
The Murder of Sergey Magnitskey and its Continuing Effects in Russia

May 12, 2010

Intro

- Hard to for those of us from working legal systems and functional governments to understand Russia.
- Lived and worked there since 1991
- 6 years on the board of directors of the American Chamber of Commerce
- Our firm handles aspects of 3 of the most famous cases in the country

The Russian Government and Lack Thereof

- ♦ Kremlin (Policy) – Able to command action while it is watching. Very narrow field of vision and limited span of attention. Impossible for a small group of people to govern a country without functional government institutions. President Medvedev and Prime Minister Putin are very popular. President Medvedev, has declared war on corruption. It is not clear the system is up to the task or that he has the power.
- ♦ Duma (Parliament)- Perceived as a rubber stamp for the Kremlin
- ♦ Judiciary (Completely subservient to any power, including law enforcement – Judges are generally for sale – almost totally unsupervised.)
- ♦ Law enforcement – Generally in business to make money. Almost totally unsupervised. 3 main functions: Enforce Govt. commands, make money, help the public. It is not enthusiastic about the 3rd function. It is perceived as the new mafia and is often simply organized crime. Almost universally detested.
- ♦ Fact: Much of the Russian “Government” now operates for private purposes with little supervision from anyone and very few opportunities for the public to do anything about it.

Legalized Theft, Dispute Resolution & The Law Enforcement Mafia

- The legal system often works but if politics or large amounts of money are involved the chances of foul play increase exponentially.
- Criminal cases are routinely purchased to steal assets or to enhance negotiating positions in civil matters. The greatest threat to anyone in Russia today is a bogus criminal case brought by law enforcement officers who have been paid or ordered (often by officials for private purposes) to bring the case. For this reason many actions undertaken by law enforcement cannot be viewed as State actions or even being State sanctioned. They are simply crimes undertaken by unsupervised officials acting for private gain.
- These bogus criminal cases cannot be won on the merits as everyone you need to appeal to is in on the game. Law, fact and logic are irrelevant.
 - Clients will be asked to yield or go to prison
 - Lawyers and tax advisors will be will be pressured to testify against their clients. Either to turn over evidence or to bear false witness. Failure to comply often results in having to flee the country or prison.

How Trouble found us

- ◆ In 2005 our Client Hermitage Fund was the largest foreign investor in Russia. It held Russian securities worth over 4 billion USD. These securities were held by three Russian subsidiary companies that were owned by HSBC as custodians for the investors in Hermitage Fund
- ◆ By 2007 these securities had been sold, \$230 million in Russian taxes had been paid, funds had been repatriated and our firm was in the process of liquidating the Russian subsidiary companies

Making Government Service Pay - Legal Nihilism In Action: Officials Attack Those They Are Sworn To Protect And Raid Their Own Treasury

The Group:

Businessmen (The Brains)

Corrupt Officials in the Russian Interior Ministry (The Muscle)

Corrupt Officials in the Russian Tax Ministry (The Needed Signature)

The Plan:

To Rip-Off \$230 Million from the Russian People

Office Raids

On 4 June 2007, 25 officers of the Moscow Interior Ministry, led by Lieutenant Colonel Kuznetsov, raided the Moscow office of Hermitage and the office of its Moscow-based lawyers, Firestone & Duncan



Led by
Lieutenant Colonel
Artem Kuznetsov



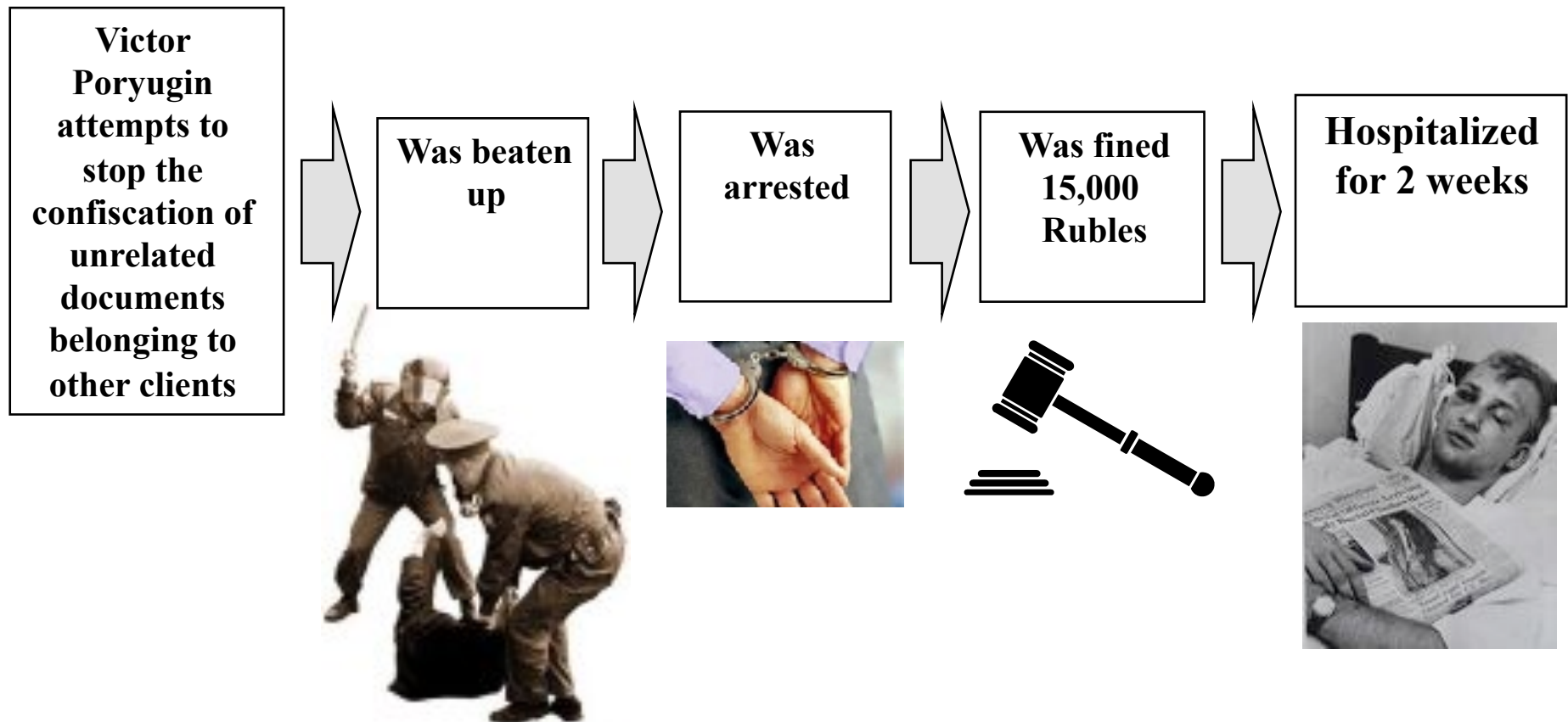
Hermitage Moscow Office



Firestone Duncan, Hermitage's Lawyers

Raid on Firestone Duncan Office

During the search of Firestone Duncan, Victor Poryugin, a lawyer with the firm, tried to stop the seizure of unrelated documents. He was taken into a conference room, punched repeatedly in the throat and face, then arrested and fined 15,000 rubles



What was taken in the raids?

The Moscow Interior Ministry seized servers, computers and numerous confidential files, in addition to four key corporate items for the three Hermitage Fund Russian companies



Key Corporate Items Seized

(for the Hermitage companies Rilend, Parfenion, Makhaon)

1. Corporate Seals



2. Original Charters

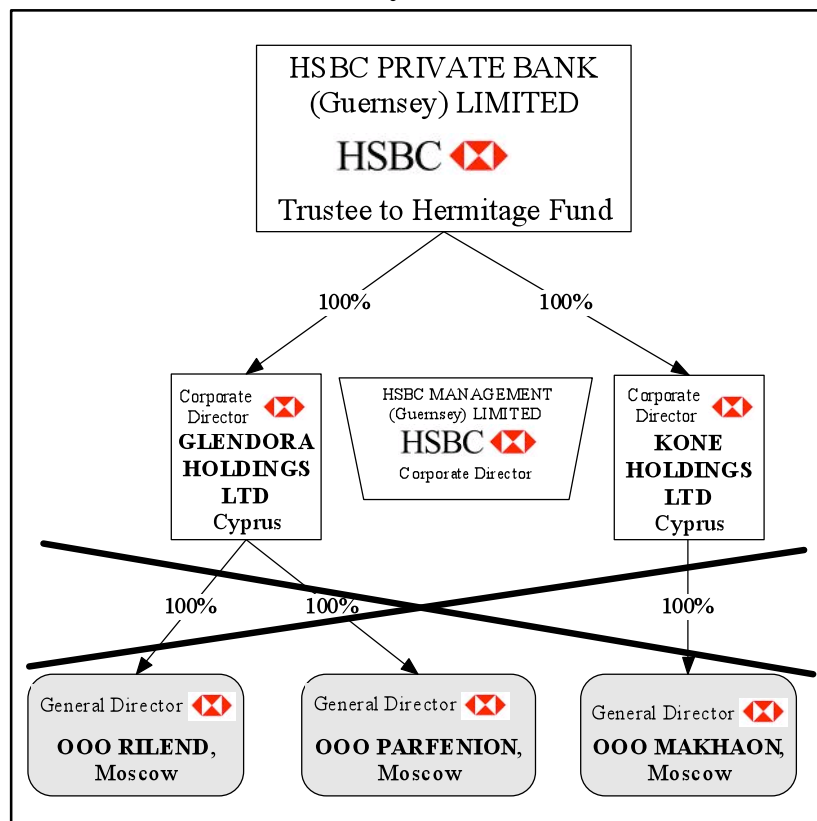
3. Original Certificates of
Registration with State
Registrar

4. Original Certificates of
Registration with Tax
Authorities

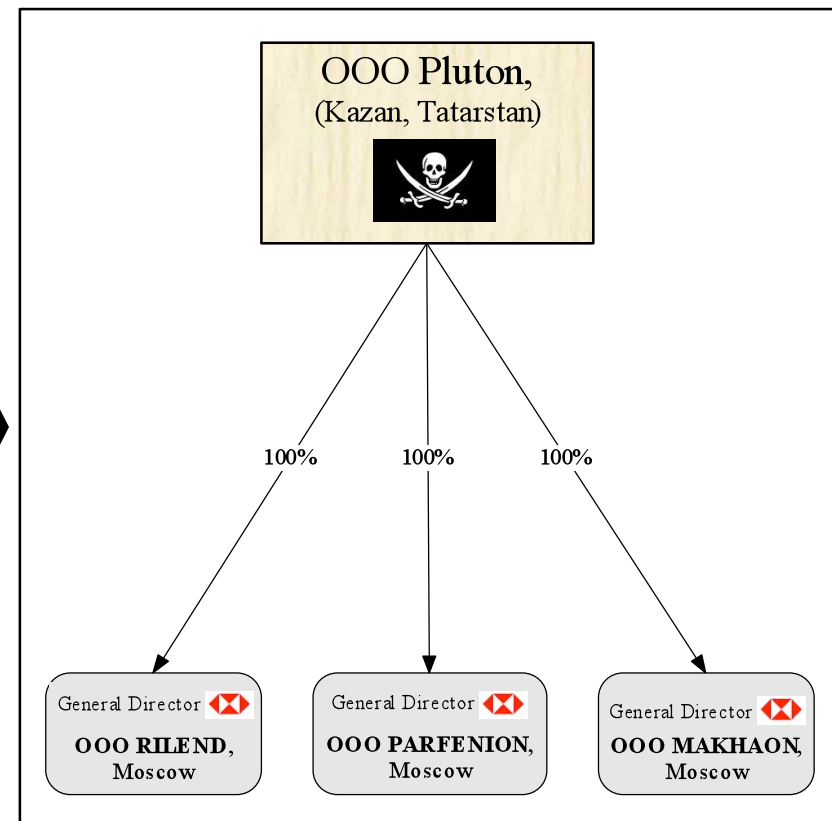
What happened next?

On 20 September 2007, the registry records of the stolen Hermitage Fund companies were fraudulently changed to show an unknown company from Kazan named “Pluton” as the new owner. The lawful owner, HSBC, was wiped off the registry

Corporate Registry
May 2007



Corporate Registry
September 2007



Who was registered as the new owner?

Pluton, a Russian company registered in Kazan (in the Russian republic of Tatarstan) and owned by a man named Viktor Markelov

– Curriculum Vitae –	
VICTOR ALEXANDROVICH MARKELOV	
ADDRESS:	
2 Zarechnaya Street, Kochetkovka Village, Atkarsky Rayon, Saratov Region 412420, Russia	
DATE & PLACE OF BIRTH:	
15 December 1967, Leninskoe, Oshsky Region, Kirgizskaya SSR	
PASSPORT:	
# 63 05 769119, issued by UVD (Zavodskogo), Saratov, 30.12.2005	
PROFESSIONAL EXPERIENCE:	
01.12.2001	MURDER– manslaughter Mr.Prohorov in Akhtarsk
29.04.2002	CONVICTED & SENTENCED FOR TWO AND A HALF YEARS – p.1 Article 109 of <i>Criminal Code of Russian Federation</i>
16.03.2004	WARRANT for ARREST PP. a), Paragraph 2 Article 158 "Theft" of <i>Criminal Code of Russian Federation</i> : "Theft conducted by a group of people with entering a preliminary collusion"
2006	ARRESTED – for "unlawful activity resulting in damage" (under Article 330 of the Russian Criminal Code)
03.07.2007	Shareholder and General Director of OOO Pluton , Kazan, Tatarstan Charter Capital US\$400 Address: 22 Dementieva Street, Kazan, Tatarstan, 420127
EDUCATION:	
• N/A	



V. Markelov

100%



100%

100%

100%

V.Kurochkin

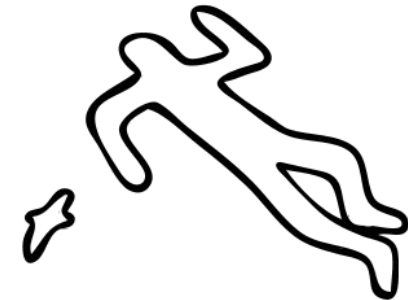
OOO RILEND,
Moscow

V.Markelov

OOO PARFENION,
Moscow

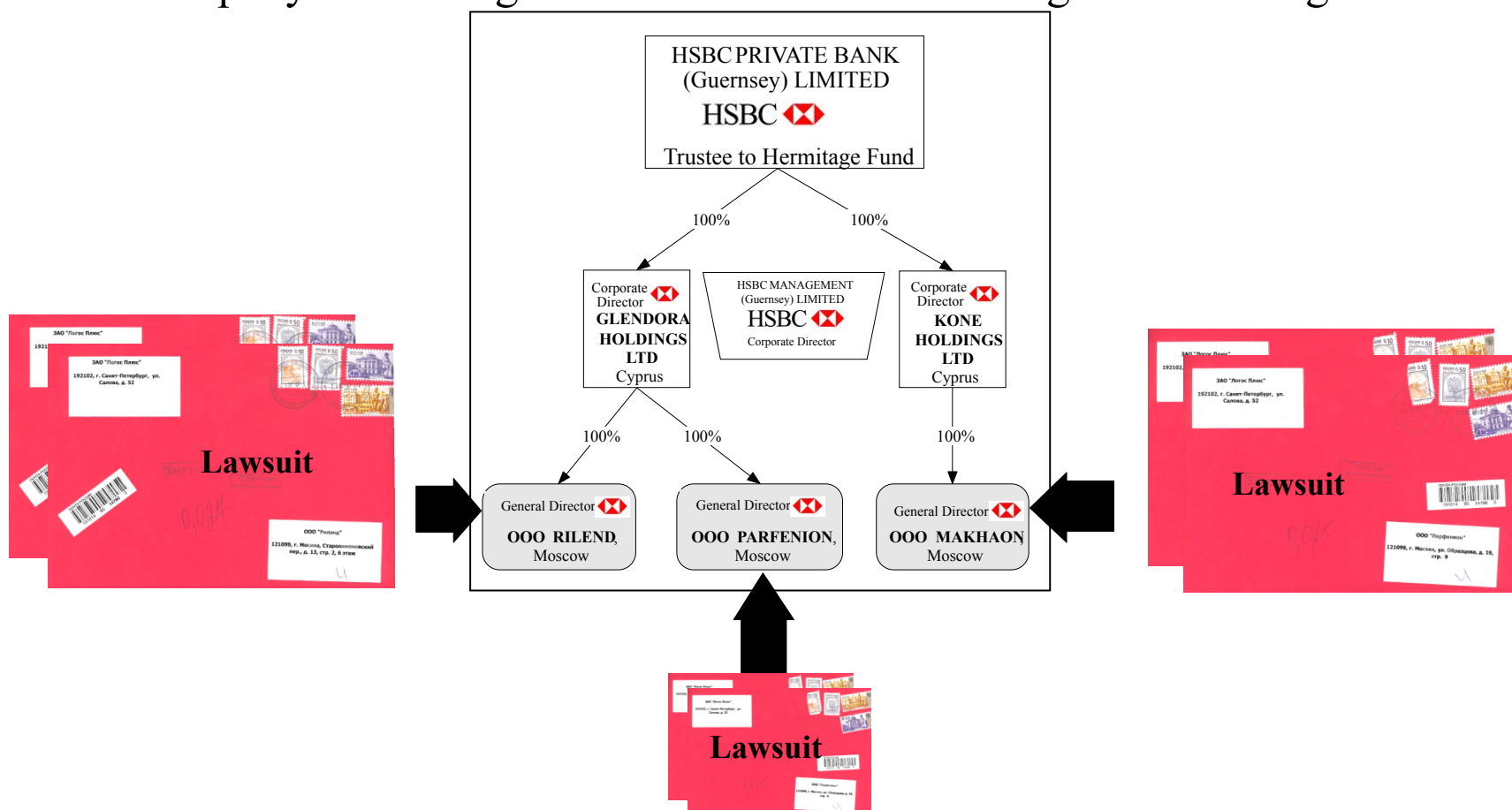
V.Khlebnikov

OOO MAKHAON,
Moscow



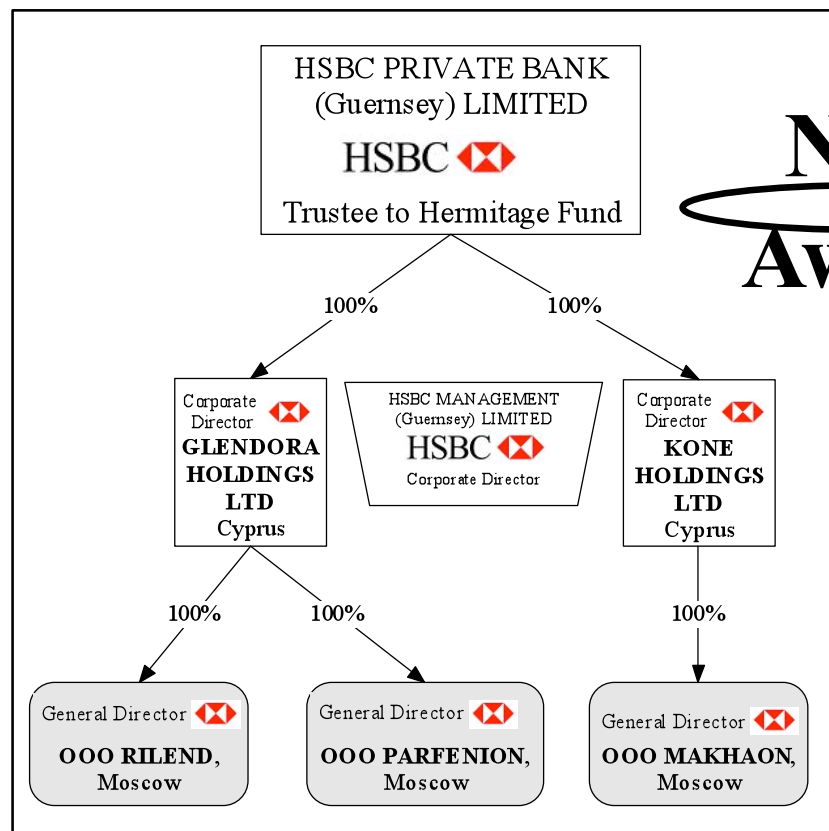
What happened after the companies were stolen?

Even before the fraudulent changes to the corporate registry were made, the companies were sued in St. Petersburg Arbitration Court on 27 July 2007 for \$376 million by an unknown company called Logos Plus without the knowledge of Hermitage and HSBC



Who defended the three stolen companies?

Even though Hermitage and HSBC were not aware of these lawsuits, the three stolen companies were represented before the St. Petersburg court by unknown lawyers not appointed by Hermitage or HSBC using fake powers of attorney from the new “owner”



**Not
Aware**



Andrei Pavlov
Lawyer for Rilend



E.A. Maltzeva
Lawyer for Parfenion



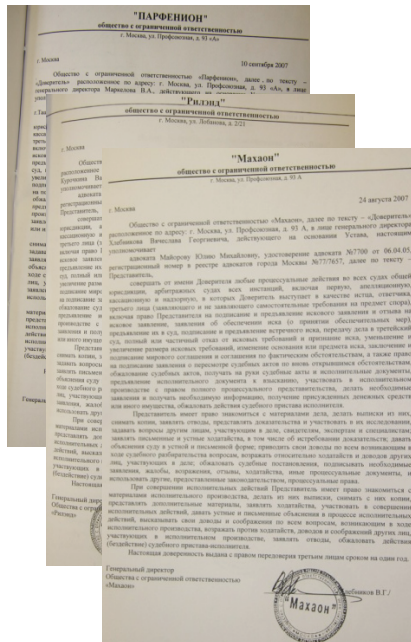
Y.M. Mayorova
Lawyer for Makhaon



What happened in court?

These lawyers fully acknowledged and accepted all the claims

**Fake POAs to lawyers
from Rilend, Parfenion
and Makhaon**



**Andrei Pavlov
Lawyer for Rilend**

“Hereby, the defendant confirms that he understands the charges, doesn’t have any objections and fully accepts the claims”

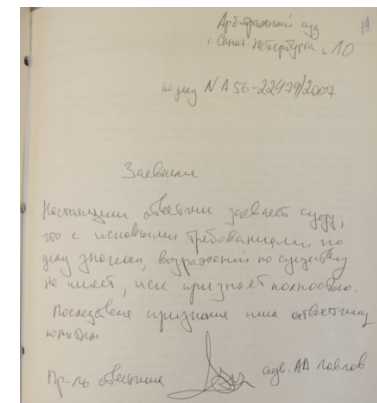
Andrei Pavlov, attorney for the defendants



Judge Orlova

“According to p.3 art. 70 of APC the acceptance of the claim by the defendant releases the plaintiff from the requirement to prove the case”

Judge Orlova



Арбитражный суд города Санкт-Петербурга и Ленинградской области
191015, Санкт-Петербург, Суворовский пр., 50/52
Именем Российской Федерации
РЕШЕНИЕ

г. Санкт-Петербург
21 сентября 2007 года Дело № А56-22484/2007
Резолютивная часть решения объявлена 17 сентября 2007г. Полный текст решения изготовлен 21 сентября 2007 года.
Арбитражный суд города Санкт-Петербурга и Ленинградской области в составе:
судьи Орлова Е.А.,
в судебном заседании ответчик заявил о признании исковых требований в полном объеме.
В соответствии с п. 3 ст. 70 АПК РФ признание стороной обстоятельств, на которых другая сторона основывает свои требования или возражения, освобождает другую сторону от необходимости доказывания таких обстоятельств.
В соответствии со ст. 309; 310 ГК РФ обязательства должны исполняться надлежащим образом. Не допускается односторонний отказ от исполнения обязательств.
Арбитражный суд считает требования истца обоснованными по праву и по размеру и подтверждаемыми удовлетворенно.
На основании изложенного и
Руководствуясь статьями 48; 102; 110; 167-170 Арбитражного процессуального кодекса Российской Федерации, арбитражный суд
решил:
Занести истца в порядке процессуального правопреемства на ООО «Гранд-Актив».
Выдать с Общества с ограниченной ответственностью «Парфенион» в пользу Общества с ограниченной ответственностью «Гранд-Актив» 2.800.000 руб. убыток и 25.500 руб. в порядке возмещения расходов по госпошлине.
Выдать исполнительный лист.
На решение может быть подана апелляция жалоба в Тринадцатый арбитражный апелляционный суд в течение месяца со дня принятия решения или кассационная жалоба в Федеральный арбитражный суд Северо-Западного округа в срок, не превышающий двух месяцев со дня вступления решения в силу.

Судья Орлова Е.А.

\$973 Million in Sham Judgments

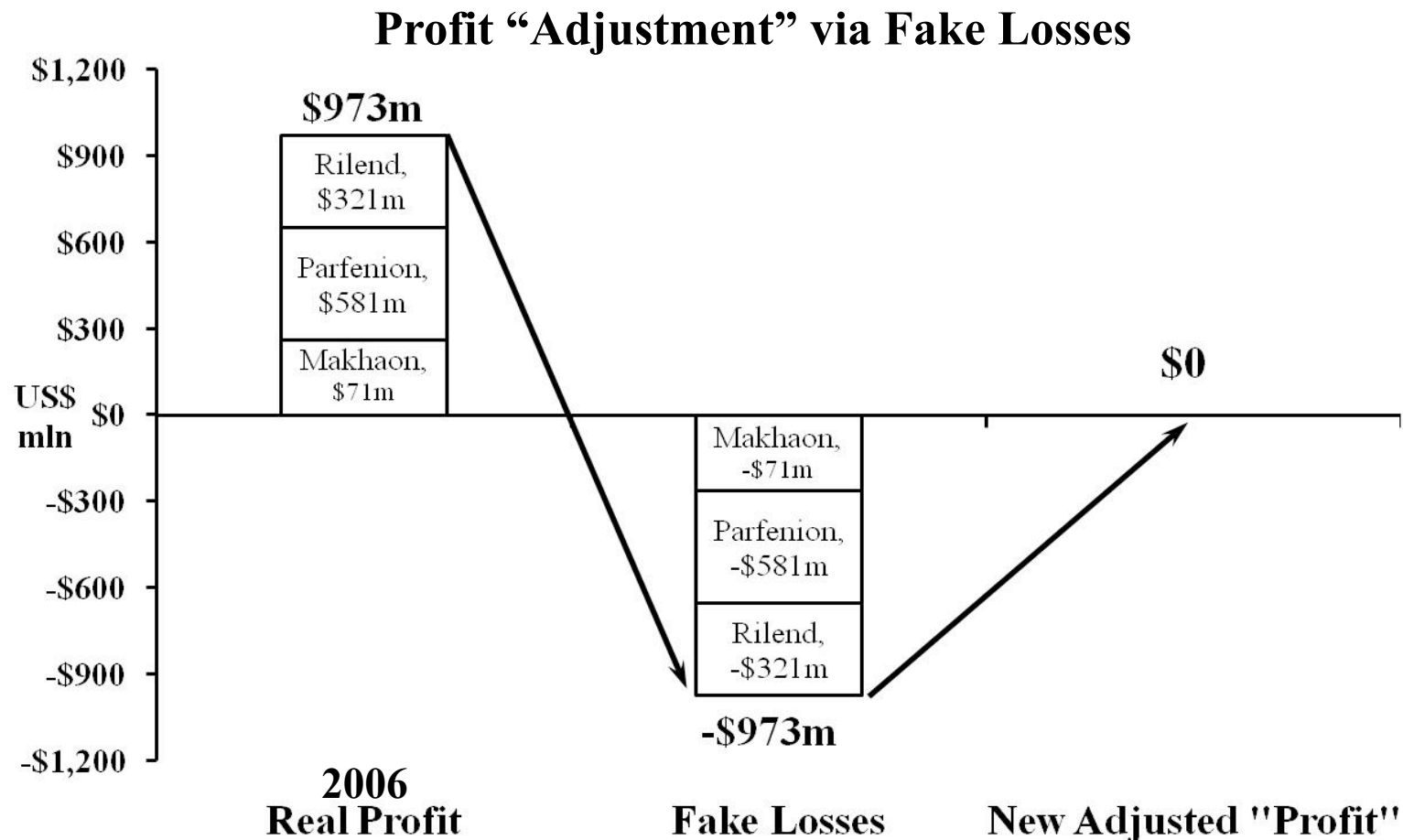
Identical sham claims against the Hermitage Fund companies were filed without Hermitage or HSBC's knowledge in October 2007 with the Moscow and Kazan arbitration courts on behalf of two unknown companies, Instar and Grand Aktive – and the claims were based on the same fake agreements and “foregone profits”



	Plaintiff	Defendant (Primary)	Total Award
Kazan	Grand Aktive	Parfenion	\$581 Million
Moscow	Instar	Rilend	\$321 Million
St. Petersburg	Logos Plus	Makhaon	\$71 Million
TOTAL:			\$973 Million

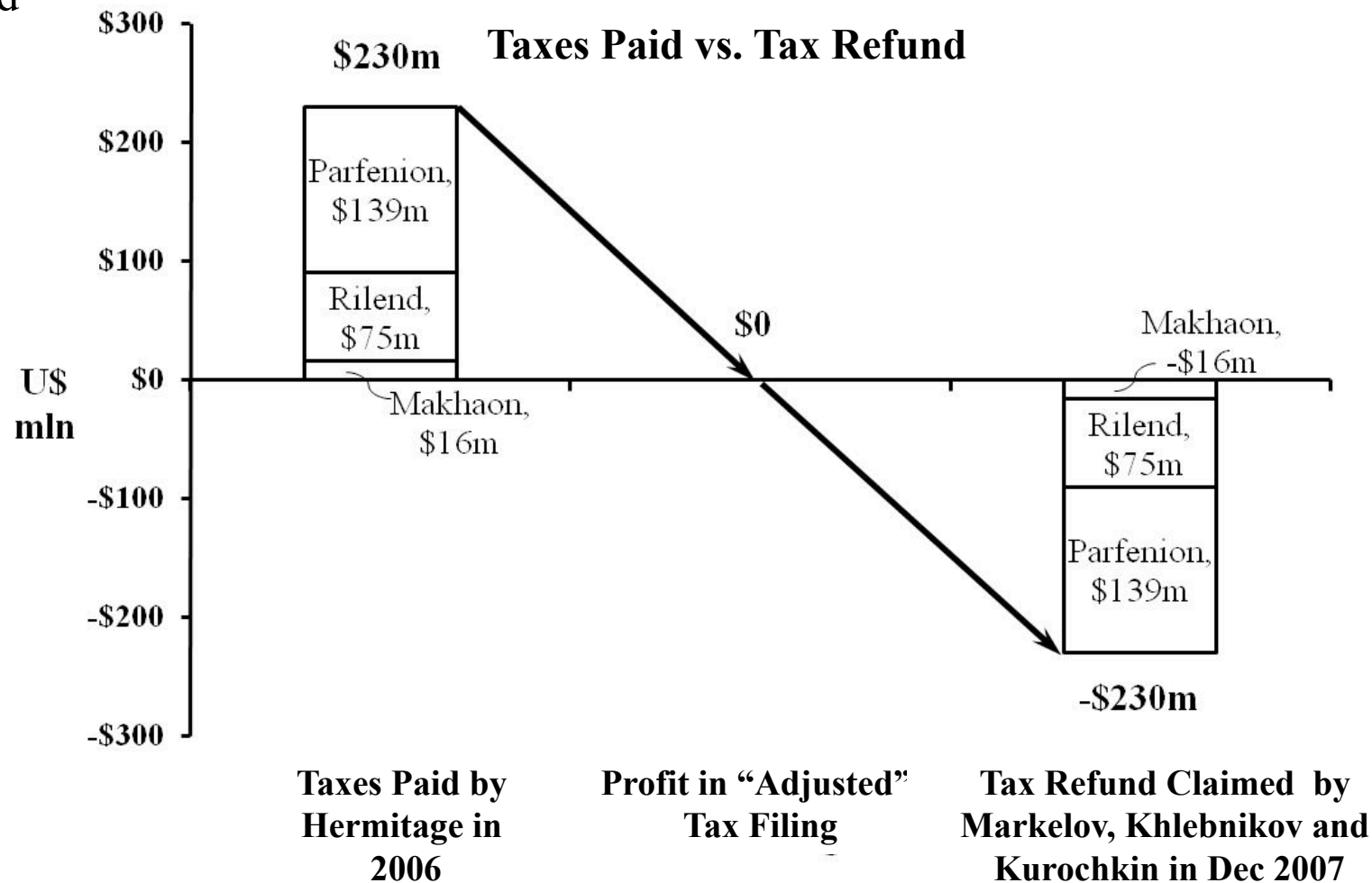
Court Judgments = Historic Profits

The perpetrators seemed to be intent on eliminating the historic profits from the Hermitage Fund companies retroactively...



Why eliminate profits retroactively?

... in order to steal the tax money paid by Hermitage by applying for a \$230 million tax refund



“Fast-Track” Tax Refund

On the basis of the court judgments, the perpetrators filed for a \$230 million refund of the taxes previously paid by Hermitage. The Moscow Tax Authorities (#25 and 28) approved the refund of \$230 million without an audit and within two working days

“Fast-Track” Refund of \$230 Million from the Russian Budget



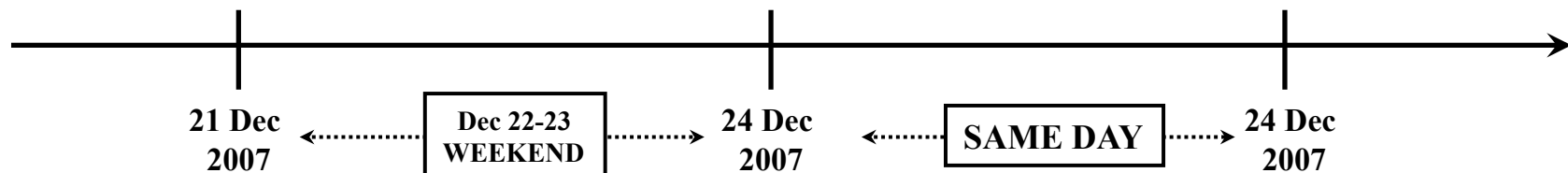
Markelov, acting for
Khlebnikov, files tax
refund for Makhaon



Markelov and Kurochkin file
tax refund for Rilend,
Parfenion



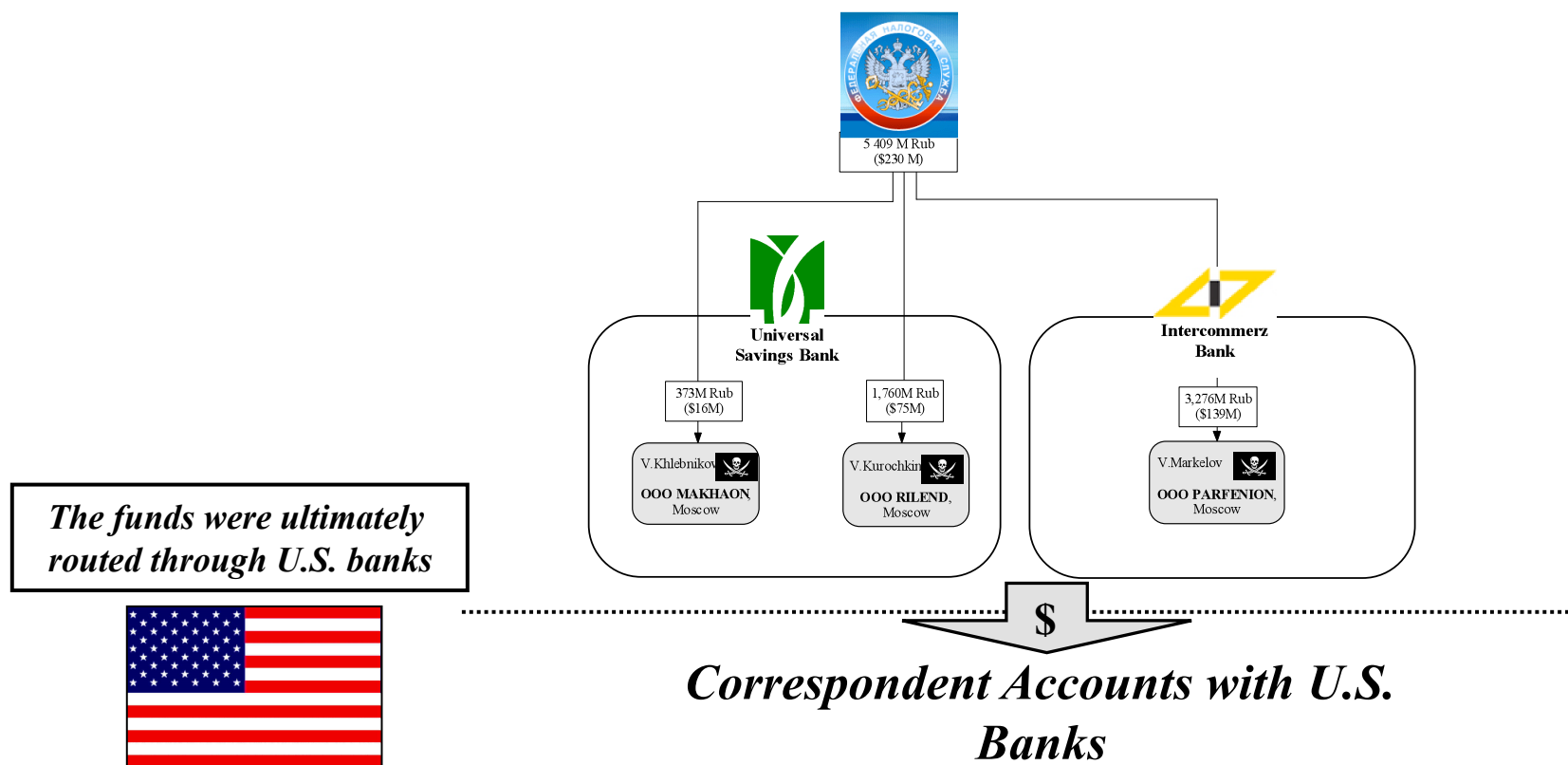
Approval of \$230
Million Tax Refund



\$230 Million Tax Refund

On 26 December 2007, the Moscow Tax Authorities transferred \$230 million in tax refunds to the newly opened accounts at USB and Intercommerz Bank, after which the funds were converted to US dollars and ultimately routed through U.S. banks

Distribution of the \$230 Million Tax Refund



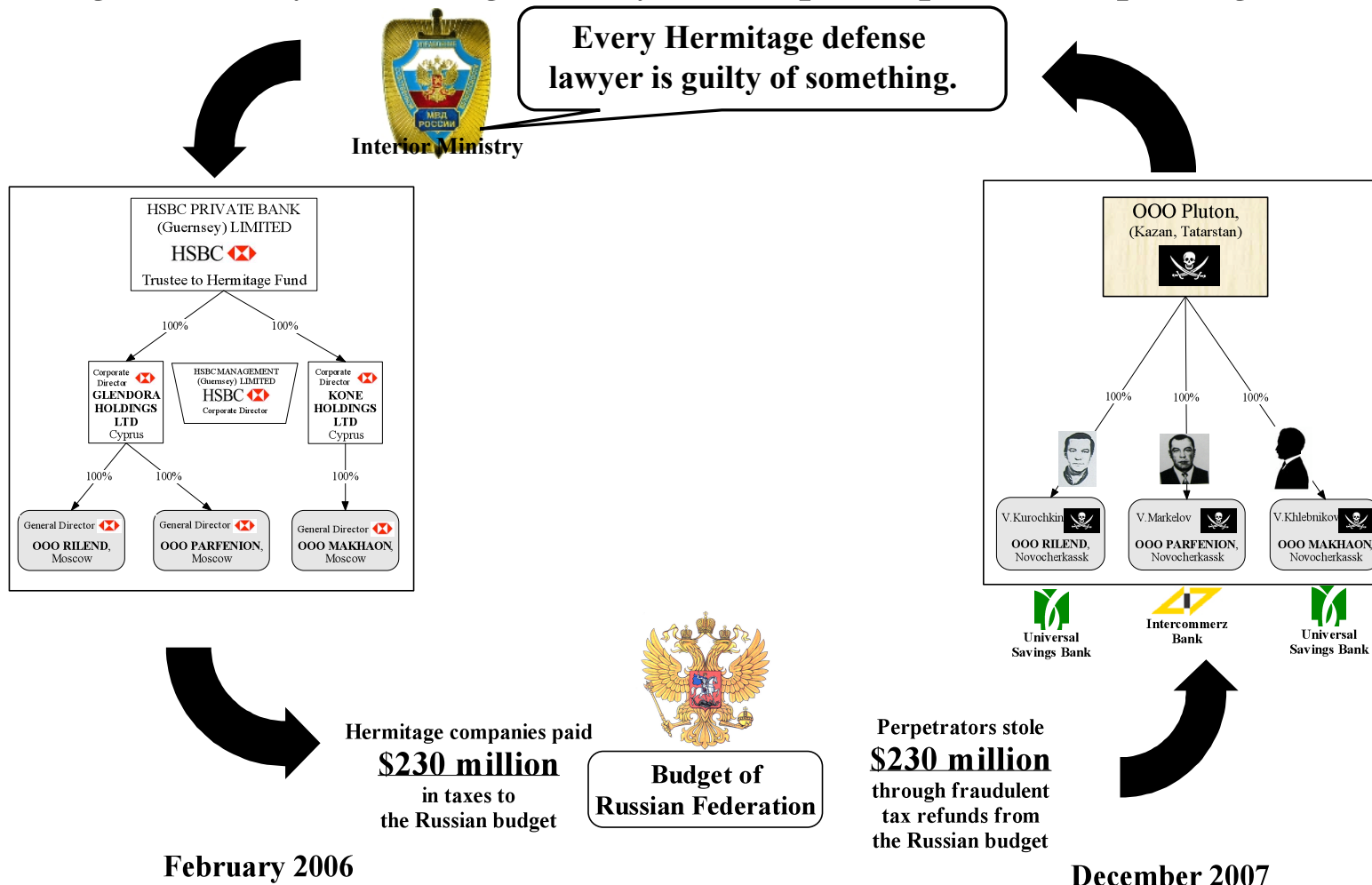
Hermitage Criminal Complaints: \$230 Million Tax Fraud

After the discovery of the tax fraud, HSBC and Hermitage filed eight complaints with the Russian authorities



Taking the Lawyers out of Action

The Interior Ministry's response to the Hermitage complaints was to bring criminal actions against every Hermitage's lawyer who participated in reporting the fraud



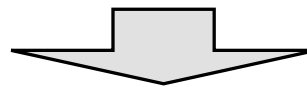
Taking the Lawyers out of Criminal Cases against Hermitage Lawyers

Eduard Khayretdinov, former judge and current Hermitage lawyer. A criminal case opened against him



Eduard Khayretdinov

- Former judge and renowned criminal defense lawyer
- Member of the Moscow Bar since 1992
- Recognized in the “Best Lawyers” ranking in Russia
- Filed criminal complaints alerting the Russian authorities to the \$230 million fraud, implicating senior officials within the Russian Interior Ministry



In January 2009 a criminal case was opened against Mr. Khayretdinov for using an “illegal” power of attorney issued to him by HSBC to challenge the fraudulent removal of the HSBC directors. Apparently, to be “legal”, the power of attorney would have had to come from the fraudulent directors themselves.

Tacking the Lawyers out of Action

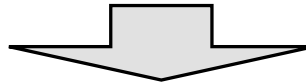
Criminal Cases against Hermitage Lawyers

Vladimir Pastukhov, Hermitage lawyer. Ongoing attempt to open a criminal case against him



Vladimir Pastukhov

- Prominent Russian constitutional lawyer
- Adviser to the Chairman of the Russian Constitutional Court
- Professor, Higher School of Economics
- Developed and coordinated the implementation of the legal strategy for HSBC and Hermitage, including the filing of complaints making public the \$230 million fraud against the Russian state



A criminal case is in the process of being opened against Pastukhov for using an “illegal” power of attorney issued by HSBC to challenge the fraudulent removal of its directors. As in the Khayretdinov case, apparently to be “legal”, the power of attorney must be issued by the fraudulent directors themselves.

Tacking the Lawyers out of Action

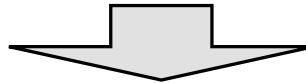
Criminal Cases against Hermitage Lawyers

Sergei Magnitsky. ARRESTED. Held in prison with bail from 24 November 2008 till death in prison 16 November 2009.



Sergei Magnitsky

- Adviser to the Hermitage Fund and dozens of other foreign blue-chip companies in Russia
- He discovered the \$230 million tax fraud committed using the stolen Hermitage Companies
- Testified about the Interior Ministry role in the \$230 million tax fraud; arrested by the officers he testified against shortly thereafter



Magnitsky was arrested in November 2008 following a raid on his home in Moscow. The charges issued by the Investigative Committee of the Interior Ministry relate to a non-existent conspiracy to commit tax fraud.

No. There was never any outstanding claims or false tax reporting claims raised by tax authorities in respect to Dalnaya Step and Saturn Investments. Both companies were audited by the tax authorities, who found no violations

Saturn Investments Tax Audit for 2000-2002

“Audit of lawfulness of applying income tax rate *didn’t reveal any violations*: the company applied tax benefit in accordance with pp2.Article 6, i.e. the tax rate was reduced by 50%, due to the fact that handicapped employees comprised not less than 50% of total staff”

[illegible]

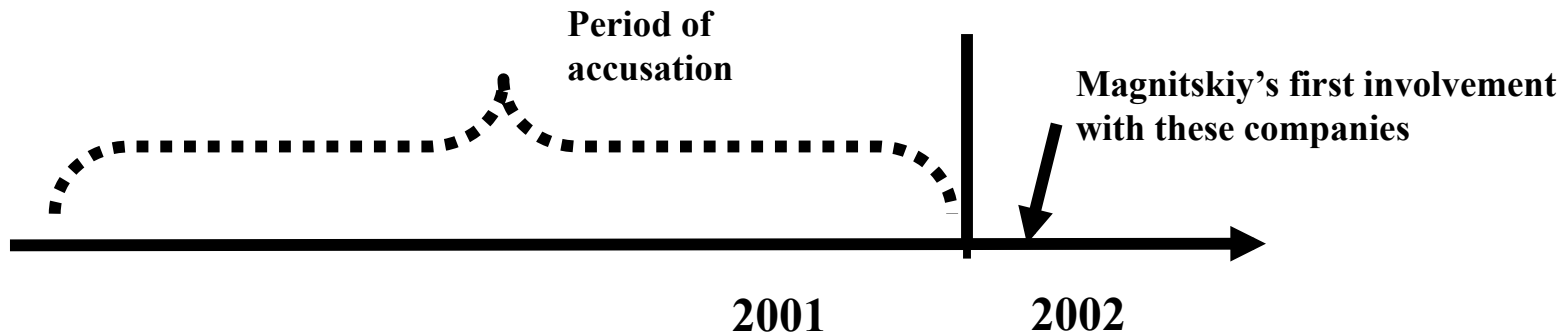
No Basis For Charge: Magnitskiy had nothing to do with these companies in 2001

Sergei Magnitskiy only started to provide legal advice to these companies in 2002. He was neither a director nor accountant or otherwise responsible for these companies in 2001

Letter appointing Sergei Magnitskiy as external legal counsel in 2002

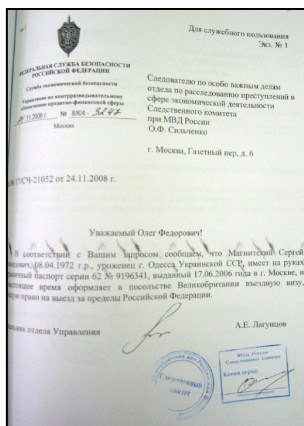


To appoint Mr. Magnitsky S.L. as a legal council from 14 August 2002 in accordance with Labor contract # 5-2002 dated 14 August 2002



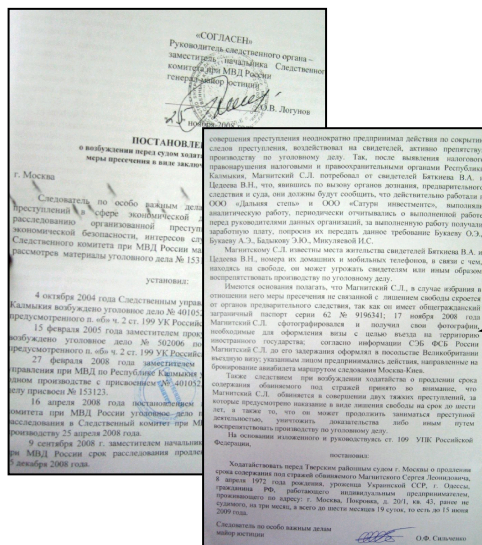
Official Basis for Magnitskiy's Pre-trial Detention

The investigators alleged that Mr. Magnitskiy was a flight risk because he applied for a visa at the UK Embassy in Moscow



FSB reply (24.11.08) to Investigator Silchenko's inquiry (24.11.08)

“Magnitskiy Sergei Leonidovich, DoB 08.04.1972, ..., holds passport #, and currently has applied to the UK Embassy for a UK entry visa, which will give him the right to leave the Russian Federation.”

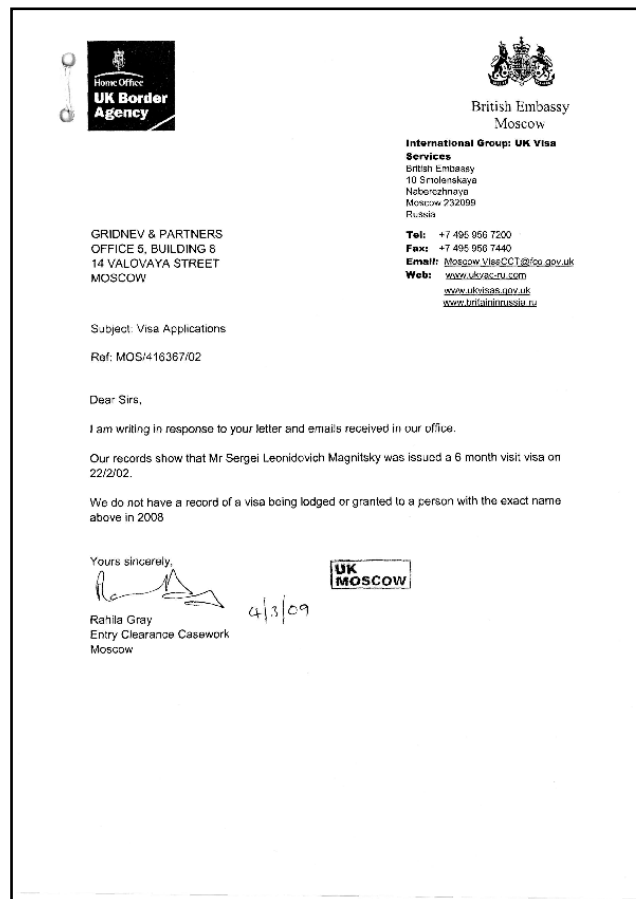


Investigator Silchenko's court request for detention of Mr. Magnitskiy (25.11.08)

“There is a ground to suspect that in case a different form of restriction is chosen, i.e. not the imprisonment then Magnitskiy S.L. goes in hiding from the investigation due to the fact that before he was detained he was in the process of applying for a UK entry visa with the UK Embassy....”

Official Basis For Detention Has No Basis In Fact

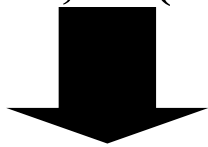
Sergei Magnitsky Never applied for a UK visa Letter from the UK Embassy in Moscow (dated March 4th, 2009)



**Detention: Pressured to withdraw testimony against officers
& incriminate client**



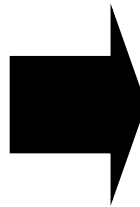
Petrovka, 38 (24 Nov 08)



**Prison "SIZO #
5" (2 Dec 2008)**



Sergei Magnitskiy
Currently detained
in a 8 sq m cell
with 4 people



Prison "Butyrka" (25 July 2009)



**Prison "Matrosskaya
Tishina" (28 Apr 2009)**

Public Reaction to Sergey's Murder – Before the New Year

- ◆ Public Outcry
- ◆ President Orders Investigation of death
- ◆ President fires 30 Prison Officials
- ◆ Law adopted to prevent pre-trial detentions for tax crimes (the most common way of framing people)
- ◆ President does not do anything to investigate or punish anyone who was involved in the fraud or in the false arrest and systematic torture that resulted in Sergey's death. The Investigation and Officials are treating Sergey's death as an unfortunate failing of prison system to provide for a prisoner.

Public Reaction to Sergey's Murder – 2010 – Hopeful Signs

- ◆ Russian NGO, The Public Oversight Commission concluded that “Sergey Magnitskey was murdered to conceal the fraud that he exposed”;
- ◆ Lyudmila Alekseyeva, Chairman of the Russian Helsinki Commission files a complaint saying that:
- ◆ Sergey Magnitskey was detained “...under the pretext of committing a tax crime...” and that his “...death was not accidental, it did not occur as merely oversight or negligence of prison officials. Mr. Sergey Magnitskey died from systematic torture intentionally applied by officers of the Interior Ministry”

Public Reaction to Sergey's Murder – 2010 – Hopeful Signs

- ◆ US Senator Benjamin Carden Chairman of the US Helsinki commission called for the US and Europe to ban visas for all of the officers involved in the false arrest and murder of Sergey Magnitskey. He published a list of 60 officials involved including police officers, tax officers, and judges and the parts they played in the theft and the false arrest and murder to cover it up.
- ◆ A future action is being launched by one of Russia's most prominent advocates to disbar all of the judges who approved Sergey's detention and its numerous extensions

Public Reaction to Sergey's Murder – 2010 – Hopeful Signs

- ◆ Over the last few months, with Sergey's case and a few other high profile cases including the death of a business woman in prison last week have brought public outrage to a boiling point; there is a public outcry against criminality in law enforcement and the judicial system. It is not anti government or anti Kremlin, it is pro rule of law and pro-Medvedev. The President claims to support those who fight legal nihilism and has taken a personal interest in this case.

My Reaction to Sergey's Murder

- ◆ I do not see our case as a war with the Russian Government but with a small cell of criminals in the government who appear to have gone too far, even for Russia. There are hundreds of these cells and the public needs to oppose them but generally does not.
- ◆ Sergey's case has become the leading rule of law case in Russia today, it has popular support, and it is not viewed by the Kremlin as a case against Russia. I.e. fighting Sergey's case does not create a problem with the Kremlin.

My Reaction to Sergey's Murder

- ◆ Based on the above I think there is a reasonable chance to get some measure of justice and to do a lot of good. I am going to take the President at his word.
- ◆ So I will attempt to bring his killers to justice, out of loyalty to Sergey, a belief that things don't change if people don't fight, and a belief that this may be a historic moment for rule of law in Russia. A victory here would send a signal that Medvedev's war on corruption is real and that the President stands behind those who fight corruption. That would open the floodgates for thousands of cases against corrupt law enforcement.

My Reaction to Sergey's Murder

- ◆ A decision to keep my firm out of the fight against Sergey's killers to avoid harassment by corrupt officers. I also made a decision to fight this from London. Safer for me and keeps the Moscow office out of the line of fire. We haven't been visited by officers in 2 years and would like to keep it that way.
FYI in the last 2 years the Moscow offices of PWC, DLA Piper, and White & Case have all been raided in unrelated cases. This is a risk that comes with the territory but we all try and minimize it.
- ◆ Future acts to expose the individual law enforcement officers as criminals and have them prosecuted. My actions will begin very shortly and be high profile.
- ◆ Intent to return if successful otherwise to remain in the London office.

My Reaction to Sergey's Murder

- ♦ I never expected to be in this position – Not what I signed up for. I realize that by being silent I could remain in Russia without personal risk. However after spending 18 years telling Russians, my staff included, that they need to oppose corruption and stand up for their rights I find myself in the center of the country's most significant fight for rule of law. I could never live with myself if after all this I failed to stand up and fight. I couldn't live with practicing law if when real trouble struck I ran from my clients, and most of all I couldn't live with myself if I failed to stand behind Sergey. Sergey's story must never be repeated.
