IN THE MATTER OF AN ARBITRATION UNDER THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA AND THE UNCITRAL ARBITRATION RULES

PCA Case No. 2018-55

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In the Matter of Arbitration Between:

MASON CAPITAL L.P. and MASON MANAGEMENT LLC,

Claimants,

and

THE REPUBLIC OF KOREA,

Respondent.

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HEARING ON THE MERITS, Volume 2

Tuesday, March 22, 2022

New York International Arbitration Center
620 8th Avenue
16th Floor Conference Room
New York, New York

The hearing in the above-entitled matter came on at 8:30 a.m. (EDT) before:

PROFESSOR DR. KLAUS SACHS, President of the Tribunal
THE RT. HON. DAME ELIZABETH GLOSTER, Co-Arbitrator
PROFESSOR PIERRE MAYER, Co-Arbitrator
ALSO PRESENT:

Registry and Administrative Secretary to the Tribunal:

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MS. JINYOUNG SEOK

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P R O C E E D I N G S

PRESIDENT SACHS: Good morning, ladies and gentlemen. Day 2 of the Hearing.

Are there any housekeeping matters that we should review together?

MS. VAZOVÁ: Good morning, Mr. Chairman.

So, on Claimants' side, we're mindful that we still owe Professor Mayer some responses on his question yesterday about citations to the evidence. We have those prepared, if it's okay with the Tribunal, we would suggest that we have two witnesses up today, that we go through the witness evidence first and then address those together with any questions at the end of the hearing day.

PRESIDENT SACHS: That would make sense.

Any objection to that?

MR. VOLKMER: No, Mr. Chairman.

PRESIDENT SACHS: Any housekeeping matters on your side?

MR. VOLKMER: None, Mr. Chairman.

PRESIDENT SACHS: Okay. Then we will call Mr. Garschina to the witness stand.

KENNETH GARSCHINA, CLAIMANTS' WITNESS, CALLED

PRESIDENT SACHS: Good morning, Mr. Garschina. In front of you is a Declaration with
which I understand you are already familiar. Would
you please read the Declaration for the record.

(Inaudible.)

PRESIDENT SACHS: And could I ask you to
speak up a little bit and approach the microphone.

THE WITNESS: I solemnly declare upon my
honor and conscience that I will speak the truth, the
whole truth, and nothing but the truth.

PRESIDENT SACHS: Thank you very much.

You are here as a fact witness. We are now
considering your Third and your Fourth Witness
Statement in particular. Is there anything in the
Third or the Fourth Statement that you would like to
correct at this point of time?

THE WITNESS: No.

PRESIDENT SACHS: Thank you very much.

Now, the rules are, as you know, you will be
questioned in direct for some minutes, and then
cross-examined?

THE WITNESS: Can you hear me?

PRESIDENT SACHS: Yes, I can hear you well.

And I hope my two co-Arbitrators--can you
hear the Witness well?

ARBITRATOR GLOSTER: Yes, very well, indeed.

Thank you.
ARBITRATOR MAYER: Yes.

PRESIDENT SACHS: Well, we don't hear you, Dame Elizabeth, but I understand you.

ARBITRATOR GLOSTER: I'm sorry, yes, I can hear the Witness very well.

PRESIDENT SACHS: Liz, can you hear us?

ARBITRATOR GLOSTER: Yes, I can hear you. Can you hear me?

PRESIDENT SACHS: Well, we don't hear you.

ARBITRATOR GLOSTER: Okay.

ARBITRATOR MAYER: I can hear Dame Elizabeth.

PRESIDENT SACHS: And, Pierre, we don't hear you either.

ARBITRATOR MAYER: Ah. We're unmuted.

ARBITRATOR GLOSTER: We're unmuted, yeah.

(Pause.)

PRESIDENT SACHS: So, here we go. Questions in direct.

MS. VAZOVA: Good morning.

DIRECT EXAMINATION

BY MS. VAZOVA:

Q. Good morning, Mr. Garschina.

A. Good morning.

Q. Can you please remind the Tribunal what your
role was in connection with Mason's investment in Samsung?

A. Yes, as the co-Chief Investment Officer of Mason Capital. My responsibilities included overseeing a Research Team, shepherding the research process, analyzing the output for the research process, and ultimately making decisions about, as I said last time, flipping that switch to own securities in the Samsung structure.

Q. And starting with Samsung Electronics, what was Mason's investment thesis in relation to Samsung Electronics?

A. The thesis, going back quite a period of time, is that Korea was going to take affirmative steps to reform their corporate governance system. I had been following Korea for--the Korean markets for a couple of decades, starting with the Asian crisis in 1997, and I noticed that the multiples of earnings that the market placed on Korean securities in general was quite low, and the reason for that was easily identifiable for everyone to observe. It was that Western investors did not think that they were getting a fair shake at the table versus management, control Shareholders, other actors within the orbit of so-called "chaebols."
The thesis was that that was going to change for a number of reasons. Chief among them was public pressure against the corruption. That pressure was putting follow-on pressure to the political establishment, causing a wealth gap that was increasingly being recognized by the public as perverse and unequitable.

We think that culminated ultimately around 2010 or so, with a movement politically inside Korea to make things better, for lack of a better phrase, more hospitable to outside investors. They realized that the large amount of capital that was necessary to develop their economy further would not be possible when the securities of their high-quality corporations at which their people worked were trading at really subsistence valuation levels.

Capital was needed for expansion in increasingly global industries that they played, and that capital would have to come from either the issuance of securities or other means, all of which led to the pressure from the public on the corruption. Inequality, and the need for access to capital led to, in my view—and I think it's been borne out by history since our last hearing—a decision within the country to reform the chaebols to achieve those ends.
Q. And how did all those expectations translate into Mason's investment in Samsung Electronics in particular?

A. Well, Samsung--we have a thesis around a set of actions that are going to take place. We looked for a way to express it, and Samsung was one of the last chaebols to reform, probably because it was so politically connected. But there was a roadmap from others that had begun a process of simplifying their structures.

And Samsung was, you know, in the press a lot as wanting to move down that path. They were very communicative with their Shareholders about wanting to simplify the structure, wanting to have a higher valuation. They were saying all the things and doing all the things that indicated to us that they were going to simplify their structure with the goal of capital efficiency.

And I think, in hindsight, it was an obvious opportunity that, as I said, even since our last hearing and since the incident in 2015, has been borne out by what's happened, and I'm quite pleased by how South Korea has reformed. The multiples of the securities have traded at higher prices now, and, you know, justice has been done in the courts against
those that tried to stand in the way.

Q. Moving on to Samsung C&T, more specifically, what was Mason's investment thesis in relation to Samsung C&T?

A. Samsung C&T is a--was a company that--the Holding Company structure. Its largest asset by far was the securities in Samsung Electronics. We felt that it was an even cheaper way to own Samsung Electronics, given that its largest asset was Samsung Electronics. The assets inside the structure were easily identifiable and valuable, given the liquid nature of most of their securities, and it was trading at about 50 cents on the dollar, what we considered to be the Net Asset Value.

In addition, the Company--the overall group decided to use one of their entities, CHALE (phonetic) or CHILE (phonetic) in order to begin the restructuring of the organization, that and to the IPO, I think, the end of 2014, the beginning of 2015, and they attempted to utilize that entity where the family had dominant control to merge with C&T in order to begin the restructuring process.

The reason they tried to merge with C&T, in my view, is because they had such a large--C&T had such a large cache of SE Shares that were so clearly
undervalued, and would have been a very--was--turned out to be a very advantageous deal for the family at the terms that an agreement to merge were made and at the terms that the vote was approved.

It was tremendously creative for the family, and our feeling was they needed to have that C&T box, as a lawyer would say, because of the value and because of the strategic nature of its holdings. They ended up achieving that just by means that I did not anticipate.

Q. Moving on to that subject, what was your expectation, Mr. Garschina, about whether the Korean National Pension Service, in particular, would approve the Merger between SC&T and Cheil on the terms that were proposed?

A. Well, I thought they'd be voted down.

Q. Why did you think that?

A. Because of their fiduciary duties. There was a large spotlight on this, on this transaction. There was a prominent activist involved, shining an even brighter light on it.

And I feel like--I believe in the saying that sunlight is the best disinfectant. I felt that there was so much attention that even if someone wanted to abrogate their fiduciary duty, it would be
very difficult to do so.

In addition, the NPS had voted in a shareholder-friendly way in the transaction just prior to that--I forget the name of--SK. And it was so clearly in their interest, especially given the trading price of C&T leading into the vote. I didn't think that they would vote to lose money. And my presumption that they would vote to lose money was actually borne out--proven, unfortunately, for Mason and myself, when it was voted through, and the stock collapsed. I didn't think--I didn't think that the NPS would--would vote to lose money, especially in such a--in such a big forum where there were a lot of eyes on their behavior.

Q. Thank you, Mr. Garschina. I have no further questions.

A. Okay.

PRESIDENT SACHS: Thank you.

We go to cross-examination.

CROSS-EXAMINATION

BY MR. VOLKMER:

Q. Good morning, Mr. Garschina. My name is Sven Volkmer, and I have questions for you on behalf of the Republic of Korea.

I would like to start with your First
Witness Statement. You have that in front of you. It should be the first in that little yellow binder--yeah--and Paragraph 9 of that statement.

I'm just waiting for FTI to also put that on the screen.

Thank you.

I'll just read this for the record, quickly: "Mr. Martino and I, working either together or separately depending on the investment, with certain employees who one or both of us directly instruct, make all of Mason's investment decisions."

For the investment in Samsung, did you make the investment decisions alone or together with Mr. Martino?

A. We are each other's surrogate. If we don't discuss an investment the minute it's made, we will discuss it shortly thereafter. I don't recall which of us approved either trade.

But more importantly, the investment process, which is the largest part of our investment, without which any securities trading would be possible, is shepherded by both of us. So we are both knowledgeable. We both follow the research. We both have both bought into the thesis, and it's a very collaborative relationship.
Q. So, what I understand, then is that you and Mr. Martino, together worked on the Samsung investment; is that right?

A. Among others at the firm.

Q. And did you and Mr. Martino ever disagree about the Samsung investment, for example, when to buy, when to sell?

A. I mean, we disagree about things every day. I don't recall specifically. But it would not surprise me at all. That's how we get to the right answer.

Q. And the core team for Mason for the investment in Samsung included four employees at the time; that was Jong Lee, Emilio Gomez-Villalva, Sang Kim and Ivan Ross. Is that right?

A. Yes, Jong and Sang are traders at the firm. Traders are not typically involved in the investment process to this level. They were because they're Korean-American and spoke the language. And the other two, the way the structure of the firm works was that we have Mike and myself as the Portfolio Managers. Two of those individuals that you mentioned, Mr. Gomez and Mr.--are we allowed to use the names or are we using letters?

Q. I think there is an agreement that we are
okay to use the names?
   A. Okay.
   Q. It makes it easier for everybody.
   A. Okay.

   Mr. Gomez and Mr. Ross were on the analyst team, which is just under myself and Mr. Martino, and they are research analysts. They're trained in corporate finance. Mr. Ross is an expert on tax and accounting. Their job is to go out and research companies and situations, distill the information that they--that they--that they can get their hands on, and look at what it means, and talk to Mike and myself about what it means.

   Mr. Lee and Mr. Kim, as I mentioned, are on the trading desk. Their function is largely executing buy and sell orders or other kind of transactions that are directed by myself and Mr. Martino.

   As I mentioned, in this particular case, they were a little bit more involved in the investment process because of communication issues.

   Q. So, that team would do most of the day-to-day work, and then they would report to you and Mr. Martino; is that right?
   A. They wouldn't do most of the day-to-day work versus myself or Mr. Martino. Myself and Mr. Martino
were doing our own work. We're analysts, ourselves. We've never gone into a corner office and become money-raisers or figureheads. We are analysts. So, they're doing their work; Mr. Martino and I are doing our work. In this particular situation, I was doing more work than Mr. Martino. It's a collaborative effort. We are members of the analyst team, ourselves, as well as we're Portfolio Managers, but the difference being that the analyst team does not have the ability to actually execute trades.

Q. And the analyst team, when they do their research, they would then report back to you and Mr. Martino; is that right?

A. Sometimes. If they have—if they have something that is—they think is worthy of communication, they will, but most of the time they're working away.

Q. If there are important developments to share, they would share those with you.

A. "Important developments"? Most important developments I would see on my own if they're public, which most important developments are public, so not necessarily.

Q. The members of your team would, for example, meet with analysts or legal and financial experts, and
then they report--would report back to you about those meetings; right?

A. Sometimes they would. Most often they wouldn't.

Q. Let's briefly look at the timing of Mason's purchase and sale of shares in Samsung. We'll start with Samsung C&T. That's under Tab 2 in the bundle, the white bundle in front of you. This is a chart that shows Mason's shareholding in SC&T. And just to remind ourselves, Mason did not own any shares at the time that the Merger was announced on the 26th of May 2015; is that right?

ARBITRATOR GLOSTER: Could you tell me, please, what Tab 2 in the bundle is, which bundle?

MR. VOLKMER: Dame Elizabeth, this is the hard copy bundle that we only have in this room unfortunately, so I can give you the--

ARBITRATOR GLOSTER: No, just give me the reference to the document you're looking at, and I'll get it from my own documents.

MR. VOLKMER: Correct. This is RDE-9. It's a demonstrative exhibit.

ARBITRATOR GLOSTER: Thank you.

BY MR. VOLKMER:

Q. Okay. So again, just to confirm, the day of
the Merger Announcement, 26th of May, Mason did not yet own shares in SC&T; is that right?

A. What was the date of the Merger announcement?

Q. The 26th of May 2015.

A. We have European numbers again. Yeah, I don't remember specifically. Our investment process for this went back at least a year-and-a-half, and we were in SE Samsung Electronics most of the time; and around the time of the Merger we transitioned into SC&T as a better expression, with more ways to win than our SE holding. So I think it's quite deceptive to show just the SC&T holdings because, as I mentioned before, one was a proxy for the other in our investment framework.

Q. I'm a bit mindful of the time, Mr. Garschina. The question was a fairly simple factual question: Did Mason own shares in SC&T on the 26th of May 2015? I think the answer is in front of you. I just want to remind ourselves of the facts at the time.

A. I think the answer is no, but it's a very misleading question that takes a lot of things out of context, as I've described.

Q. All right. And then again just to remind
ourselves, Mason started buying shares in SC&T about a week after the announcement; is that correct?

A. You haven't shown me--according to this chart, am I supposed to make that assumption?

Q. Well, do you remember if Mason bought shares--

(Overlapping speakers.)

A. I don't remember.

Q. Okay. Then I just represent that to you, that is not disputed between the Parties, but it is important to remind ourselves.

Let's have a look at the timing of the share purchases in SEC, and that's under Tab 3, Demonstrative Exhibit RDE-10.

A. Um-hmm. I'm there.

Q. So, this chart shows Mason shareholdings in Samsung Electronics.

In October 2014, there is a gap where Mason first sold all of its shares and then started buying shares again.

Do you see that?

A. I do. We discussed this last time.

Q. The gap corresponds to approximately two weeks. That's not indicated in this chart, but we know that from Mason's trading records.
In October 2019--I think you referenced this--you mentioned that Mason would buy and sell on an ongoing basis as a way of optimizing its position.

A. Um-hmm.

Q. This two-week gap here, is it your position that this corresponds to optimization of Mason's position?

A. I don't remember exactly what this is, other than to tell you that, during this period of time, the firm--it was a very ugly time for the P&L of the firm, and from time to time when we were wrong on situations, we will decrease our balance sheet in order to control risk for our investors for whom we're fiduciaries. So, it could have been that. It could have been the traders trying to figure out, you know, maybe there was a big block coming off a seller, and they wanted to buy it back at a lower price. It could really be anything.

But it's--I know one thing that it's not, and it's not an indication of our lack of commitment and time spent and desire to make money from this investment.

Q. Let's have a look at some of the information that was available to you before Mason bought its shares in SC&T. And we'll go to Tab 7. That's
Exhibit R-391.

A. Yes.

Q. And that's an internal Mason e-mail dated 26th of May 2015, the day of the Merger Announcement, and you were one of the recipients of that e-mail.

A. One of many.

Q. The e-mail compiles notes of several analysts on the Merger Announcement. And if we go down a little bit, we see that there are notes from JPM--that's JPMorgan; is that right?

A. Yes, analysts and traders, yes.

Q. And CSFB. That's Credit Suisse?

A. Yes, it is.

Q. UBS, I think we know what that is. BAML, that's Bank of America Merrill Lynch?

A. I presume so, yes.

Q. Okay. Parts of the analysts' notes are copy/pasted into the body of the e-mail, starting with JPMorgan at the bottom of Page 1.

A. Um-hmm.

Q. And the second paragraph, the note considers ownership structure post-merger.

Do you see that?

A. Um-hmm.

Sorry, yes, I did.
Q. And then on the next page, the second paragraph considers what's the next step, and the third paragraph considers implications for Samsung Group companies.

Do you see that?

A. Yes.

Q. So, the note considers next steps after the Merger between SC&T and Cheil and it considers the implications of that Merger for other Samsung Group companies; is that right?

A. That's what it says.

Q. The note doesn't say that the Merger would likely fail; correct?

A. You know, I don't know. I would have to take time and read it.

Q. Please do.

A. Which part of it?

Q. Does the note say anywhere that the Merger was likely going to fail?

A. This five-page note, you want me to read it?

Q. No, the JPMorgan note.

A. The JPMorgan note. The first one?

Q. Correct.

(Witness reviews documents.)

A. Yes, this appears to be a prospective
analysis, assuming that the Merger would go through, which was not my view.

Q. Okay. The next note is by Credit Suisse, and that also doesn't say that the Merger would likely fail; correct?

A. Well, it doesn't say the opposite, either.

Q. So, the answer is yes, it does not?

A. It doesn't say a lot of things. It doesn't say what the weather is.

Q. And the next note is from UBS, starts at bottom of the page, continues on the next page, and if we could look at the next page. So, at the bottom paragraph of that note, there is a sentence starting "our review on price."

A. Um-hmm.

Q. Now, I'll just read this for the record: "Although SC&T pricing is low versus Cheil, we expect Merger likely to occur given group holdings, market expectation of benefits from merging with Cheil and put strike out of the money."

Do you see that?

A. I do.

Q. And below the UBS note, there is a note from Bank of America Merrill Lynch. I will not ask you to read this, I'll just represent to you that that also
does not say that the Merger would likely fail.

So, in terms of immediate reactions to the Merger, none of these analysts reported that the Merger would likely fail, and UBS expected the Merger likely to occur; correct?

A. I mean, they're all entitled to their opinions. They're not my opinion, and clearly they weren't the opinion of Mr. [redacted], either.

Q. Okay. Can we go to the next document, please. That's Tab 8, Exhibit R-394. This is an e-mail from Mr. Sull at Korea Investment of Securities America to Mr. Gomez at Mason. It's dated 27th of May, one day after the Merger Announcement--

A. Yes, I know of Mr. Sull.

Q. Okay. In the first paragraph, Mr. Sull wrote that he checked with our analyst, "Taeho Yoon" (phonetic), who said, yes, the Cheil Samsung C&T Merger is a bad deal for Samsung C&T Shareholders, considering the Company's revenues and grope--sorry, group investments. Is that consistent with your view?

A. Which part?

Q. The paragraph I just read.

A. Can you read it again, please. Sorry, I'm confused between the screen. Which one would you like me to look at?
Q. The first paragraph of (overlapping speakers) the paper.
   A. Is a bad deal--I see it.
   Q. Is that consistent with your views at the time?
   A. No. I mean, this was all about price. There was strategic rationale, significant strategic rationale to putting the two entities together. But buying something at 50 cents on the dollar when you've conducted a fraudulent bribery scheme is wrong.

   And I'm not saying, and I never said, that it doesn't make sense to simplify the structure. To the contrary, in my questions from my counsel leading up, I thought it made sense. And I thought that it would be good for Korea and good for Samsung and good for the employees of Samsung and good for me. I'm not laboring over this investment in order to lose money. I'm clearly--I'm up front that I wanted to make money from it. I'm not saying that it's a bad deal combining the companies. I thought that the price was demonstrably too low, and you can put a lot of analyst reports in front of me and people with different opinions, undoubtedly a lot of those investment banks are being paid by Samsung. You could even put a report from Samsung Securities in front of me that
said it was a good deal, and I think that would be the ultimate example of a conflict of interest from sell-side firms.

So, this--this particular line says nothing about the price of the Merger.

So, in general, I'd say putting the entities together is a good deal. It's a good idea.

Q. Okay. The terms of this deal, the price as you say, was, of course, known at this point in time, on the 27th of May; right?
A. But he's not referring to the price.
Q. So, Mr. Sull thought, for the reasons that he did, that this was a bad deal for Samsung--
(Overlapping speakers.)
A. We don't know the reasons.
Q. Are the reasons that whatever the reasons may have been--
A. So, I can't opine on something, and I don't know what his thinking is.
Q. I understand.

Mr. Sull thought it was a bad deal for the reasons given here, whatever else they may have been. Can we please have a look at the--
A. What are the reasons given here?
Q. Mr. Garschina, I think--
PRESIDENT SACHS: Mr. Garschina, please wait for the question first. Thanks.

BY MR. VOLKMER:

Q. The third paragraph of this e-mail, if we can have a look at that. So, despite thinking that this was a bad deal for SC&T, Mr. Sull also thought, and I'll read this for the record: "However, the National Pension Service (NPS), as Shareholders of Samsung C&T, should go along with the Merger, as the NPS has been pushing for more group restructuring and likely Samsung C&T consulted with NPS. In any case, Shares of Samsung C&T are moving up and should go through."

Do you see that?

A. I see that.

Q. So, KIS America thought that despite this being a bad deal for SC&T, the NPS should go along with the Merger; correct?

A. That's what they wrote.

Q. And according to KIS America, the NPS should go along since they had been pushing for restructuring for Samsung for a long time; correct?

A. Yes. He—he was—had this opinion, and he was wrong.

Q. Okay. Taking a step back, upon the
announcement of the Merger, you received notes from at
least two analysts, KIS America and UBS, saying that
they expected the Merger to go through, and those
Reports were available to Mason before buying Shares
in SC&T; correct?

A. A multitude of opinions were proffered on
the outcome of the Merger. You can look where
we--where we put our money as an indication of our
view, and you can also look at the price of SC&T
coming into the Merger was trading above the Merger
price.

So, the market, as a whole, all the market
participants all over the world were voting with the
share price trading above the Merger price that they
did not think the Merger was going to go through. But
whether or not these people who have relationships
with Samsung are getting paid by Samsung or other
entities have a view, I'm very skeptical of them. I'm
not--not in an arrogant way, but my job is to identify
conflicts of interest, identify people who are
unbiased, and Mr. Sull in particular, I viewed as a
shill.

Q. Okay. So, first of all, I think the answer
to my question was yes; right? These two analyst
notes were available to Mason before it bought shares
in SC&T. That's a "yes" or "no" question.
   A. Were available to Mason? Yes, but I don't remember reading them.
   Q. Okay. And then you mentioned Samsung paying analysts. Do you have any reason to believe that UBS, a large international investment bank, was paid by Samsung?
      A. Do I have any reason to believe that?
      Q. Yes.
      A. Yes.
      Q. Do you have any evidence for that belief?
      A. Not in front of me.
      Q. You don't mention any in your Witness Statement; correct?
      A. Samsung pays every investment bank. They're one of the largest companies in the world.
      Q. Do you have any reason to believe that, for that reason, UBS would be influenced and would say whatever Samsung wanted to say?
      A. Yes. 30 years of investment experience and seeing it over and over and over again. People went to jail in this country during the dot-com crisis for exactly the same thing and I see it every day in my work. Analysts are influenced by the investment banking departments. They put out things that the
investment banking departments want them to put out. There is no wall despite the fact that Eliot Spitzer put a lot of these people in jail, you're probably too young to remember, but it's--in sell-side reports, especially when there is a lot of money up in the corporate finance on the line, are taken by me and everyone in my business--I'm not special--with a very skeptical eye.

Q. You don't have any evidence that UBS was--I don't know what you're suggesting--bribed or anything like that by Samsung?
A. No, I didn't say bribes. You did.
Q. So, you don't have any evidence--
A. I'm saying that if I'm a client, my counsel is going to--is going to do its best to serve my interests. UBS is a--potentially, and I'm sure you can find the information, Samsung represents, if not a big client at that time, a big potential client.

And, you know, investment banks are biased when there's money from corporations on the line. It's a fact. Do I have specific evidence that UBS was being paid on this Transaction? I'd have to do research. But, in general, large global investment banks and large global humongous corporations have a joint interest.
So, I don't know who wrote these notes. I don't really care. I have my own opinions. We had done years of work, and they culminated in that process of making these investments. Our money is on the line. Our view is clear.

If I was listening to these--these folks, I wouldn't even--I wouldn't be employable.

Q. Mason was collecting these analyst notes at the time and was reviewing them at the time and looking at what was written by these analysts; correct?

A. It's the analysts' job to--analysts at my firm's job--to collect information that's out there. Whether or not I saw them, I can't tell you, sir.

Q. Right.

A. Analysts at your firm would have seen them. I mean, clearly, this is an internal e-mail collecting these notes?

Q. Well, this is an internal e-mail distributing these notes.

A. Look, I don't what--know who read it. I have--I--it's immaterial to me.

Q. Does it happen that Mason internally just
Forwards information that nobody ever looks at?
   A. It happens quite frequently.
   Q. And therefore, you miss certain information?
   A. I seek out the information. I don't miss.
I consider certain information and certain opinions to be valuable. Notes from unnamed sell-side analysts from large investment banks that are--that are not well thought out, not well-reasoned, poorly researched, and potentially biased are not important to me.

So, if I missed them, I don't care.

Q. Would you care if your market analyst missed them?
   A. If he missed them?
   Q. If this was never read, was forwarded but, as you appear to be suggesting, never read?
   A. Okay. I think if he saw something in one of these reports that was potentially the opposite of all the characteristics that I just described, he would walk into my office and specifically verbally communicate it to me.

Most of our communication is done verbally. What you're seeing is largely administrative back and forth e-mail traffic. I grew up in this business before e-mail, so I prefer verbal communication, and
that's why all of our people are in the same place every day. You know, 95 percent of all of our communication is verbal.

Q. Let's talk about the economic rationale behind the Merger, in particular from the perspective of the NPS. These go to your fourth Witness Statement that's in the yellow bundle, that is CWS-7--the last tab in the yellow bundle--and Paragraph 14.

A. Which statement?


And I'd ask you to read that paragraph to yourself, not out loud, and let me know once you have read it, please.

(Witness reviews document.)

A. Okay.

Q. So, the NPS had appraisal rights under Korean Law and other SC&T Shareholders did as well; correct?

A. I don't know about other SC&T Shareholders, but NPS.

Q. And the appraisal price was a pre-set price at which shareholders could sell their shares back to SC&T if they didn't agree with the Merger; right?

A. I don't know the specifics of what the put-back--so called put-back option would be, but
there was some sort of ability to sell their shares back.

Q. Well, that's what you're saying in this paragraph, isn't it? The NPS could sell back its shares back to the company at a pre-set price. I'm just calling it an appraisal price. That's another word for it.

A. Okay. Yes.

Q. Okay. Now, if, after the Merger Announcement, SC&T Shares traded below their appraisal price--

A. Um-hmm.

Q. --then the NPS would have an incentive to sell Shares back to SC&T; right?

A. No.

Q. If the appraisal price is higher than the actual market price, there would be an incentive to sell back to the Company? You would make more money selling back?

A. Not necessarily, no.

Q. Please--please elaborate.

A. Because a fund the size of NPS is invested not only in SC&T but in all the other Samsung Securities. And if the Merger was not to go through--was to go through and they were to sell their
securities back, means, in my view, that they would have lost money in all their other securities because it would have been a voting through a Merger, that was clearly wrong on its merits from an economic perspective, would have driven down the securities—all their other securities, including all the securities outside of the Samsung structure that they owned in Korea. And I think they would have been well-aware of that. And it's a very shortsighted view to say, well, I'm going to vote again—even if this deal goes through, I'm going to be able to put my shares back. There are plenty of circumstances during this process where the share price was trading above the put price.

So, if I were NPS, I'd be thinking, if this Merger doesn't go through and it's renegotiated, and more importantly, as I mentioned last time, it would have been a signal that the rule of law was holding in the country. They could make two, three, four times their money. So, I think it's a very—I see the argument that you're making, but it falls on itself because pension plans are not short-term traders. They are not interested in making 5 percent. They're fiduciaries for large amount of public people's assets. And it could be trading a little bit above
the put price, it could be trading a little bit below, but these are long-term thinking organizations, and they could double or triple their money in all of the Samsung securities or Korean securities if the rule of law was seen as holding here.

I think it's bit of a myopic theory.

Q. And then taking the opposite approach--I think you do say that yourself--if the shares traded above the put-back price, the NPS could have an incentive, as you say, in theory, to support the Merger; correct? That is what you say here in your Witness Statement?

A. It could have that in theory, yes, but I think the larger point out of the myopic is that there's a much bigger picture, as I discussed in questions at the beginning. This is not about a put-back price that you could make a little money on or lose a little money. This is about wholesale reform of corporate governance structure in an entire country, a large country. NPS is at the center of it. And they're a fiduciary for the assets of the people that are pushing for this restructuring--putting political pressure on the politicians about the corruption and inequality. They're a fiduciary for those very people.
My view was that they would be grasped by that fiduciary obligation and see the reforms that are attempting to be taking place, and be a part of it, following in their own fiduciary duties with the view that, over time, their assets could be worth five, 10 times where they're trading.

And I think, actually, we have the benefit of a lot of hindsight here because this is almost eight years ago, and I think that's largely been born out. So, I think it would have been very shortsighted and myopic, and Machiavellian to a point of fault, for their own investors to think about that. And I would be very surprised if they thought about that.

Q. Okay. Once again, Mr. Garschina, mindful of the time. That was a fairly long answer to a much narrower question about what you were saying in your Witness Statements, so please try to listen to the questions and--

(overlapping speakers.)

A. I use as many words as I think is--are required to--to provide context for very narrow questions.

Q. I would ask you to listen to the question and answer the question. If there is elaboration, your counsel will have time to come back to that
later. We are limited in our time.

So, with the appraisal prices in mind, can we please go to the next document, which is Tab 11, R-131. And please keep your Witness Statements next to you, the paragraph we just looked at.

A. R-11?
Q. R-131, Tab 11.
A. Which Witness Statement before?
Q. The fourth, and we just looked at Paragraph 14 of the Fourth Witness Statement, so you can just leave that next to you.

R-131 is an article published on the 29th of May 2015 in the Mail Business News, a Korean business newspaper. I will read the second paragraph of that article for the record.

"On the 29th, a key official of the NPS, regarding the Cheil Industries-Samsung C&T Merger said, 'There is no reason for the NPS to oppose the Merger because the current share prices are higher than the price of appraisal rights, indicating a position in favor of the Merger.'"

Now, you say in Paragraph 14 of your Witness Statement that there was market chatter that the NPS might vote in favor of the Merger based on appraisal rights but what we see here is not market
chatter--right?--this is a statement by the NPS's about its intention how to vote?
   A. It's not a statement by the NPS.
   Q. It's a quote of a statement by the NPS; correct?
   A. It's not a statement by the NPS. I can elaborate, if you would like.
   Q. The newspaper articles says "a key official of the NPS said.'"
   A. Which official?
   Q. Not specified in the article.
   A. So, it's not in a statement. It's an unnamed source in a newspaper article. A statement has the NPS's name on it, and it's released.
   Q. The first paragraph of that article says that the NPS has announced its position.
   Do you see that?
   A. I do.
   Q. And the NPS can announced its position, and that would then be reported in the press; correct?
   A. I don't know what they're referring to when it says they have announced their position. If you have an original source document, I'm happy to look at it.
   Q. This newspaper article saying that there has
been an announcement by the NPS will be relevant information for an assessment of how the NPS was likely going to vote?

A. Not for me, no.

Q. An announcement picked up in a newspaper, in your mind, is irrelevant?

A. It's not irrelevant. It's just not important.

Q. The NPS stating its own intention how to vote is not important to assess how the NPS would vote?

A. Where is the statement that they said they were going to oppose it?

Q. It is quoted here.

A. From who? It's a newspaper article with an unnamed source. I don't take unnamed sources seriously.

Q. You don't take newspaper articles seriously?

A. If they have names on the record sources, yes. We're in the building of The New York Times, where things are double sourced. Unnamed accusations, unnamed sources, especially in a Korean newspaper, I take with a huge grain of salt.

Q. This information would have been available to Mason before buying its SC&T Shares; right?
A. I don't read Korean newspapers, sorry.

Q. Not my question.

This information was available to Mason before buying its Shares; correct?

A. What does "available" mean?

Q. Mason could have seen this information.

A. I could have seen anything. It doesn't mean I did.

Q. I'm not asking about you specifically. You have a team of analysts including Korean-speaking analysts who read Korean-speaking newspapers. This information was available to Mason, including your team?

A. I don't know.

Q. Well, this was published before you bought your investment in Mason--sorry, in SC&T; correct?

A. I would have to look at the chart with the purchases again.

Q. Okay. We did earlier. It is undisputed that Mason did not own any shares before this Article was published.

Let's move on. Let's go to Tab 12, Exhibit R-388. This is an e-mail from an analyst at Macquarie to Mr. Gomez--this is dated the 26th of May 2015--and if FTI could perhaps show Pages 1 and 2 side by side.
So, this analyst sent an article published by Macquarie about the Merger Announcement. If you look at the last bullet point at the bottom of the page, Macquarie wrote that: "The deal is a win-win for both Cheil Industries and SC&T, in our view," and Macquarie then gave reasons why the Merger was a win for Cheil.

Do you see that?

A. I don't--as I said before, I agree that there were many strategic reasons--

Q. Sorry, Mr. Garschina, I haven't asked a question yet to comment on this article. I'm asking only so far can we agree that we are on the same page? You see that Macquarie said the deal was a win-win. You see that Macquarie then gave reasons as to why it was a win-win.

Do you see that?

A. I see that's what they wrote, yes.

Q. Okay. Let me just read for the record so we are all on the same page. On the second page, the sentence starting with "for". "For Samsung C&T Shareholders the deal removed uncertainties over Samsung C&T's role in the Group's Shareholding reshuffling," I will skip the next part, then, "the Merger will effectively remove competition for
construction projects between the two companies, and the market would likely to allow higher valuation premiums as the stock becomes a core holding of the Samsung family.'"

This article doesn't mention appraisal rights; is that right?

A. Doesn't?

Q. It does not?

A. I will take your word for it.

Q. So, according to Macquarie, SC&T shareholders had reasons other than appraisal rights to approve the Merger; is that right?

A. That appears to be their opinion.

Q. And presumably you disagree with that opinion?

A. That people had reasons--I think there are a lot of considerations, but the chief consideration is price. It's very easy to value the Company.

And no matter what--I think we all agree, that no matter what the strategic benefits of any combination, the first thing you're going to look at is if you're being paid a fair price. Chief in any negotiation, the first issue in any negotiation between merging parties is the price. It could be the best combination since ham and swiss, but if it's a
price that is half of what the valuation is of the swiss, then it's not a good deal.

Q. Okay.

A. Even though there could be strategic merit.

Q. Now, the terms of the deal, the price was known on this day, so Macquarie thought that this was a win for Samsung--SC&T, no matter the price; correct?

A. I don't know that.

Q. Well--

A. It doesn't say that.

Q. The deal was announced--

PRESIDENT SACHS: If I may intervene, it's the first bullet point, isn't it?

MR. VOLKMER: Yes.

THE WITNESS: Which bullet point?

BY MR. VOLKMER:

Q. Samsung--sorry, "Summary of Key Terms'" on the first page. It talks about the Merger Ratio, that's the price?

A. Um-hmm, yeah, but they don't opine on the price.

Q. Well, knowing what the price is, Macquarie says this is a win-win; correct?

A. You know, I think they're referring to Cheil, that it was a really good deal for Cheil, which
I agree.

Q. Okay. That's why it's important that we read this together.

So, once again, on the second page, for Samsung C&T's Shareholders, the deal removed uncertainties and so on and so forth, what I just read. These are reasons why the deal is a win for Samsung C&T; correct?

A. We're talking about the accretion, first of all. We're talking about accretion in the bullet point you're talking about was 119 percent accretive to Cheil Shareholders. A very good deal for Cheil shareholders. The reason it's 119 percent accretive is because they're stealing it in the parlance of finance. So, yes, I can understand that it was a very good deal for Cheil shareholders. They're not saying what the dilution would have been for C&T shareholders. C&T was trading at seven times earnings. Cheil was trading at a jillion times earnings, and we were taking their currency as consideration.

So, they're pointing out that if they were being fair, they would have said it's 90 percent dilutive for the C&T Shareholders.

Q. Precisely my point. Knowing what these
terms were, knowing what the valuation was of each
company, Macquarie said this is still a win-win for
both companies?

A. I mean, that's their opinion. I disagree
with it. Macquarie is an Asian investment bank, and
probably--I don't know who their audience is, but it's
not something that I would give a lot of credence to.

Q. Okay. Macquarie is an Australian-based
financial institution; do you know that?

A. I do. Their main business is in Asia.

Q. Okay. Let's move on to the next document.

This is Tab 13, Exhibit R-423.

A. Um-hmm.

Q. And this is an e-mail from Mr. Sull at KIS
America to your team, he forwards an article published
by Bloomberg under the heading "Korea pension has
18 billion at stake in backing Samsung on C&T," and
Mr. Sull wrote in his e-mail that he highlighted a
certain paragraph in yellow.

Do you see that? It's the first line of
that e-mail.

A. "I highlighted it in yellow." Yes, I see
that.

Q. Okay. Then I will read the third paragraph
of the Bloomberg article for the record:"
The NPS is
used to being caught between the competing interests of business stalwarts and minority shareholders. Its stakes in at least 12 listed Samsung affiliates, worth $17.8 billion, may force its hand on C&T because with the take-over so integral to Samsung's once-in-a-generation leadership transition, the Fund can't evaluate the deal in isolation.'"

So, according to this Bloomberg article, the NPS couldn't evaluate the Merger only from the perspective of an SC&T Shareholder; correct?

A. So, they seem to be saying that it was uncertain how they were going to vote.

Q. Not quite my question.

According to this Bloomberg article, the NPS couldn't evaluate the Merger only from the perspective of an SC&T Shareholder; correct?

A. That's what it says in the article. It's the opinion of the article.

Q. Okay. And according to this article, given that the NPS owned shares in at least 12 Samsung companies worth almost $18 billion, the NPS would have to consider the impact of the Merger on all of the Samsung investments?

A. I considered that very fact. I could elaborate, if you want.
Q. Let's move on. We can still talk about this document a little more. Now, this document is in black and white, but then you can see that the next paragraph is the one that was highlighted by Mr. Sull, still on the same page, on the first page. It's a little shaded.

A. Um-hmm.

Q. I will just read that again for the record:

"For investors who only have C&T Shares, the decision may be easy, 'as they can oppose the deal if they agree with Elliott,' Albert Jong, Chief Executive Officer of Petro Capital Management, 'which I received about KRW 450 billion, USD 409 million, including C&T Shares, said by phone in Seoul on Monday. But for investors like the NPS who have stakes in other Samsung affiliates, it's more complicated. The collapse of this deal could bring losses to its other shareholdings.""

So, this fund manager made a similar point to that in a previous paragraph in this article, namely that the NPS's perspective of the merger was more complicated than that of a shareholder only in SC&T; right?

A. That's what his opinion is.

Q. And, according to this fund manager, the NPS
would have to consider the collapse of the Merger that
that might bring losses to other holdings than SC&T;
right?
A. Or gains.
Q. Well, the fund manager says the collapse of
this deal could bring losses to its other holdings,
right?--that is what he is pointing out.
A. I disagree with that a hundred percent, and
I think history is on my side given that the opposite
happened when the deal was approved, so he was wrong.
Q. In your opinion, he was wrong, but you
knew--
A. Not my opinion. The opinion of the market
when the deal--when the deal was approved, all of the
securities in the Samsung structure went down.
Q. And you knew--
A. I can elaborate, if you would like.
Q. No need. Thank you.
You knew that at the time placing yourself
in May or this is now June 2015--this is before the
Merger was approved, that some market participants
thought the NPS, knowing what the Merger Ratio was,
had an incentive to support the Merger; right?
A. I mean, market participants are entitled to
their opinions. My opinion, as expressed in the
amount of money that I had invested here, was that the NPS would follow their fiduciary duty.

And indeed the Market Prices of C&T trading above the price of the Merger, indicate that the market agreed with me, and the Market Prices of C&T declining precipitously when it was approved, indicate the market agreed with me.

So, the market represents the aggregation of all, if you believe in the "efficient market" hypothesis, which I don't, we can discuss, but it is more of an indication, much more of an indication of the aggregate opinion of all market participants than the opinion of one who you're citing here.

Q. Right.

You're referring to what happened after the Merger was approved. This is before the Merger was approved, and I'm trying to situate us at that point in time.

A. He's hypothesizing about what could happen after the Merger is approved.

Q. Right.

Nobody knew at this point in time what would happen after, right? This is before.

A. No, but he's saying that they would have to consider what happened after.
Q. And what I'm saying is let's place ourselves at that point in time with the knowledge the people had at that point in time.

A. But I'm saying he was wrong.

Q. I understand that. Let's move on--

A. So, my instinct that I shouldn't listen to him was right.

Q. With the benefit of hindsight, you're offering your opinion now, understood.

Let's move on to Mason's expectations of how the NPS would vote on the Merger. And if we can go to your third Witness Statement, CWS-5, at Paragraph 22. And you say here you were horrified and shocked when you learned that the NPS had decided to vote in favor of the Merger, and that the Merger would proceed as a result.

Do you remember how you learned that the NPS had decided to vote in favor?

A. No.

Q. Do you remember when you learned it?

A. No.

Q. So, you just remember--you don't remember how, you don't when, you just remember being shocked at some point in time?

A. I remember when I got this cut on my head,
but I don't remember the date. It was a jarring
moment, and I think humans are prone to remember their
emotions, not the date on the calendar.

Q. Okay. It could have been before, after the
SC&T Shareholder Vote? You don't remember?

A. How would I know that they were going to
vote until after the vote?

Q. Okay. So, you think it must have been after
the Shareholder Vote?

A. Well, I'm not a--I had no material nonpublic
information, if that's what you're implying.

Q. Okay. Let's have a look at the information
available to Mason at the time.

Perhaps--sorry, before we do that--yeah, no,
that's right.

Your Fourth--sorry--your Fourth Witness
Statement at Paragraph 15. Your Fourth Witness
Statement, Mr. Garschina. And I will read the second
sentence for the record: "Our view, which solidified
as the Merger Vote approached, was that if the NPS was
rational and acted in good faith, and thought of its
own pocket and its fiduciaries (the Korean
pension-holders)--as it should have--it would vote
against the Merger.''

And you refer to a Footnote 7; and in that
footnote, you cite Exhibit C-125. And I would like to have a look at that Exhibit C-125, which is in your binder under Tab 15.

And that's an e-mail from Mr. Gomez to you, dated 8th of June 2015.

A. Um-hmm.

Q. That chain starts with a question from you to Mr. Gomez: "How you feel about the ability to block a deal if 60 percent show up, do Treasury Shares count?"

The "deal" refers to the Merger; is that right?

MR. VOLKMER: And FTI, that's on the second page.

THE WITNESS: Oh, yes, sorry.

BY MR. VOLKMER:

Q. And the "deal" refers to the Merger?

A. I don't know. It could refer to a deal in Korea in general. I'm asking about mechanics--general questions about the mechanics of both deals.

Q. Okay. Because this is an e-mail cited in your Witness Statement. Do you remember if this is referring to the Merger between SC&T and Cheil?

A. Can you show me where I cite it in my Witness Statement?
Q. Footnote 4 of the paragraph we just looked at. Paragraph 15 in your Fourth Witness Statement.

A. Well, my question is not in the Witness Statement, is it? You're asking me about my question?

Q. I'm asking whether you're familiar with this document. You cite it in your Witness Statement.

A. You asked me if I'm referring to the deal, as this version, I'm saying I don't know. That is not cited in my Witness Statement.

Q. Okay.

A. The lines you're asking me are not cited in my Witness Statement.

Q. All right. Let's look at the rest of this document. I think it becomes clear from context that this is the Merger.

A. Okay.

Q. So, on the first--sorry, in response to your question, Mr. Gomez gives you answers about Treasury Shares and about the 60 percent--

A. Um-hmm.

Q. --showing up.

Then on the next page, Page 1, there is an e-mail where you asked: '"Try to get the gist of Elliott letter to NPS.'"

Do you remember what that was about, what
A. I mean, not specifically. I remember Elliott being public in opposition to the Merger.

Q. And you remember that Elliott wrote a letter to the NPS to influence how it might vote?

A. Elliott not only wrote a letter, they put out large public presentations lobbying investors to mind their fiduciary duties when they voted, and I thought it was a--one of the reasons that I was very--first of all, I was very happy they were there, and I thought that them, as I said, shining a light on the situation would make it even more likely that NPS would come up with their fiduciary duty.

Q. Okay. Then the next paragraph, that's the middle of the page, it's again an e-mail from Mr. Gomez to you, and in the middle of that paragraph, that e-mail, I will read that for the record: "NPS is the wild card. I agree with you that it doesn't make sense to buy stock to side with Cheil and lose money but we don't know what else could be driving NPS. Bankers told me NPS has been more pro shareholders lately. Also I sensed the Samsung Securities Bank was concerned with this. Before Elliott, it looked like NPS was going to approve the Merger solely based--solely because stock traded above
put-back, i.e., a short-sighted economic decision. If they now also think about their pocket, they should approve. Jong was trying to reach out to them.'"

The NPS being the wild card meant that it was unclear how the NPS would vote?

A. I think he's saying that they're the swing vote.

Q. A wild card is something unpredictable and uncertain; correct?

A. I thought that it wasn't uncertain. To me, it was--I was willing to place a lot of money relying on them following their fiduciary duties. But I can tell you who also thought it was uncertain was Mr. [redacted].

Q. Okay. Not the question at all.

NPS is the wild card means NPS, the vote was uncertain; right? Mr. Gomez says we don't know what else could be driving NPS. At this point in time, we don't know what the NPS is going to do? You may have an opinion but you don't know?

A. That could be what he's saying. I don't know.

Q. You don't understand the phrase ""NPS is the wild card""?

A. No, I don't. It's telling me that he either
hasn't made up his mind or doesn't have a firm opinion. Again, Mr. Gomez is an analyst. He has no investment authority. We placed a lot of money disagreeing with Mr. Gomez.

And again, everybody had an opinion here, but my opinion is--I repeat it over and over--no voluminous amount of other people's opinions cannot get us away from the fact that I had a strong opinion as illustrated by my putting my own fiduciary duty on the line for my investors.

Q. Okay. Let's move on to the next document. This is Exhibit C-128. It's under Tab 16 in your bundle. This is an e-mail two days after the e-mail we just looked at. This is the 10th of June 2015. Again, an e-mail to you.

There is a PDF of this e-mail.

MR. VOLKMER: Yeah, that's right, FTI, but there's also an Excel file. Could we pull up the Excel file next to the PDF, please.

FTI TECHNICIAN: I'm sorry, the Excel file is C-128 as well?

MR. VOLKMER: It should also be named C-128, yeah.

If it isn't there, we'll just move on.

BY MR. VOLKMER:
Q. In your bundle, that file is the next page, and you can see from the attachments that that was attached to the e-mail. It's called "C&T Voting Sheet."

A. Um-hmm.

Q. There we go. Thank you.

So, middle of the first page, that e-mail exchange, it says: "Below is our estimate in percentage on how votes may shake out. If our estimate is correct, we need 10 to 11 percent additional no vote to block the deal."

And then when you look at that Excel file, the table--exactly--in your bundle, it shows that this estimate on how votes may shake out counts the NPS as a Yes vote; correct?

A. I don't know whose estimate it is, but that's what it says, yes.

Q. That is an internal Mason estimate, isn't it?

A. I don't know. It could be cut and pasted from an Analyst's Report somewhere.

Q. Okay.

A. It comes from the trading desk, so it's not--

Q. So, the e-mail--
A. As I mentioned before, it's not a product of our research department.

Q. Okay. So, the e-mail that we just looked at is from Mr. Jong Lee at Mason Capital?

A. Yes.

Q. And he writes "this is our estimate"; correct?

A. He writes "our estimate," yes, or someone did, and he's forwarding it.

Q. You're saying that this is not his estimate when he says "our," he doesn't mean--

A. I don't know what his estimate is. I don't know who "our" refers to. The e-mail comes from our trading desk, which has no decision-making authority, and everyone was entitled to their view.

I don't remember seeing this. It was not my view.

Q. This was forwarded--sorry to interrupt. Go ahead.

A. I don't remember seeing it. It was not my view. And if it was my view, I wouldn't have owned the securities that I owned.

Q. Okay. Just for the record, this e-mail was sent to you; correct? You may not have read it, but it was sent to you?
A. Yes.

PRESIDENT SACHS: May I intervene, I'm a bit confused. I see in the middle of the page in a different kind of printing what appears to be your e-mail, Mr. Garschina, to Mr. Jong Lee, and it states what percent do you have voting in this analysis?

So, in reading this, it seems to me that this is your e-mail, isn't it?

THE WITNESS: Yes. I wrote that. I'm asking--I'm asking a question on quorum, which is--

PRESIDENT SACHS: Yes. And isn't what follows the answer to your question?

THE WITNESS: This analysis only counts for 45 percent--sorry, 57 percent of the votes.

PRESIDENT SACHS: But it's an answer, isn't it?

THE WITNESS: The reason I asked the question is because they're only counting 57 percent of their votes in their analysis. See the 45 yeses and the 12 nos, adds up to 57, so I'm effectively saying where is the other 43 percent?

PRESIDENT SACHS: Okay. So, you're reacting to that e-mail. It's not an answer to the e-mail. You're reacting--

THE WITNESS: Yes.
It appears to be. Sorry, I didn't see--I didn't see my participation actively in it.

PRESIDENT SACHS: Okay.

THE WITNESS: But my question is on, okay, where's the other 43 percent?

BY MR. VOLKMER:

Q. Right.

So, I think we established you did look at this e-mail at the time. You also asked what percent do you have voting in this analysis, which appears to be referring to an analysis by Mr. Lee--right?--it's not some external analysis.

A. It could be. I don't know. I don't know where he got that from.

ARBITRATOR GLOSTER: Mr. Garschina, I'm confused now. The e-mail we're looking at is 10th of June at 9:13.

THE WITNESS: Um-hmm.

ARBITRATOR GLOSTER: And your e-mail, which we see in the middle of the page is responding to an earlier e-mail from Mr. Lee, as I understand it, of--is this right? The previous day, or--which way does it go? All the times are different. I'm just trying to understand. Which e-mail are you responding to? Are you responding to the one at the bottom of
the page?

THE WITNESS: I think that's the sequence, as I understand it.

ARBITRATOR GLOSTER: Right. So, you then respond to Mr. Lee.

And then at the top of the page, Mr. Lee sends his e-mail to Bloomberg's and Emilio at Mason.

So, what I'm trying to understand is, I can see you were responding to the earlier e-mail, but you don't seem to be a recipient--or were you?--of the later e-mail.

THE WITNESS: I don't know.

MR. VOLKMER: Dame Elizabeth, maybe just to try to clear this up.

BY MR. VOLKMER:

Q. The Bloomberg address, Amagansett--I'm not sure I pronounced it right, but--

ARBITRATOR GLOSTER: Yes.

MR. VOLKMER: --that's Mr. Garschina's e-mail address.

ARBITRATOR GLOSTER: Right. I'm so sorry, then that explains it, yeah.

MR. VOLKMER: Yeah, and for the time stamps, we can't, of course, speak for what this document originally shows, but where we see this in practice is
often where the times don't match up is under different time zones.

ARBITRATOR GLOSTER: Yes, absolutely.

Absolutely. Thank you.

BY MR. VOLKMER:

Q. Okay. So, last question on this document.

In Mr. Lee's e-mail at the very top responding to your question, we see in what we might call the second paragraph, "the wild card will be foreign shareholders," so there is an expression by Mr. Lee of uncertainty of about how foreign shareholders might vote at the SC&T shareholding meeting; correct?

A. That's Mr. Lee's view.

Q. Okay.

MR. VOLKMER: I see that we're at 10:00, Mr. Chairman. We would be happy to stop here for a break.

PRESIDENT SACHS: Yes. Agreed.

We meet again at 10:15, please.

(Brief recess.)

PRESIDENT SACHS: We can resume.

MR. VOLKMER: Mr. Chairman, we don't see the co-Arbitrators yet.

(Pause.)

PRESIDENT SACHS: Please proceed.
MR. VOLKMER: Okay.

BY MR. VOLKMER:

Q. Mr. Garschina, we will stay on the topic of Mason's knowledge of the NPS's vote before the Shareholder Meeting. Can we please go to Exhibit R-541. That's under Tab No. 20. That's a Mason internal e-mail exchange from the 10th of July 2015. Several of your colleagues were part of that exchange, including Mr. Martino. You aren't.

And on the day of this exchange, the NPS's Investment Committee approved the Merger.

Let's start on the second page, and towards the top of the page you see an e-mail from Mr. Jong Lee to Mr. Martino and others, and Mr. Lee forwarded an article published by Bloomberg. That article is in the bottom half of the page under the second dashed line, and I'll read that article for the record. It says: "National Pension Fund to vote for Samsung C&T Merger Economic Daily," and then it says: "South Korea's National Pension Service will support the merger between Cheil Industries and Samsung C&T, Korea Economic Daily Reports without citing anybody. NPS's decision comes amid criticism and speculative overseas hedge funds and concerns about the negative impact to NPS which holds more than KRW 20 trillion in Shares of"
Samsung affiliates.'"

Do you see that?

A. Yes.

Q. And then towards the top of the page, we have Mr. Lee's e-mail, and he writes: "'I'm looking into the credibility of this paper and if it has Samsung ties.'"

So, as far as you understand, this document, this paper is referring to the Korea Economic Daily?

A. That's the link in the Bloomberg article is the Korean Economic Daily, yes.

Q. Okay. And are you aware that Korea Economic Daily is a large business newspaper in Korea?

A. I'm not.

Q. Let's go to Page 1, middle of the Page, and we see an e-mail from Mr. Ivan Ross to his colleagues at Mason. And I'll just read this for the record: "'I just spoke with James Smith at Elliott. He thinks story is true but his view is that NPS, by not making any formal announcement, is still leaving itself some wriggle room to vote no if circumstances on the ground change, for example Korean Shareholders protest increase. James's base case, however, has said that NPS will be a yes. In which case, he thinks the key factor for approval or disapproval will be overall
turnout. His view is if closer to 70 percent Merger fails, closer to 80 percent Merger probably succeeds.'"

So, on the 10th of July 2015, the Korea Economic Daily reported that the NPS would approve the Merger, Elliott thought that the story was true, and Elliott's base case was that the NPS would approve the Merger. That's what this e-mail says; correct?

A. It says--it says base case, I assume based on the newspaper article you cited, he's not disagreeing with the newspaper article. I don't know if it was just base case. I would doubt it was his base case coming into the vote, but I think he's taking the article at face value.

Q. And, of course, Mason was informed about all of this because one of Mason's employees spoke with an employee at Elliott; right?

A. Informed about?

Q. About the newspaper article, about Elliott's position of the newspaper article, and Elliott's base case going forward.

A. Yes. Mr. Lee was, and probably a lot of other people at Mason, saw this e-mail.

Q. And spoke with Elliott?

A. That's what he says, yes.
Q. Okay. So, as of the 10th of July, Mason knew that it was highly likely that the NPS would approve the Merger; correct?

A. What's the date of the--date of the vote?

Q. The date of the e-mail is 10th of July, the date of the Shareholder Vote is 17th of July, one week later.

A. Can you repeat the question, please?

Q. As of the date of this e-mail, based on all the information we just reviewed, Mason knew that it was highly likely that the NPS would approve the Merger?

A. These people on this e-mail chain thought that James Smith at Elliott thought that it was likely.

Q. And that includes Mr. Michael Martino?

A. He's one of the recipients.

Q. So, did Mr. Martino inform you about this e-mail?

A. I don't recall.

Q. You don't recall hearing from anybody from your team that there was an article that the NPS would approve and that Elliott thought that this was correct? Yes, the NPS would approve?

A. I don't recall that, no.
Q. You don't recall that.
You don't recall whether, at this point in
time, you were shocked and horrified to find out the
NPS voted yes? It might have been this time, it might
have been later?
A. I believe it was after the Merger Vote was
announced.
Q. But you don't remember?
A. It would not have been on this. I--I--this
is not an announcement of the Merger terms. This is a
rumor from a newspaper.
Q. Which Elliott believed to be true.
On this--the date of this e-mail, after this
e-mail, before the Shareholder Vote, Mason could have
sold shares in SC&T; right? That would have been an
option for Mason to do?
A. If I had believed this e-mail, that would
have been one of my natural courses of action, but I
didn't.
Q. Well, I think you just said you don't know
if anybody brought this to your attention.
A. I can't remember specifically if someone
brought it to my attention. This was a long time ago.
Q. Now, according to this e-mail, Elliott
expected that the key factor for approval or
disapproval would be turnout at the SC&T Shareholders' Meeting; right? That's what Elliott told Mason at the time?

A. That's what it says here, yes.

Q. Yeah.

Was it also your expectation that turnout would be a key factor?

A. You know, there--there were a lot of factors, but the predominant factor to me was NPS, and that, I think--if you look at the record of the votes that happened, that was what it turned on.

Q. Okay. Was turnout one of the key factors that you considered at the time?

A. Yeah. In any vote, the amount of people that show up is important.

Q. And, according to this e-mail, Elliott thought turnout, if it was closer to 70 percent, the Merger would fail; and, if it were closer to 80 percent, the Merger would probably succeed? That was Elliott's view at the time, as communicated to Mason?

A. I think what he's saying is that, even if NPS votes yes, you can still--can still be voted down if there's a certain amount of turnout.

Q. And do you remember you agreed with those
numbers? Do they reflect your view at the time?

   A. I don't. I don't remember, but my view at the time was that it did not turn on--on the turnout.

   Q. Okay. Let's move on to Mason's rationale or thesis for investing in Samsung, and we can have look at your Second Witness Statement for that, CWS-3, at Paragraph 8.

   I'll read this for the record: "What prompted to us invest at the time was the prospect that the transition to the next generation of leadership would require a significant restructuring of the Samsung Group. The restructuring would be a catalyst to unlock value in the business for Shareholders. The Samsung heir apparent was under a lot of pressure from Shareholders, particularly foreign Shareholders, to improve governance and increase the returns."

   Do you see that?

   A. Yes.

   Q. And it's your position that, when the Merger between SC&T and Cheil was announced, that invalidated Mason's investment thesis, and Mason therefore sold its shares in SC&T and Samsung Electronics; right?

   A. When it was approved, not announced.

   Q. If I said announced, then I misspoke. When
it was approved.

Now, let's look at how this is reflected in Mason's memos from 2015, and we can first go to Exhibit C-51 under Tab No. 5.

This is an internal e-mail dated 4th of March 2015, and attached to it is a memo prepared by Mr. Gomez and Mr. Lee.

A. 51?

Q. It's Tab 5.

A. Tab 5.

Q. Exhibit C-51.

An internal e-mail from Mr. Gomez and Mr. Lee—sorry, a memo prepared by Mr. Gomez and Mr. Lee is attached to this e-mail.

And to just remind ourselves, Mr. Lee was the primary analyst responsible for analyzing the investment; correct?

A. No, he wasn't. It was Mr. Gomez.

Q. Sorry, that's what I meant. Mr. Gomez was the primary analyst, okay.

A. Yes.

Q. And he is one of the authors of this memo?

A. Yes--

Q. Can you see that--

A. I.
(Overlapping speakers.)

A. --this memo is partly cut and paste pasted from sell side analyst reports, but I believe he has put together all the facts.

Q. Okay. And just to be clear, you can see that he was one of the authors. If you look at first page, the e-mail is coming from him, and the subject line says "writeup by Jong and me.'"

A. Yes.

Q. Okay. So, let's have a look at the memo, so that's the second page of the PDF.

The memo sets out Mason's analysis of the anticipated restructuring of the Samsung Group, including why and when Samsung would restructure; right?

A. He seems to be saying why, but when, he says that no one knows.

Q. Right.

But those questions are considered--I mean, the title is "'Samsung Restructuring,'" and two points considered are why restructure and when will they do it; right?

A. Yeah. He's weighing out different scenarios that could take place in the restructuring.

Q. Right.
And then if we could go to PDF Page 7, that's the second-to-last page of the memo. And in the bottom half, the page considers possible restructuring scenarios, and I'll read that paragraph under that heading for the record: "The goal is break up circularities and increase control of the family. For that, it seems reasonable to think that Cheil will be the holding company of the group, given that the family has a large ownership.'"

So, according to this memo, Mason anticipated Cheil would become a holding company after the restructured Samsung Group; right?

A. I agreed with that.

Q. And then Point No. 2 sets out a possible restructuring scenario, namely a merger between Cheil and SC&T, and it says: "C&T trades pretty much at the value of its stake in SEC, given the perceived risk of the Merger. Given Cheil high valuation and C&T low valuation, this Merger makes sense for Cheil as it would gain control of 4 percent of SEC.'"

Do you see that?

A. I do.

Q. So, in March 2015, Mason believed that Cheil's valuation was high, and SC&T's valuation was low?
A. Yes.

Q. And if Cheil and SC&T merged, these valuations would favor Cheil?

A. No.

Q. The Merger Ratio had higher valuation for Cheil, it would be favorable to Cheil?

A. He's not discussing the Merger Ratio.

Q. The Merger Ratio is determined by the valuation of the companies?

A. It's determined by a negotiation.

Q. Are you familiar with how Merger Ratios are set in Korea?

A. I think so. You know, where the securities are trading has a factor but, you know, you need to get a vote. You can set the ratio wherever you want, you need to have a vote to approve it.

Q. Are you aware that a Merger Ratio in Korea is set based on the average trading price of the companies of the month, week, and day before the Announcement?

A. I don't recall.

Q. Okay. It is not disputed. I'll just represent that to you.

So, on that basis, if the valuation of a company was high, that would favor that company in a
Merger?

A. In a proposed Merger it could.

Q. And the memo doesn't say that such a Merger that would favor Cheil would invalidate Mason's investment thesis, does it?

A. You know, I--I--again, I--I think they were very relevant and fine corporate reasons for the entities to go together. So, the fact they're merging is not an invalidation of our thesis. In fact, it's a validation of our thesis that they're taking a step to simplify the structure, but that's not what's important here. What's important is the price that was offered and the manner in which the votes were gathered.

Q. Right.

The memo considers not just a Merger in the abstract. It considers a Merger at the high valuation for Cheil and a low valuation for SC&T.

A. Where--can you point me to that?

Q. PDH--sorry, PDF Page 7, the second point that we just looked at, giving Cheil high valuation and C&T low valuation, this Merger makes sense for Cheil.

A. Okay.

Q. So, that is what this memo considers; right?
A Merger with a high valuation of Cheil and a low valuation of C&T?

A. I mean, they can try to do a Merger at a price that's not fair for Shareholders but the Shareholders have to vote on it.

Q. Right.

A. That was not--my conclusion from this was not that C&T is going to get a bad deal.

Q. Right. This memo does not say that this kind of Merger with a high valuation for Cheil would invalidate Mason's investment thesis, does it?

A. Doesn't say that--it doesn't say that it would invalidate or validate.

Q. Right.

There is no concern expressed over such a Merger, is there?

A. You know, our--we've looked at a lot of documents, and I want to circle back to one thing I should have mentioned. Most of all our research takes place--deliberations takes place verbally. You know, people write reports, people who work for me write reports. They put a lot of effort into it. They're designed to put a lot of facts together for me to consider.

But whether we're really deliberating about
investments, it's in person, and we consider as many
factors as we think are relevant.

Q. And then, sometimes that is written up and
put in a memo such as this one?

A. These memos are--most of the time, they're
starting points for analysts to do research. The
decisions are made by discussing the likelihood of
events happening or not happening. These are--he's
putting out a lot of bullet points, some of which are
relevant, some of which aren't. It's the job as an
analyst, I'm not faulting him for it.

Q. Right.

And Mr. Gomez, just to remind ourselves, was
your lead analyst on this investment; correct?

A. He was in charge of the modeling, I was the
lead analyst on the decision-making.

Q. Let's have a look at another Mason memo,
that's Exhibit R-397, and that's under Tab No. 24 in
your bundle.

This is another e-mail from Mr. Gomez to
Mr. Lee, dated 1st of June 2015. This was about a
week after the proposed Merger between SC and Cheil
were announced, so at this point in time Mason would
have known the Merger Ratio; correct?

A. I presume so, yes.
Q. And Mason did not yet own its shares in SC&T?
A. I believe at this period of time, we were deliberating whether to switch from SEC into SC&T.
Q. The subject line is FYI I'm going--I'm giving this SEC summary to the big guys. The "big guys" refers to you and Mr. Martino?
A. It does. It's not Joe Biden in this circumstance.
Q. And the e-mail attaches a three-page memo. You can go to the second page of that, the first page of the memo. And that's--the title is, "Samsung restructuring June 2015." So this memo considers potential next steps in Samsung's restructuring process; right?
A. Yes.
Q. And the memo considers, among other things, if those next steps would be good for Masons investment in Samsung, I think you can see that under the heading, "Why is this good for SEC?"
A. Yes.
Q. Okay. Let's have a look at those potential next steps under the heading "SEC."
The memo says that the base case is that Samsung Electronics was split into a holding company
and an operating company and the holding company was then merged with C&T/Cheil.

Do you see that? It's the first line under the heading "SEC."

A. Yes, I do.

Q. Okay. C&T/Cheil, that refers to the merged company that would come out of the Merger between SC&T and Cheil?

A. Yeah—that's his hypothesis, yes.

Q. All right. And the memo also refers to that as New SC&T; right? I think you can see that in the fourth bullet under the base case, New SC&T (Cheil) and C&T?

A. Yes.

Q. Okay. So, the memo anticipated a potential Merger between Samsung Electronics Holding and New C&T; right?

A. He's—he's hypothesizing, I think.

Q. Right.

A. I don't know if he's anticipating, but he's laying out scenarios.

Q. Right.

And he's describing it as the base case, so it's not just some fanciful hypothesis. That's the base case?
A. For him.

Q. Right. Your lead analyst--sorry, the--

A. I'm the lead analyst, but it appears to be
his base case, yes.

Q. Okay. And the memo announced why is this
good for SEC, and it lists two bullet points, and the
first one is "solve the corporate governance because
interest of SEC and the family aligned." The
"family" here refers to the Family; right?

A. Yes.

Q. So, according to this memo, a Merger between
Samsung Electronics Holdings and the New SC&T would be
good for corporate governance because the interest of
Samsung Electronics and the Family would be
aligned?

A. Yes.

As I said before, a successful restructuring
of the group benefits would have inured to all the
parties, in my view. It was a win-win.

Q. And let's go to the last page of the memo,
that's PDF Page 4. Under the heading "New C&T, C&T
plus Cheil." The memo lists two positives and two
negatives. And the positives are, first positive is
align with the family, so that again refers to the
alignment of interests that we just looked at.
The second positive is can increase value and it then lists four ways in which value can be increased.

Do you see that?

A. I do.

Q. Okay. And one way to increase value would be for New C&T to merge with Samsung Electronics Holdings; right?

A. Which bullet was that?

Q. First bullet point under "can increase value." It says "emerging with SEC Holds Co. in the future."

A. Yes.

Q. That refers to a merger between SEC Holdings--

A. He's hypothesizing about there is a myriad of different ways that the restructuring could have happened, and he's hypothesizing as to what some of those are.

Q. Right.

And he's saying a Merger between the new entity that would come out of the Merger between SC&T and Cheil, so this New C&T, a merger of that entity and SEC Holdings that would be a way to increase value; right?
A. I don't know about increase--yes, increase value as a next step after--I think his view was that they would try to do Cheil-SC&T, and if that was successful they would proceed to merge more entities and continue to simplify the structure.

Q. Right, exactly. So, they would first do the Merger that we have been talking about so much, Cheil-SC&T, then the hypothesis is they will go on to merge the New SC&T with Samsung Holdings. In your analysts' view, that would be a way to increase value?

A. Well, I think it's important to note that, as I said before, the main asset of C&T was Samsung Electronics Shares. So, if Cheil could buy--by buying C&T, a lot of Samsung Electronics Shares at 50 cents on the dollar, that's a good deal for them. I thought--I thought that wouldn't happen inside the bounds of the law. But it's reasonable to assume if they had paid a good price and that had entity--the resulting entity of that Cheil-SC&T Merger had a lot of Samsung Electronics shares in it, that in order to further simplify the structure, merging that entity with Samsung Electronics itself would be a way to really simplify and organize the structure.

Q. Right. You refer to the price. The price was known at this point. This was the 1st of June,
almost a week after the Merger Announcement. This wasn't just some hypothetical price. They knew the terms of the Merger, and were saying this is the way to increase value based on the terms of the Merger as it is known.

A. It's not saying that the deal is going to go through at this price.

Q. There was only one deal on the table?

A. Yeah, and I thought it would be voted down, and that there would be--as I said in my last testimony two-and-a-half years ago, that one of the results of voting the Merger down was that it would be renegotiated at a fair price. He's not assuming that it goes through at a bad price. My view was that it would be voted down. He's hypothesizing about if it does go through at a price, he doesn't know what price during next steps, and that's totally reasonable.

Q. Right.

The memo doesn't say any of this, does it? It doesn't say we expect the deal as we know it right now, as it was just announced, to fail, then there's going to be another deal, that deal is going to have a different price, and then we look what happens?

A. That was my view.

Q. Right.
A. It doesn't say it in here.

Q. Right. Okay. And then going on down the list--

A. Importantly, if I--I had to consider all those issues. I can't just consider what is or isn't a note from one of my analysts.

Q. Right.

And then we consider, if you go further down the memo, there are two negatives of risks. The first one is a potential incentive to keep New C&T stock low temporarily. And the second one is that core business of both Cheil and SC&T have not been performing well, in the absence of restructuring, news stock could trade down.

A. I see that.

Q. Okay. So, the memo doesn't say that, based on the terms of the Merger, as they were known then, the approval of the Merger would be a negative or a risk for Mason's investment; correct?

A. It doesn't say in either direction.

Q. And the memo doesn't say that, if the Merger goes through and the New C&T is created on based on the terms of the deal as it was known then, Mason should sell all of its shares in Samsung Electronics?

A. It doesn't say that, but I--look at what I
did. I didn't do anything that was really out of consensus here. We were owning securities above a deal price, and the market agreed with me that it would be voted down. And when the market was surprised as I was, the price went down.

Q. This memo, in fact, assumes that Mason would keep its shares; right? That is why this memo considers next step in the restructuring. The plan had been to sell the shares immediately after the Merger, based on the terms of that Merger, there wouldn't be any need to consider next steps?

A. That's wrong.

Q. You wouldn't need to consider next steps in the Samsung restructuring if your plan was to sell after the Merger; correct?

A. Our plan is based on what happened. You know, we don't have a pre-determined plan. You know, we had a strong view that the Merger would be turned down. When it wasn't turned down, I didn't know what had happened.

I'm happy to be wrong on a commercial basis.

Q. If we can just go back to the Transcript to something you said before the break, and if FTI could pull that up, perhaps, it's at 947, I think it's Lines 4619, maybe that's Page 46.19. Yeah, that's
right.

And your answer was: "Elliott not only wrote a letter, they put out large public presentations lobbying investors to mind their fiduciary duties when they voted, and I thought it was one of the reasons that, first of all, I was very happy that they were there," and so on and so forth.

Now, you weren't just very happy that Elliott was there. You invested on the day that Elliott made its announcement; correct?

A. When our investment process began well before that, but we were investing around the time that Elliott--are you talking about SEC or SC&T?

Q. SC&T.

A. Yes, our investment in Samsung Group happens well before that. We were still investing and investing during that period of time, yes.

Q. Right.

And is it mere coincidence that Mason bought shares in SC&T the very day that Elliott announced that it would oppose the Merger and buy SC&T Shares?

A. I don't know if it was a coincidence or not.

Q. Do you--

A. I can tell you that, having a large investor coming out and shining a light on a situation is a
positive thing, from my view, that it would be turned
down.

Q. Right.

You say that you don't know whether it was a
coincidence. Does that mean it is possible that you
invested because you saw that Elliott made the
announcement that day?

A. I mean, anything is possible. Our record on
investing in the Samsung structure is long, and the
fact that they would oppose the Merger agreed with
my--cemented my--not "cemented," but made me feel
stronger about my thesis.

Q. You mentioned earlier that the ultimate
investment decision is with you or Mr. Martino. When
you or Mr. Martino gave the order to buy that day, did
you do that after having heard from Elliott?

A. I don't know.

Q. All right. Given that there is so much
uncertainty about this timing, I put it to you,
Mr. Martino--Mr. Garschina, excuse me--that on the day
you invested, because Elliott was entering the scene,
not because of any expectation with NPS?

A. That's your view?

Q. I put that to you, yes.

A. That it's your view?
Q. I put that to you that that is what happened.
A. Okay.
Q. And what is your position on that?
A. Well, the two—the two issues are intertwined; are not distinct. My view was that if the fiduciary duties were followed, the vote would be turned down, and that turned out to be the case.

Having a large shareholder who was able to vote their shares and is also lobbying to vote in the direction I thought was possible, likely, is a good thing for our investment, so they're intertwined.

Q. Right. So, you took a chance, you made a bet that Elliott would be successful in the campaign?
A. I wouldn't characterize it as making a bet. I'd say that we had an informed view that was crafted over a long period of time.

Q. We don't have any further questions.

PRESIDENT SACHS: Thank you.
Will there be redirect?
REDIRECT EXAMINATION
BY MS. VAZOLA:

Q. Mr. Garschina, you were asked a number of questions about what counsel characterized as "'memos.'" Can you please elaborate on the role of
these documents in Mason's investment process.

    A. Yes. Analysts produced a lot of documents with their thoughts and aggregating information. It's like a research project. I think last time I was here we were joking about whether I'm a management consultancy firm or not, but our research process is thorough and covers everything that's out there.

    And, you know, it's advisory to myself and Mr. Martino. Sometimes I look at them, sometimes I don't, but our primary source of interaction and deliberation and coming to an investment conclusion is verbal.

    Q. Would you typically create documents memorializing the specific investment thesis?

    A. No. No. These documents are--I'm from the old school before e-mail, and the internet. The younger guys and gals use these to communicate and--you know, it's the job of any analyst to point out to me--to have had pointed out to me all the different views in the market because it's their job to aggregate information.

    Q. You were shown some charts reflecting Mason's purchases of SEC and SC&T before the Merger Vote. Did those purchases reflect Mason's investment thesis about those two companies?
A. Can you repeat the question?

Q. Sure.

You were shown charts reflecting Mason's purchases of Samsung Electronics and Samsung C&T before the SC&T-Cheil Merger was voted on July 17, 2015. My question to you is: How, if at all, did Mason's actual trading in SC&T and SEC reflect its investment thesis?

A. Well, I was confident that--my thesis was I was confident that the vote would be turned down, if it was done inside the bounds of the law. And the reason to buy SC&T, as I mentioned last time, is that, that if it were turned down, which was my thesis, we would make money in many different directions, the whole value of the structure would lift, SC&T would trade at a smaller discount to its NAV, and it was possible--in fact, I foresaw that it was so important to do this transaction for the reasons your counsel has discussed, but they would have to raise the price, and we would get paid that way; right? I thought there were a number of ways to win but the central thesis was that the Merger would be voted down.

Q. If you believed the Merger was likely to be approved, would you have directed your team to make those purchases in SEC and SC&T?
A. Absolutely not.

Q. You were asked a number of questions about the Exhibit C-125. Could we please have that on the screen? That's Tab 15 in the binder.

    So, I want to direct you to the second e-mail in the chain. That's from Emilio on 6/8/15 at 4:47.

    A. Um-hmm.

    Q. About halfway down in the middle of the paragraph after the language that counsel asked you about, "NPS is the wild card;" I want to focus on the sentence after that: "I agree with you that it doesn't make sense to buy stock to side with Cheil and lose money."

    Do you see that?

    A. Yes, he's speaking to my view.

    Q. What is your recollection about what NPS's trading in SC&T looked like after the Merger was announced?

    A. Well, they were buying more shares, and I thought it would be--I couldn't fathom why you would buy shares in order to vote those shares in a transaction to lose money for yourself.

    Q. So, what did the fact that NPS was buying shares in SC&T tell you, if anything, about the
likelihood that whether they would approve the Merger?

A. It was a sign to me that they would vote it down. It was a clear sign to me because—who would be so bold to buy shares and vote them down as a fiduciary for pension assets in order to lose money for your—for your, I guess, clients or people that you have fiduciary responsibility to. I thought—

And, in fact, I think the record is borne out that, until there was an intervention by Mr. [redacted], they would have voted for it, in my view--voted against it, in my view.

Q. So, staying with that subject, you said at the beginning of your testimony that you had been following the Korean market for some 20 years. Did you ever expect fraud and corruption of the type and scale that was exposed in relation to the Samsung Merger?

A. No.

And I think it's fair to say that when--when I got the news that it was voted through, I didn't know what had happened. You mentioned before—Korea's counsel mentioned before, I don't remember the date, but I do remember the emotions and they were—I didn't understand what had happened because I—I'm not always right in my investment career, but this one was not a
close call to me, relying on the pension scheme to
decide in their clear economic interest was--it wasn't a
hard decision for me to make.

And when--only when the subsequent events
came to light did I know--that I knew what had
happened.

Q. Thank you, Mr. Garschina. I have no further
questions.

PRESIDENT SACHS: Thank you.

I turn to my two colleagues. Dame
Elizabeth?

ARBITRATOR GLOSTER: I have no questions.

Thank you.

PRESIDENT SACHS: Professor Mayer?

ARBITRATOR MAYER: No questions, thank you.

PRESIDENT SACHS: I don't have questions
either.

We thank you, Mr. Garschina, for your second
performance before us. You're now released as a
witness.

THE WITNESS: Thank you. Thank you.

PRESIDENT SACHS: And you may leave the
room.

THE WITNESS: Thank you.

(Witness steps down.)
PRESIDENT SACHS: We will now have our lunch break. We are very punctual. We are even ahead of schedule.

45 minutes, meaning that we will resume at 11:45.

(Whereupon, at 11:00 a.m. (EDT), the Hearing was adjourned until 11:45 p.m. (EDT) the same day.)
AFTERNOON SESSION

PROFESSOR SUNG-SOO KIM, RESPONDENT'S WITNESS, CALLED

PRESIDENT SACHS: So, good afternoon,

Professor Kim. You may take off your mask.

Good afternoon, Ms. Ran Ha. You have to

speak loud so that also my colleagues who are

connected online understand you.

THE INTERPRETER: I will, thank you.

PRESIDENT SACHS: Okay. So, in front of

you, Professor Kim, you will find the Declaration for

expert witness. You are an expert witness, so we

would ask you to read this Declaration for the record.

Read it loud.

THE WITNESS: Can I do it in Korean?

PRESIDENT SACHS: Yes, of course.

THE WITNESS: Expert Declaration for Expert

Witness.

I solemnly declare upon my honor and

conscience that my statement will be in accordance

with my sincere belief.

PRESIDENT SACHS: Could you come closer to

the microphone, please.

Professor Kim, you submitted two Expert

Reports in these proceedings. Is there anything in

these reports that you would like to amend at this
point of time?

THE WITNESS: None.

PRESIDENT SACHS: Thank you very much.

I have a doubt whether we will have a presentation or whether we go to direct and cross-examination. What was the agreement?

MR. HAN: Thank you, Mr. President.

The Parties have agreed that there is no expert presentation for our legal expert.

PRESIDENT SACHS: Okay. But there will be some direct?

MR. HAN: No, there is no actual direct.

PRESIDENT SACHS: So immediate cross-examination?

MR. HAN: Yes, we're happy to hand over to the Claimant.

PRESIDENT SACHS: So, the floor is yours. Ms. Lamb? Okay. Thank you very much.

MS. LAMB: Thank you so much.

CROSS-EXAMINATION

BY MS. LAMB:

Q. Good afternoon, Professor Kim.

A. Good afternoon.

Q. In my questions today, I may make use of a visual aid, and this is Exhibit CDE-1. For Members of
the virtual Tribunal, this is the equivalent to Slide 128 in our Opening Submissions from yesterday. This is intended just as a visual aid, to depict the structure that we are going to talk about. If there is anything in it with which you disagree, you can tell me.

So, if we just start at the top, the Korean Constitution, of course, sets out the highest level of each of the branches of government, including the presidency; correct?

A. Yes, that is correct.

Q. And the Ministry of Health and Welfare is a ministry established under the control of the President; that's right, isn't it?

A. That is right.

Q. The Korean Constitution provides that it's a duty of the State to protect citizens who are incapable of earning a livelihood, including as a result of old age or disability; that's right, isn't it?

A. Yes, I am aware of that, but, if you don't mind, I would appreciate it if you could point me to the exact provision.

Q. Of course.

Let's look at Article 34, subsection 5 of
the Korean Constitution at CLA-149.

A. Could we have that up on the screen, please?

VOICE: We created a hard copy.

BY MS. LAMB:

Q. So, Article 34(5), an extract from the Constitution: "Citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by Act."

A. Yes, I see it.

Q. The Act that implements that constitutional responsibility is the National Pension Act, isn't it?

A. That is not correct.

So, let me, if I may, explain to you the Article 34(5) of the Constitution is about the citizens who are difficult to make a living because of their physical disabilities or disease or the old age, and this is, in fact, covered by the Elderly Welfare Act or the Child Welfare Act. And, in fact, the National Pension Act is about the pensioners who are paying the monthly contribution to the National Pension Service, and they still maintain their property of right to the contributions that they make, and the State is managing the Fund for a certain amount of time, and then, when the pensioners retire,
they receive the money back.

So, I can see what is prescribed in the Article 34(5) of the Constitution, but I cannot agree that the statute that is based on the Article 34(5) of the Constitution is the National Pension Act.

And let me add one more thing.

The National Pension Act is to ensure the rights of the citizens to be guaranteed about the contributions that they make to the Fund. So it is, in fact, a slightly different structure\(^1\) from the--what is prescribed in Article 34(5), which is unilateral welfare services from the State to the citizens.

Q. Let's have a look at CLA-157, which is, indeed, the National Pension Act. We look first at Article 1, which is its purpose.

A. Yes, I'm looking for it.

Now I have it.

Q. So, the purpose of the Pension Act is to contribute to the promotion of the stable livelihood and welfare by providing pension benefits for old age, disability, or death.

A. Yes, but, in fact, in the purpose of this

\(^1\) The English interpretation at the hearing was inaccurate. Instead of "slightly different structure," an accurate translation of the Korean testimony is "completely different structure."
Article is that the--it stipulates the reasons for the welfare to be given to the citizens, which are old age, disability, or death. But in the Article 34(5) of the Constitution, it is not prescribing the legal reasons for the citizens to be receiving the welfare benefits. It is, in fact, a national law that is giving help to them through the Constitution so that there is a slight difference between the two.

Q. Under Article 2 of the National Pension Act, it's the Minister of Health and Welfare, isn't it, who is in charge of the National Pension Services?

A. Yes. This says that the National Pension Service business would be in--sorry. It says that the Minister of Health and Welfare would be in charge of the National Pension Service business.

Q. Provided under this Act?

A. Yes.

Q. And if we go back to our visual aid, we see here the links between the Ministry of Health and Welfare and the National Pension Service.

A. Yes.

Q. You can see on the Act--sorry, on the visual aid at the bottom the National Pension Fund. Under the--do you see it on the diagram?

A. So, in the English version, it says
"National Pension Fund," but in the Korean version it only says "national pension" without the word "Fund," and I think there should be one.

Q. Yes. The last entity, if you will, at the bottom of the diagram is intended to be the National Pension Fund.

Under the Pension Act, it's the Minister who establishes the National Pension Fund, isn't it?

A. Yes.

Q. And it is the Minister that has the power to manage and operate the National Pension Fund, isn't it?

A. Yes.

Q. The National Pension Act provides for the methods by which the Minister of Health and Welfare is to manage and operate the Fund; that's right, isn't it?

A. That is correct, but I would be--really appreciate it if you could point me to the exact provision.

Q. Of course.

Article 102(2) of the National Pension Act, which is your CLA-157.

Article 102, subsection 2 (reading): "The Minister of Health and Welfare shall manage and
operate the Fund by use of the following methods,"
and these include, at Item 3, purchase, sale and
lending of securities under Article 4 of the Financial

A. Yes.

Q. And the National Pension Act also
establishes the National Pension Service; correct?

A. Yes.

Q. And the sole purpose, the sole function of
the NPS is to carry out services commissioned by the
Minister of Health and Welfare; correct?

A. It is not the sole purpose. There are a lot
of services that are commissioned by the Minister of
Health and Welfare that is carried out by the NPS, but
there are other numerous activities that are conducted
by the NPS that are not part of that.

Q. Let's just look at CLA-157 again, Article 24
(reading): "The National Pension Service shall be
established to effectively carry out services
commissioned by the Minister of Health and Welfare to
attain the purposes set forth in Article 1."

A. Yes.

Q. And we looked at Article 1, didn't we? The
purpose of the Act is to contribute to the promotion
of the stable livelihood and welfare of citizens by
providing pension benefits, et cetera.

A. Yes, I see the purpose; but, as I explained earlier, the pensions—the pension benefits are not given out to the people who are in need as a mere benefit. But then the pension benefits are the benefits that the pension-holders receive in exchange for their monthly contributions which is, in fact, found by the Korean Constitutional Court as their right to property, and that money is in fact paid to them when the certain conditions are met.

Q. The Minister's power to manage and operate the Fund is then delegated to the NPS, isn't it?

A. Are we referring to the Article 102(5)?

Q. Shall we look at CLA-150. This is the Presidential Decree of the National Pension Act.

CLA-150. And you may recall Article 76: Entrustment of affairs concerning Management and Operating of Fund.

A. Yes, I found it.

Q. So, Article 76(1) (reading): "The Minister of Health and Welfare shall entrust the affairs in the following subparagraphs to the service"—that's the National Pension Service"—under Article 102(5) of the Act, the National Pension Act.''

A. Yes.
Q. Turning back to CLA-157, let's look at Article 41 of the National Pension Act. The Service must acquire and obtain the approval of the Minister on its Plan of Operations and its budget every year, mustn't it?
   A. Yes.

Q. And it must also report to the Minister on its performance after the end of the financial year; that's right, isn't it?
   A. Yes.

Q. And the Minister may order it to take any necessary measures regarding supervision; that's also right, isn't it?
   A. That is not correct. In this provision, it is not clearly mentioned what kind of necessary measures pertaining to the supervision would be.

And in Korea, there--indeed, there are multiple public institutions that would be under the supervision of the competent ministerial authority. But if you looked at this Article 41 that is applicable to the National Pension Service, if you compare it to the other regulatory provisions that are applicable to other public institutions, it is very clear that the--that this provision is considering a significant amount of independence and autonomy of the
Service, and it is also highlighting—it is also highlighting that the supervision is only indirect and done in a macro level.

Q. Can we just look again at Article 41(3). This says very clearly that the Minister of Health and Welfare may order the Service to report on its services, inspect the status of its services or property; and, if deemed necessary, take necessary measures regarding supervision. Are you disagreeing with those powers of the Minister of Health and Welfare?

A. I am not disagreeing with what the provision said, but I would like to, if I may, offer you some interpretation of what this provision means.

So, let me first direct your attention to what it means to order the service to report on its services. It is not only applicable to a public institution like the National Pension Service, but it is also something that can be requested to the non-profit corporations that are established under the civil law such as the orphanage or a nursery. There can be an occasion where they are ordered to provide a report on their financial status or the accounting status after a year's business.

And as for the second part, inspect the
status of a services or property. In fact, in Korea about two years ago, there was an occasion where a kindergarten that is receiving national funding was--had become an issue; and, in that case, that kindergarten in question was requested to provide a report on their status of the property and their operation to the competent ministerial authority or the regional head.

And let me finally turn to your attention to the last part, which is related to the necessary measures regarding supervision. As I said earlier, this doesn't provide any specific examples of what such measures would be, but in the case of other public institutions, there is a more strict rules applied to them; for example, the Authorities can, in fact, make a cancellation or a suspension of the actions or the dispositions made by the public institutions directly.

But in the case of the National Pension Service, it is set out rather loosely. It is only mentioning that the necessary measures could be taken. It doesn't extend to the extent where it--the authority can cancel or suspend the actions taken by the National Pension Service.

Q. Otherwise, it can take the measures that are
necessary to perform its supervisory functions?

A. So, not all the necessary measures for supervision are allowed. If you looked at the court decisions and rulings in Korea, there are certain conditions and restraints that are set forth clearly. For example, there is a rule of proportionality and the necessary measures are not all accepted.

So, it is not only considering the necessity of the measures, but then it is also considering how much of the violation of rights could happen as a result of the measures. And it is also looking at the amount of punishment that would be applicable to the target when it is applied, et cetera.

Q. And, subject to those, if you will, administrative-law constraints, the Minister of Health and Welfare, indeed, can take necessary measures regarding supervision?

A. Yes, indeed this provision is giving a discretion that the Minister may take necessary measures, but then in the case of the exercise of such discretion, what is, in fact, in practice is very limited under Korean case law. For example, you will need to consider many different factors, such as the principle of proportionality and the principle of the protection of trust and the principle of impartiality
and so forth.

So, in the case of the National Pension Service, which is a self-controlling entity with a Board of Directors, the discretion would only apply in a very limited sense, according to the court decisions made in Korea.

Q. You don't dispute the existence of the Minister's power as it is stated here in Article 41 of the Act?
   A. Yes. The Minister has the power.
   Q. Thank you.

Let's look again at the visual aid. We can see that the NPS has a number of connections with other State institutions. Let's look at the National Assembly.

Do you see that on the top left-hand side of the visual aid?
   A. Yes.

Q. The National Assembly has certain audit rights, doesn't it, over the National Pension Service?
   A. Yes.

Q. And that's because the National Assembly may inspect affairs of State or investigate specific matters of State affairs; that's right, isn't it?
   A. Yes. You can say that the National Assembly
has the power to inspect, but it cannot be done any
time. It is only done when the conditions are met,
according to the National Inspection and Audit Act.

Q. Let’s just remind ourselves of Article 61 of
the Constitution, CLA-149.

A. Yes. I’ve found it.

Q. And just focusing on the power and the
source of the power, you agree that this is that the
National Assembly may inspect affairs of State or
investigate specific matters of State affairs?

A. May I direct your attention to the
Article 61(2)?

Q. Please, perhaps you can first answer my
question, which is to confirm that the National
Assembly has, indeed, a power to inspect affairs of
State or investigate specific matters of State, and
that is why it has a power to investigate the National
Pension Service.

A. Yes, that is what is written in the Article
61(1) of the Constitution, but only with this Article
61(1) of the Constitution we cannot say whether this
would allow the Ministry\(^2\) to have the right to have an
inspection or the Audit over the NPS.

\(^2\) The English interpretation at the hearing was inaccurate. Instead of
""Ministry,"" an accurate translation of the Korean testimony is ""National
Assembly.""
For us to be able to discuss that, we will need to look at Article 61(2) and see whether the statutes that are written in the Article 61(2) would be providing the conditions necessary for the NPS to be subjected to a certain audit or the inspection and whether these conditions are met.

So, I mean, Korea is regulated by law. It's a country that is regulated by law, so we cannot simply say, looking at one provision in the Constitution, to say whether a certain--a Ministry has a certain right over a certain public institution. We will need to look at a cert--we will need to look into the intent of the legislators and look into the conditions that are required by the law to decide whether it is possible to do so when the conditions exist.

Q. Professor Kim, I did not ask about the Ministry's own rights to conduct an audit. I'm simply asking the question whether the National Assembly itself has audit and inspection rights in matters of affairs of State or that concern specific matters of State affairs. That's what the Constitution appears to say; do you agree with that?

3 The English interpretation at the hearing was inaccurate. Instead of "'Ministry,'" an accurate translation of the Korean testimony is "'National Assembly.'"
A. Yes, I completely agree with what you say, but what I wanted to say was: What was implied in your question earlier was that--was that--based on Article 61(1), the National Assembly has a right to inspect or audit the NPS, and that would be wrong.

Q. There are a number of other audit routes, of course, over the activities of the National Pension Service. If we look again at our visual aid, we see on the right-hand side the Board of Audit and Inspection. Do you agree that that Board has a periodic audit and inspection right over the National Pension Service?

A. I agree with the statement, but the audit that is conducted by the Board of Audit and Inspection would be subject to the Article, either 100 or Article 99 of the Constitution. But the audits that are conducted by the Board of Audit and Inspection is conducted--pursuant to the Act on the Board of Audit and Inspection instead of the Constitution.

Q. So, I think you're agreeing with me, then that, indeed, the Board of Audit and Inspection has the right to conduct periodic audits of the National Pension Service?

A. Yes, I agree with the statement, but if you would like to have a more in-depth knowledge or
understanding, it would be really appreciated if you could point me to a certain article or provision within the Act on the Board of Audit and Inspection to look into when, which--sorry, which conditions could be met for the Audit to happen.

Q. I'm only concerned with the existence of the power, so there's really no need for us to go into that detail, but thank you for the offer. I would like to turn to your First Report, if I may.

Would you be kind enough to go to Paragraph 48. So, in Paragraph 48, you say that—and you were talking here about the NPS's purposes—purpose, functions and powers, and you say: '"Save for a few that are functionally administrative, the powers entrusted to the NPS are commercial and private in nature.'"

A. Yes.

Q. Let's have a look at some of those powers, if we may. They're in Article 25 of the Pension Act that conveniently you summarize some of them in Paragraph 29 of your own Statement, and I'm happy to use that.

So, here, you're summarizing some of the powers of the NPS: Number 1, management and maintenance of records on insured persons.
A. Yes.

Q. And that that's an administrative power in nature, isn't it?

A. Yes.

Q. And the Number 2, the imposition of pension contributions, and here we mean the mandatory contributions to be made by Korean citizens; that's right, isn't it?

A. Yes.

Q. And, of course, a commercial pension fund would not have the right to compel contributions from its pension-holders, would it?

A. Yes. The National Pension Fund is focusing on the management of the Fund, and what is prescribed in the Number 2 of my Statements, Article--Paragraph 29, is the role that is played by the National Pension Service.

Q. Correct.

And my question was to ask you to confirm, if you will, that that is not a power that enjoyed by a private pension provider?

A. Are we talking about the right to impose the premiums?

Q. The compulsory contributions to the National Pension Fund, that's not a right that a commercial
pension fund enjoys, is it?

A. The private companies would not have the public power. They are operating based on the contractual terms with the pension-holders.

Q. Quite.

And they operate under a very different regulatory regime to the National Pension Service, don't they?

A. In a way, yes; and in a way, no. Even if we're talking about a private pension fund, there would be certain principles that such private pension funds would be operated. And if the pension—private pension fund is a big one in terms of the size, it would be big enough to have a significant influence in the market. Then, the operation would need to consider its implications in the market.

Q. My question to you is whether they operate under a different regulatory regime to the National Pension Service. Can you answer "yes" or "no" to that question?

A. I would say is a correct statement.

Q. Thank you.

Item 4 on your list, Paragraph 29, "welfare promotion services," and these include the operation of welfare facilities for the current and former
insured beneficiaries.

   Now, again, that's not a power or duty that
a private pension fund would have, is it?
   A. I would also say, in a way, yes; and in a
way, no, to that question. I work at Yonsei
University, and Yonsei University is a private
university, and a private university like Yonsei
University is, in fact, offering loans to its former
employees or former professors at a lower interest
rate than the market.

   Q. So, my question was whether a private
pension fund has an obligation to engage in welfare
promotion services, to the best of your knowledge?
"Yes'" or "no'.
   A. Even if we are talking about a private
pension fund, they would be offering such welfare
services to their own employees.
   Q. That wasn't my question, and I think you
know that.

   Is it obliged to provide those services to
its pension fund holders?
   A. So I--it is hard for me to grasp why the
private fund or the private pension fund is at the
center of the discussion right now. But, for example,
there is a group called a ""Mutual Cooperation Group""
within many of the Korean entities, and this is—in fact, this kind of a welfare service is, in fact, something that is frequently offered by this Mutual Cooperation Group.

Q. I'm asking the question because your opinion is that many of the powers entrusted to the NPS are commercial and private in nature, and so I'm asking you whether, to the best of your knowledge, a private pension fund is obliged to provide old-age planning services and the establishment and operation of welfare facilities as part of its mandate, to the best of your knowledge.

A. I am retiring next year, and I have high hopes of receiving a significant amount of salary from the Mutual Cooperation Group that I mentioned earlier.

Q. I'm not really sure that's an answer to my question but I wish you all the very best of luck with your retirement.

Perhaps we can look at my visual aid again. Thank you. So, I would like to start by looking at the National Pension Fund Operation Committee. That's right in the middle of our visual aid.

A. Yes.

Q. Under the National Pension Act, this Committee, the Operation Committee, is established
under the Ministry of Health and Welfare; that's right, isn't it?

A. Yes.

Q. And the Operation Committee shall deliberate and decide on matters concerning the Operation of the Fund; that's right, isn't it?

A. Yes.

Q. And that includes matters relating to guidelines for Operation of the Fund; that's right, isn't it?

A. Yes.

Q. And the National Pension Service is obliged to comply with the matters specified in those guidelines?

A. Yes. The Guidelines are an Administrative--

THE INTERPRETER: Sorry, give me a second.

(Pause.)

THE WITNESS: The Guidelines are an Administrative Rules, so it should be--it should be complied with. But what is important is not only the Guidelines, and the National Pension Act and Presidential Decree on the same come above and will first need to be complied with.

BY MS. LAMB:

Q. Indeed, there are, but the Guidelines
themselves, they must be complied with; that's right, isn't it?
   A. Yes, correct.
   Q. And, in fact, a number of organizations and their members are also required to comply with the Guidelines, aren't they?
   A. Yes, correct. They are obliged to comply, but that is only regarding the Guidelines for operation of the Fund. Not everything but limited to the Guidelines regarding the operation of the Fund.
   Q. Let's just look at Article 1, briefly, of the Guidelines; that's your C-6. So, I'm looking at subsection 3 of Article 1.
   A. So, we're looking at the Guidelines on the exercise of Voting Rights? We're looking at the Fund Operation Guidelines?
   Q. We're at C-6, Guidelines for Management of the National Pension Service Fund.
   A. I don't have it here.
   Q. Apologies, it seems that the translation in the Cross-Examination Bundle is of the wrong document, so we just rectified that now. Can we use the electronic version from the main case record? In Korean.
   A. I would, in fact, really appreciate it, if I
could look at the Korean document on the screen.

Q. Perhaps FTI can help us with a side by side. Article 1, subsection 3. I will have to trust you about this, that this is the right translation.

A. Yes, I am looking at it.

Q. Thank you.

So, we're just looking to clarify those others who are required to comply with the matters specified in the Guidelines, and those entities are listed in Paragraph 3, aren't they?

A. Yes.

Q. So, those include the Ministry of Health, the Experts Voting Committee, the Service itself.

A. Yes.

Q. And we find more of the Fund operational principles in Article 4.

And you will agree with me that Article 4 sets out, if you will, the guiding principles on which the Minister shall operate the Fund.

A. Yes.

Q. So, just looking at Principle 1, the Principle of Profitability--

A. Yes.

Q. --and what we see there is that the Fund, in its operation, must consider the burden on future
generations.

Do you see that?

A. Yes, I see it.

Q. So, if we were to compare the way in which the National Pension Fund is operated versus a private pension fund, we can immediately see a difference because a private pension fund is not obliged to consider the burden on the future generation, is it? It's only concerned with its own pension-holders?

A. Yes, in principle.

Q. Thank you.

When it comes to the exercise of Voting Rights, difficult decisions are to be referred to the Experts Voting Committee; that's right, isn't it?

A. Yes, but when the difficult--when a decision is referred to the Special Committee, the principle is that the NPSIM would make a decision first. And when it is deemed difficult to make a decision, then it may request the Special Committee to vote.

Q. And so, for a difficult decision, the decision is taken away from the National Pension Service, and it's passed externally to the Experts Voting Committee?

A. Well, but if you only say that it is about the difficult decision, I think it could be a bit
misleading. I think it will need to be more specific. When it is difficult for the NPSIM to decide whether to cast an affirmative vote or the negative vote, the Decision may be referred to the Special Committee. That is how I would put it.

The exercise of Voting Rights would be primarily done by the NPSIM. But when it is difficult for it to decide whether to cast an affirmative vote or the negative vote, it will refer the matter to the Special Committee which is under the Fund Operation Committee under the Ministry of Health and Welfare.

And one thing I would like to note here is that it may refer it to the Special Committee, not that it is required to refer it to the Special Committee.

Q. Indeed, thank you for that.

So, to summarize, when a decision is difficult, it is taken out of the hands of the NPS and referred to a Committee established under the Ministry of Health and Welfare?

A. Yes, but I would like to once again highlight that the matter that is difficult is related to deciding the exercise of voting rights of whether it should be in the affirmative or negative. It is not about all the difficult decisions that the NPSIM
should make.

So, I'm not quite sure whether you're intending to omit some of the parts that I highlighted or you're just trying to maybe make it more broad in terms, but I have, in fact, made this point a number of times.

Q. I think my point is very simple, and I think you've agreed with it, and it's simply that when a decision is deemed difficult and sent to the Experts Voting Committee, it is taken out of the hands of the NPS and placed into the hands of a Committee which operates under the authority of the Minister of Health and Welfare?

A. Well, if you simply put it, I would agree, but all of the matters that happened in this world are complex and difficult matters. So, if you only say that the matter being difficult is the only condition for it to be referred to the Committee, then it will render the activities done by the Investment Committee of the NPS or the NPSIM meaningless.

And to that point I disagree.

Q. Let's be very specific then. C-6, back to the Guidelines, Article 17, subsection 5.

So there is no confusion between us as to what difficult decision I'm referring to. So, while
Voting Rights shall, in principle, be exercised by the NPS, proposals for which it is difficult for the NPS to determine, whether to support or oppose shall be decided on by the Experts Voting Committee, so that is the difficult decision I'm referring to.

A. Yes, I fully understand your point, and once again, I would like to highlight very clearly that the NPS, in principle, has a right to exercise its Voting Rights, and only when it is difficult to make a decision on whether to cast an affirmative vote or the negative vote, it would refer to the Committee.

And these two conditions are significantly important. And if these two conditions do not stand or met, then the actions by the Investment Committee or the NPSIM would be rendered meaningless.

So, I would like to, once again, make it clear that these two conditions are important.

Q. And if the conditions are met, the decision is taken out of the hands of the NPS and placed with the Experts Voting Committee outside the NPS.

A. Yes.

Q. And to the best of your knowledge, that's not a feature, is it, of a private pension fund. They do not refer difficult decisions to those outside of fund management?
A. Well, I am not an expert in the private pension funds, I do have a certain amount of knowledge in it, but you are constantly asking me questions about the operation of the private pension fund, and I would like to say that I can only provide you with a very general answer to the questions with respect to the private pension funds, I'm afraid.

Q. That's understood, and that's all we can ask. I simply make the comparison because, in your opinion, many of the powers carried out by the NPS are equivalent to those carried out by commercial/private organizations, and I'm making the most immediate comparison I can think of.

A. That is not so much about the exercise of Voting Rights, I'm afraid. The commercial function of the Fund that I want to highlight here is with relation to the maximization of the profitability, and this is to ensure that the Fund is providing the welfare to the beneficiaries in Korea that is facing--heading into an aging society at a fast pace.

When the Fund is operating, it should follow the principle of profitability and if you look at the National Pension Act Article 102 and Article 103, it says that when the Fund is making an equity transaction or a derivative product transaction, that
it should do so in a direction that exceeds market returns, so that is something that I am highlighting as commercial aspect of the Fund.

Q. Let's turn our attention to the Executive Officers of the NPS. Perhaps we could look at CLA-157, so we're back in the National Pension Act, Article 30.

A. Yes.

Q. And under Article 30, the Minister of Health has the power to appoint and dismiss the standing Directors and other Directors and the Auditor?

A. Yes.

Q. And as to who those Directors are, one of them shall be, indeed, a national public official of the Ministry of Health or a public official in general service belonging to the senior Civil Service; is that right?

Perhaps if you could look at subsection 1 of Article 30.

A. Yes. Yes, that is correct, but if you look at the whole composition of the Board that is coming right before what you have highlighted, among the Directors, there are the representatives of the employers, and the representatives of the employees, and the individually insured persons in the regional
community as well, so I would say that the Directors include people from all walks of life.

Q. They do, indeed, but the Government itself has a seat at the Board table, doesn't it?

A. Yes.

MS. LAMB: Mr. Chairman, that might be a convenient moment take our break before I move on to something very different.

PRESIDENT SACHS: Very good. We will resume at 1:30.

Professor Kim, you are still under expert testimony, so please do not talk to anybody about the case during the break.

(Brief recess.)

PRESIDENT SACHS: Okay, Mrs. Lamb. Are you ready to proceed?

MS. LAMB: Thank you.

BY MS. LAMB:

Q. I'd like to ask you a couple of questions about the Financial Supervisory Service, if I may. If I call it the FSS, you'll know what I mean? A. Yes.

Q. So, the FSS performs essential prudential supervisory functions over banks, capital markets, supervision, consumer protection and so on; do you
agree?
    A. Yes.
Q. So, it performs, if you will, classic market regulatory, supervisory functions?
    A. Yes.
Q. And it has investigatory powers of its own as well?
    A. Yes.
Q. The FSS has a separate legal personality, doesn't it?
    A. Yes, it has.
Q. Like the NPS, which also has separate legal personality?
    A. Yes, both entities have separate legal personalities. That would be the common characteristics that they share, but the NPS is a public institution that is under the Act on the Operation of the Public Institutions, and FSS is not.
Q. Let's have a look at CLA-230.
    So, this is a writing from Professor Kang, and he is describing the legal characteristics of the Financial Supervisory Service. Professor Kang is--himself, has a regulatory advisory position with the FSS? Do you know?
    A. I am not familiar with that.
Q. Let's have a look at his description of the relevance of separate legal personality for the FSS, and for that we will need to go to Page 24, Section 6, subsection 1, which on the PDF for those following is Page 24; I think Page 137 of the Korean text. It's Section 6, subsection 1. I'm sorry, Page 3 of the PDF in the English.

So, according to Professor Kang, the fact that the FSS has separate legal personality in no way detracts from its public functions and public purpose; do you agree with that?

A. Yes.

Q. So, FSS performs public law functions; it performs the State affairs of financial supervision; it has separate legal personality, and, in his view, to conceptualize it as a private organization would be a patent error that should be abandoned.

Do you see that?

A. Yes, that is correct.

And the FSS is not a private organization.

Q. And it seems that Professor Kang is rather focusing on the nature of its acts and its duties, what it does for the State, within the State, and not the form that it takes.

A. I can partially agree with that, but we will
need to be cautious. I am not quite sure when this article was published. I think it was around 20-plus years ago. And ever since this paper was published, there have been many amendments to the Act on the establishment of the Financial Services Commission. And just referring to this document as a fact can be an erroneous one.

Q. I was simply asking the question whether it seemed to you, as it seems to me, that Professor Kang is rather focused on the nature of the acts and the nature of the duties that the FSS undertakes, and not the legal form that it takes.

A. It may seem that way and it may not at the same time.

Q. Now, in your statement, you advocate a three-category classification for State organs. Perhaps for the convenience of the Tribunal, we just look at Paragraph 11 of your First Report. And, in your view, if an entity does not fall within one of these three categories, it cannot be a State organ under Korean Law; is that your opinion?

A. Yes.

Q. So, under your classification, the FSS, which performs these important governmental regulatory functions, is not an organ of the State.
A. It is not a State organ, according to the classification. It doesn't fall into either three of the categories that I set forth. It is not a constitutional institution like, for example, the National Assembly or the President. It is not an entity that is established under the Acts pursuant to the Constitution, and it is not a central administrative agency that is set up based on the separate Acts to set up such agency, so it is not a State organ.

But something that we will need to keep in mind here is that if you ask me whether this is an administrative agency, even though it is not a State organ, then the FSS is an administrative agency, and that will be agreed upon by many of the academics in Korea.

Q. And the NPS is also an administrative agency, isn't it?

A. NPS is an administrative agency. It is performing the functions of an administrative agency. If you look at the Article 25 of the National Pension Act, the National Pension Service is capable of carrying out some administrative dispositions such as the imposition of the contributions and the disbursement and determination of the contributions.
So, it is an administrative agency.

But, if you look at the Korean Administrative Appeals Act and the Korean Administrative Procedure Act, then the administrative agency is not related at all to its status of a State organ. So the administrative agency is an entity that is making an administrative decision-making, and it is also making such administrative decision-making public, and that would include the State or a local government and public organizations, their agencies and individuals, which are delegated with the power from the State or local governments.

And so, if you say that, since the FSS is an administrative agency, it will also constitute a State organ or since the NPS is an administrative agency so it would constitute a State organ, then that would not stand logically.

Q. The Central Bank of Korea performs more than administrative functions, doesn't it? Itformulates monetary policy for the Government; do you agree with that?

A. Yes.

Q. The Central Bank of Korea doesn't seem to fall within any of your three categorizations either, does it?
A. It does not fall into any of those categories. It is not a constitutional institution, and it is not an organ that is established under a certain act under the--pursuant to the Articles 96 of the Constitution. According to the administrative organization legalism, it is not a State organ, and it is not a central administrative agency, either.

The fact that the reason why the Korean lawmakers didn't make such organization a State organ is because the Central Bank of Korea does perform some governmental functions, but it should be ensured a very important principle of independence and neutrality when it is formulating the monetary and credit-related policies.

And the fact that the Central Bank should have the independence and neutrality from politics is not only applicable to Korea but would be applicable to any country around the world.

Q. So, does that mean, then, that the Central Bank of Korea does not enjoy sovereign immunity in other countries, in other courts? Do you know?

A. I do not know about that in detail, but if the Central Bank of Korea argues in such a manner, then I would say, in my view, it is an erroneous judgment. If the Central Bank of Korea says that it
is a State organ, that it means that it will be under
a direct supervision and oversight by the Ministry of
Economy and Finance, and that would be wrong.

Q. There may be those within your client who
are surprised to hear that, but that's your opinion,
and you're entitled to it.

Perhaps we could look at CLA-126. And this
is a Court Decision from the Korean courts, the
Administrative Courts, I believe.

A. Euijeongboo District Court.

Q. That's right.

And this is a Decision that you covered in
your Report, so you're familiar with it; yes?

A. Yes.

Q. So, just looking at who the plaintiff is,
then, from the cover page, it's the National Pension
Service who is appearing as plaintiff, apparently not
represented by any counsel, just appearing as the
National Pension Service. And I think the respondents
are the mayors of certain cities in Korea.

What I'd like to look at is the positions
that were taken by the NPS itself, so we'll need to go
into the Decision; and, in this case, the NPS, itself,
argued that the National Pension Fund is vested in the
State and the NPS only conducts management and
operation of the Fund commissioned by the Minister of Health and Welfare.

But the point is the NPS argues that the Fund, itself, is vested in the State.

A. Yes.

Q. That was the Claim made, the position asserted by the NPS.

And looking at the Court's Decision, among other things, the Court decided that it was appropriate to regard the NPS's acquisition of shares through the Fund as an acquisition by the State. That was the Court's Decision, wasn't it?

A. So, yes, but we will need to be very cautious in looking into this case. As you would know, the National Pension Service has a separate legal personality. So, when it is acquiring shares, the legal effect of acquiring shares would be attributable to the National Pension Service. And the Fund that--the share that it acquires would fall into the Fund of--the Fund that it operates, and then it will form a general property.

So, it could be summarized this way: The act of purchasing a share would be done by the National Pension Service, but the negligence with

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4 The English interpretation was corrected from "negligence" to "profits"
regard to such shares and the legal impact of such acquisition would be falling into the State general property.

There is a very well-known doctrine in the Tax Act which is the substance over form, so the action is taken by the National Pension Service, but the negligence⁵ would be attributable to the Fund, and that is according to the Tax Act.

So, I actually have a question to you, counsel: In any part of this ruling, does the Court say that the NPS is a State organ? I mean, you're asking me whether the Fund is part of the national property, then yes, but is it saying that the NPS is a State organ?

MR. HAN: Mr. President, there is a translation issue here, and I would like to comment. So Professor Kim said "gwashil," and here "gwashil" does not mean "negligence," as you can see in the Transcript; it should be "profits."

BY MS. LAMB:

Q. The Court's rationale for finding that the Fund is vested, indeed, in the State even though NPS has separate legal personality, is explained in the...
Judgment as follows (reading): As in the case of the Government budget, the Fund's operation plans are subject to the Government and the National Assembly's administration and control, including the President's approval, report to the National Assembly, submission of report on final accounts to the Minister of Strategy and Finance, et cetera. It is therefore appropriate to deem that the Fund is vested in the State. That was the Court's reasoning.

A. Yes. And as you said multiple times, in this ruling, it says, even though the NPS has a separate--I mean, sorry, it says since the NPS has a separate legal personality, the legal act that is conducted by the NPS such as the acquisition of shares would be an act that is conducted by NPS, but the result of such act, such as the profit made, would be attributable to the Fund.

And the--there are certain governmental interventions or supervision by the Ministry of Health and Welfare in relation to the various managements of the NPS, but this ruling doesn't say anywhere that the NPS is a State organ.

Q. What the Court does say in Paragraph 3 is that, "in light of the Fund's legal nature and circumstances of management and operation as described
above'--we just read that--"it is appropriate to
demean that the shares acquired by the Fund is vested in
the State.'" That was the Court's Decision.

Do you agree with that?

A. Yes. This is a reference to the principle
of the Tax Act, as I mentioned earlier, the substance
over form. The form is that the National Pension
Service acquired shares, and the profits or the
results of such acquisition of shares would be vested
in the Fund, and that Fund is part of the national--

THE WITNESS: (In English) General property.

A. So--but this is not related at all to saying
that the National Pension Fund or the National Pension
Service is a State organ. The acts conducted by the
NPS is a form, and the result of such act is vested
into the Fund, and that is all it says.

And I am not understanding why this ruling
is used as an evidence to say that the NPS is a State
organ.

Q. The Court's Decision was confirmed on
appeal, wasn't it? We know that from CLA-127.

A. Yes.

Q. And, among other things, the Appeal Court
found that the NPS's duties to manage and operate the
Fund are delegated from the Minister and that, therefore, the legal effect of its duties were to be attributed to the State. That's what the Court found, wasn't it?

A. Yes. And, in fact, this is almost the same ruling as what was said in the lower-court decision.

Q. Moving on now to an entity that you refer to in your Report. We called it "KAMCO." It's the Korean Asset Management Corporation. So, perhaps we could look at your Second Report, Paragraph 44.

So, as to KAMCO, now, this is an entity which takes on, if you will, the bad debts of a failing bank; simplistic description. Do you agree with that?

A. Yes, I do.

Q. And what we know is that KAMCO, itself, asserted sovereign immunity in litigation overseas, and it asked the courts of the United States to recognize it as a State organ under Korean Law. That's what KAMCO said to the U.S. Courts; and you're aware of that, aren't you?

A. Yes.

I read that from what you have provided, and based on my judgment, I am, in fact, not familiar in detail with what they have argued at the courts and
what kind of legal disputes were at issue at such case. But if—but the fact they made such statements at the litigation with regard to the State—sorry, sovereign immunity and them saying that they're a State organ is for them to defend themselves in such legal proceedings.

And my personal view is that such argument is not—not reasonable in light of the Korean administrative law.

Q. Well, let's just look at how KAMCO put its case under Korean Law. If we go to CLA-121. This is KAMCO's brief. And the relevant section is Section F. Printed page 41, if that helps.

So, this is the part of the brief where KAMCO is setting out the reasons why it considers that it is treated as a government organ under Korean Law.

A. Is this the brief that is submitted by KAMCO?

Q. Yes, it is.

A. This is the first time that I read this.

PRESIDENT SACHS: Mrs. Lamb, perhaps you could put this brief in context so that the Expert Witness can understand the context.

MS. LAMB: Certainly.

BY MS. LAMB:
Q. So, simply put, this is the document in which KAMCO gave its reasons to the Court why, under Korean Law, it should be considered a State organ.

And what KAMCO said to the Court was that, in fact, there were myriad ways in which KAMCO is treated as a government agency under Korean Law and is, therefore, an organ of the State.

A. I think it's a wrong assertion made by KAMCO.

Q. The-- we won't go through all of the many reasons it says it's a government organ under Korean Law, but among other things, it points to its founding statute. So it says KAMCO is a creature of statute, was created by an Act. It's the Act that determines its mission, its functions and so on, and for that reason it should be treated and is treated as a government organ under Korean Law.

A. So I do not know about this case in detail, but it doesn't seem that KAMCO had submitted specific documents or statutes to prove its status as a State organ in this case.

And, as you know, KAMCO is an entity that is managing the underperforming assets, so in a simple way to put it, it is in effect cleaning up the mess of an underperforming company, so it is not performing
the commercial functions so much.

But, for example, for the NPS is a different story because it is pursuing profitability to ensure the livelihood of the citizens after retirement. It engages in financial activities in a very aggressive and active way to increase the Fund, so that is a difference between the KAMCO and the NPS.

And "either" (corrected to "neither") of the entities can be considered State organ, in my view, and why KAMCO is making such a statement in this brief is beyond my understanding at this point, sitting here, because this is the first time that I'm seeing this brief in detail.

Q. I won't ask you any more about it, perhaps other than to ask if you know that the U.S. Courts, in fact, accepted the position of KAMCO that, indeed, it was an organ of the State under Korean Law?

A. I didn't know it was accepted. I mean I only heard that KAMCO made such assertion.

PRESIDENT SACHS: May I just interject a question maybe an issue of translation. The translation of the statement of the Expert Witness some moments ago was, "and either of the entities can be considered a State organ.'"

THE INTERPRETER: Cannot be.
PRESIDENT SACHS: Okay.

THE INTERPRETER: Sorry.

PRESIDENT SACHS: Thank you.

BY MS. LAMB:

Q. Could we have a look at CLA-229. This is one of your writings.

A. Yes, I have it.

Q. So, this is the 9th edition of a book on "General Administrative Law" authored by yourself?

A. Yes.

Q. And, among other things in your writing, you say that it is difficult to define what executive administration precisely means. We find that on Page 2 of the PDF or Pages 8 to 9 of the Korean.

A. Yes.

Q. And you endorse another academic statement, if we look at Footnote 1 on Page 2. You endorse that statement, that administration cannot be defined but only described.

A. Yes.

Q. And so, ultimately, you say that, despite attempts to define "administration" under administrative law, it ends up being defined by way of unique characteristics or features, such as serving the public interest. That was your opinion then?
A. Yes. And indeed, it is a personal honor to have my rather humble textbook shown on the screen in front of the Tribunal, but the reason why I put this in here--put this statement in here is because, if you look at the three branches of the Government; Executive Government--sorry, Administrative and Judicial Branch and the Legislative Branch. If you compare it to--if you compare the Executive Branch to the Legislative or Judicial Branch, the roles that are performed by the Executive or the Administration is way more diverse and complex, and it is more related to a lot of different policies. So, it is very difficult to define clearly what the concept is. That is what I wanted to say through what I wrote here.

So, this is a view of an academic in the Administrative Law, and this is not related to how the State organ should be defined under Korean Law.

Q. You give us an example of a definition of administration that is "taking on unique initiatives to execute national tasks in terms of future-oriented social formation." What do you mean by that?

"Unique initiatives to execute national tasks in terms of future-oriented social formation."

A. Well, the initiatives that I wanted to highlight here is, in comparison to the activities
taken by the courts, such as the trials or the
activities taken by the Legislative Branch, the
administration could engage in, for example,
large-scale projects; for example, building
large-scale airports or pushing for a pension reform.
Such activities would be examples of the
future-oriented social confirmation.

Q. Or tasks which involve safeguarding the
National Pension Fund for future generations, the
Principle of Profitability that we looked at earlier?

A. So, of course, that will fall into the
category of the governmental tasks or the
administrative task, but here I would like to
highlight something. This is a government task and a
State activity, but how, in what form should it be
conducted is remaining as a question.

So, would the State directly do the job.
For example, let's take an example of a pension
reform. If I am a law-maker, I would establish a
Pension Reform Agency under the Ministry of Health and
Welfare, but in this actual case, the Korean
Government decided to create the separate legal entity
with the separate legal personality, the National
Pension Service, to manage and operate such
activities.
So, I am not disagreeing with the fact that this is a national initiative or the national task, but then how it should be conducted can be decided by the legislation through the statutes, whether the Government would do it directly, whether it will delegate its authority to the NPS to conduct the activities. I mean, that is up to the Legislative Branch to decide.

Q. Thank you, Professor Kim. A couple of final questions.

You've been good enough to tell us in your First Report right at the beginning that you have, indeed, held many Government positions over the past three decades. I just wanted to bring up Paragraph 1.

A. Yes.

Q. And in addition to this case, you're also retained to give an opinion on another case that we've heard about this week, the Elliott case; is that right?

A. Yes, that is correct.

And I had an opportunity to look into this particular case, the Mason case, and I was able to find a lot of differences, even though there were many similarities as well, so I studied a lot for this case specifically.
So, the fact that I was retained in another case would not undermine my independence or neutrality as an expert witness in this case.

Q. You've already testified in the other case?
A. Yes.

Q. And finally, Mr.--Professor Kim, are you aware of another investment tribunal case, Dayyani, which is also a case against Korea?
A. Yes, I read it from the Mason's Report, and I understood the content from it.

Q. The outcome of this Decision was--was reported in the press, wasn't it, even in the Korean press?
A. Yes, that is what I am aware of.

Q. So, you will know, at least from that, not just from what I say, that KAMCO was considered to be an organ of the State by a Tribunal in that case?
A. Yes, but as I explained earlier, I heard about that Report but I do not know about the specific reasons why KAMCO argued that it is a State organ and what was a dispute at issue at that case. I am only aware of that case at a level that would be reported by the media outlets.

Q. Okay, understood. No further questions.

Thank you so much for your time, Professor Kim.
PRESIDENT SACHS: Is this case on the record?

MS. LAMB: We discussed it in opening. So, if you recall--

PRESIDENT SACHS: Yes.

(overlapping speakers.)

MS. LAMB: --the press reports are on record. We asked if we could see a copy, and it has not been shared with us. That is, indeed, the case.

PRESIDENT SACHS: Okay. Thank you.

Redirect.

MR. HAN: Thank you, Mr. President.

REDIRECT EXAMINATION

BY MR. HAN:

Q. Professor Kim, the counsel for the Claimant spent time with you about document (unclear) CLA-157. Let's take a look at that document.

MR. HAN: Operator, can you put up 157 on the screen?

FTI TECHNICIAN: I'm sorry? CWS-157?

MR. HAN: CLA-157, please.

FTI TECHNICIAN: One moment, please.

MR. HAN: This is not CLA-157.

FTI TECHNICIAN: I'm sorry, could you direct me to the folder of the bundle?
MR. HAN: There is no separate bundle for
CLA--

MR. VOLKMER: Sorry, I'll try to help.
This is a Claimant's Legal Authority.
FTI TECHNICIAN: I see it. My apologies.
MR. HAN: Thank you.
BY MR. HAN:

Q. Can you show us Article 24 and 25.
So, Professor Kim, the counsel for the
Claimant asked you some questions about NPS powers,
abilities or affairs that NPS can conduct. Can you
remember that?

A. Yes.

Q. Other than the authority or power that NPS
can exercise in Article 24 and 25, can you explain
whether NPS can exercise other business or activities
under the Act?

A. There would be several activities that the
NPS performs, for example, lending out the money or
leasing out a certain property as part of its
business, but I am looking to find the right provision
for that.

But let me just explain verbally. The NPS
could be leasing some part of its office to the
private entity to generate income from that, or it
could engage in a profit-generating business to increase profits in its pocket.

So, those would be the examples of other Commercial functions that the NPS can engage in.

And that is under Article 46 of the National Pension Act with regard to the welfare businesses and the lending business, et cetera.

Q. Professor Kim, can you take us to the Article and further elaborate? Article 46, please.

A. So, the NPS can perform many different welfare and loan services according to Article 46 of the National Pension Act. It says that this service may conduct the following welfare services to promote the welfare of currently and formerly insured persons and beneficiaries as prescribed by Presidential Decree. For example, the services would include loan services and establishment, supply, lease and operation of welfare facilities for the aged under the Welfare of the Aged Act, and the establishment and operation of sports facilities under the Installation and Utilization of Sports Facilities Act, and other welfare services as prescribed by Presidential Decree.

And if I may, I would like to direction of tension--direct your attention to Article 74 of the Presidential Decree of the National Pension Act.
There, you'll be able to see myriads of other profit-generating businesses that the NPS conducts.

Q. Professor Kim was referring to not CLA-157 but to the Enforcement Decree of the National Pension Act, which is CLA-150.

A. And Article 74.

May I have the interpreter to read the Article 74(2) for the record?

Q. Yes, please.

A. Under Article 74(2), it says--it sets out the businesses that the NPS can conduct, for example, Number 1, banks under the Banking Act, the Korea Development Bank under the Korea Development Bank Act, and the Industrial Bank of Korea under the Industrial Bank of Korea Act.

And Number 2, investment traders, investment brokers, trust business entities, collective investment business entities, investment consultants, and securities finance companies under the Financial Investment Services and Capital Markets Act.

And Number 6, insurance companies under the Insurance Business Act.

And Number 7, is Postal Service offices.

So, these diverse activities are crucial activities conducted by the NPS. These commercial
activities are crucial to the NPS for the purpose of maximizing the profits and increasing its fund.

Q. And then, Professor Kim, the last question on this document, so, those activities you just explained are activities that commissioned by the Ministry of Health and Welfare or just those activities that are conducted or done without that commission by the Minister?

A. So, in principle, the operation of the Fund is commissioned by the Minister of Health and Welfare under Article 102(5) of the National Pension Act, but the loan services or the welfare services that was mentioned before were under Article 46 and these activities that are set forth under Article 74 of the Presidential Decree, these are the activities that are conducted autonomously by the NPS.

And the acquisition of shares and investment activities are the activities that are conducted by the Investment Committee and the NPSIM of the NPS in a self-controlling way, and this is, in fact, a very difference between the NPS and the other entities such as KAMCO that was mentioned earlier.

Q. Thank you, Professor Kim.

MR. HAN: Now, Operator, can you take us to Document C-6. C-6.
Article 17-5 please.

Just keep this document on the left-hand side, and can you pull up Transcript Page 24, Row 8.

BY MR. HAN

Q. So, Professor Kim, while operator is pulling up the Transcript, can you take a look at Article 17, Page 5 of this document because the counsel for the Claimant asked some questions about this document, and I will explain. I take to that question and answer shortly.

FTI TECHNICIAN: Do you have the time stamp for the Transcript?


Yeah, there. Thank you.

BY MR. HAN:

Q. So, Professor Kim, Claimants' counsel asked a question about the 17-5 of this document, and she asked, I read: "So, the difficult question, that decision is taken away from the National Pension Service, and it's passed externally to the Experts Voting Committee."

Can you carefully take a look at this question and your answer, and give your comment on this question and answer.

MS. LAMB: Mr. Chairman, I'm very loath to
interrupt, but respectfully, it's not a re-examination
to say to the Witness, look at what you were asked and
look at what you said, comment on it. If he has a
question, then please put it. He's been invited to
look at the Transcript and comment on it.

PRESIDENT SACHS: I presume you will have a
question in relation to that, or--

MR. HAN: Sir, I was trying to ask the
Professor Kim's explanation on what perspective--what
context he gave this answer to the question.

ARBITRATOR GLOSTER: Can you not articulate
a question for the Witness, Mr. Han?

MR. HAN: Okay. Will do so.

BY MR. HAN:

Q. Professor Kim, do you have the Korean
version of this document and with Article 17-5 with
you right now?

A. Yes, I do have it.

Q. Okay. Regarding this Article, Article 17-5,
the Claimants' counsel asked this question and it
goes, so the difficult question, the decision is taken
away from the National Pension Service.

So, Professor Kim, can you explain whether
the agenda, which as you can see on the screen,
difficult question, it is taken away from the National
Pension Service?

    (No interpretation.)

Q. Yes, thank you.

A. Well, the phrase "'taken away'" is something I want to explain a little more on. It is not entirely taken away to a completely external party. It is not staying inside the NPS, but it is given--it is referred to the Special Committee that is under the Fund Operation Committee of the Ministry of Health and Welfare.

    And while the Claimants' counsel have highlighted multiple times on the difference between the NPS and private pension funds --and I would say that the Decision is not entirely taken away to a complete external party--I would not 100 percent say that it is taken away from the National Financial--sorry, National Pension Service.

Q. Thank you, Professor Kim.

MR. HAN: Operator, can you pull up CLA-126, please. You can pull down the document on the screen.

ARBITRATOR MAYER: Sorry, maybe I should ask the question now.

    Professor Kim, you have been asked a question about this expression "'taken away.'" But my question would be, in connection with that, who
decides that it's going to go to the Special Committee and not stay with the NS--NPSIM?

THE WITNESS: That would be decided by the Investment Committee under the NPSIM in accordance with the Guidelines on the Exercise of Voting Rights. So, let me elaborate a little further on that.

I am aware that there is some confusion around the interpretation of this particular provision because there is a provision that is related to this matter in the Operational Guidelines as well. It is within the authority--so, because of that, some interpret it as the Special Committee having the right to refer the matter to the Special Committee itself, and this would be an erroneous interpretation.

Simply put, let me explain to you about the procedure of how it works.

So, when there is a matter that the Investment Committee finds difficult to decide whether to cast the affirmative vote or negative vote, that difficult decision would be referred to the Special Committee under the Fund Operation Committee under the Ministry of Health and Welfare that is outside of the National Pension Service and this is about procedure and method in a way.

And, according to the procedure and method,
the jurisdiction, I would say, is established for the Special Committee under the Fund Operation Committee. And we have to be careful here. So, who is making a decision of referring this certain matter to the Special Committee? That is, of course, done by the Investment Committee under the NPS, and by doing so, jurisdiction is created for the Special Committee for it to decide on the matter afterwards. So, this is the overall flow, and we shouldn't be making a mistake of confusing between the two.

ARBITRATOR MAYER: Sorry, I have a short question, and maybe there will be a short answer: Who decides whether the question is difficult or not?

THE WITNESS: That is decided by the Investment Committee of the NPSIM.

ARBITRATOR MAYER: Thank you, Professor Kim.

PRESIDENT SACHS: And a follow-up question from my side, forgive me.

Decided by the members of the Investment Committee? Without taking a decision on the issue or prior to taking a decision on the issue, is it, so to say, tentative? You're discussing an issue and you find it difficult to decide and then it is decided to pass it on to the Special Committee, or how does it work in practice? Do you have an idea?
THE WITNESS: I am not an expert in the practice of the NPS, but as far as I am aware, when the Investment Committee under the NPSIM decides entirely itself that the decision is difficult to decide between an affirmative vote or a negative vote when it is exercising the Voting Right, then it will refer to the Special Committee. And when the Special Committee is referred to, then it will make a final decision on whether--how to exercise the Voting Right.

So, based on my judgment, the final decision-making would be done by the Special Committee.

PRESIDENT SACHS: Thank you.

MR. HAN: Operator, can you go back to CLA-126, please, internal Page 3. Yes. Can you scroll all the way down to the bottom and stop at 3. Yes. And can you show the next page, sir. Thank you.

BY MR. HAN:

Q. So, Professor Kim, can you take a look at this paragraph and comment on whether the Court found that NPS is a State organ or the shares acquired by National Pension Fund should be attributable to the State from the tax perspective?

(No interpretation.)

MR. HAN: Mr. President, I only have one
min--go on. Sorry.

THE WITNESS: As I explained earlier, this particular principle under the Tax Act would apply here, and what is written by the Court here is--in--it says, in light of the legal characteristics and the Operation of the National Pension Fund.

And here, based on my judgment, the Court has found since the Fund does not have a separate legal personality, it cannot engage in a legal act by itself, such as acquiring the shares.

So, when the shares are acquired, then the right of that--right to the property would be attributable to the Fund, which is a State property. That is what is written--that is what is found by the Court here, and it is not about asserting that the NPS is a State organ.

MR. HAN: Mr. President, I only have one very short question and I finish.

BY MR. HAN:

Q. So, Professor Kim, you recall that counsel for Claimants take you to the issue whether NPS is subject to the Audit by the Board of Audit and Inspection under Korean Law. Do you recall?

A. Yes.

Q. Could you explain what else entities are
also subject to the Audit by the Board of Audit and Inspection under Korean Law?

A. There are many entities that are supervised, that are audited under the Act on the Audit and Inspection under Korean Law. It is very broad. The scope is very broad. For example, the Yonsei University, a private university that I work for, is receiving a certain amount of funding from the national fund and the state and local government, so it is audited under the Act and the entities that are under the Act would include the private universities, kindergartens and the nurseries and the orphanages as well.

And these entities are under the Act and they are subject to audit under the Act because taxpayer's money is paid in those entities.

MR. HAN: No further question,

Mr. President. Thank you.

MS. LAMB: Very briefly?

PRESIDENT SACHS: I think that is justified in the context of what you raised earlier.

MS. LAMB: Thank you.

PRESIDENT SACHS: But please, as a rebuttal. RECROSS-EXAMINATION

BY MS. LAMB:
Q. Could we just go back to the Transcript then because I just want to check that we have properly understood your evidence. So, at 14:39. Perhaps we could just pin that. 14:39:24, 24 seconds.

Perhaps I can paraphrase. If we need to we can look at the Transcript.

Professor Kim, I understood you to have said that the NPS can engage in myriad profit-generating businesses, and that these include, among others, a banking business, investment banking business, insurance business, and other items listed under Article 74 of the National Pension Act. Was that, indeed, your expert opinion?

A. Yes, so that is under Article 74 of the Presidential Decree of the National Pension Act.

Q. Could we just have a look, then, please, at Article 102 of CLA-157.

A. That is not specifically my expert opinion, but that is what is stipulated in the law.

Q. Let's just examine that.

Article 102 of the National Pension Act--we have it in front of us now--so, this is dealing with management and operation of the Fund, a reminder the Fund should be managed and operated by the Minister.

And then in subsection 2, we are told the
methods that the Minister of Health and Welfare may use to manage and operate the Fund.

Do you see that? The first line, subparagraph (2), "the Minister of Health and Welfare shall manage and operate the Fund by use of any of the following methods,'" and they are then listed 1 through 7.

A. Yes.

Q. And one of the methods, number one, is "deposits or trusts in financial institutions prescribed by Presidential Decree.'"

Do you see that?

A. Yes, that is exactly what I meant by what is prescribed in Article 74 of the Presidential Decree.

Q. It can make a deposit or trust in one of the financial institutions listed in the Decree. They can't, themselves, carry out the business of banking, investment banking, insurance business, and so on; that's right, isn't it?

A. In fact, the Article 74 that we looked at was mistranslated, so it doesn't say that the Fund can make a deposit or engage in such actions on its own. It was mistranslated in that document.

Q. Let's have a look--let's have a look at the Presidential Decree, which is CLA-150, Article 74.
So, Fund Operation Business, subsection 1, and then it says: '"Financial institutions under Article 102, subsection 2, Number 1 of the Act.'"

So, we have to sort of go back to Article 102. But Article 102 is simply the provision which empowers the Minister to place deposits or trusts in financial institutions prescribed by Decree, and the Decree is then listing the institutions in which the Fund may place a deposit or trust; correct?

A. Yes, but I would like to direct your attention to the Paragraph 3 of Article 74 of the Presidential Decree. You can see a lot of profit-generating businesses and activities that is written here. This is the core of what I wanted to say earlier.

Q. Professor Kim, with the greatest of respect, you sought to say in your evidence to the Tribunal that the National Pension Fund could itself conduct myriad profit-generating businesses which you said were listed in Article 74 and, indeed, all Article 74(1) is telling us is what financial institutions the Minister is entitled to place a deposit in; that's right, isn't it?

A. Um-hmm.

Q. Thank you.
A. Well, of course, what you're saying is right. The subparagraphs to the Article 74(1) are stipulating the financial institutions that the Fund can make a deposit to.

But what I want to highlight here is that, according to Article 74(3), you can see a lot of myriads of areas where the Fund can make an investment in, and this is what is important. I am not disagreeing with your point, though.

Q. And would the NPS be paying corporation tax on these profit-generating activities, to your knowledge?

A. Yes, of course. These profit-generating business are subject to Corporate Tax, but the Operation of the Fund and the profits that are generated from the Operation of Fund is not subject to Corporate Tax. Only the profit-generating activities and businesses are subject to Corporate Tax.

Q. Shall we just take a quick look at the corporation tax paid on these myriad profit-making activities. R-338.

So, R-338 is a 2020 Q1 statement, tax statement, but it's telling us a little bit about some of the years prior to that, you can see in the middle of the document, starts in 2015, and you've got the
tax, the relevant tax base, and the amount of Corporate Tax paid on these profit-generating activities, so nothing at all 2015; '16; '17; KRW 63,000 2018; KRW 152,000 in 2019.

And apologies, I was approximating to U.S. dollars, of course, in won the number would be in the millions, not hundred thousand.

So, rather small, if I may say so, amounts, in the context of the enormous size of the Funds which, in fact, form the primary and significant part of the NPS's activities. You would agree with me on that, wouldn't you?

A. Yes, I agree.

And, in fact, this is what is quite sharply criticized when they're making an evaluation of the public institutions.

Q. Just a final question, and on these so-called "difficult decisions" for the Voting Committee, the Experts Voting Committee.

You were asked in your knowledge the practice of referring a difficult decision and who can refer a difficult decision. Are you aware that the Chairman of the Expert Voting Committee can him or herself deem a decision necessary for consideration by the Expert Voting Committee?
A. Well, once again, I'm not an expert in that regard, but if you looked at the Voting Guidelines and the Fund Operation Guidelines, it is entirely up to the Investment Committee of the NPSIM to decide whether to refer a matter to the Special Committee or not. And once a matter is referred to the Special Committee, then the decision-making—the right to make a decision on that matter would be within the scope of right of the Special Committee. That is how I would view it legally.

Q. Shall we just take a look at Article 5, then, of the Guidelines. This is C-6.

So, within Article 5, we have a subsection 5, and this is where we see the roles and responsibilities of the NPS's Expert Voting Committee.

A. We don't have the Korean version in the bundle. It's the document that we had a problem with earlier.

MS. LAMB: We will make them side by side. This happened before, if you recall.

BY MS. LAMB:

Q. So, we are on Article 5, subsection 5, the National Pension Fund's Experts Voting Committee for the exercise of Voting Rights, and what we see— I'm sure you will agree with me—is a list of six
circumstances in which, indeed the Voting Committee shall involve itself. And if we see Item 6, "other matters which the Chairman of the Expert Voting Committee deems necessary."

Were you familiar with that?

A. Well, I am not fully familiar with this, but as a legal expert, let me make an interpretation of what I see here.

This Number 6 is saying that outside of what is stipulated in Number 1 through 5, if there are any other matters that the Chairman of the Special Committee deems necessary, then it could create a jurisdiction within the Special Committee to make a decision.

Q. Indeed, the Chairman himself has the power and a discretion to put matters to the Expert Voting Committee?

A. Yes, but even though it is written in such a manner this way, there could be a power and discretion under the Chairman, but if there is a procedure that is set forth separately on how such power and discretion is to be exercised, then the procedure will need to be followed for such power and discretion to take effect.

MS. LAMB: Nothing further for Professor
Kim. Thank you so much. This time was the last time.

PRESIDENT SACHS: Also we have questions. Do you have questions that have now been triggered by Ms. Lamb's questions?

MR. HAN: Only very short two questions, Mr. President.

PRESIDENT SACHS: Very short.

MR. HAN: I promise.

FURTHER REDIRECT EXAMINATION

BY MR. HAN:

Q. I'm sorry, but the operator, can you put the C-6 again, which we do not have the Korean version hard copies, so we need to put up the other bundle side by side.

Thank you.

BY MR. HAN:

Q. So, Professor Kim, regarding this subparagraph six which provides other matters which the Chairman of the Expert Voting Committee deems necessary, so I'm wondering whether the Expert Voting Committee can decide any matters that the Chair deems necessary, is there any kind of limitation in terms of scope of that authority that Expert Voting Committee can decide? For example, then Chair can deliberate and resolve an agenda on whether they can impeach the
Minister of Health and Welfare?

A. Well, that would be not possible sensically, and as explained earlier, this is a guideline, and guidelines are the Administrative Rules. And in terms of the hierarchy, the Administrative Rules falls under the Act.

So, even if the Chairman deems necessary to conduct such an act, the higher laws and statutes would prevent him from exercising such a right. For example, the impeachment of a Minister would need to be regulated by the Constitution or other Acts that are related to the impeachment.

So, if we are to say that the Chairman of the Special Committee would have a right to make an impeachment, according to what is written here, then it will be a disagreement to the hierarchical system of the law up front.

Q. Thank you.

MR. HAN: Operator, can you pull up R-338, please.

BY MR. HAN:

Q. Professor Kim, this is a document that counsel for Claimant took you to about the Corporate Tax amounts that NPS paid from 2015 to 2019. Can you see that?
A. Yes, I see it.

Q. So, as far as see it, so tax amount that NPS paid in 2019 is not KRW 152,000 but actually the unit is KRW 1,000 that they should be way bigger than that; is that correct?

A. Yes, correct.

And another thing I want to say here is that the Corporate Tax or any other tax would be levied on the net income basis. It is the same for the personal Income Tax and for the Corporate Tax alike. And from what I see here, the Fund has an enormous size, but the Corporate Tax amount seems to be small. That is probably because, even though there was a huge amount of revenue, there was a huge amount of expenditures as well.

So, since the Corporate Tax is levied on a net basis, that this is probably why we see a smaller-than-expected number here.

Q. Just one last follow-up question. In 2015, if you look at tax base column, there is like a more than KRW 1 million loss.

So, can you explain that tax base and how come that loss came up in that year?

A. Well, I do not have any information about the revenues that the NPS made in the Year 2015, but
just saying from a common sense probably in this year they had more expenditures than the revenue, and that is why we see a minus here, and maybe that would be a year when the NPS was paid back the taxes.

Q. Thank you.

MR. HAN: No further question,

Mr. President.

THE WITNESS: And one last thing to add, I mean, I do have similar experiences personally, and that feels good to have the taxes back.

PRESIDENT SACHS: I still have a question, Professor Kim, regarding Article 74 of the Presidential Decree, and I would ask the operator to put Article 74(2) and also Paragraph 3, if there's a Paragraph 3, because we only saw 74(2) on the screen, please.

This is not so good.

(Pause.)

PRESIDENT SACHS: 74(2). Right.

Now, we've somehow, in my understanding, clarified the purpose and the meaning of this Article, at least as far as Paragraph 1 and 2 are concerned, and I wondered whether you would still maintain what you said at 14:44 where you said "and the acquisition of shares, and investment activities are the
activities that are conducted by the Investment Committee of the NPS in a self-controlling way, and this is, in fact, the very difference between the NPS and the other entities such as KAMCO that was mentioned earlier."

So, my question is: I understand now Article 74 to set out the banks and other players that were mentioned in the law—which law was that? Yes, in the Pension Act. But when we discussed that very Article earlier, you seemed to say it shows that the NPS does all this business in a self-controlling way.

Could you elaborate on this, whether this is the case?

THE WITNESS: So, that was, indeed, pointed out to me by the counsel and by Mr. President, and the Article, Article 74(1) of the Presidential Decree is about the institutions and players where the money can be deposited.

And it is now clear that the NPS is not doing these businesses on its own, but when the NPS is making a decision on which institution, which player that it wants to put in its money in, for example, it would choose to go to a player that is offering a higher Interest Rate, and that Decision would be made solely by the Investment Committee and the NPSIM.
So, the Judgment of how to increase the profit is upon the NPS and NPSIM to decide. And if you look at the many profit-generating business that are set out in the Paragraph 3, there are multiple areas where the NPS can make an investment in. For example, real estate can be one of it, and the energy business is something that the NPS can make an investment into.

And given the Korean context, for example, if the real-estate investment is a risky business for now, then if I am an operator of the Fund, then I would choose to invest my money in the renewable energies since we are living in an energy-transition era, with the aim of increasing the Fund, so that is what I would like to say.

PRESIDENT SACHS: Could the operator show us Paragraph 3 of Article 74. Yes, that's the article that you mentioned in the later discussion but not at 14:42.

My question is: Is there something similar as regards KAMCO? Because when you compared KAMCO to NPS, you said this is the difference, but my question would be: Is there such Ministerial Decree also in place regarding KAMCO with respect to KAMCO's activities where they are given a certain liberty to
select among funds or placements?

THE WITNESS: Thank you so much for the question, Mr. President. That I believe is a very important one. If you look at the two acts that are applicable to the KAMCO, I would say they are the Underperforming Debt Resolution Act and the Restructuring Act. And I looked into those two Acts, and if you look at the--sorry, the second Act is the Restructuring Fund Act, and I looked into those two Acts, and I was able to understand that there was no provisions that is allowing the KAMCO to make any aggressive investment or engage in any aggressive profit-generating activities, and that is because it is a public institution that is not serving specifically commercial functions.

But on the contrary, NPS is allowed quite a lot of liberty compared to the KAMCO, and if you look at the businesses that it can invest in, it is including some businesses that is on a riskier end such as the venture business or investment in a private equity, and for those people who are concerned about the profitability and the maintenance of the Fund, there are some people who are feeling a bit negative about such a wide range of liberty that the NPS is given, so I would say that is showing the
difference between the KAMCO and the NPS.

   PRESIDENT SACHS: But nevertheless, you maintain that also KAMCO is not a state agency?
   THE WITNESS: Yes. That is because the KAMCO is given a separate legal personality because it should operate with the professionalism in the area of underperforming debts and restructuring, and that is the intent of the KAMCO Act that establishes the KAMCO. But it is not a State organ under the Constitution or the Government Organization Act.

   PRESIDENT SACHS: Thank you. I have no further questions.

   I turn to my two co-Arbitrators.

   ARBITRATOR MAYER: No questions from me.
   ARBITRATOR GLOSTER: No questions from me.

   Thank you.

   PRESIDENT SACHS: So, this means that we have come to the end of your expert testimony. We thank you, Professor Kim, for your Expert Opinion. I was glad to hear that Mr. Forsthoff, a German administrative lawyer, was referred to in your book, but you're now released as a Witness, and it's the end of our day in terms of taking up evidence.

   We will still have to deal with the answers to the questions put by Professor Mayer, but
considering the late hour in Paris in particular, I think we should move that to tomorrow. Would that be agreeable?

MS. LAMB: We are entirely in your hands, sir. Of course, we have a rather lighter day tomorrow.

PRESIDENT SACHS: Yeah. Would that be agreeable?

MR. HAN: Yes, Mr. President.

PRESIDENT SACHS: I see no objections from Paris?

ARBITRATOR MAYER: No objection at all.

ARBITRATOR GLOSTER: No objection from London, either.

PRESIDENT SACHS: Okay. Thank you very much.

(Witness steps down.)

(Whereupon, at 3:50 p.m. (EDT), the Hearing was adjourned until 8:30 a.m. (EDT) the following day.)
CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN