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

- - - - - - - - - - - - - - - - - - - - - - - - - - x
In the Matter of Arbitration Between: :
:
MASON CAPITAL L.P. and MASON MANAGEMENT LLC, :
:
Claimants,
:
and :
:
THE REPUBLIC OF KOREA,
:
:
Respondent.
- - - - - - - - - - - - - - - - - - - - - - - - - - x

HEARING ON THE MERITS, Volume 3

Wednesday, March 23, 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:

DR. LEVENT SABANOGULLARI
MS. JINYOUNG SEOK

Assistant to the Tribunal:

MR. MARCUS WEILER

Realtime Stenographer:

MR. DAVID A. KASDAN
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C.  20003
United States of America

Interpreter:

MS. MYUNG RAN HA
APPEARANCES:

On behalf of the Claimants:

MS. SOPHIE J. LAMB, QC
MR. SAMUEL PAPE
MR. BRYCE WILLIAMS
Latham & Watkins, LLP
99 Bishopsgate
London EC2M 3XF
United Kingdom

MS. LILIA VAZOVA
MS. SARAH BURACK
MR. RODOLFO DONATELLI
MS. AMY CHAMBERS
Latham & Watkins, LLP
1271 Avenue of the Americas
New York, NY 10022

MR. BEOMSU KIM
MR. YOUNG SUK PARK
MS. WOO JI KIM
MS. SU AH NOH
MS. YU JIN HER
KL Partners
7th Floor, Tower 8,
7 Jongro 5 gil, Jongro-gu,
Seoul
Republic of Korea 03157

MR. ERIC DUNBAR
Evidence Presentation/Magna Legal Services

Party Representatives:

MR. KENNETH GARSCHINA
MR. RICK ENGMAN
MR. MICHAEL CUTINI
APPEARANCES: (Continued)

On behalf of the Respondent:

MR. CHANGWAN HAN
MS. YOUNG SHIN UM
MS. HEEJO MOON
MR. DONGGEON LEE
Ministry of Justice

MR. JEONG MYUNG PARK
Ministry of Health and Welfare
Government of the Republic of Korea

MR. PAUL FRIEDLAND
MR. DAMIEN NYER
MR. SVEN VOLKMER
MR. SURYA GOPALAN
MS. JOY LEE
MR. ERIC LENIER IVES
White & Case, LLP
1221 Avenue of the Americas
New York, New York 10020-1095
United States of America

MR. MOON SUNG LEE
MR. SANGHOON HAN
MR. HANEARL WOO
MR. JUNWEON LEE
MR. MINJAE YOO
MS. SUEJIN AHN
MS. YOO LIM OH
Lee & Ko
Hanjin Building
63 Namdaemun-ro Jung-gu
Seoul 04532
Republic of Korea
CONTENTS

PRELIMINARY MATTERS........................................443

WITNESS:

Cross-examination by Ms. Vazova..........................444
Redirect examination by Mr. Han..........................527
Questions from the Tribunal...............................535

PROCEDURAL DISCUSSION..................................539
P R O C E E D I N G S

PRESIDENT SACHS: Good morning, ladies and gentlemen.

Are there any housekeeping matters that we should discuss before hearing Mr. ■?

MS. VAZOVA: I don't believe so.

ARBITRATOR GLOSTER: Klaus, can I say, you're a bit quiet, actually. You're not near enough to the microphone.

PRESIDENT SACHS: And the Respondent?

MR. VOLKMER: No.

PRESIDENT SACHS: Okay. So we'll give the floor to Mr. ■.

■, RESPONDENT'S WITNESS, CALLED

PRESIDENT SACHS: Let me take the opportunity to thank you, Interpreter. I have the impression that your interpretation is very correct. I don't speak a word of Korean, but the fact there were no protests so far in the room shows that it must be very accurate.

THE INTERPRETER: Thank you.

(Pause.)

PRESIDENT SACHS: Good morning, Mr. ■.

Please make yourself comfortable.

Mr. ■, you are a lawyer, so you are aware
of your duties as a witness of fact, and in front of you is a Declaration that we would like you to read out for the record.

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.

Mr. [redacted], you submitted a Witness Statement in these proceedings dated 13 August 2021. Is there anything in this Witness Statement that you would wish to correct at this point in time?

THE WITNESS: There is none.

PRESIDENT SACHS: Thank you very much. So, we go to direct.

MR. HAN: Respondent has no direct questions for the Witness. Thank you, Mr. President.

PRESIDENT SACHS: Okay.

So we go to cross.

MS. VAZOVA: Thank you, Mr. President.

CROSS-EXAMINATION

BY MS. VAZOVA:

Q. Good morning, Mr. [redacted].

A. Good morning.

Q. Thank you for being here, sir. So I will be asking you some questions this morning. My name is
Lilia Vazova. I'm an attorney for Claimants. Before we get started, you should have a copy of your Witness Statement in front of you in Korean. Do you?

A. Yes, I am looking at it.

Q. Great.

And then you should also have a binder of documents in front of you that we may refer to during the course of today's examination.

Do you see that?

A. Yes, I am looking at that.

Q. We will also be pulling the documents on the screen for the rest of us in English, but you should, of course, feel free to refer to the Korean versions in front of you.

A. I will do so.

Q. Now, as you just responded--

ARBITRATOR GLOSTER: Sorry to interrupt, but whilst I can hear--I cannot hear the Interpreter. I can hear Ms. Vazova perfectly well, but the Interpreter's microphone is too quiet or not near enough.

THE INTERPRETER: Would this be better?

ARBITRATOR GLOSTER: That's a bit better.

THE INTERPRETER: Hello?

ARBITRATOR GLOSTER: That's better. That's
much better. Thank you.

THE INTERPRETER: Thank you.

BY MS. VAZOV:

Q. Mr. [redacted], as you just said in response to the Chairman's question, you submitted one Witness Statement in this Arbitration; correct?

A. That is correct.

Q. And the date of that Witness Statement is August 13, 2021?

A. Yes, correct.

Q. When were you asked to testify in this arbitration, Mr. [redacted]?

A. Are we talking about today's testimony?


A. I don't recall an exact date, but it must be around one or two years ago.

Q. Who asked you to testify?

A. So, the law firm--attorneys at the law firm who is representing the Republic of Korea in this case and the people from the Ministry of Justice visited our office to make a request.

Q. Had you previously met before the Ministry of Justice officials that came to your office to ask you to testify?
A. It was my first time meeting them, but before the meeting happened, I received a call from the Ministry, and I am not sure whether the person who called me and the person who visited me were the same person. So the appointment was made through a call, and the attorneys and the officials at the Ministry who visited the office were the people that I met for the first time.

Q. You had previously done some consulting work for Samsung; right, Mr. [redacted]?

A. So, about 10 years ago, based on my recollection, I had represented Samsung Group in its legal cases; and, since my practice area is labor law, I was requested to give a lecture at the Samsung Group multiple times, and I did give a lecture about 100 times and plus.

And I recall it to be around six to seven years ago or maybe four to five years ago, before 2015.

Q. In your line of work as a lawyer, do you do any work with the Ministry of Justice?

A. This is the first time working with the Ministry of Justice.

And for the Ministry of Employment and Labor, I had represented their cases for quite a long
time, until four years ago.

Q. You also submitted a witness statement in another arbitration involving Korea; right, Mr. [redacted]?

A. Right. I have submitted a witness statement to the Elliott case.

Q. And you also provided live testimony in that case as well; right?

A. Yes.

Q. And, in that live testimony, you of course told the truth; right, sir?

A. That is right.

Q. Now, in addition to the arbitration testimony that you have provided, you were also interviewed by the Seoul Central District Prosecutor's Office on November 28, 2016; correct?

A. Yes, I was interviewed as a witness twice, once by the District Prosecutor's Office and the other time would be Special Prosecutor's Office.

Q. Okay. Let's start with the District Prosecutor's Office interview, first.

If you may turn to Tab 227 in the binder in front of you. That's Exhibit C-227.

A. Yes, I have it in front of me.

Q. And the title of that document is "Record of Statement," and then it has your name, [redacted];
correct?
A. That is correct.
Q. And that's the record of your statement to the Seoul Central District Prosecutor's Office from the interview that took place on November 28, 2016; correct?
A. That is correct.
Q. You have reviewed the record of your statement before; correct?
A. Correct.
Q. And after you reviewed the record of your statement, you affirmed its contents; correct, sir?
A. That is correct.
Q. Can we turn to Page 16 of that document, please.

So, are you there?
A. I am looking at it.
Q. Okay. And so, as stated here, [redacted]; right, sir?
A. That is right.
Q. And you also affirmed that there are no errors, no additions, and no changes to be made; correct?
A. That is correct.
Q. And then you signed and sealed the Statement Report.

A. Yes, I signed it, and I have the fingerprint seal on it.

Q. So, that's your signature and your fingerprint on Page 16, in front of you; right, sir?

A. That is right.

Q. So, let's talk about your interview with the Special Prosecutor's Office; and, for that, let's turn to Tab 220 in the binder in front of you. That's Exhibit 220.

A. Yes, I have it in front of me.

Q. In this document in front of you, Exhibit C-220 is the record of your statement to the Special Prosecutor from the interview that took place on December 28, 2016; right?

A. That is right.

Q. And you've reviewed the Record of this Statement before, as well; right?

A. That is right.

Q. And after you reviewed the Record of your Statement, you of course affirmed its contents, as well; correct?

A. That is correct.

Q. And if we may turn to Page 23 of the
document in front of you.

A. Yes.

Q. That is your seal and your signature there; correct?

A. That is correct.

Q. When you were interviewed by the Special Prosecutor, you told the truth; right, sir?

A. That is right.

Q. And you also told the truth when you were interviewed by the Seoul District Prosecutor.

A. Yes.

Q. Now, Mr. [ ], between 2013 and 2017, you were a member of a Committee called the Special Committee for the Exercise of Voting Rights; correct?

A. That is correct.

Q. So, just a point of terminology in this Arbitration. The Parties have referred to that Committee as either the "Expert Committee" or the "Special Committee." You referred to it as the "Special Committee" in your Witness Statement, so I will do so as well this morning.

A. Understood.

Q. So, the Special Committee decides how the Korean National Pension Service will vote on certain matters; correct?
A. Yes. The Committee deliberates on the matters that were requested by the NPS to be deliberated on.

Q. And some of the matters that the NPS requests the Committee to deliberate on implicate issues of corporate governance, for example; correct?

A. I recall having deliberated on around four matters, and there are different characteristics to the issues. One item was around the loan, and the other was around--another one was around the separation of subsidiaries, and two items were around the Merger Ratio.

Q. Can you go back to Tab 227 in your binder, sir.

And I want to ask you about Page 4, the last paragraph on that page.

And just to orient ourselves, this is the Record of your Statement to the Seoul Central District Prosecutor's Office.

A. Yes.

Q. So, when you were asked by the Prosecutor [redacted], you responded: "[redacted]."
Do you see that?

A. Yes.

Q. So, as you told the Prosecutor, some of the matters on which the Expert Committee--excuse me, [●]; right?

A. Well, the corporate governance is a broad and wide and vague term, so I thought the four items that I testified earlier--loan, and the separation of subsidiaries, and the Merger Ratio--are intuitively connected to the corporate governance, so I do not think that this contradicts with my testimony.

Q. I'm not suggesting it contradicts your testimony, sir. I'm just asking whether the matters on which the Committee deliberates include issues of corporate governance, however vague or broadly defined you understand that term to be.

A. Yes. I think most of the issues would be intuitively possible to be related to the corporate governance.

Q. And [●] that you identified to the Special Prosecutor [●]; correct?

A. Correct.
Q. And, as you also told the Prosecutor, \[\text{[illegible]}\] correct?

A. Yes. After discussions and deliberation at the Committee, the collective decision was to vote against them.

Q. So, if you can turn to Page 2 of your Witness Statement, Footnote 1, you cite a number of different documents there that I want to ask you about.

A. Okay.

Q. And these documents that you cite in Footnote 1 of your Witness Statement, they're all materials you were familiar with in your work on the Special Committee; right?

A. So, every time we hold a meeting, the NPS, who was preparing the meeting, copied either part or all of the documents and had our members of the Committee check them, so these are the guidelines that we check almost every time.

Q. You didn't review the documents for the first time in preparing your Witness Statement; right?

A. That is right. NPS refers some matters, according to the guidelines, and we also made
deliberations referring to the guidelines, so these
guidelines are familiar with me.

Q. The first document you cite in Footnote 1 is
Exhibit R-144. That's the National Pension Fund
Operational Guidelines, so I want to ask you about
that. And if you may turn to Tab 144 in the binder in
front of you, that's Exhibit R-144.

A. I am looking at it.

Q. So, this document, the National Pension Fund
Operational Guidelines, this is the guideline for the
general operation of the National Pension Fund;
correct?

A. So, when we are making a deliberation at the
Committee, not all of the guidelines were given to us.
Only the part that were related to the Special
Committee were given to us, so I would say Article 5.5
of the Guidelines, only the excerpts of that was
provided to us when we were making a deliberation at
the Committee, and the rest of the document hasn't
been reviewed by us.

And there is another Article that I am
familiar with that is Article 17, and specifically
Paragraph 4 under Article 17. That is also in
relation to the Special Committee, so that was
provided to us. So, as such, only the parts that are
necessary for the Special Committee have been extracted and given to us, so we did not review the rest of the document, and it was not necessary for us to review the rest of the document, either.

Q. Okay. So, now I'm a little confused. I thought you testified a minute ago that you had reviewed these materials before you cited them in your Witness Statement. Was that not correct?

A. What I meant was that I reviewed and referred to the document within the scope of that--of which that relates to the Special Committee.

Q. Okay. So, the only parts of Exhibit R-144 that you had ever reviewed were Article 5.5 and 17.4; is that your testimony?

A. That is correct. I am not familiar with the rest of the provisions.

Q. So, you don't know, one way or the other, whether this document is a guideline for the general operation of the Pension Fund.

A. Yes. In fact, if you look at a certain part of the document, then it is clear that this guideline is a guideline that comes above the Guidelines for the Special Committee in the National Pension Service, so only the parts that are necessary were given to us for review.
Q. I understand your testimony as to the parts that are applicable to the work of the Special Committee. My question was a little different. Do you have an understanding, one way or the other, whether this document, National Pension Fund Operational Guidelines, are supposed to be a guideline for the general operation of the National Pension Fund?

A. Well, the applicable provisions were given to us, and I believe that the other Special Committee members thought that they were relevant to them as well, but the rest of the provisions, the Special Committee members, including myself, didn't think deeply about their intent or content, so I cannot say that I understand the meaning of the rest of the document.

Q. Let's turn to Page 1 of the document. I want to show you Article 2, which I suppose you have never seen before, so let's turn to Page 1, Article 2.

A. Which tab are we talking about?

Q. Oh, apologies. We're still on Tab 144. And I misspoke earlier. I meant Article 1, subsection 2.

A. Yes, I am looking at it.

Q. And you see there, under Article 1,
subsection 2, how the document is described as a guideline for the general operation of the Fund?
   A. Yes, I see that.
   Q. Do you have any reason to doubt that description?
   A. Well, I didn't see this part in my normal work, and this is the first time that I'm seeing this, so I'm not in a position to say in any ways, and, plus, I do not have any experience with this provision.
   Q. Okay. This document, the National Pension Fund Operational Guidelines, it was issued by the Korean Ministry of Health and Welfare; right, sir?
   A. It seems to be that way. It has the Ministry of Health and Welfare in it, the name in it.
   Q. That's the Ministry of Health and Welfare's logo on the first page; correct?
   A. Yes, it seems so.
   Q. The Special Committee operated under the Ministry of Health and Welfare; right, sir?
   A. So, about the hierarchy or the relationship between the Ministry of Health and Welfare and the National Pension Fund, we didn't address that or dealt with that in a serious manner. So, I did not have a big--I was not fully conscious or aware of where the
Committee sits, specifically when I was working, because our group, the Special Committee, is an independent group of people who are coming from the outside of the Ministry of Health and Welfare and the National Pension Service.

So, we didn't really think deeply about the relationship between the Ministry of Health and Welfare and the National Pension Service.

Q. So, you don't know, one way or the other, whether the Special Committee was part of the NPS or the Ministry of Health and Welfare?

A. The secretaries came from both entities, the National Pension Service and the Ministry of Health and Welfare, but we were operated on an independent way.

So, intuitively, I was able to think that they had some relation to the entities, but we didn't think that these entities are upper bodies that are governing us, so we didn't--I have never thought that the actions or measures taken by the NPS or the Ministry of Health and Welfare to be binding on our activities.

Q. So, from your perspective as a member of the Special Committee, the Ministry of Health and Welfare and NPS were one and the same thing?
A. So, I didn't really give a serious thought into the relationship between the two; and, whenever a new administration comes in, it became a big headlines in the Korean media that the NPS should have an independence.

So, I was able to have an impression that these two entities are involved with the Special Committee, but whenever we were asked to deliberate on some matters, we made the deliberations independently.

And when the matter came to our table, I almost didn't care about what the Ministry of Health and Welfare's position would be on that issue or the National Pension Service's position would be on the issue, and made an independent deliberation.

Q. Understood.

Let's move on to the next document you cite in Footnote 1 to your Witness Statement. That's Exhibit R-55. That's the Guidelines on the Exercise of the National Pension Fund Voting Rights. And that's going to be behind Tab 55 in your binder.

A. Yes, I am looking at it.

Q. Are you familiar with this document?

A. Yes. I recall having a copy of the full document with all the provisions in it provided to us when we had a meeting.
Q. Okay. So, unlike the document we looked at earlier, this document you actually familiar with in its entirety, not just parts of it?

A. Well, not necessarily. We received the full document, but the one that is related specifically to the Special Committee is Article 8, and more specifically Article 8.2. So, I did have a look at Article 8.2. And the document in its entirety was provided to us, and I did review that, but I didn't pay full attention to the document in its entirety.

Q. So, this document, R-55, Guidelines on the Exercise of the National Pension Fund Voting Rights, it establishes the standards, methods, and procedures for the exercise of Voting Rights by the Fund; correct?

A. Yes, that is how I read it.

Q. And the Special Committee was required to follow these guidelines in making decisions on how the National Pension Fund would exercise its Voting Rights; right, Mr. [ ]?

A. Well, I would say that the--not all of the document had been deeply looked at, and there are many provisions that are related to how the Investment Committee should make a decision before the matter is referred to the Special Committee in this document.
So--and there is a separate guidelines for the Special Committee, once the matter is referred to the Special Committee. So, when I was deliberating on the matters, I didn't think that the Special Committee would need to follow all these guidelines that are specified herein. Only the ones that are related the Special Committee would apply. That was the impression that I had.


A. Yes, I am looking at it.

Q. So, Article 2, "Scope of Application," reads: "The Exercise of Voting Rights of Shares held by the fund shall be conducted in accordance with the Guidelines, except as otherwise provided by relevant laws and regulations."

Do you see that?

A. Yes, I see that.

Q. So, is it your testimony that the Special Committee was not required to follow the Guidelines in Exercising the Voting Rights of the Fund?

A. Well, that is not my intent. Within this document, there would be provisions that are related to the Special Committee and that are not related to the Special Committee. And the Article that you have
shown me is a general provision, so it will apply to the Special Committee in principle.

But to this sort of general provisions, there was rarely an occasion where the Special Committee members had a meaningful discussions or debate on how to interpret or apply it.

Q. Okay. So, pursuant to this general provision, Article 2, "Scope of Application," the Guidelines do apply to the Special Committee; right, sir?

A. Yes, I agree that this would apply to the Special Committee, but what I would like to say is that there was no occasion where we discussed or debated whether this would apply to the Special Committee.

Q. I understand it wasn't discussed or debated. Let's move on to Article 3. That's the next--the next Article down.

Article 3, "Fiduciary Duty," reads: "The Fund shall exercise Voting Rights in good faith for the benefit of the subscribers, former subscribers, and public pension-holders." That's what it says; right?

A. That is right.

Q. And this Article 3, "Fiduciary Duty," also
applied to the Special Committee when the Special Committee voted on Exercising the Voting Rights for the Fund; correct?

A. Yes, I agree that this applies to the Special Committee.

Q. Let's move on to Article 4, "Increasing Shareholder Value."

Article 4 reads: "The Fund shall exercise its Voting Rights to increase Shareholder value in the long term." Right?

A. Right.

Q. And this Article 4, "Increasing Shareholder Value," also applied to the Special Committee when the Special Committee decided how to exercise Voting Rights of the Fund; right, sir?

A. Yes, I agree.

Q. And let's move to another one, Article 4-2. That's the next one down.

Under "Responsible Investment," Article 4-2 says: "The Fund shall exercise its Voting Rights in consideration of factors of responsible investment, such as the environment, society, and corporate governance in order to enhance long-term and stable rate of return." Right?

A. That is right.
Q. And this Article 4-2, "Responsible Investment," also applied to the Special Committee when the Special Committee decided how to exercise the Fund's Voting Rights; right, sir?
   A. Yes, I agree.

Q. Let's move on to the third document you cite in Footnote 1 to your Witness Statement. That's Exhibit R-145. That's going to be behind Tab 145 of your binder.
   A. Yes, I have it.

Q. And this Document R-145, "Regulations on the Operation of the Special Committee on the Exercise of Voting Rights," governs the operations of the Special Committee of which you were a member; correct?
   A. That is correct. I almost always looked at these regulations, and most of the members of the Special Committee tried to operate the Committee in compliance with this regulation.

Q. As a member of the Special Committee, were you able to exercise your vote freely?
   A. The debates were done in a very free manner. You would be expected—sorry, strike that.

   You would consider the entity that recommended you to the Committee. But in the process of discussion and debate, when there is some--a
reasonable point that is made by other members, then even when that reasonable point may be in opposition to what the entity that recommended you to the Committee, that member would likely to change their mind to a reasonable, you know, manner.

And the decision-making at the Committee was done in an autonomous and independent manner and even—sorry.

And the decisions were not made before the meeting, and the decisions were made after the discussions that were made freely at the meeting. And many members found it a little surprising, too.

Q. So, no one told you how to vote; right? The decision how to vote was yours and yours alone?
A. I don't know what went into respective members' minds when they made a decision, but there were many people who changed their mind after debate and discussions. And, in my case, I was recommended by an organization that represents the employers. So, if you look at a—at the cases from the employers' perspective, the three cases that were mentioned earlier must have been affirmed by me, but I ended up voting against them after the discussions with the members of the Committee.

So, I could have been requested to—–I could
have been given some requests before or after the meetings, but I was never bound by such requests.

Q. Okay. So, ultimately, the decision of how to vote was yours and yours alone; right, sir?
A. Yes. It was up to the conscience and liberty of the members.

Q. Did you always do your very best to act in the best interests of the National Pension Service when deciding how to vote on a particular issue?
A. Yes. According to the principles set out in these regulations and guidelines, I had the mid- to long-term interest of the National Pension Service in mind, and that was the biggest decision-making standard that we had, and I believe that was the same for the other members of the Committee.

Q. So, both for and you the other members of the Committee, first and foremost, was always the best interests of the National Pension Service?
A. Yes, there was the shared motive of promoting the best interests of the National Pension Service among all the members. But after the debate, whether the "Yes" vote would be in the interest of the NPS or the "No" vote would be in the interest of the NPS would depend on individual members' discretion. It will depend on their expertise, their conscience,
and their rationale.

Q. I understand that. Leaving the debates aside, when casting their votes, did you and your colleagues on the Special Committee always try to do so with the best interests of the National Pension Service in mind?

A. I can say with my conscience that I did so, and I believe that other members of the Committee did so, too. And when there is a clarity around what is a reasonable decision after the debate, there was many—there were many cases when the members of the Committee would change their mind to the direction of reasonableness.

And there—while there were still some people who might not change their mind, but still the majority moved to the direction of rationality and reasonableness after the debates. That is my experience.

Q. When the Special Committee considered how to exercise the Fund's Voting Rights, it considered whether a proposed transaction would cause damage or profit to the Fund; correct?

A. That is correct.

Q. In fact, that's the top priority for the Special Committee; right, sir?
A. That is right.

Q. Let's go back to Exhibit R-144. That's Tab 144 in your binder.

A. I am looking at it.

Q. And this time I want to ask you about an article on Page 2. That's Article 4 on Page 2, "Fund Management Principles."

A. I am looking at it.

Q. So, Article 4(1), "Principle of Profitability" states that: "Returns must be maximized in order to alleviate the burden on the insured persons, especially the burden on the future generations." Right?

A. It reads so, yes. And I understood it to be a given, but when we were having a deliberation, I don't remember this provision provided to the members.

Q. Okay. So, setting this specific provision aside, when the Special Committee deliberated, did it consider whether the proposed transaction would maximize returns for the National Pension Service?

A. Yes. That is always a top priority of consideration of us--of ours.

Q. Let's go back to R-55. That's Tab 55 in your binder, and I want to ask about Article 6 that's on Page 1.
A. Yes, I have it.

Q. So, Article 6, "Fundamental Principles of Exercise of Voting Rights," states as follows: "The standards for exercising Voting Rights on individual items shall be determined on the basis of the following fundamental principles."

And then under subsection 2, it says: "If the item goes against the interests of the Fund or decreases Shareholder value, the Fund shall vote in opposition."

A. Yes, I am reading it, too, and I agree.

Q. When you say you "agree," do you mean that's when the Special Committee discussed how to exercise the Fund's Voting Rights, it considered whether the proposed transaction would go against the interests of the Fund or decrease Shareholder value?

A. I agree that this provision will need to be followed, and I believe that the members of the Committee took action with this mindset, and I can testify that I made my decisions according to this provision.

Q. When the Special Committee considered how to exercise the Fund's Voting Rights, did it consider the views of the National Pension Service's financial advisors?
A. The ones that were deliberated by the Special Committee, when it comes to the gains or the interests of the National Pension Service, if those interests can be calculated, then the financial profits or damages could be calculated as well. But most of the time, the interests that were--that were at issue were the morality, ethics, principles, and the trust from the citizens, and they are related to the mid- to long-term interests of the National Pension Service.

Q. Okay. So, did the Special Committee consider or not consider the views of financial advisors when deciding how to exercise the Fund's Voting Rights?

A. Of course, that was considered, but--of course, that was considered, and when there was numbers presented, we considered those numbers. But, in most cases, financial numbers were not suggested.

And the thoughts or the belief of the Special Committee was as follows: The--when the Board of Directors make a certain decision and it goes against the morality and the principles, then it will undermine the long-term interests of the National Pension Service. And most of the debates that were held at the Special Committee was in this direction,
that if you keep the morality and the ethics, then it will benefit the National Pension Service in the long-term.

So, as a result, most of the discussions did not center around the financial numbers, but it tended to be centering around the ethics and the principles.

MR. HAN: Mr. President, can I make a very short question to the interpretation?

So, if you look at time stamp 9:42:34, "when the Board of Directors make a certain decision," Mr.所述 "Shareholder Boards Meeting," not "Board of Directors."

THE INTERPRETER: Oh, yes. Sorry. That was not "Board of Directors" but the "Shareholders' Meeting." Thank you for the correction.

PRESIDENT SACHS: Is this all right?

MR. PARK: Yes.

PRESIDENT SACHS: Thank you.

MS. VAZOVA: Thank you for the clarification.

BY MS. VAZOVA:

Q. Now, Mr.所述, switching gears a little bit. I want to ask you about the Samsung C&T-Cheil Merger. Now, because the National Pension Service was the largest Shareholder of Samsung C&T, it held
the casting vote on the Merger; right?

A. I knew that the NPS had a casting vote because there were media reports on that, but I didn't know that the NPS was the largest Shareholder.

Q. Can we turn to Tab 220, which is your Statement to the Special Prosecutor. And we're going to be looking at Page 23 of the English version, and for you, Mr. , it's going to be Page 21 of the Korean version.

A. Yes.

Q. So, the first full paragraph states a question by the Prosecutor: "[redacted]"

And then you respond: "[redacted]"

That's what you told the Prosecutor; right, Mr. ?

A. I think I did mention the "[redacted]" part, but I don't remember checking the "[redacted]" part. I think when the Special
Prosecutor was making this document, he must have put the fact in after checking the fact. The Hearing didn't happen, so I didn't have an opportunity to check the facts with regards to this particular case, so I don't remember saying this when I was giving an answer to the interview.

I think when the Prosecutor was sorting out my answer and putting it into a document, the fact that he or she was aware of was included in it.

Q. You did review this Record of Statement before you signed and sealed it; right, Mr. ?

A. I did review the whole document, and I thought that the overall intent in the document was correct, but I didn't particularly look into whether the NPS was the largest Shareholder of Samsung C&T or not. But it really doesn't affect the overall intent or the direction of my Testimony, so I didn't give much care into it.

Q. There are no facts--

MR. HAN: Mr. President, I'm sorry, there is another very minor interpretation issue, so can I just check with the Interpreter?

PRESIDENT SACHS: Yes, please.

MR. HAN: Look at the time stamp
9:47:44--actually, from 37, so Mr. □□ says, "the hearing did not happen," but as I recall Mr. □□ said "shimri," so "shimri" so it should be interpreted as "deliberation" or "discussion," not the "hearing."

THE INTERPRETER: I concur.

BY MS. VAZOA:

Q. Just to make clear, Mr. □□, as to the Prosecutor's recording your statement, it is not your testimony, is it, that the Prosecutor was at liberty to just add random facts to the Witness Statement, to the Statement of Record, that you disagreed with?

A. That's not exactly correct. As you can see, the interview took place from 3:00 p.m. until 9:00 p.m., so it went on for a--long hours. And a lot of the questions were given to me with an expectation of a certain answer. And when the expected answer doesn't come out, many of the answers that I had given didn't go on the record.

And it was around the six-hour mark, so I was very exhausted, and so I only checked the big flow of what I said, and the important parts of my testimony, and the minor ones have been just looked over.

And if I can say that the most important parts overall had been mostly checked.
Q. Can we turn back to Page 25 of the document in front of you, sir. We looked at that language earlier.

A. Which document?

Q. 220, Tab 220.

A. I am looking at Tab 220.

Q. And as you testified earlier, sir, when you were shown this Record of Statement before you signed and sealed it, you answered that [redacted]; that's correct, right?

A. That is right. And in most cases, what is written here is a pre-printed statement. The fact that many parts of what I actually said were not on the record, and some of the expressions were slightly modified to what the Prosecutor wanted it to be, could be the case, but if it was overall correct, then we kind of have to wrap it up there. If we start debating the exact wording that is written in the document, then it will go endless.

And this statement is a pre-printed statement in every Statement Report, so the wording such as "[redacted]" may be inaccurate in some cases.

Q. You're a lawyer; right, sir? Is it your
habit to sign and seal documents without reading them or without agreeing with their contents?

A. That is not the case. Whether it was a largest shareholder or not is not really important or meaningful in this document.

So, some of the facts that were included in the document may not be something that I said, but still I didn't think of them as important, so I just looked over that.

Q. That's not what you said here, though. You didn't say "the general flow is correct," you didn't say "most of the facts were correct." You said there were "..." That's the language you certified to.

A. So, this statement is a pre-printed statement in any of the Prosecutor's Statement Report document; and, during the clarification process of the content of the Statement Report, there could be some recording that is in contrast with the existing document. And many of what I said has not been reflected to this document by the Prosecutor. So here, if you look at the wording that is printed in Korean, it says "...," and there was reduction.

And why did it look over? Because, if we
start asking about what the specifics, then it will--the interview would not end, so a lot of the things that I said and that were not in line with the Prosecutor's expectations were omitted in this document.

So, if there was an addition or a reduction, yes, there was reduction. But if I refused to sign, then how could the interview end? So, you could understand it as such. The overall direction was correct, and the important meanings were checked, and I signed it.

Q. You were given the opportunity to clarify or correct; right?
A. So, it was a six-hour-long interview, and this particular Prosecutor, unlike the earlier General Prosecutor, created a rather short document after a long discussion, so I could say that this Report is full of omission. But I was exhausted, and the Prosecutor and I agreed that if it is in the large--if it is in line with the large flow, then we should just end the interview.

And I was given an opportunity to make a clarification or correction, and I looked at the Report, and I found no significant areas that should be added or reduced, so that is how I signed it and
ended the interview.

Q. You said a couple of times that this language was pre-printed; right?

A. Yes, that is a typical statement in every--the Report.

Q. So is it your testimony that when you certified the language that was pre-printed, you don't necessarily mean it?

A. That's not what I mean. What I mean is that the meaningful parts have been mostly checked. And for the parts that are not considered important, I think as an attorney, I think all the documents will need to be understood in a way that all the documents would have some ommittances and some requirements for further clarification.

Q. So, there were no material omissions or errors in these Statement Reports, as they were presented to you, before you certified them?

A. So, I would say "yes," in the scope of the Prosecutor's question. And in the process of clarifying the direction of the Prosecutor's question, there may be some areas that should be corrected and clarified.

And there would be a possibility of addition in the course of such process, and plus there could be
some areas that will need to be removed with the possibility of misunderstanding as well.

   But with regard to the questions given from the Prosecutors and within the meaningful scope, the general content was correct. Please understand my testimony in such a way.

   Q. I understand it.

   So, it's your view as well, sir--right?--that no reliable prediction could have been made as to how the Special Committee would have voted on the Samsung Merger. Correct?

   A. In fact, that was the question that the Prosecutor lingered on for the longest time. That question went on for about more than an hour.

   If the item was to be referred to the Special Committee, would the Special Committee vote against it? Would the Special Committee have voted against it? And to that question, I said no one can make a prediction. There is uncertainty, and I continued on answering that no one could have made a prediction, for a long time. The Prosecutor and I compromised and agreed on the phrase there was certainty—instead of nobody knows, but my exact wording in the answer was that no one can make a prediction.
Q. And just so we're clear, the Special Committee never had the opportunity to consider the Samsung Merger; correct?
A. Correct. We did not deliberate on it.
Q. And that was because the Samsung Merger was never referred to the Committee for a vote; right?
A. That is right.
Q. So, one proposed merger that the Special Committee did have an opportunity to consider was the merger between two companies of the SK Group; right?
A. Can you ask me the question once again?
Q. Sure.

One merger that the Special Committee had the opportunity to consider, because it was referred to the Committee for a vote, was the merger between two companies of the SK Group.
A. Yes. The item that was deliberated in my term that is related to a merger was the SK Merger one.

Q. And the SK Merger was referred to the Special Committee for about approximately one month before the NPS had to decide how to vote on the Merger—on the Samsung Merger? Excuse me.
A. That was in May, so I think it was around one or two months before then, yes.
Q. And the Special Committee decided that the National Pension Service should vote against the SK Merger; right?

A. Yes. We had multiple and long-hour discussions on this matter as well. And in the course of--sorry.

In the course of the discussions, the collective decision changed over time from a favorable direction to a negative decision.

Q. So, the Special Committee decided to vote against the SK Merger; correct?

A. Correct.

Q. Let's turn to Paragraph 16 of your Witness Statement.

A. I am looking at it.

Q. So, as you explain in this Paragraph 16 of your Witness Statement, the SK Merger included a proposal on how to treat treasury stock that concerned you?

A. Yes.

Q. And the problem with the treasury stock was that it could undermine the interests of the Shareholders of the SK company that owned the greater proportion of that stock; right?

A. So, SK had the share of treasury stocks of
over 20 percent--it was quite high--and the new Shares were not assigned to the treasury stocks, and they were to be retired afterwards. So, for the Shareholders in the side where the more portion of the treasury stocks were held, the number of new Shares that would be allocated would go down.

So, it was found that the Shares in the side where the more treasury stocks were held would be unfairly treated.

So, to give you more context, when the new Shares are allocated after the treasury stocks retire, then a hundred Shares would be allocated, but when the allocation happens before the retirement of the treasury stocks and only 80 would be allocated.

So, either the retirement of the treasury stocks had been in before or after the allocation are all legal, so it was not the legal--legality issue. But since the treasury stocks were to be retired afterwards, the Shareholders of the entity where the proportion of the treasury stock was higher, would have to suffer some losses.

So, based on the Special Committee's discretion, we decided based on the morality principle.

Q. So, the impacts of the treatment of treasury
stocks that you just described, was what it would cause the loss to the NPS; correct?

A. That was not directly related to the NPS's loss because the Shares that NPS held in the SK Holdings and the SK C&C were the same. So, if one loses, the other would have the same amount of benefits, profits. So, there was no loss that was calculable.

However, if you look at it from the fairness perspective, the Chairman of the SK Group held more percentage of Shares in SK C&C, so the Shareholders in the entity that the Chairman of the group held more Shares then would benefit and then the Shareholders in the entity where the Chairman had less percentage of Shares would suffer losses, so there was some imbalance between the two entities.

For the NPS's perspective, it was plus and minus equaling zero, but from the perspectives of the Shareholders, there was an element of unfairness, and the NPS could not agree with that. If NPS agree with such unfairness, then it will lose trust from the public, and this would be a long-term loss for the NPS. That was our overall view, and that is how we made a decision.

MR. HAN: Mr. President, while we're on this
issue, can I make one simple clarification in terms of interpretation with the Interpreter?

    PRESIDENT SACHS: Yes, please proceed.

    MR. HAN: If you look at time stamp 10:15:15, it reads, "so based on this Special Committee's discretion," but as I recall, Mr. said in Korean "hwaesa jaeryang," so not "Special Committee's discretion," but "SK's discretion." Can counsel for Claimants confirm us that whether that is correct? I mean, any comments on this proposed correction?

    (Comments off microphone.)

    MR. PARK: I would agree with you that the "discretion" is not the "Special Committee," but I think what Mr. was referring to was the discretion when to retire the Shares, even though there was a discretion in that regard, based on morality they decided against it. I think that was what he was trying to explain, not the Company's discretion.

    PRESIDENT SACHS: Maybe this can be put to the Witness so that he can confirm or correct his earlier statement? We're talking about statement at 10:15:15.

    THE WITNESS: So, that would be a discretion of the Parties to the Merger, but more specifically it
would be the discretion around whether to retire the treasury stocks. And depending on the timing of the retirement of the treasury stocks, as I said earlier, the amount of stocks that would be allocated to the Shareholders would change, so you saw it correctly, that the expression is around when and whether to require--retire the treasury stocks.

BY MS. VAZOVA:

Q. Okay. Let me see if I can try to break this down a little bit.

So, there was discretion as to the timing of retiring treasury stocks; correct?

A. That is correct.

When the timing should be is not a legal issue. That is what I have been told, and that is what I have understood.

Q. So, the Company could have done that on one point or other, depending on its discretion?

A. Yes. And despite that if the allocation happened after the retirement of the Shares, then it would have been more fair to the Shareholders in the entity where the proportion of the treasury stocks were higher, and there wouldn't have been an unfairness issue, then. And if so, it is likely that the Special Committee voted Yes for that.
Q. But even though there was no problem with the timing of when the stocks were retired, the Special Committee still rejected the Merger because, under the approach adopted by the Company, the founding family of the Company would unfairly benefit at the expense of the other Shareholders; correct?

A. So, more precisely put, it was not exactly a question of whether the owner Shareholders and the other Minority Shareholders are in confrontation. It was more about the two companies, one company where the Chairman or the owner had more percentage of Shares in, and the other company where the proportion of treasury stocks were higher.

And between the two companies, the Minority Shareholders of the earlier companies would gain compared to the other company, so it was not exactly in a collision between the owner Shareholder and the Minority Shareholder, but it should be understood that it was a relative gain for all of the Shareholders in the Company where the Chairman had more Shares in than for all the Shareholders in the other company. An imbalance between the shareholders depending on the company.

Q. Can you turn to Tab 227 in your binder, page--the English version is going to be Page 5, the
Korean version also Page 5. And we're going to be looking at the last paragraph.

And you were asked the following question; right, Mr. [redacted]? "[redacted]" Do you see that?

(Overlapping interpretation with speaker.)

THE INTERPRETER: That was him asking you what page it is.

MS. VAZOVA: Oh, excuse me. Page 5, Tab 227.

THE WITNESS: Yes, I see it. Yes.

BY MS. VAZOVA:

Q. So, when you were asked by the Prosecutor [redacted], you responded as follows: "[redacted]."

Then you went on to say: "[redacted]."
That's what you said, right?

A. I actually explain this in detail, but as the Prosecutor was summarizing, what I explained in detail, it left some room for misunderstanding.

So, to be more precise, the Shareholders in a company where the large shareholder had more Shares in, and these Shareholders in the other company were in the opposite direction.

And even though I explained this in detail to the Prosecutor, he didn't seem to get it so well, and I checked the content afterwards, and it didn't really hurt the overall flow, so I just let it stay this way.

Q. Was what the Special Prosecutor summarized here accurate or not accurate, Mr. XXX?

A. Here, we have a term, Ordinary Shareholders, and I think there should be more specification attached to it because it can be misleading if it is just written as Ordinary Shareholder, so what it should be is that the Ordinary Shareholders of the other entity.

So, if it is understood as the Ordinary
Shareholders in the same entity, then it is a misunderstanding. The Ordinary Shareholders in the other entity opposed to the entity where the largest shareholder holds more shares, would be the right way to put it.

Q. Any other corrections you want to make to this?

A. So, if we only--about the wording that is related to the unfair capital decrease, I could make a clarification there as well. I explained about the exercise of discretion in the timing of the retirement of treasury stocks, then, so we could clarify this as the unfair exercise of discretion with regard to the retirement of treasury stocks.

Q. Okay. Now--

PRESIDENT SACHS: I'm sorry, Ms. Vazova, we are approaching--

MS. VAZOVA: I was going to suggest that, Mr. Chairman.

PRESIDENT SACHS: Before we do, Mr. [ ], we need a clear testimony, and I'm a little bit lost now regarding your corrections as compared to the statements that we find here in the document Tab 227.

Now, here you are stated to say on Page 5, which I quote, "[ ]"
"whereas in your testimony today you seem to say, well, for the NPS, it was neutral. But here you are quoted saying that \(\text{[redacted]}\)."

So, how do you reconcile those two statements, or do I understand you incorrectly?

THE WITNESS: Thank you so much for that question for clarification.

As I explained earlier, in the short term, NPS held similar amount--similar percentage of Shares in SK and SK C&C, so the entity that the Chairman had more Shares in would gain, and the other entity would lose. So, overall financially, NPS's profit and losses would be unclear in the Merger case. But there still was a morality issue that I mentioned earlier.

And because of the exercise of discretion, Shareholders in one company would be unfairly treated. And in this situation, if NPS supports the unfair decision by or the immoral decision by a company, then it will end up losing the trust from the public.

So, in the short term, the impact on the NPS could be neutral, but in the mid- to long-term, it would be a loss for the NPS.

So, in the earlier part of my testimony to
the Special Prosecutor, I mentioned that the Ordinary
Shareholders, including the NPS, would have their
interests threatened, and this will need to be
understood in twofold: The short-term interest and
the mid- to long-term interest related to morality,
and only by understanding it twofold there would be no
room for misunderstanding with regard to my testimony.

    PRESIDENT SACHS: Thank you.
    We will now have our break.
    MR. HAN: Mr. President, I'm sorry--
    PRESIDENT SACHS: Is there an interpretation
issue?
    MR. HAN: Yes. I have a fresh memory, I
would like to point out some interpretation now, if I
may.

    Can you take us to time stamp 9:54:38. Can
you put that on the screen so that the Interpreter and
everyone can see. Thank you.

    As I recall, Mr. [ ] testified that "gumsaga
wonhaneun pyohyundaero yakgan dalajin bubun." In
English it should be "expressions were slightly
modified in a way that the Prosecutor wanted to be,"
but here the translation is "the expressions were
slightly modified to suit what is expected or what
could be the case."
PRESIDENT SACHS: I turn to the Claimant. Do you remember that statement?

MR. PARK: Thank you, Mr. President. I think this portion we will need to double-check the Korean recording.

PRESIDENT SACHS: Okay. Maybe since the Witness is present, could you please, Interpreter, show him the passage.

We're talking about 9:54:38.

THE WITNESS: Well, what I intended to say here was, in front of the Prosecutor, I said that nobody could have predicted, but the Special Prosecutor slightly modified it to that there is uncertainty, and I agreed to make such slight modifications. And upon the request from the Special Prosecutor, more direct expression had been modified to the expression that is written in the document.

So, upon the request from the Prosecutor would be the right way to put it.

PRESIDENT SACHS: Okay. That's now on the record.

MR. HAN: The Claimants took the Witness to two Statement of Records made to the Prosecutor and the Special Prosecutor, and those two statements were interpreted as Witness Statements, but actually at
that time Mr. [redacted] was not testifying as a witness, so it should be Statement of Report rather than Witness Statement. And also there is consistent with Claimants' own translation of those documents.

MS. VAZOA: Can I just respond briefly to that? So, there are competing versions of translations of this document in the record. One is Claimants' translations, the other one is Respondent's translation. We, for purposes of being "O-A" (phonetic), we dispute there is any material differences between the translations, but in order to be fair to the Witness, we have been using and referring solely to Respondent's versions of documents with competing translations where there were any available for his Witness Statements. One of them, for one of them there is no competing version from Respondents. And for the other one we are using Claimants' version because Respondent's version only translated excerpts. Our version translates the full statement.

So, I would suggest that if there are any disputes about translations, I don't know that this is really the forum to address those.

PRESIDENT SACHS: Well, I think we take note of your comments and leave it there, and we will now
have our break. We resume at 11:00.

Mr. [redacted], you are still under testimony, so please do not talk to anyone about the case. Thank you very much.

THE WITNESS: Yes.

(Brief recess.)

PRESIDENT SACHS: All right. We can resume.

MS. VAZOVA: Do we have co-Arbitrators on yet?

PRESIDENT SACHS: Pardon?

MS. VAZOVA: I was wondering whether we had Dame Gloster and Professor Mayer yet.

(Pause.)

PRESIDENT SACHS: We can proceed.

MS. VAZOVA: Thank you, Mr. Chairman.

BY MS. VAZOVA:

Q. Welcome back, Mr. [redacted].

A. Yes.

Q. So, the last question about the SK Merger, the Merger Ratio proposed in the SK Merger was an issue in that case; correct?

THE INTERPRETER: Was an issue?

MS. VAZOVA: Yes.

(Through interpretation.)

THE WITNESS: Yes, in the end, it was.
BY MS. VAZOVA:

Q. Can we turn to Tab 220 in your binder, sir. And I want to look at Page 7, second paragraph from the top.

ARBITRATOR MAYER: Ms. Vazova, we don't see you at all now. You should move a little bit over or move the computer.

MS. VAZOVA: How about now?

ARBITRATOR MAYER: Thank you. Thank you.

MS. VAZOVA: Thank you, sir.

THE WITNESS: Yes, I am looking at it.

BY MS. VAZOVA:

Q. So, you said there: "[redacted]." Correct?

A. That is correct.

Q. Now, one of the main controversies around the Samsung Merger was also the Merger Ratio; correct?

A. Yes. This is what I am aware through the media reports and through the Parties.

Q. One of the key issues relating for the Samsung Merger was the adequacy of the Merger Ratio;
right, sir?

   A. Yes, that is how I understood it.

   Q. In the Samsung Merger, did NPS own the same number of Shares in SC&T and Cheil?

   A. Well, we didn't deliberate on it specifically, but I understood that the NPS had a significant portion of the Shares in both entities.

   Q. Isn't it true, sir, that NPS, in fact, held significantly more Shares in SC&T than in Cheil?

   A. Well, I didn't deliberate on it, so I do not recall the exact ratio between the two, and I don't know about that, sitting here, either.

   Q. Okay. Would the relative shareholdings of the NPS in SC&T versus Cheil be relevant to the Special Committee if it had the opportunity to deliberate on the Merger?

   A. It would have been one of the considering--it would have been one of the factors to consider.

   Q. If, given the Merger Ratio proposed for the Samsung Merger and NPS's relative shareholdings in the two companies, the NPS would have suffered a loss, a short-term loss, as a result of the Merger, would that have been relevant to the Special Committee?

   A. So, generally, when we are deliberating on
the case, we receive, as meeting materials, the
positions of both parties, the Shareholders who are in
favor of the Merger and the Shareholders who are
opposing the Merger.

So, if we were asked to deliberate on the
Samsung case, then we would have received documents
explaining the positions and the rationale for Elliott
and also the document explaining the positions and
rationale for Samsung.

Q. Okay. That was not quite my question.

My question was: If the materials that you
were provided reflected that, given the Merger Ratio
and the NPS's relative shareholdings in SC&T versus
Cheil would result in a loss to the NPS were the
Merger to be approved, is that something that the
Special Committee would consider in deciding how to
exercise the Fund's Voting Rights?

A. So, the argument that you just mentioned in
your question would be the argument that the opposing
party would make, and there would--must have been the
materials that deal with the other party's opinions as
well.

So, regardless of any matters, we would be
provided with the positions and the rationale of both
parties, and although I am speaking hypothetically, it
is very likely that we would have deliberated almost 
fully, considering both parties' opinions, not just 
one party's opinion.

So, I would like to say that we wouldn't 
have listened to only one party's opinion when making 
a deliberation.

Q. So I understand you weren't provided 
material. I understand you did not deliberate on this 
issue. My question is: If you were to deliberate on 
this, would you consider, as part of your 
decision-making, whether or not the NPS would suffer a 
loss as a result of the Merger at the proposed ratio?
A. That would easily have been a factor to 
consider. And back then, when Samsung and Elliott 
went to court for the injunction requests, there were 
a lot of opinions and rationale from both Parties that 
came out through the process, and the Court made a 
quite long decision for that case.

And in the decision made by the 
Court -- sorry, the decision made by the Court was sent 
to me through Samsung's counsel, so I roughly looked 
through it, and the major issue that was dealt with in 
that decision was related to the question that you 
asked me.

And, based on my recollection, even though
the applicant, the plaintiff, made some argument, the rationale wasn't accepted by the Court.

Q. We'll talk about the District Court's Decision. Before we get to that, though, in addition to whether the NPS would suffer a loss, the Special Committee would also consider the moral and ethical implications of the Merger as proposed; correct?

A. Yes, if we were to deliberate on the Samsung Merger case, it is very likely that the morality issue would have been debated seriously on that matter, as well.

Q. So, let's talk about the District Court application you just referenced. I believe the Samsung Merger became the subject of an application from the interim injunction before the Seoul Central District Court; correct?

A. Yes, that is how I remember it.

Q. And you discussed that in Paragraph 36 of your Witness Statement, so let's turn to that.

A. Yes, I have it here.

Q. So, in the last sentence of this Paragraph 36 of your Witness Statement, you explain: "In its decision which garnered significant media coverage in the lead-up to the Merger vote, the Seoul
Central District Court found that there were no illegalities in the procedure of the Merger or in the determination of the number of Samsung C&T and Cheil shares that would be exchanged for shares in the merged entity, i.e., (the so-called Merger Ratio)."

That's what you say in your paragraph 36; right?

A. Yes, it is in line with my recollection.

Q. So, as explained in this Paragraph 36 of your Witness Statement, the District Court found there were no illegalities in the determination of the Samsung Merger Ratio; correct?

A. That is correct.

Q. And the District Court also found, as you also say in Paragraph 36 of your Witness Statement, that there were no illegalities in the procedure for the Merger, either; right?

A. Yes, based on my recollection, both the procedure and the content of the case were reviewed by--have been looked at as part of the opinion--as part of the Court's process of reviewing the opinion of the plaintiff, and the Court made a decision accordingly.

Q. Did the Court opine on whether the NPS would suffer a loss under the Merger Ratio as proposed?
A. Based on my recollection, even though it is quite vague, I recall there was some mentioning about the judgment on the losses as part of the Court Decision.

Q. But ultimately the Court determined that, regardless of the losses that the NPS would be suffered, the Merger Ratio was still legally calculated; correct?

A. So, I do not recall the exact wordings in the full decision made by the Court, but based on my recollection, the decision was very detailed. And unless there is an evidence that is presented to the Special Committee members that is going beyond the scope of the Decision made by the Court on a new issue that is not dealt with at the Court, then, since the content and the authority of the Court Decision is quite overwhelming, so it will be quite difficult for me to make a different decision. That was the impression that I got as--personally as attorney.

Q. Now in the--
A. --with legal background.

Q. --in the SK Merger, you didn't think there was illegality in the Merger procedure; right, sir?

A. I do not have any recollection of having discussed the procedural issues.
Q. Let's look at Paragraph 17 of your Witness Statement, then.
   A. Yes.
   Q. So, you say in Paragraph 17 of your Witness Statement, in relation to the SK Merger, that it was not the problem of illegality that caused concern but more of an ethical one; right? That's what you testified?
   A. Yes, that's how we viewed it.
   Q. And both you and the rest of the Special Committee voted against the SK Merger, even though there was nothing illegal in how that Merger was being proposed?
   A. Yes.
   Q. So, you alluded to that earlier. You allude earlier to being contacted by counsel for Samsung, and I want to take you to Paragraph 23 of your Witness Statement.
   A. Yes, I am looking at it.
   Q. So, you explain in Paragraph 23 of your Witness Statement that you were contacted by counsel for Elliott, who suggested a meeting, and you told him that the meeting would be inappropriate, but you'd review any materials he may want to send you; correct?
   A. That is correct.
Q. It wasn't just Elliott who tried to meet with you, though; right? Samsung tried to meet with you, as well?

A. Yes. The counsel for Elliott is two years senior than me. We're from the same school. And counsel for Samsung is my--in the same school--was in the same school with me in the same year, so both of them were the attorneys that I personally know. They asked to meet me in person, but I rejected both requests and said to both Parties that if they send me the materials, then I will fully review them, and they sent me the documents.

Q. And you believed that Samsung's representatives tried to meet with other members of the Special Committee, as well; right?

A. Based on my recollection, both sides were making efforts to communicate with the members with their best effort, and I think, depending on the decisions of the individuals, some individuals may have met with the representatives and some may have not.

Q. Okay. I just want to be clear because you focus on your Witness Statement--in your Witness Statement in a request to meet from Elliott. It wasn't just Elliott who was trying to meet with you.
It was also Samsung; correct?
   A. That is correct, and I do recall having said that Samsung tried to meet me at some part.
   Q. And you also believed that Samsung tried to meet with rep--with other members of the Special Committee, as well; right?
   A. Well, Samsung representative tried to meet me, so I would expect that they would have tried to meet with the other members of the Committee.
   Q. Understood.
   Let's turn to Paragraph 30 of your Witness Statement.
   A. Yes.
   Q. And there, you discuss a report that you were shown by the Prosecutor when you were interviewed. The report was prepared by the Ministry of Health and Welfare, forecasting how different members of the Special Committee would vote; is that accurate?
   A. I think it is accurate.
   Q. So, let's turn to your statement to the Prosecutor. That's Exhibit C-220, Tab 220 in your binder.
   And, in your version, Mr. [redacted], we're going to be looking at Page 17. For those following along
the English version, we're going to be on Page 19.

A. Yes, I am looking at it.

Q. So, the Report that you were asked about, that's what was excerpted on Page 18, I suppose--sorry, Page 16 of your version of the document?

A. Yes, I'm looking at it.

Q. All right. And as we see on Page 19, Page 17 for you, Mr. --when you were questioned by the Special Prosecutor, you said that: "

That's what you said; right?

A. So, the Prosecutor saying that, saying that, and . And the premise of the question asked was that . And I answered, , and this opinion is around that particular premise.

Q. You also told the Special Prosecutor that
A. Yes, and that was a point made on the assumption that the premise made by the Prosecutor, the hypothetical premise, was correct, so yes.

MR. HAN: Mr. President, while we are on the page, I'm not trying to interrupt the cross, but it's already on the page, we want to correct one interpretation issue.

So, Mr. [redacted], if you look at time stamp of Transcript 13:30:52, and here I quote that you testified in Korean: I was questioned--I'm sorry, I was questioned as--I was--was the question asked was if there the Government tried to analyze and contact, but I recall that you said in Korean "shiljero jungbooga bunsukhago jupchokhatdamyun."

So, he--you said that actually governments analyzed and contacted, not they tried to analyze and contact.

THE WITNESS: So, that is not something I could know. The Prosecutor suggested the facts that he or she is supposed to know, and said that it seems to be the case that the Government analyzed and contacted the members. And what I said here was, [redacted]
So, my answer to this question was made based on a hypothetical situation where what the Prosecutor suggested was right. And this is not the fact that I experienced.

MS. VAZOA: Mr. Chairman, if I may, I think a lot of these interpretation issues have veered into redirect examination territory. I believe I've been patient, even if I say so myself, but I would respectfully submit that questions that seek to clarify, or to give the Witness an opportunity to clarify his answers, should really be in reserved for redirect as opposed to being casted interpretation questions.

PRESIDENT SACHS: Yeah, I would agree with that. I mean, it's better the flow of the cross-examination, if you intervene later.

MR. HAN: Will do so. Thank you, Mr. President.

BY MS. VAZOA:

Q. Mr. [redacted], let's move on to Page 19 of the document in front of you. It's going to be Page 21 for those of us looking at the English version.

A. Yes, I'm looking at it.

Q. So, you told the Special Prosecutor,
Mr. , as said here on Page 19/21 of this document, that __________; right?

A. That is right.

Q. But __________

A. __________?

A. Yes, that is how it is written here.

Q. And __________; right?

A. Yes. I have a thought that the Government should remain neutral and perform its supervision and oversight in a lawful manner.

Q. And __________; right? That's what you said here?

A. Yeah, I agree that all the employees at the National Pension Fund and the members of the Special Committee should work for the benefit of the National Pension Service and should prevent the losses to the National Pension Service.
Q. Right, Mr. ?

A. Well, I was told that the Ministry— that this—and if this— that if that is the fact, then I understood it to be very shocking. The Government making such a document and tried to adjust the behaviors of the members, if that is the case, that is fact, then it would be a serious problem, and I was shocked.

Q. Now, Mr. , if the Samsung Merger went against the interests of the National Pension Fund or decreased Shareholder value, the Special Committee was supposed to reject the Merger; correct?

A. So, if there is a consensus on the losses and the gains, then, of course, I think that the losses will need to be prevented and the gains—I would say "yes" to the gains. But I—as I understood, there was fierce discussions around the loss part.

Q. If the Samsung Merger were ex—was expected to damage Shareholder value, the Special Committee was supposed to reject it; correct?

A. If the loss is proven to be—proven to an extent that would be agreed upon by the majority of the members of the Special Committee, then it would be the right decision to make.
Q. Now, Mr. [redacted], you believe the Samsung Merger should have been referred to the Special Committee; right?
A. Yes. From the point when I heard that the decision was not referred to the Special Committee and when the meeting, interim meeting, was held to have discussions on our positions, and until now most of the members of the Special Committee thought--thought that the matter should have been referred to the Special Committee, and I also maintain that position, too.

Q. In fact, as you told the Special Prosecutor, Mr. [redacted], [redacted]; right?
A. Yes, that was a position made through the interim meeting that the Special Committee held on the decision not to refer the case to the Special Committee. We reached a collective consensus that the matter should have been referred to the Special Committee and we created a press release, and that was published to media outlets.

Q. It is also your view, isn't it, Mr. [redacted], that [redacted]
A. Basically, yes, but then there was a very fierce debate in putting those into words, and let me continue. At first, most of the Committee members and myself had discussed expressions like "a breach" of the Regulations.

And then, the--Mr. [redacted], the official from the Ministry of Health and Welfare who attended the meeting, said that if you definitively say that it was a breach of Regulations then it is, in fact, not upon the Special Committee members to decide on whether that was a breach of Regulations and it is up to the Court to decide, and plus, there could be problems to--caused to the public officials as well. So, he asked us not to use the expression "the breach of regulations." And listening to what he said, I thought--I mean, I was thinking of using the word "breach of regulations" out of my habit as attorney, but I realized that this is, in fact, the legal phrase, and it would be inappropriate for the Special Committee members to judge whether this is a breach of the Regulation or not.

So, in the end, we were able to phrase the position of the members of the Special Committee in a non-legal language, such as not reasonable, not
appropriate, or regretful. And the consensus was reached that the Judicial Branch will need to decide on whether that was a violation or not, so that is how we came to the final wording in the Report.

So, in terms of the wording, it is said that the request may be made to the Special Committee to deliberate on the matter. So, that is up to the discretion. So, there were two different opinions around what kind of discretion this is. Is it a fully free discretion, or is it a discretion that is still bound by the reasonable boundaries? And the Special Committee members thought that it was the latter, which is bound--the discretion that is bound by the reasonable boundaries. And the Ministry of Health and Welfare and the National Pension Service felt it is the former, which is a completely free discretion.

And there were some differences between the two sides; and, in the end, the Special Committee agreed to a wording that is used in the Final Report. And with the consideration that this is the--this is a discretion that is describing a discretion that is within a reasonable boundary.

Q. Well, thank you for this very detailed answer. That was not my question at all. I asked whether it was your view, Mr. □□□, □□□.
A. So, I am a little cautious with the word "---sorry, what was it? " that was used in the question because the wording was dealt with quite seriously. It--that most of the members of the Special Committee thought that the matter should have been referred to the Special Committee; but, after a certain amount of discussion, since the wording is pointing to discretion, it is understandable that the NPS thought that they had the discretion, and it is possible that they thought that way. I mean, you can find the expression that we were able to agree to a certain degree on that thought, and that it wasn't just clear cut without any room for debate, so I wouldn't--that is why I want to be cautious with the word "---".

Q. Okay. Let's turn--

PRESIDENT SACHS: May I interject.

Mr. , this is precisely the word you used in the interview with the Prosecutor on Page 15. Is that a misquote of--how do you explain this? At the bottom of Page 15.
THE INTERPRETER: He's asking for the page in Korean.

MS. VAZOA: It's Page 14 of the Korean version.

Last paragraph.

PRESIDENT SACHS: Maybe for the Transcript, we could read it, if the Interpreter could please read the passage in English to the record. Starting with "...".

THE INTERPRETER: "..."

THE WITNESS: Well, I think there is a slight misinterpretation in the document. What I said in Korean is interp--translated as "..." here, but based on my understanding of English, it might not be the exact--exactly accurate translation. I think it should be "mandatory" instead, so it's more about explaining that it should be done, not "it is clear."

PRESIDENT SACHS: Thank you. So,
"mandatorily." All right.

Now, is that still your position?

THE WITNESS: Yes, that is my current position, and I find it hard to agree with the translation "[REDACTED]," and I would hope to change it to "mandatorily" instead.

PRESIDENT SACHS: Okay.

BY MS. VAZOVA:

Q. Can you turn to Tab 214 in the binder in front of you, Mr. [REDACTED].

A. Yes, I'm looking at it.

Q. So, it's an e-mail chain, and the e-mail I want to ask about is the second one from the top-down.

ARBITRATOR MAYER: Can you tell us which exhibit it is, please.

MS. VAZOVA: Certainly. It's C-214.

ARBITRATOR MAYER: Thank you.

THE WITNESS: Are we looking at the e-mail on July 10th?

BY MS. VAZOVA:

Q. Yes, sir.

A. Yes, I am looking at it.

Q. So, this is an e-mail from [REDACTED], chairperson of the Expert Committee on the Exercise of Voting Rights; right?
Q. And the e-mail was addressed to the Joint Administrative Secretaries of the Expert Committee, that's [redacted] and [redacted]; right?
A. Correct.

Q. And then it copies the members of the Expert Committee including yourself; correct?
A. Correct.

Q. And then, if you were to turn to the second paragraph in Chairman [redacted]'s e-mail?
A. Yes.

Q. It reads: "[redacted]" and I'll pause there just for the transmitter because it's a long paragraph.
A. Yes, I am looking at it, and I agree with the content.

Q. And Chairman [redacted] goes to say: "[redacted]"
"Right? That's what it says?"

A. Yes, that is how it reads. And plus, Chairman asked me: Who is the only person with the legal background in the Committee to draft this letter? So I drafted it. So, I am well-aware with the content.

Q. You're just aware of the content. You also agree with it, Mr. ?

A. Yes, I do agree.

Q. Then you also agree that, in consideration of these past cases, as this paragraph we just looked at continued to say: ""You agree with that as well; right?"

A. I agree with it primarily. And, after the interim meeting where fierce discussion and debate happened, there was some modification to the expression, and the final wording in the final Press Release is the final position of the collective members of the Committee.

And this expression is representation of
what I thought at the time of writing the e-mail, and it is basically the same even after that as well.

But the exact wordings that were used in the end could be looked at from the "press-release."

Q. Now, Mr., when we were discussing the Press Release earlier, you mentioned that there were two schools of thought, so to speak, on whether there was discretion in whether to refer the Samsung Merger vote to the Experts Voting Committee. Do I recall that correctly?

A. Yes. And the most accurate expression would be the wording shown in the Press Release because this is a press--and the Press Release is quoted in the statement to the Prosecutor, and the document that is quoted in their Press Release is as a result of one or two hours of tug-of-war, so I would say that the expression written there would be the most accurate one.

And about the understanding of how much of the discretion that the National Pension Service had, the thoughts on that is, in fact, expressed in the Page 13 of the statement to the Special Prosecutor.

So, that is Tab 220, and the Korean version Page 13.

So, on Page 13 of the Tab 220, "Because of
the ambiguity in the relevant regulations and instructions, the Expert Committee sympathized with considerable difficulties that the Fund Management Office must have confronted in deciding whether to refer the matter to the Expert Committee to make a decision on this case". That was our thought on the discretion part, and the opinion from the Special Committee is as follows: "However, the Expert Committee regretfully believes that the motion should have been referred for its deliberation in view of past precedents and purpose of the regulation". And we also added a request further down the line, "We request the Fund Management Office to further review and amend the relevant provision to minimize potential disputes in the future."

Q. It was your view, wasn't it, sir, that it was an abuse of discretion for the Investment Committee to fail to refer the Samsung merger to the Special Committee?

A. Yes. That is what I said back then, and inside--internally as an attorney, I thought so, but at the time I decided not to use the legal terms in preparing the Press Release to accurately express the thoughts of the Committee members, and instead use the non-legal terms to represent the thoughts of the
Special Committee.

So, the thoughts of the Special Committee members are expressed in non-legal terms in the Press Release.

Q. Well, let's talk about this meeting where the words of the Press Release were negotiated. I believe you described that in Paragraphs 38 to 42 of your Witness Statement, if I'm not mistaken.

A. Yes, I'm looking at it.

Q. So, one of the gentlemen who attended the meeting--I believe you mentioned his name earlier--was Director [REDACTED] from the Ministry of Health and Welfare; correct?

A. That is correct.

Q. And it was Director [REDACTED] who insisted that the wording of the Press Release you just showed us be changed from "unlawful" to "regrettable"; correct?

A. Well, he didn't insist on a certain phrase like "regretfully," but what he requested was not to use the word "violation," and he said that there are two reasons for his worries of using the word "violation": Number 1, the public officials could get into trouble; and, Number 2, that is up to the Courts to decide.
Q. You were so frustrated with Director’s behavior at the meeting, Mr., that you requested his removal from the meeting; right?

A. So, in fact, Mr.’s stance I would say or the behavior changed over time from the start to the end, and from the earlier stage to the middle of the meeting, he was very adamant about not even holding the meeting, interim meeting, and the Special Committee should not be making a deliberation at all. And in such arguments made by Mr. was denying the very existence of this Special Committee and the authority of the Special Committee.

And I thought that Mr., who doesn’t even have a vote in the Special Committee, was undermining the authority of the Committee, and just continued on with the arguments that are nonsensical. So--and was preventing the overall flow of the meeting.

So, at the mid-point of the interim meeting--at the mid-point of the meeting that we held up--up until the mid-point of the meeting that we held, I was rebutting his argument quite fiercely. And then even after a certain amount of discussions that were based on logic, from my side, he didn't listen, so I even suggested the Chairman to vote on
whether to remove Mr. [redacted] from the meeting or not.

And I said that his attitude changed over time. At the earlier part of the meeting, he was very insistent and adamant about his appeals, but then at a certain point in the middle of the meeting, he realized that he will not be able to prevent the decision to be made, so he changed his attitude to try to change the wording.

So, we were rebutting Mr. [redacted], who tried to stop the decision from being made at the earlier part of the meeting, but on the later part of the meeting when we were discussing about the wording, he pointed out that the legal term should not be used, and that made me realize that, "Oh, I should be thinking of this as a Special Committee member, but then I was thinking of this as a legal professional", so I accepted his point about using the legal terms to be inappropriate in the Press Release and accepted his opinion on that matter at the later part of the meeting.

And that, I would say, is contribution that he made to the meeting at the end about the wording that is used in the Press Release.

Q. Understood.

And as you say in Paragraph 42 of your
Witness Statement, even though you requested Director [redacted]'s removal from the meeting, on reflection, you do not think that his participation in the Special Committee Meeting went beyond the scope of the Administrative Secretaries' duties; is that right?
   A. Yes, that is right.
   Q. When did you have an opportunity to reflect upon that, Mr. [redacted]?
   A. Mr. [redacted] would attend the Special Committee Meetings always, and he would deliver the opinions of the Ministry of Health and Welfare at the meetings so that these Committee members could consider them, so his participation itself is within the scope and responsibilities of the Secretary, I think.
   Q. Did you reach this conclusion before or after you were asked to testify in this Arbitration?
   A. My thought didn't change. If you look at that incident only where I thought that Mr. [redacted] should be removed from the meeting, then it could be read as him not being allowed or not being able to participate in the meeting. But his participation is not a problem, and he--but his attempts to prevent the decision from being made is unreasonable, but his--another opinion of changing the legal term to a non-legal term was acceptable.
I mean, only pointing to a single incident that happened in the course of two to three hours of fierce debate would be misleading and that required clarification, that is why it is written here but my position didn't change.

Q. Last couple of questions. And for that, if you can turn to Tab 165 in your binder, and that's going to be Exhibit C-165. And, for the record, that's the Statement Report of Director          to the Special Prosecutor. I just want to take a look, Mr.          , about what Director          himself said about his participation in the meeting. And we're going to be looking at Page 23.

A. Yes, I am looking at that.

Q. So, when asked about the meeting, Director          responded as follows: "          ."
Do you see that?

A. Yes, I am looking at it.

Q. Do you still think that, Mr. [REDACTED], there was nothing unusual about Director [REDACTED]'s participation in the Special Committee Meeting?

A. To be--to precisely put it, his participation in the meeting is not a problem. His attempt to prevent the decision in the meeting is not acceptable. But his opinion around the legal terms being used being inappropriate is acceptable. Mr. [REDACTED] did all he could do, but the unjust requests would not be accepted by the Special Committee members, and the parts that are reasonable are accepted.

And what I want to highlight here is that it was not a meeting that was controlled by Mr. [REDACTED]. Anyone who is giving a reasonable argument would be heard, and then the decision would be made based on the reasonable arguments made, and the process was followed.

MS. VAZOVA: Thank you, sir. I have no further questions.

PRESIDENT SACHS: Thank you.

Will there be questions in redirect?

MR. HAN: Yes, Mr. President.
PRESIDENT SACHS: So please proceed, Mr. Han.

MR. HAN: Just one point in redirect. If I may, I'm going to use Korean to help the interpretation.

PRESIDENT SACHS: Yes.

MR. HAN: Thank you.

REDIRECT EXAMINATION

BY MR. HAN:

Q. The counsel for the Claimant asked you questions around the operation guidelines, and I would like to ask you some questions regarding that.

MR. HAN: Operator, R-144, please.

Article 17, please.

THE INTERPRETER: Which tab in the binder, please? Is it 144 in the binder as well?

MS. VAZOVA: It is.

MR. HAN: Yes.

THE WITNESS: Yes, I'm looking at it.

BY MR. HAN:

Q. Witness, you testified that since Article 17 is related to the Special Committee, so you were provided with Article 17, and you reviewed Article 17. And are you familiar with Article 17.5?

A. Yes. They are related to the exercise of
Voting Rights, so Article 17-4--17.4 and 17.5 would be the provisions that I looked at every time we had a meeting.

Q. Could you explain to the Tribunal how you and the other members of the Special Committee understood the Article 17.5?

A. If you look at Article 17.5, in principle, the NPS would exercise the Voting Rights. So, Article--

MS. VAZOVA: Mr. Chairman, I'm so sorry to interrupt. I do have to object here. If we look at Transcript from this morning, 9:00 at 12, I asked the Witness the questions, "so the only parts of Exhibit R-144 that you have ever reviewed were Article 5.5 and 17.4, is that your testimony?" The Witness responded, "that is correct."

I'm not familiar with the rest of the provisions. He disclaimed any knowledge of Article 17.5. I don't ask any questions about Article 17.5. I don't think this is the proper subject matter for a redirect examination.

PRESIDENT SACHS: Let me put it differently. I mean, the Tribunal is in a position to read those provisions, so I doubt whether it's really helpful to go along this line of questions.
MR. HAN: Yes, Mr. President.

So, Article 17.5 provision, so whether the Witness and other members of the Expert Committee had the same understanding of the Article 75 which provides on its face was the question I was put to the Witness.

PRESIDENT SACHS: Yes, but you had the observation coming from the Claimants' counsel that that was not addressed in cross-examination, and that the Witness also--I don't recall that precisely, but it was that he doesn't--didn't remember the content of the other provisions.

MR. HAN: So, we submit that, by implying he's aware of Article 17.5 as well, so I think Mr. now testifies that he is also aware of Article 17.5, not only 17.4.

MS. VAZOVA: We're happy to put the Transcript on the screen. The Witness's testimony was very clear.

PRESIDENT SACHS: I think you should move to your next question.

MR. HAN: Okay. Will do.

(Witness speaking without interpretation.)

PRESIDENT SACHS: Mr. , so we were discussing this, and I said we should move to the next
question, so I'm sorry, but since it's now--please translate what the Witness said.

THE INTERPRETER: Yes.

So, he made a point that this testimony is not a test of his memory, and when he was directed to look at Article 17 in the morning, he was able to see Article 17.4 that has relevance to the Special Committee. But what my intention was anything that is related--any provision that is related to the Special Committee is presented to the Special Committee. And now that I look at Article 17.5, it is also relevant.

PRESIDENT SACHS: Yes. We've discussed that Article at various instances, and I would now suggest that you move to the next question.

MR. HAN: Yes, thank you, Mr. President.

BY MR. HAN:

Q. Mr. [redacted], the counsel for the Claimant asked you about the decision made by the Seoul Central District Court on the injunction request, and the question had--the question centered around whether the NPS suffered losses due to the Merger, and I would like to ask you questions within that regard.

MR. HAN: Operator, R-177, please.

It is not on the tab. So the bundle should be pulled up. Page 14, please.
Can we also see the Korean version, too?

THE INTERPRETER: Was that a request to the operator?

MR. HAN: Yes.

Operator, can you put the Korean version side by side.

FTI TECHNICIAN: Do you have a page for the Korean version?

MR. HAN: Korean version is Page 14, but in the internal Page 14, actually the PDF page is also Page 14 in Korean version.

THE WITNESS: Yes, I'm looking at the Korean version.

BY MR. HAN:

Q. If you look at the middle part, it says whether the purpose of the Merger was unreasonable. Are you looking at it?

A. I'm looking at it.

Q. So, in the decision it says it is difficult to conclude that based on the records submitted, the Merger only inflicted damages to the Respondent Company shareholders and provided profit to the I and its shareholders.

Were you aware of this content in the decision?
A. I didn't have a chance to review it this thoroughly.

Q. Let me move on to the next question.

MR. HAN: R-242, please. Could you put them side by side, please. Page 44.

BY MR. HAN:

Q. Witness, you testified that the matter not being referred to the Special Committee, whether it is a violation of the Regulation or not is up to the Court to decide and not up to the Special Committee to decide. Did you testify so?

A. Basically, the decision not to use the legal terms was based on my understanding that it is out of the scope of Special Committee's authority to make a legal judgment. So, in the end, we decided not to use the legal term there.

Q. Are you aware that there was a Court Decision on this matter?

A. I haven't heard of it.

Q. If you look at the decision on the screen. And here it says, according to the Guidelines set for the Exercise of Voting Rights of NPS, in principle, Voting Rights of Shares are to be considered and decided by the Investment Committee of the Investment Management Division. And if there is
an Agenda that is too difficult for the Investment Management Division to decide, it can exercise its discretion to request the Agenda to be decided by the Special Committee.

Can you see that?

A. This is the first time that I'm seeing this, but I can see that.

(Witness speaking in Korean without interpretation.)

PRESIDENT SACHS: Sorry, we have to hear the translation first.

BY MR. HAN:

Q. And on the bottom side of the same paragraph, it reads--

PRESIDENT SACHS: Mr. Han, if I may intervene, you're putting decisions to the Witness that he has not seen, so that is not very helpful to the Tribunal.

MR. HAN: I will move on, Mr. President.

PRESIDENT SACHS: Please do so.

BY MR. HAN:

Q. Let us look at the Witness Statement that you submitted?

MR. HAN: It's RWS-1, Page 4.

THE INTERPRETER: Which paragraph are we
looking at?

MR. HAN: Paragraph 17.

THE WITNESS: Yes, I'm looking at it.

BY MR. HAN:

Q. And you testified that it was more of a problem of ethical issue as the Shareholders of the Company whose Shares were held more by the owner family of SK Group would reap unfair benefits.

A. Yes.

Q. And you were asked about the retirement of the treasury stock in the morning, and you gave your testimony in length.

Could you please explain the ethical problem that you're mentioning here. Is that a problem related to the Merger, the unfair Merger Ratio or the problem related to the timing of the retirement of the treasury stocks?

A. Well, those two are related. How are they related? If the allocation happens in an ethical and fair way after the retirement of the treasury stocks, or if the allocation is made earlier than that. I mean, the decision between the two would, in the end, affect the Merger Ratio.

So, the ethical problem of the timing of the retirement of treasury stocks would, in the end,
affect the Merger Ratio, so we viewed it as a linked issue.

MR. HAN: Mr. President, Respondent has no further questions.

PRESIDENT SACHS: Very good.

I do have a question, Mr. [redacted].

QUESTIONS FROM THE TRIBUNAL

PRESIDENT SACHS: You were shown the Decision R-177 of July 1, 2015 by the Seoul Central District Court which stated that the Merger Ratio was--ought to be criticized, and you said you didn't--you didn't know it. I don't know what you exactly said--you didn't review it. You didn't review it.

But you mention it in your Witness Statement on Page 36, and even in a footnote, and later on in Paragraph 37 you even say that this was the main reason why you thought you could not have voted against the Merger because that would have been difficult to concile with that Decision. So, how do I have to understand that?

THE WITNESS: So, I had made an overall review of the decision by the Court on the injunction request, and I do not recall having reviewed the detailed parts related to the losses, means that I
didn't pay attention specifically to that.

So, I would like to say that I made a review of the document in a general overall sense; and, based on my overall review of the document, I prepared my Witness Statement here.

And when I was asked a question about the specifics of the document, I didn't look into the detail that is the intent of my answer, so these two testimonies do not contradict each other, so I would like to summarize my point as such: Did I make a general review of the decision? Yes. Did I make a specific review of the detailed parts of the decision? No. And if we were asked to deliberate on the case, then it is very likely that I would have reviewed in fuller detail.

PRESIDENT SACHS: Yes, because you said that you even wanted to present that decision to the Special Committee members in Paragraph 37. You said that?

THE WITNESS: Yes, I said is that.

MR. HAN: Mr. President, with respect, I'm wondering if you could refer to the court decision that I took the Witness to and to which he was not aware of.

PRESIDENT SACHS: R-177?
MR. HAN: No, it was R-242, another court
decision that I took the Witness to. So, the court
decision that he said that he is not aware of was not
R-177.

PRESIDENT SACHS: I have a different
recollection, but the Transcript would show this.

Do my co-Arbitrators have questions to the
Witness?

ARBITRATOR GLOSTER: I don't. Thank you.

ARBITRATOR MAYER: I don't either, thank
you.

PRESIDENT SACHS: So, Mr. , thank you
very much, your testimony has come to an end. And I
also thank again the Interpreter. Today it was a
little bit more difficult, but this is probably due to
the fact that we are lawyers and sometimes we need to
be as precise as possible.

What I would suggest is I would like to talk
to my co-colleagues in our breakout room, so please
stay in the room, it won't take long, and I think I
will get back within 10 minutes, okay? So Operator,
can you please switch us to the breakout room.

(Tribunal conferring outside the room.)

PRESIDENT SACHS: So, we have two
organizational matters that we would like to discuss
with you. The first matter concerns the questions raised by Professor Mayer. We would suggest that we hear you on these questions tomorrow, at the end of tomorrow's witness hearing, expert witness hearing.

And the second issue concerns Saturday. So, from the Tribunal's perspective, we're hesitant. We think that you have provided us with very thoughtful and interesting opening, both verbal and in documents, so we heard, of course, some evidence, but we want to flag that we would prefer to have Post-Hearing Briefs, but we want to hear you first because if you think that we should hear you on Saturday in a certain format, then we will discuss this.

So I turn to you. We are here. We will be here, so we're available, but we also wanted to let you know that we will certainly request you to provide us with Post-Hearing Submissions and possibly--possibly--followed by a one-day oral argument subsequent to the Post-Hearing Briefs that could be held virtually in order to reduce costs. But these are our ideas that we wanted to flag.


(Witness steps down.)
(Recess.)

PROCEDURAL DISCUSSION

PRESIDENT SACHS: So, before we get to that, let me say that I was told by my assistant that I was probably in error when I referred my remarks to R-177, so Mr. Han--I don't see him presently--I just want to put on the record that I will review the Transcript as well.

So, this being said, can we hear you on the Saturday issue.

MS. LAMB: Thank you. Thank you, sir. Of course, we're in your very good hands on that. As you know, it was our strong preference to be able to close the case, if you will, while we're all in the moment of the case, but we hear you.

Our respectful submission would be that you approach the issue of Post-Hearing Briefs and any post-hearing oral reflections on those Briefs with both principles of efficiency and practicality in mind.

Let me elaborate just a little on that.

As to efficiency, now again is the moment where we are all in full familiarity with the case. I would strongly urge you to set a rather tight timetable in terms of when we will be able to file
those Briefs. I would strongly urge you to ask both
Claimant and Respondent file those Briefs at the same
time so as to draw a line under the proceedings, and I
would also strongly urge you to set an approximate
date for an Oral Hearing, if indeed having read those
Briefs you consider you wish to hear from us.

Again, and I would strongly urge you to
indicate to the Parties any issues on which you wish
us to place particular focus so that we don't end up
with voluminous post-hearing material, much of which
are just often repetitive of materials that have
already been submitted.

The second principle is rather particular to
our team, and it's an issue of practicality. It may
not have escaped your notice, Professor Sachs, that a
number of members of this team are due to be on
maternity leave in the not-too-distant future, and we
will be grateful to have the opportunity for all
members of the team to participate in whatever
post-hearing process unfolds from now on.

So, that's it from our side. Thank you.

ARBITRATOR GLOSTER: Ms. Lamb, can I just
make one point. So far as Post-Hearing Briefs are
concerned, what, speaking for myself, I'm particularly
concerned to have is both sides' submissions as to how
the evidence which we have heard or will hear during this week impacts on both sides' arguments. I am certainly not looking for a repeat or repetition of the lengthy memorials which we have already had and the lengthy openings which we've had. What I would like--rather than having it in the Transcript, I would rather have it in a post-hearing brief--is, as I'd said, your respective submissions as to how we are assisted either way by the evidence which we have heard.

ARBITRATOR MAYER: I had the same understanding of what kind of Post-Hearing Briefs we were expecting. I guess that's also the view of the President.

PRESIDENT SACHS: Yes, it is. But before we elaborate on this, we will hear the Respondent.

MR. FRIEDLAND: Yes. We agree with the Tribunal's instinct, that having had such extensive Opening Arguments, it would not be necessary or efficient to have a Closing Argument this weekend.

And we largely agree with the principles stated by our counterpart, Ms. Lamb, as to the Post-Hearing Briefs. We would suggest that counsel discuss between us the appropriate deadlines and a page limit. And we certainly also agree with the
principle stated by the Tribunal that the purpose of
the Post-Hearing Brief is to address what's new from
the Hearing, which could include, by the way, Tribunal
questions raised during the Hearing, not just
evidence, so there we go.

Did I cover everything, my colleagues?
Okay, that's it.

PRESIDENT SACHS: So, yes. Well, fine,
there seems to be common ground, and as far as the
questions are concerned, the Tribunal may put, yes, we
will consider this. It is quite likely.

In addition, of course, to your general
comments as to the results of the taking of the
evidence, so--well, this will not be the first case in
which the Tribunal will send you questions to deal
with in Post-Hearing Briefs, so you know how to deal
with that.

Yes, we would invite you, therefore, to
confer with each other as far as the deadlines are
concerned and the page limit; and also possible dates,
then, for Closing Argument respecting of the deadlines
on your team's side.

MR. FRIEDLAND: One question: Was there an
assumption or a direction there be two Post-Hearing
Briefs or a single?
PRESIDENT SACHS: You didn't mention it, we didn't mention it, so we leave this to you.

MR. FRIEDLAND: Okay.

PRESIDENT SACHS: If we have a closing hearing, one round could be sufficient.

MS. LAMB: I think implicitly I did because I suggested that we both file our Briefs at the same time, and that will draw a line under it.

PRESIDENT SACHS: Simultaneous Briefs?

MR. FRIEDLAND: Simultaneous is okay, but the question is whether there were two rounds of simultaneous, so maybe we could discuss that, and if there is disagreement, we could get back to the Tribunal.

PRESIDENT SACHS: Right.

MS. LAMB: Sir, just one further thought, then, with regard to Professor Mayer's questions, you made the suggestion that we come back to that tomorrow at the ends of what will again be another very long day. I wonder whether, in fact, we just wrap those into the Post-Hearing Briefs. One of the Professor's questions was actually directed to both Parties. He had a hypothesis and asked whether, in that hypothesis, it would still involve a violation of the FET standard, so perhaps both Parties would wish to
reflect further on that and include it in their Post-Hearing Submissions.

ARBITRATOR MAYER: Also the third question was put to both Parties, I recall: The burden of proof.

MR. FRIEDLAND: We would be ready to address it tomorrow, but we leave it to you to direct us.

PRESIDENT SACHS: I think it could be helpful in developing our questions, the final questions, that you should deal with in the Post-Hearing Briefs, so we would welcome an exchange, preliminary exchange, without prejudice on these questions.

And we thought about it again, and we would prefer to have it in the morning, so prior to hearing the Experts, so that we have a fresh start and concentrate. In particular for my colleagues who sit in Europe, they would, yes, like to have it not at the end of a very long day but at the beginning of a very long day.

MR. NYER: Mr. Chairman, tomorrow is indeed a very long day--indeed the longest day of testimony this week that we have on the schedule, so I wonder if Friday morning might be an alternative.

PRESIDENT SACHS: Okay. We are flexible.
We are flexible. If you feel the Friday program is lighter, then we should move it to Friday.

    MS. LAMB: Either is fine for us. I'm happy to say Friday.

    MR. FRIEDLAND: It would be first thing Friday, then.

    PRESIDENT SACHS: Okay. First thing Friday. Fine. Anything else?

    So, thank you very much. See you again tomorrow morning at 8:30.

    (Whereupon, at 1:16 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