and place of birth, place of employment or date and place of state registration of individual entrepreneur, telephone and fax numbers, and electronic mail address;

3) The name and location or place of residence of the defendant;

4) The plaintiff's claims against the defendant, with citations to statutes and other legal and regulatory acts; if claims are asserted against multiple defendants, the claims against each defendant;

5) The facts on which the claims are based and the evidence supporting these facts;

6) The amount of the claim, if the claim can be expressed monetarily;

7) The calculation of the amount of money sought or disputed;

8) Information on the plaintiff's compliance with the claim presentation or other non-judicial procedure, if required by federal law or the contract;

9) Information on the measures taken by the court of arbitration to secure the property interests before commencement of the action;

10) A list of the attached documents.

The statement shall also include other information necessary for the proper and timely consideration of the case and may contain motions, including motions to compel discovery of evidence from the defendant or other persons.

3. The plaintiff shall send to the other parties to the case copies of the statement of claim and any of the attached documents that they do not have, by registered mail with delivery confirmation.

TRANSPERFECT

City of New York, State of New York, County of New York

I, Sara Hutchison, hereby certify that the file "**Article 125 of the 2002 Arbitrazh Procedure Code**" is, to the best of my knowledge and belief, a true and accurate translation from Russian into English.

Sara Hutchison

Sworn to before me this
26th Day of October 2011

Signature, Notary Public

KRISTIN MILORO
Notary Public - State of New York
No. 01MI6212799
Qualified in New York County
Commission Expires Oct 19, 2012

Stamp, Notary Public

"АРБИТРАЖНЫЙ ПРОЦЕССУАЛЬНЫЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ" (АПК РФ)

от 24.07.2002 N 95-ФЗ

Статья 125. Форма и содержание искового заявления

1. Исковое заявление подается в арбитражный суд в письменной форме. Исковое заявление подписывается истцом или его представителем. Исковое заявление также может быть подано в арбитражный суд посредством заполнения формы, размещенной на официальном сайте арбитражного суда в информационно-телекоммуникационной сети "Интернет".

2. В исковом заявлении должны быть указаны:

1) наименование арбитражного суда, в который подается исковое заявление;

2) наименование истца, его место нахождения; если истцом является гражданин, его место жительства, дата и место его рождения, место его работы или дата и место его государственной регистрации в качестве индивидуального предпринимателя, номера телефонов, факсов, адреса электронной почты истца;

3) наименование ответчика, его место нахождения или место жительства;

4) требования истца к ответчику со ссылкой на законы и иные нормативные правовые акты, а при предъявлении иска к нескольким ответчикам - требования к каждому из них;

5) обстоятельства, на которых основаны исковые требования, и подтверждающие эти обстоятельства доказательства;

6) цена иска, если иск подлежит оценке;

7) расчет взыскиваемой или оспариваемой денежной суммы;

8) сведения о соблюдении истцом претензионного или иного досудебного порядка, если он предусмотрен федеральным законом или договором;

9) сведения о мерах, принятых арбитражным судом по обеспечению имущественных интересов до предъявления иска;

10) перечень прилагаемых документов.

В заявлении должны быть указаны и иные сведения, если они необходимы для правильного и своевременного рассмотрения дела, могут содержаться ходатайства, в том числе ходатайства об истребовании доказательств от ответчика или других лиц.

3. Истец обязан направить другим лицам, участвующим в деле, копии искового заявления и прилагаемых к нему документов, которые у них отсутствуют, заказным письмом с уведомлением о вручении.

ARBITRAZH PROCEDURE CODE OF THE RUSSIAN FEDERATION,
May 5, 1995, No. 70-FZ

Article 3. Legislation on Judicial Procedure in Arbitrazh Courts

. . .

3. If an international treaty of the Russian Federation has established rules of court procedure other than those that are provided by the legislation of the Russian Federation, then the rules of the international treaty shall be applied.

. . .

Russian text of Article 3:

Article 3. Legislation on Judicial Procedure in Arbitrazh Courts

1. Pursuant to the Constitution of the Russian Federation, matters of legislation on judicial procedure in the arbitrazh courts of the Russian Federation are the authority of the Russian Federation.

2. Judicial procedure in the arbitrazh courts of the Russian Federation is defined by the Constitution of the Russian Federation, the Federal Constitutional Law on Arbitrazh Courts, this Code and other federal laws enacted pursuant thereto.

3. If an international treaty of the Russian Federation has established rules of judicial procedure other than those that are provided by the legislation of the Russian Federation, then the rules of the international treaty shall be applied.

4. Judicial procedure in the arbitrazh courts is based on the laws that are effective at the time when a case is heard, or certain procedural actions are taken, or a court's ruling is enforced.

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TRANSPERFECT

City of New York, State of New York, County of New York

I, Sara Hutchison, hereby certify that the file "ARBITRAZH PROCEDURE CODE OF THE RUSSIAN FEDERATION, May, 5, 1995, No. 70-FZ" is, to the best of my knowledge and belief, a true and accurate translation from Russian into English.

Sara Hutchison

Sworn to before me this
26th Day of October 2011

Signature, Notary Public

KRISTIN MILORO
Notary Public - State of New York
No. 01MI6212799
Qualified in New York County
Commission Expires Oct 19, 2014

Stamp, Notary Public

ARBITRAZH PROCEDURE CODE OF THE RUSSIAN FEDERATION,
May, 5, 1995, No. 70-FZ

Article 3. Legislation on Judicial Procedure in Arbitrazh Courts

. . .

3. If an international treaty of the Russian Federation has established other rules of court procedure than those that are provided by the legislation of the Russian Federation, then the rules of the international treaty shall be applied."

. . .

Russian text of Article 3:

Статья 3. Законодательство о судопроизводстве в арбитражных судах

1. В соответствии с Конституцией Российской Федерации законодательство о судопроизводстве в арбитражных судах в Российской Федерации находится в ведении Российской Федерации.

2. Порядок судопроизводства в арбитражных судах в Российской Федерации определяется Конституцией Российской Федерации, федеральным конституционным законом об арбитражных судах, настоящим Кодексом и принимаемыми в соответствии с ними другими федеральными законами.

3. Если международным договором Российской Федерации установлены иные правила судопроизводства, чем те, которые предусмотрены законодательством Российской Федерации, то применяются правила международного договора.

4. Судопроизводство в арбитражных судах ведется по законам, действующим во время рассмотрения дела, совершения отдельных процессуальных действий или исполнения решения суда.

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