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 4

Thursday, March 24, 2022

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

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

PROFESSOR DR. KLAUS SACHS, President of the Tribunal

THE RT. HON. DAME ELIZABETH GLOSTER, Co-Arbitrator

PROFESSOR PIERRE MAYER, Co-Arbitrator

ALSO PRESENT:

Registry and Administrative Secretary to the Tribunal:

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MS. JINYOUNG SEOK

Assistant to the Tribunal:

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P R O C E E D I N G S

PRESIDENT SACHS: So, good morning. We are one minute late.

Are there any housekeeping matters we should address?

MR. PAPE: None on Claimants' side.

PRESIDENT SACHS: Very well.

DR. TIAGO DUARTE-SILVA, CLAIMANTS' WITNESS, CALLED

PRESIDENT SACHS: Dr. Duarte-Silva.

THE WITNESS: Good morning.

PRESIDENT SACHS: In front of you, you should find a declaration that we would invite you to read out for the record please.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, and that my statement will be in accordance with my sincere belief.

(Pause.)

PRESIDENT SACHS: Now, we have, of course, your two Expert Reports in our file, and also we just received a handout of your presentation of today, and we give you now the floor to address us.

THE WITNESS: Thank you. Thank you, and good morning. Good afternoon to the Members of the Tribunal.

DIRECT PRESENTATION

THE WITNESS: I have prepared, indeed, a deck that I'll start to present now that summarizes my opinions in this matter.

PRESIDENT SACHS: Can you speak up a little bit and approach your microphone.

THE WITNESS: Yes.

Is this better?

PRESIDENT SACHS: Okay.

THE WITNESS: Thank you.

So, I will start--this is not working.

Good morning. So, I will present my opinions in this case. Just to introduce myself, briefly, I'm a professor of valuation, and I'm a former equity research analyst where I used to cover holding companies, including earnings announcements and various disclosures such as mergers proposals, both stock and cash, hostile and friendly offers, successful and failed offers, et cetera.

I've also testified on market efficiency here in the United States.

And here is an outline of my testimony here today. I will start with the damages associated with Mason's investment in SC&T Shares, and then speak about the damages association--associated with Mason's investment in SEC Shares. Then I will speak about the General Partner's Lost Incentive Allocation, and finally a very brief summary.

So, let's start with SC&T damages.

What is the damages framework?

The damages framework are associated with Mason's investment, the Fair Market Value but-for Korea's Measures minus the Fair Market Value with Korea's Measures.

So, what are those? The but-for Market Value minus the actual Market Value, where the actual Fair Market Value is in the actual scenario, what actually happened with Korea's Measures.

And the but-for Fair Market Value is under the but-for scenario, meaning just like the actual scenario, except or but-for Korea's Measures.

So, how do I calculate that? We'll talk first about how I quantify the but-for value of SC&T, then how I actually calculate it in Item B, then what is the actual value, and the resulting damages, and then I'll comment upon some of Professor Dow's and Professor Bae's approaches.

What happened here is that on the left you see what was the vote's outcome with Korea's Measures. What you see on the left column is the stacking of all the votes on July 17, 2015, of all the Yes votes that cleared that dashed line, dashed red line; and, therefore, the vote was approved. That dashed line basically means 66 percent of the cast votes.

As you can see, the NPS vote in orange there was decisive.

And I should also highlight that the other participant in this Merger, Cheil, all Shareholders of Cheil voted in favor of the Merger.

Without Korea's Measures on the right, you see what happened--what could have happened. As I'll explain next, the NPS would not have voted Yes; and so, either they would have abstained or voted against, but the Merger Vote would have failed. SC&T would have remained a stand-alone company, and that is the basis to calculate the but-for value of SC&T.

And let me tell you further why NPS would not have voted Yes. First, NPS had a higher ownership interest in SC&T than Cheil, so NPS would be worse off with a proposed Merger Ratio. There are arguments that there will be a high level of synergy that could justify that transfer of value from one company to the other, and so NPS would vote yes. I calculated what that level of synergies would be to justify NPS's vote. It will have to be more than $8 billion of synergies. That exceeds anybody's calculation of synergies at the time.

Consistent with this, NPS's proxy advisor, KCGS, issued the Report urging NPS to vote against the Merger.

Just as a further clarification about synergies, the two companies were already controlled by the same Shareholders, so thinking that they would obtain higher synergies because suddenly they are merged defies credulity.

So, how to calculate the but-for value? The but-for value of SC&T is simply the sum of its parts, SOTP. There are essentially three parts: SC&T Core, publicly traded holdings and privately held holdings. SOTP is a well-accepted valuation methodology, especially in holding companies. It was used by virtually all analysts of SC&T, used by NPS, used by shareholder advisories, et cetera.

In contrast, SC&T's Share Price is not an appropriate measure of but-for Fair Market Value, as I will explain in the next few slides. They tell you a chronology of what happened here.

There were succession concerns early on due to Samsung Chairman's health and age that led to an expected restructuring of the group while, of course, trying to avoid dilution of control of the key group's assets. Quickly Cheil, or as it was called earlier Everland, emerged as the group's future controlling entity, and SC&T was seen as a desirable target for acquisition due to its holdings in SEC. So rumors of takeover of SC&T by Cheil start very early on.

And in order to avoid dilution of control, the market knew that it was in [redacted]'s family's interest to pursue a Merger Ratio disadvantageous to SC&T so that you obtain control by having more ownership of SC&T than you would have on Fair Value terms.

So, the result is that there was expected value transfer from SC&T, and, therefore, SC&T started trading below Fair Market Value or its Sum Of The Parts.

Then, Cheil started trading in November 2014, immediately at a premium to its Sum Of The Parts or Intrinsic Value. As you can see here on the right, the market recognized that SC&T was trading at a discount to its Sum Of The Parts, and Cheil was trading at the premium to its Sum Of The Parts. This analyst commentary is consistent with my own calculations in the next slide.

This chart shows in blue how much higher Cheil traded above its Sum Of The Parts, and it shows in green how much lower SC&T traded than its Sum Of The Parts. I believe this symmetry is quite evident, and what it indicates is that that green value there was going to go over to the blue part, meaning that value that was trading--that SC&T was trading below its Sum Of The Parts would become Cheil's value. The market understood that, and the prices showed it. This was the natural result of investors' recognition of an expected value transfer, so the two companies' Share Prices reflected that, and, therefore, the ratio of their Share Prices reflected that as well, algebraically.

And then, in May 2015, the Merger and associated Merger Ratio are announced; and, since the Merger Ratio is based on the ratio of the Stock Prices, it also reflects a very same expected value transfer.

Market commentary confirms that the Merger Ratio reflected an expected value transfer. Very sophisticated market participants noted that the Merger was not priced fairly. I'll leave you here with some examples. There are plenty others in my Reports.

And as further illustration, you can see here in the next slide, how deeply embedded in SC&T's

price was the expected value transfer. On the left here, the left part, it shows 8.4; that's the market value of SC&T's equity right before the Merger Vote. And on the right you have the sum of its parts. 8.7 is just--if you sum all their holdings in publicly traded companies, such as SEC, SDS, and so on. So everything that is above that is value that was missing from SC&T's Stock Price.

So, it's as if SC&T's core business, Biologics and all other assets had no value at all. So, what this shows is that the Stock Price cannot be an adequate measure of SC&T's worth without expected value transfer, and so Sum Of The Parts is the only appropriate method.

Then on the Merger Vote Date, you can see on the right, on July 17, Korea's Measures to NPS's crucial vote locked them in this expected value transfer. They went from becoming expected to becoming realized.

So, I calculate SC&T's but-for Fair Market Value based on Intrinsic Value. But there has been discussion about what would have been SC&T's Stock Price but for Korea's Measures. What would happen next? And I explain that here.

First, the Merger Vote would have failed, as

I showed earlier.

Second, the [redacted] Family would not try again. They said that themselves, and it was completely believable because it is the rational choice. There were other options, and a merger on more fair terms (because it could have been rejected--it would have to be on more fair terms) would defeat the purpose of the Merger. Remember, the Merger is meant to obtain control. And with more fair merger terms, that control would not be reached. They will have to get--keep more Shares of Cheil for the same Shares of SC&T. Therefore, the cause of the depression in SC&T's Stock Price will be gone, the threat of value transfer would be gone, and the Stock Price would reflect the Company's intrinsic value, and so the Stock Price would rise to its Sum Of The Parts.

And it's not just me saying that. Investors expected SC&T's Stock Price to increase if the Merger Vote had failed. You can see here: Had the Merger Vote been rejected, SC&T's Stock Price would have increased or, citing other people, skyrocketed.

Also, had the Merger Vote been rejected, conversely, Cheil Stock Price would have declined and lost its premium. And its expected price movements if the Merger Vote failed are consistent with expected value transfer and inconsistent with a merger that would be value-additive.

Next, I explain how I calculate the but-for Fair Market Value or the Sum Of The Parts, and I explain that part by part.

The first part is its core business, or SC&T Core. I used the widely used market approach based on multiple enterprise value to EBITDA from publicly traded comparable companies. And how did I identify those? I looked at companies that are based in Korea, identified by at least two equity research analysts who followed SC&T, and here are the results, what the resulting companies are.

I did one more thing to those multiples. Recall that most of these comparables in Korea, or really all of the comparables for my SC&T core business are holding companies. So, what you have in the Enterprise Value divided with EBITDA is the stock has the core business and all other holdings they have, and the bottom, the denominator, has only the EBITDA, the earnings, of the core business, so it's apples and oranges.

So, what I did is I grabbed the Enterprise Value, and I depressed it to be just Enterprise Value of the core business, so the Enterprise Value here on the left box is everything, and then I took out the value of listed and unlisted holdings to get just the implied value of the core business; so that's on the right. You can see. My multiple is the enterprise of all of the core business divided by the EBITDA on the core business. The result of this adjustment is a lower multiple, lower Sum Of The Parts and, therefore, lower damages, but it is the right thing to do.

And here are the multiples. On the columns on the right, you can see the Enterprise Value to EBITDA of every company, and my adjusted Enterprise Value to EBITDA, that, as I explained, will be lower. I grab that multiple, multiply it by the EBITDA of SC&T's core business, and I get the total value of the core business of SC&T, $6.2 billion.

In this slide, I explain more about my calculation. The Comparable Companies are reasonable in accordance with market participants' views, as I just explained. It is appropriate to use multiples based only on construction companies, as all analysts did.

I include the value of the trading activities. I don't exclude it. It's part of the earnings. I just multiply it by same multiple like most analysts did.

Also, analysts' valuations of SC&T Core are not sufficiently comparable to my valuation because they're not exactly at the same time. And they also use an Enterprise Value to EBITDA without any adjustments; so, all else equal, my Enterprise Value will be lower. And even if it were compared, even if their valuations were comparable, my core valuation is not an outlier, and I present here one example of a valuation by another analyst that was higher than mine around the same time.

Finally, there were some critiques about including a specific company, HDC, as comparable. That doesn't really inflate valuation. It's not the highest multiple among the comparables. It's near Mason's range, follows the same criteria that they are based in Korea, used by at least two analysts, so there is no issue there.

Now that I've explained how I value SC&T's core business, I'll move on to the publicly traded holdings.

The publicly traded holdings, again I use the commonly accepted market approach. As of their regular Stock Prices, how much SC&T has, how many Shares they have, what percentage of the Company they have, and I multiply those, adds up $10.7 billion.

There is no indication that the public companies' stock prices were unreliable anywhere.

Then we move on to the privately held holdings, meaning holdings in companies that are not publicly traded, and there I looked at Samsung Biologics, one of the most important privately held holdings, and I approximated the Market Value, Estimated Market Value, by using the Market Value of the IPO and just index it back to the Valuation Date or the Merger Vote Date using Comparable Companies' prices to estimate to that value would have been. For all other privately held companies, I used the book value from the quarterly Financial Statements.

So, what is the result of those three parts? The result is presented here for each of the parts. The Sum Of The Parts of--sum of all these parts is \$18.5 billion. After I remove the net debt, I get equity of \$16 billion, and when I multiply it by Mason's percentage ownership, I get \$311.1 million of but-for value.

My valuation is not very different from contemporaneous valuations by, for example, Mason Capital, and ISS, but naturally they are different because this is my own valuation. I'm not trying to be equal to others.

So, I have explained how to calculate the but-for Fair Market Value of SC&T Shares. Now let's look at the actual value.

For the actual value, I use three alternative measures, and I pick the highest of the three, to be conservative. The first measure presented here, the highest one, is $165 million based on SC&T's Share Price right after the Merger Vote on 17 July.

I also looked at the proceeds from Mason's sales of SC&T Shares, 148.5 million, and I also looked at SC&T and Cheil's aggregate Sum Of The Parts. So, just like I did for Sum Of The Parts in the but-for value for SC&T, I looked in the actual scenario there is a vote, the two companies will be together, and Mason will have a certain percentage of it, so I calculated that at the $147.5 million. Those two last ones are quite similar to each other, but again I picked the highest of the three.

And this valuation of SC--of Cheil that I did for this Sum Of The Parts in the actual scenario confirms the overvaluation of S--of Cheil in the market. That Sum Of The Parts is lower than its Market Capitalization, here on the bottom right, by $10.8 billion.

I will now look--comment on a few points by Professors Dow and Bae.

So, as I explained, the investors were well-aware of the expected value transfer. In other words, as a result SC&T's Stock Price before the Merger Vote reflected that expected value transfer that was locked in by Korea's Measures.

As a side note, the valuations in analyst reports are of course not comparable to my but-for Fair Market Value because those valuations in analyst reports are in the actual world where the expected value transfer was going to happen almost certainly, as expected by the market.

So, as a result, SC&T's Stock Price, here at bottom before the Merger Vote, is not a measure of SC&T's Fair Market Value but-for Korea's Measures.

Also related to that was reactions--the market reactions to key news, also consistent with expected value transfer. For example, I'll pick one date here, 11 June 2015, it was announced after-hours on 10 June that KCC was going to buy Shares, Treasury Shares, and that was understood by the market as a higher probability of the merger going through.

What happened? SC&T's Stock Price fell in a statistically significant way, meaning beyond normal noise that happens every day.

I will also comment, for example, on the Merger Announcement Date, the second row from the top, SC&T increased. Of course it increased. It went up to the Merger Ratio terms. That was not as bad as had been expected by the market, and Cheil naturally went up because the market recognized Cheil is starting a value transfer campaign. This is going to be great for Cheil's Shareholders.

Conversely, at the bottom, you see at the Merger Vote Date, the two companies start trading together, so they move in tandem after that, and the news that day was that the winning margin was so slim that the market thought, the investors thought, that value transfer campaign is in trouble. Shareholders are waking up, and so the prices fell 8 to 10 percent that day.

I'll also comment on the Holding Company Discount that's been argued here. First, it is inappropriate to apply it, as explained by Professor Wolfenzon. Also, we have a great comparable in the same group, Cheil. Cheil did not trade at a discount. And also after the Merger, several analysts did not apply a discount to--in their Sum Of The Parts valuation of the new company. They're not discounting a new company, why should there be a discount earlier? The discount is due to the value transfer.

It also did double discounting because my Sum Of The Parts is already based on Holding Companies. So, if there is a general holding company discount, it's already in my valuation. Remember, the comparables for my Sum Of The Parts are holding companies. Any such discount would already be there.

There was also some issues raised about liquidity concerns from the publicly traded holdings, that if SC&T wanted to sell them, they would be sold at a discount. There is no indication SC&P wanted to sell them, and they're valuable because there's control for those Shares so...

Also, SC&T's analysts' discounts are not applicable for my Sum Of The Parts, as I explained. They're not reduced by my adjustment for non-core businesses, my adjusted enterprise value to EBITDA; and so, whatever discounts they have, they're not applicable to my already depressed Sum Of The Parts.

Further, as I explained, their discounts are not in the but-for world. They're in the actual world where the vote was expected to pass.

Finally, there is a point about Korea's discounts, which is the notion that companies in Korea trade lower than in other countries, but all my comparable companies are Korean, and now Professor Dow agrees that it should not apply Korea discounts.

This concludes the SC&T analysis, and now I'll move on to the damages associated with SEC Shares.

And here is the framework. The framework similarly is looking at but-for sales proceeds minus actual sales proceeds from Mason's investment in SEC Shares. I believe it has been explained to you that Mason's investment thesis was disproven by the vote, so they decided to sell on that day. So I look at the actual sale proceeds, and I compare that to the actual scenario except for Korea's Measures that I assume caused Mason to sell its SEC Shares, and I assume that by instruction.

And how do I calculate the damages?

First, I look at what would have been the but-for sales proceeds. I'm told that those but-for sales proceeds would be based on Mason's internal valuation of SEC. I looked up that model, it sums parts. It lends--it ends up with a result at the bottom of KRW 1,895,699.

What I do next is I observed the model. It seemed reasonable to me in terms of structure. I looked at how it compared to analysts' price targets. It was quite close. It was just 8 per--and the median analyst price target was just 8 percent lower than that level, and there are examples here of several analysts above and below it.

And I looked at under this scenario that I was told to assume had Mason carried out its investment strategy it would have sold those Shares on the but-for date of 11 January 2017 when that price was reached.

So, the but-for still proceeds as shown here, are basically that price times the number of Shares, $139 million. This I can say that is conservative because it is--it is reasonable to think that the valuation of SEC's Shares in Mason's Model would have increased over time, so there would be a higher but-for price, higher proceeds, and it's also based on their valuation at the time. It isn't looking back now about what they would have wanted it to be.

So, here, on this table, I compared the actual sales proceeds of $84.4 million, and then I move forward to the sale, the but-for sale date, to be on the same date basis, to become $85.2 million, so that's the mitigation I applied to that--to those sales proceeds.

So, but-for value is there, and so the damages are $44.2 million.

Next, I comment very briefly on Mason's trading. As I understand, Mason had been--had a long-term position in SEC. Part of it was also obtained through investment through SC&T. There were times when they sold off Shares. I understand that was because they were optimizing those positions, and there were inflows and outflows from the Claimants' funds as investors enter and exit. The fact is that they got right back on it. So, if there's any missing of appreciation of Shares, it was missing those periods.

Note this chart on the right looks at number of Shares, not value.

And finally, we--I look at General Partner's Lost Incentive Allocation. At the request of counsel, I used the aforementioned results to build how much better the Cayman Fund's investment performance would have been but for Korea's Measures. So I provided Mason's CFO with essentially my measure of damages that I also explained from SC&T and SEC. He put it in his spreadsheets to see how much--how--he added back that--those damages as improved performance, and so he got what would have been the but-for performance of the Cayman Fund. So, from that, he gets what would have been the but-for Incentive Allocation, and the result is an additional .92 million of Incentive Allocation from incremental profit but-for Korea's Measures.

Professor Dow and I agree on the but-for scenario, the but-for scenario where the same investors who were in the Fund, who exited and entered are the same in the actual and in the but-for world; and, in that scenario, I find .92 million. If I were to assume that investors who exited the Fund due to Korea's Measures would have stayed, in the but-for world, which is an assumption I could have used, the Fund's assets would have been larger and there would be higher Incentive Allocation.

I note that I don't see any but-for scenario where former investors would receive profit allocations.

And so, we've looked at investment in SC&T Shares, SEC Shares, and Lost Incentive Allocation. And so to summarize, I have here overall damages. In the first column you have the numbers that you have seen throughout this presentation. Then I add--I use an interest rate of 5 percent per year compounded monthly, and I get the values with interest that are there on the right, 195.2 million from SC&T Shares, 54.5 million from SEC Shares, and 1.1 million in a General Partner's Lost Incentive Allocation.

And that concludes my presentation, which I hope it was helpful, and I'm happy to answer any questions.

Thank you.

PRESIDENT SACHS: Thank you very much, Dr. Duarte-Silva.

I'm told that David, our Court Reporter, has a small technical problem with his equipment. We need a few minutes for him to fix it, so we will have a short break, but please stay in the room.

(Pause.)

PRESIDENT SACHS: So, we can go to cross-examination.

Mr. Nyer, I suppose.

MR. NYER: Yes, thank you, Mr. Chairman.

CROSS-EXAMINATION

BY MR. NYER:

Q. Mr. Duarte-Silva, two preliminary matters. Good morning, first.

A. Good morning.

Q. I'm told that you have a cellphone leaning

on the screen in front of you so...
A. I don't.
Q. Okay, well maybe it was earlier for--
A. Yes.
Q. --time--
(Overlapping speakers.)
Q. And the second point is I think as a matter of fairness, I need to remind you that your--that the testimony is public, and the Transcript will be available on the website of the PCA in due course.
A. Thank you.
Q. So, with those preliminary items out of the way, could you please turn to Paragraph 11 of your First Expert Report.
And if FTI could set that up on the screen as well.
You set out your instructions in that paragraph, sir; is that right?
A. Yes.
Q. And I haven't seen a similar paragraph in your Second Expert Report. So is it fair for me to understand that your instructions stayed the same throughout your engagements in this matter?
A. I'll look at my Second Report.
(Pause.)

A. We'll look at my Second Report.
Q. Sure.
A. My Second Report indicates that I was to provide my comments on the opinions expressed by Professor James Dow and on Korea's Statement of Defense insofar as it relates to damages.
Q. Understood.
So, in addition to those instructions set out in your First Report, you were asked to comment on the evidence provided by Korea. Understood.
A. That's fair.
Q. Now, coming back to those instructions set out in Paragraph 11 of your First Report, you considered them carefully, didn't you?
A. I considered them carefully.
Q. And I assume that you discussed them with your instructing Party as well?
A. I believe--I don't remember the conversation, but I believe so. It's a fair assumption.
Q. You also made sure that you understood your instruction; right?
A. Yes.
Q. And you did follow your instructions to the best of your abilities; right?

A. Right.
Q. Because that's what you do as an expert? You get your instructions and you follow the instructions; right?
A. I try to do a good job, yes.
Q. Okay. So, let's look at your instructions.
And we start with the second one, Item B. You are instructed here to assess Mason's loss with respect to its investments in Shares in SEC caused by Korea's Measures.
Do you see that?
A. I do.
Q. And that's what you did; right?
A. Yes.
Q. You assessed Mason's loss?
A. Yes.
Q. Now, if you look at the second--at the first instruction, Item A, you see that?
It says: "I've been instructed to assess the loss in the Fair Market Value of Mason's investments in Shares in SC&T caused by Korea's Measures."
Do you see that?
A. Yes.
Q. And the formulation is different, isn't it?

A. You mean, the sentence is different?
Q. The formulation of your instruction with respect to SEC and SC&T is different, isn't it?
A. Yes.
Q. Because you're asked to do different things with respect to SEC and SC&T; right?
A. I followed different methods under different assumptions.
Q. And under different instructions?
A. I'll try--I don't know exactly what that question means, but I'll try to help you.
So, I assessed the loss in Fair Market Value of making an investment in Shares in SC&T caused by Korea's Measures, and for SEC I assessed Mason's loss according to certain instructions that are further detailed in the Report.
Q. Right.
That's--so, with respect to SC&T, you're not assessed--you're not asked to assess Mason's loss, are you? It's not what your instruction says here.
A. I don't really see the distinction. Maybe it's a lawyerly distinction? I mean, for an economist, it's not really different. Loss in Fair Market Value means investment or loss to Mason by loss of Fair Market Value--I don't see--really see much of

a difference.

Q. Right.

So, the instructions could have been phrased the same way, and you would have conducted the same analysis?

A. No.

Q. Let's look at the third instruction, Item C. You're asked here to calculate Mason's trading profits or loss associated with its investment in Shares of SC&T.

Do you see that?

A. Yes.

Q. Now, you explained later in your Report that a trading loss occurs when an entity sells Shares for lower value than the price it paid to purchase them earlier; is that correct?

A. Yes.

Q. And so you looked at how much Mason paid for its SC&T Shares, and you looked at how much Mason sold them for, and you calculated the difference?

A. Yes.

Q. And you calculated that Mason had incurred a trading loss of about $47.2 million?

A. I remember the number, but I can go take a look--I can't remember the number, but I can go back

and take a look.
Q. It's not that material at this stage.
Now, your evidence, sir, if I understand it, is that the trading loss that you've calculated with respect to SC&T is not an adequate measure of Mason's loss due to Korea's Measures; is that correct?
A. The trading loss does not compare the actual world with the but-for world. Therefore, it is not the Measure of the loss in the Fair Market Value of Mason's investments in Shares in SC&T caused by Korea's Measures.
Q. And it's not an adequate measure of Mason's loss. That's what you say in your Report. We could go back to that, if you want.
A. If you'd like, I mean, I can take a look.
Q. We can have a look at Paragraph 90--89 of your First Report.
And if FTI could show that on the screen as well.
A. Yes. This sentence is consistent with what I--with my description that the trading loss does not compare but-for with actual.
Q. Now, in your two Reports, you have not attempted to determine whether the trading loss incurred by Mason was caused by the Merger or caused

by other factors unrelated to the Merger. You have not done that?

A. My Report does not attribute whichever part of the trading loss is due to Korea's Measures.

Q. Now, you were not asked in your instruction--and if FTI could go back to Paragraph 11 of your First Report.

You were not asked as part of those instructions to calculate the trading profits or loss associated with Mason's investments in SC&T, were you?

A. I was. That's what it says here, Mason's trading loss in investment in SC&T.

Q. Sorry if I wasn't clear, sir. I may have misspoken.

You were not asked to do the same calculation with respect to SEC, Samsung Electronics?

A. I don't recall that I was. Probably not. I didn't do it, so yeah.

Q. You if had been instructed to perform that calculation, that would presumably be listed in your instructions, wouldn't it?

A. Presumably, yeah. I don't think I did that, no.

Q. And would it be fair to assume that your evidence would similarly be that any trading loss or

trading profits associated with Mason's Samsung Electronics Shares would not be an adequate measure of Mason's loss? Would your evidence be the same with respect to that?
A. I didn't think about that. I'd have to think about it.
Q. Is it fair, sir, that both of your loss assessments with respect to SC&T and with respect to Samsung Electronics, both of them assume that, but for Korea's alleged Measures, the Merger would not have happened?
A. Because of SC&T, it's not an assumption. It's--it's my conclusion based on economic evidence that, but for Korea's Measures, the vote would not have been successful. In the case of SEC, I was told to assume that, due to the vote passing, Mason found that its investment thesis had been disproven and therefore decided on to sell its Shares.
PRESIDENT SACHS: Could you speak up a little bit?
THE WITNESS: Of course, sure.
Would you like me to try to repeat that?
BY MR. NYER:
Q. And so, in the but-for world as regard Samsung Electronics, in the but-for world, the Merger

would not have happened, and Mason would have kept its Shares, it's investment thesis would not have been invalidated and would have kept its Shares. That was the instructions, I guess, or the assumptions you were told to accept?

A. I was told to assume that, but for Korea's Measures, Mason would have been able to implement its original investment strategy, but could not complete it because the Merger disproved Mason's investment thesis.

Q. So, going back to what you told us about SC&T, you explained it as a conclusion from your analysis that the Merger would not have happened, but for Korea's Measures. That's what you testified to a few minutes ago; right?

A. As I explained in my presentation, as an economist, I believe that, but for Korea's Measures, NPS should have voted No; and, therefore, the Merger would not have passed.

Q. And I think you explain in your Report something very similar, if you could turn to Paragraph 4 of your Second Report. And if FTI could put that on the screen as well.

And towards the middle of the paragraph, you explain that: "Contrary to Professor Dow's assertions, it would not have made economic sense for the NPS or SC&T's other Shareholders to vote in favor of the Merger."

Do you see that?

A. I do.

Q. It's a fact, sir, that majority of SC&T's Shareholders voted in favor of the Merger, isn't it?

A. In the actual world, the vote passed as more than 66.6 percent of the cast votes were "yes," including the [redacted] Family and various Samsung-affiliated companies' votes.

Q. I think you explain in your First Report, that 69.5 percent of the votes present had voted in favor of the Merger; right?

A. I don't recall the exact number.

Q. But you--it's Paragraph 22 of your First Report, but you can take me on representation for this.

You mention that those calculations included the [redacted] Family and various Samsung affiliated entities, you just mentioned that, right.

And I believe in your Second Report, you've calculated what the vote would have been without those affiliated--allegedly Samsung-affiliated entities, and you explain that approximately 50 percent of the votes cast--excluding the [redacted] Family, Samsung affiliates, KCC and the NPS--voted for the Merger. Does that sound about right? You said that at Paragraph 39 of your Second Report.

A. Yes. So--setting aside shares owned by [redacted] Family members, Samsung affiliated companies, KCC, and the NPS--the Yes votes were approximately 50 percent of the votes cast. So, about 50:50 between yes and not yes.

Q. Now, is your position, sir, that all those Shareholders who voted in favor of the Merger voted against their economic interest?

A. No. I'm saying that it should not make sense for SC&T's Shareholders to vote in favor of the Merger.

Now, if other people, say retail Shareholders, for example, common people like you and me that are not institutions, are swayed by persuasion or if, potentially, some or many of them might even have more Cheil Shares, so they want to vote for the Merger. Then, it would be in their economic interest as owners of more Cheil than SC&T to vote in favor of the Merger. There's no way I can get the data on that.

All I can say is that, for an SC&T

Shareholder, it would not make economic sense to vote for the Merger.

Q. And I think you would agree that the 50 percent of SC&T Shareholders who voted in favor of the Merger, voted in accordance with their economic interest.

A. As I just explained, there may--some of them may have been swayed by persuasion in the media, persuasion by personal visits, and some others might have more Cheil than SC&T. Therefore, it is in their economic interest to vote for the Merger.

Remember, if you have a higher percentage of Cheil's Shares than you have of SC&T's Shares, the vote favors you, so you would vote for the Merger.

Q. But your Statement, and your opinion in your Second Report, sir, which is highlighted on the screen here, is much more definitive than what you explain here. When you're saying here, it would not have made economic sense for the SC&T other Share--for SC&T's other Shareholders to vote in favor of the Merger. That's what you said.

A. I keep saying that it does not make sense for them to vote in favor of the Merger.

Q. Well, it--it's--it's--it's slightly more nuanced than this; right? Because you explain that, for Shareholders, whatever economic interest may be that made sense for them, to vote in favor of the Share--of the Merger.

A. I don't recall if I explained this nuance in my whole Report, but I can try to look, if you want.

Q. Well, that's what I got from your testimony this morning just now but...

Amongst those 50 percent Shareholders--well, sorry, 69.5 percent of Shareholders who voted in favor of the Merger, they were many sophisticated investors, weren't they, sir?

A. There were--sophisticated is a relative term. But yes, the--I will tell you that there were Institutional Shareholders that voted for it. Many of those were domestic Shareholders, meaning Korean institutions. There were also other foreign institutions, it's not for me to opine on what information they relied upon, but my Report shows the foreigners that voted Yes on the Merger, there are institutions there. I heard on the first day that they were given false information, but that's not for me as an economist to opine on--but yes, there will people that voted Yes. Do they have more Cheil than SC&T? I don't know. If they do, it would make sense for them to vote Yes.

Q. So--
A. So, that is not inconsistent with them for voting Yes.
Q. One of those foreign Shareholders you list in your Report is BlackRock; right, sir?
A. That's right.
Q. And BlackRock is a New York-based asset manager, isn't it?
A. I don't know where they're based.
PRESIDENT SACHS: Sorry?
THE WITNESS: I don't know where they are based.
BY MR. NYER:
Q. Up on Park Avenue, you never, like, walked passed the BlackRock tower on Park Avenue?
A. No, I don't know. I don't pay attention to that.
Q. And BlackRock is the world--the world's largest asset manager, isn't it?
A. They are the asset manager that has the most passive funds, so I think they've surpassed Vanguard now, in that they have index funds where they don't really do any active management.
Q. They manage about $10 trillion of assets; does that sound right?

A. I have no idea, sir.
Q. They're about, like, 10,000 times bigger than Mason, you know?
A. I don't know how many assets--I know they're very large. I don't know how many dollars they manage actively or passively. I can't answer that question.
But I'll tell you that they're one of the largest asset managers in the world.
Q. And they also had a larger holding in SC&T than Mason did; right?
A. I don't have that number in front of me. I will believe you.
Q. Well, I think you state that--well, I mean, we can go to Exhibit R-202, Page 22, please. And it's Page 22 of the document, not Page 22 of the PDF. That will be a few pages later.
Yeah. There we go.
I assume you're familiar with the document, sir? I'm sorry, I didn't ask you to confirm that, but you do reference it in your Report, it's the "NPS Investment Management Analysis Regarding the Merger," dated 10 July 2015.
A. I wrote my Report almost a year ago. I don't remember this document. I'll believe you.
Q. And do you see [redacted]

[redacted]?
A. Yes.
Q. And [redacted], according to this document?
A. No, what is this--what is this column up here? [redacted]?
Q. If FTI can show the top of the page. It's a [redacted].
A. Okay.
Q. Is it fair that, according to this document, [redacted]?
A. I think so.
Q. And [redacted]?
A. Yes.
Q. So [redacted]; right?
A. Based on this--[redacted], so this document suggests that, yes.
Q. Now, [redacted], and I think we see them here. Do

you see [redacted]?
     A.   Yep.
     Q.   And I think you explain in your Reports that GIC voted in favor of the Merger?
     A.   Yes.
     Q.   And GIC is the Government Singapore Investment Corporation?
     A.   Yes.
     Q.   That's their sovereign wealth fund; right? Was that a "yes," sir?
     A.   Yeah. They're an investment fund from Singapore.
     Q.   They have a sovereign wealth fund in Singapore?
     A.   Yes. They used to be my clients.
     Q.   Now, if we scroll down the page, we see also [redacted]?
     A.   Yes, I see that.
     Q.   And I think you refer to them in your Report as a foreign investor that voted in favor of the Merger?
     A.   I think that's SAMA, but I'm not sure right now.
     Q.   Yeah, I think the name may be--there may be a difference in the name, but that's the Saudi--in

your Report, you say Saudi--you confirm that the Saudi Arabian Central Bank, SAMA, voted in favor of the Merger?
A. Yeah.
Q. That's right?
A. Yes.
Q. And [redacted]; right?
A. ADIA, yeah.
Q. Did we get that on the Transcript?
REALTIME STENOGRAPHER: Yes.
BY MR. NYER:
Q. Now, presumably, sir, these sophisticated investors have Fiduciary Duties to their own investors?
A. Yes.
Q. They also have professional staff?
A. Yes, they have professional staff.
Q. They receive professional advice?
A. I don't know what exactly that means. They form their own opinions, if that's what you're saying.
Q. They hire people like you, I mean, you explain that GIC was your client. They hire people like you to provide them advice; right?

A. Yes, just like many other Shareholders.
Q. Yeah. And they all the voted in favor of the Merger; right?
A. No. Of the foreign Shareholders, there were about 33 percent of the Shareholders, only 7 percent voted Yes.
Q. Sorry, the ones--
A. And so, about four times more than these foreign Shareholders voted against the Merger.
Q. The ones we spoke about this morning--BlackRock, GIC of Singapore, the Saudi Arabia Central Bank, and the Abu Dhabi Investment Authority--all voted in favor of the Merger?
A. Those are the only foreign Institutional Investors I identified among the foreign investors that voted Yes. Like I was saying, among the foreign investors, four times more didn't vote Yes than these guys.
Q. And these guys, as you call them, all concluded that it was in their economic interest, in the interest of their investees to vote in favor of the Merger; right?
A. I don't know that.
Q. They also concluded that it is in accordance with their Fiduciary Duties to vote in favor of the

Merger; right?

A. Yes. I don't know what their incentives were. If they, for example, had more Cheil than SC&T, yes, their economic interest would be to vote in favor of the Merger.

Q. Let's focus on the NPS vote for a moment. I think your position as stated in your Report is that it would not have made economic sense for the NPS to vote in favor of the Merger because the Merger would have caused a Net Loss to the NPS across its holdings of SC&T and Cheil.

A. Because I don't have the Transcript in front of me, I would ask you to repeat that question.

Q. Of course. We actually can look at your Report, and I think it may be a fairer process.

A. Okay.

Q. Let's look at Paragraph 31 of your Second Report.

A. Yes.

What I mean by this is that, in contrast with the hypotheticals given here about some foreign investors like you listed like BlackRock and so on, my hypothetical in contrast, NPS had more SC&T percentage than Cheil, so it would make economic sense to not be in favor of the Merger.

Q. So, because it's a larger ownership in SC&T than in Cheil, NPS, in your opinion, would have been worse off with the Merger than without?

A. It would have been worse off with the Merger, it was worse off.

Q. Now, it has been noted by Korea in this Arbitration, Korea and Professor Dow, that the NPS had holdings in multiple other Samsung companies beyond Cheil and SC&T, but you disagree that this could have justified the Merger, do you?

A. I do. I do disagree with that. And I can explain why, if you want.

Q. If we can turn to Paragraph 38 of your Second Report and I'm looking at the second sentence. You say here that "Korea asserts without substantiation that since the NPS is a long-term investor with shareholdings in various Samsung Group companies outside of SC&T, that gave the NPS sufficient economic justification to approve the Merger."

Do you see that?

And then you explain that: "Neither Korea nor Professor Dow have provided any evidence or rationale as to why or how much the Merger Vote would have affected companies unrelated to it."

Do you see that?
A. I do.
Q. You said Korea has not provided any substantiation, but in this paragraph, you don't provide any substantiation for the reverse proposition; right? You don't provide substantiation for the proposition that the Merger would not have had a positive impact on other companies in the Samsung Group?
A. No, I don't because it doesn't make any sense to do that.
I mean, what this assertion by Korea implies is that the NPS should take a certain loss of more than $500 million up front in exchange for an uncertain gain in other companies in the group or that could actually be a loss. It doesn't make sense to do that, especially given that Cheil was going to start a value transfer campaign from other companies in the group.
So, voting yes, would only increase that pressure on other companies of the group.
Q. The point you make here in this paragraph, sir, is merely that Korea and Professor Dow have not shown a positive impact from the Merger on the other companies in the group; right? That's the point

you're making here.

A. I'm making the point that I haven't seen any evidence or rationale as to why or how much the Merger Vote would affect the companies unrelated to it.

Q. Right.

And you have not conducted your own analysis of the impact of the Merger Vote on the companies in the Samsung Group, have you?

A. I didn't need to because it is implied from what I did. And besides, there is no but-for that could be examined here. But it is implied from my analysis that Cheil was going to start the value transfer campaign across the group.

Q. I guess your answer to my question--

A. I was still answering, sorry. Can I finish?

Q. Sure. Go ahead.

A. Okay.

So, what that means is that part of the premium that Cheil had over its sum of the parts reflected that value transfer from other companies in the group that was going to happen. The Yes vote could not benefit the other companies. So, the other companies were depressed by that value transfer campaign. Voting No would only relieve them from that depression, so it makes economic sense that a No vote could increase the price of those companies.

Q. So, I guess the answer to my question is that you have not--yes, you have not conducted your own analysis of economic impact of the Merger on the companies in the Samsung Group, on the other companies in the Samsung Group; isn't that true, sir?

A. I gave you my answer, and my answer should be in the Transcript. The answer is that it is impossible to look at the but-for because--for the other companies in the group because that didn't happen. But based on economic logic and what I presented in my Report, it follows immediately that there would be no such benefit to other companies in the group.

And even if there were, it is--it would not be something that I think a fund manager would think, oh, yes, let's suffer $500 million now in exchange for perhaps gaining $500 million later, or maybe losing them again. It just doesn't make economic sense to me.

Q. Now, you're aware, sir, that the NPS did take into consideration the impact of the Merger on its other holdings in the Samsung Group? You're aware of that?

A. Yes, yes, I remember seeing a document about looking at other companies in the group.

Q. Right.

So, if we can turn back to Exhibit R-202. That's the NPS Investment Management Report from July 2015 that we just looked at a moment ago. And if we can go to Page 7 of the document--not of the PDF--of the document.

You see the page that is stating [redacted]? Do you see that?

A. I do.

Q. And then under [redacted]."

Do you see that?

A. Yes.

Q. And if we go to Page 8, to the next page, we see [redacted].

Do you see that?

A. Yes, I do.

Q. And then at the bottom of the page, if FTI can zoom out a little bit, we see [redacted]."

Do you see that?

A. I see that table.

Q. And do you understand this to be [redacted]?
A. I do.
Q. Now, the NPS, according to this list, [redacted]; right?
A. I will believe you. I didn't count them.
Q. Now, what is the stake of the NPS in Samsung Electronics?
A. [redacted]. I don't know exactly which one.
Q. Let's look at [redacted]. Is that, like, [redacted]?
A. [redacted]. I don't know what [redacted] and [redacted] means here. I don't remember.
Q. Right.
A. I read this more than a year ago. But I don't remember that right now.
Q. That's fine. We can use both. We can use both, either of those numbers. Let's use [redacted], so [redacted].

Do you see that?
A. Yeah.
Q. And that compares to [redacted]--right?--that's what we see [redacted].
A. That's right.
Q. So, [redacted]; right?
A. These numbers seem off. I mean, when I look at the percentage held at numbers that held SC&T, I don't think it was [redacted]. I may be wrong.
Q. Well, you rely on this document in your Report, sir, so I--
A. I thought the percentage was different, but regardless, to answer your question, yes, they have more in Samsung Electronics than SC&T.
Q. That is an order of magnitude more?
A. Yeah, it had more.
Q. An order of magnitude?
A. An order--you want me to tell you the order of magnitude? It's about 10 times.
Q. Okay. Now, if we go back to the top of this page--
A. Um-hmm.

Q. --the NPS Investment Management Division expressed an opinion as to [redacted].
Do you see that?
A. I do.
Q. And they explained that, [redacted]--that's the bolded underlined sentence at the top--[redacted].
Do you see that?
A. I see that.
Q. And rising Share Prices and growth--that's a good thing; right?
A. Rising Share Prices, yeah, they're good, yeah.
Q. Now, if we look at the next box, [redacted], the NPS Investment Management Division expressed its view as to [redacted], and this states, first sentence: "[redacted]."
Do you see that?

A. I do.
Q. And volatility is it a bad thing; right?
A. I mean, as long as the prices don't go down, it's okay, just endure it. But all else equal, I mean, I'd prefer to have less volatility, but that doesn't mean a loss, it will be neutral.
Q. It's added risk; right? It's added risk, the volatility?
A. Yes, according to these people in the Investment Committee, that would be the case.
Now, I don't know if we're talking about the but-for world here or if this document is with Korea's Measures, but maybe you can explain that to me, if you would like.
Q. Oh, this document is dated July 2015, so it's before the Merger Vote.
A. No, but I'm saying is this Document a reflection of Korea's Measures or not? I don't know that.
Q. I don't know that.
So, in this document, sir, the NPS Investment Management Division considers that [redacted], doesn't it?

A. That's what--I mean, what they're saying is [redacted].

Q. It looks like the NPS had a much broader perspective than solely its holding in SC&T and Cheil, didn't it?

A. They were looking at the overall Share Prices of the Samsung Group company. I disagree with what they did. I didn't see any such economic evidence other than these opinions; I did not see any economic evidence in Professor Dow's Report about the generality of the other group companies. And as I explained, it doesn't--it doesn't make sense to expect that the Share Prices of other companies would grow with a successful merger, I just explained it's uncertain, the Cheil Premium contradicts it, and if Stock Prices are sufficient like Professor Dow was defending, then I don't see why it would be any different in the short term or the long run. It reflect all information.

Q. If we look at Page 9, please, we see that this document considers [redacted] at large; is that correct?

A. That's what it says at the top. I'd have to

read to get a better context.
Q. If we look at Page 10. This document appears to consider [redacted] at large; is that correct?
A. Yes.
Q. We can remove the document. Thank you.
So, your opinion, if I understand it well, Dr. Duarte-Silva, is that, even before the Merger had been announced, SC&T was trading at the discount to its Fair Market Value; right?
A. Even before the Merger had been announced, it was already trading at the discount with Sum Of The Parts, yes.
Q. And it did so, in your opinion, because Minority Shareholders were concerned about potential value extraction in the Merger with Cheil?
A. Yes.
Q. And in your opinion, that is why the Share Price traded at the discount to SC&T at Fair Market Value, in your view; right?
A. Not just my opinion. Contemporary analysts confirm that.
Q. So, when Mason bought its Shares after the Merger Announcement, they were already trading at a discount to Fair Market Value, in your opinion; right?

A. Yes, they were.
Q. Now, upon the Merger Announcement, the SC&T Share Price went up substantially, didn't it?
A. As I explained, it mechanically should.
Because you see, the ratio of Stock Prices, the Share Price Ratio, had been coming down over time, and so because the Merger Ratio has to be based on an average, historical average, of those ratios of Share Prices, then algebraically--remember it was coming down--so, algebraically the average, had to be higher than the last one; therefore, the Merger Ratio has to be necessarily higher than the most recent Share Price Ratio. What that means is that, the offer terms, the Merger Ratio, had to be higher than the latest Share Price Ratio, and therefore SC&T's Share Price had to mechanically increase to mirror the terms of that proposed merger.
Q. So, we will come back to your interpretation, sir, in just a moment, but there were other interpretation of why the Share Price went up on the announcement of the Merger in 2015, weren't there?
A. Yes, their interpretation is based on synergies that I explained earlier.
Q. Let's turn to Exhibit R-345.
Are you familiar with the document, sir?

A. No, there are many documents. I may have seen it. I can read it now, if you want.

Q. It's an excerpt from a Korean news report. You can certainly read it, if you're not familiar with it.

If you look at the second paragraph in particular, the Report reports that a research analyst at NH Investment Securities analyzed that it seems that expectation that Samsung Group's corporate governance restructuring speedup and influenced the Market Price of the relevant company--

Do you see that?

A. I do, but I would like to see the Analyst Report. This is an expert--an excerpt of an excerpt.

Q. I appreciate that.

And do you see that the next sentence references another Analyst Report research also pointed out that "there would be positive effect on both companies if Cheil Industries and Samsung C&T embark on propelling their business efficiency through the Merger."

Do you see that?

And explain--

A. Oh, like propelling, for example, integrating overlapping businesses like fashion and power plant companies?

Q. And this analyst explains--concludes and commented that "this could have led a spike in the Market Price."

Do you see that?

A. This integrating overlapping businesses--I mean, there is even a ridiculous example of fashion and power plant companies that don't make any sense.

Second is, to be able to comment on this, I have to read the Analyst Reports which you're not showing me. I would like to see them to be able to answer this question.

Q. Let's turn to your interpretation of the spike in the Market Price on the day of the Merger Announcement.

If you turn to Paragraph 81 of your Second Report, you explain there that it was due to--it was because the market was positively surprised that the Merger terms were not as bad as anticipated.

A. That's the mechanics of what I just explained, Share Price Ratios were going down and the Merger Ratio being not mechanically not as bad as the most recent Share Price Ratio; therefore, the Stock Price of SC&T mechanically went up to the Merger Ratio terms. It was not as bad.

Q. So, I think what you explain is that the Share Price aligned with the Merger Ratio?
A. I don't understand, can you repeat, please?
Q. Are you explaining or suggesting that the Share Price aligned with the terms, the proposed terms of the Merger, with the Merger Ratio?
A. They are close to it, yes.
Q. So, the Market Price to one share of SC&T with a view that it would be converted at some point to .35 share of Cheil? Is that what happened?
A. It got close to it.
Q. Right.
And so, is your point that, in effect, the merger terms were merely priced in the Market Price?
A. For SC&T, SC&T's Share Price adjusted up to get close to the Merger terms.
Q. So, the Merger terms were priced in the SC&T Share Price?
A. The Merger terms and the likelihood of the Merger succeeding were priced in.
Q. And that happened immediately upon the Merger Announcement?
A. I don't have the numbers in front of me, but I believe so.
Q. So, Mason bought its Shares in SC&T about 10

days after the Merger Announcement; right?
A. But after the Merger Announcement.
Q. It started buying on the 4th and 5th of June; right?
A. I don't recall the specific dates.
Q. You can take my representation for that.
And by then, the Merger terms had been priced in the Market Price; right?
A. As I explained, the Merger terms and the likelihood of the Merger passing had been priced in together.
Q. So, when the Merger happened, Mason got exactly what it had paid for, didn't it?
A. When the Merger happened, Mason--
Q. It was important to convert each one of its SC&T Shares for 0.35 Cheil Shares; didn't it?
A. Could you repeat the question, please?
Q. When the Merger happened, Mason got exactly what it had paid for?
A. No. It had paid a different price.
I don't understand your question.
Q. Mason--
A. Exactly what it paid for? I don't understand.
Q. Mason had bought Shares that reflected the

fact that they would be converted to 0.35 Cheil Shares; right?

A. Again, it bought Shares at a certain price that reflected the Merger terms or the Merger Ratio and the likelihood of the Merger passing. That is a completely different question from looking at what would have been obtained but for Korea's Measures.

Q. I follow you on this, but when the Merger happened, Mason got the opportunity to convert each one of its SC&T Shares into 0.35 Share of Cheil, didn't it?

A. When the Merger Vote passed, the Stock Prices of SC&T and Cheil reflected the certainty of the Merger having passed and the respective Merger terms or Merger Ratio. In that sense, Mason's SC&T Shares reflected that same certainty that the Merger had passed; and, therefore, the conversion ratio or the Merger Ratio.

MR. NYER: Mr. Chairman, I'm ready to continue. I appreciate that we are due to break in 15 minutes. I can continue. It would be a natural break in my cross-examination, but I'm already in your hands as to--

PRESIDENT SACHS: No, no, let's stick by the time scheduled, 15 more minutes.

MR. NYER: Okay. Yes, sir.
BY MR. NYER:
Q. So, you explained, Dr. Duarte-Silva, that you had prepared a Sum Of The Parts valuation of SC&T. You explained that this morning.
And you explained that the Sum Of The Part or SOTP is a widely used methodology to value companies; right?
A. I did.
Q. And you explained that in your Report and you repeated that this morning, that SOTP was followed by virtually all analysts of SC&T at the time?
A. Yes.
Q. And by analysts of SC&T, you mean the people in the Equity Research Department of investment banks that follow the stock on a regular basis?
A. Yes. I used to be one of those as well.
Q. Now, I have seen references in the record to both SOTP and to NAV, Net Asset Value. Am I correct to understand that the NAV, the Net Asset Value, is the result of your SOTP methodology?
A. I view those terms as equivalent. I would have to look specifically at each Analyst Report before I tell you that those are two equivalent terms because some people might do NAVs after taking out Net

Debt and others not, so it depends really on the details --
Q. Right.
A. --if any.
Q. And I appreciate you're being cautious, but generally those terms are equivalent?
A. Generally. I would have to look at specifics.
Q. Now, if you could turn to your First Report, Table 4 at Page 19. I think you set out here the result of your SOTP valuation, don't you?
A. I presented the results of my SOTP valuation this morning.
Q. And they're also set out here in this table, aren't they?
A. That's right.
Q. And so, if I understand correctly, you calculated separately the value of the SC&T Core, that's the core construction trading business? You valued that separately? And then you valued separately the value of SC&T's listed holdings, its holdings in listed companies? And then you valued separately SC&T's holdings in private companies; right? That's the three buckets that you looked at?
A. That's right.

Q. And so, for SC&T Core, you've used an EBITDA multiple derived from comparables?
A. That's right.
Q. And you used data as of July 2015?
A. Yes. Those multiples are of the Valuation Date, that is the Merger Vote Date.
Q. Right.
Now, for the publicly traded piece, so that's the second piece on this table that you value at $10.72 billion, you used the Market Price as of 17th July 2015?
A. Yes.
Q. Now, for the privately held holdings, and it's a much smaller part of your valuation, you've used with the exception of Samsung Biologics--and we will come back to that--but other privately held holdings, you used the value that SC&T at the time in its public report was giving to those holdings in private companies; right?
A. Yes, those are Book Values, and that's consistent with how analysts are valuing it as well.
Q. But you used the Financial Statements as of June 2015 to determine that?
A. I did.
Q. Now, for Biologics, I understand that you

did something a little bit different. You looked at the price, Market Price of Biologics when it listed in 2016, in November 2016, and then you indexed that back to the Valuation Date; right? That's roughly what you did?

A. That's right.

Q. Right.

Now, your valuation of Biologics is $.28 billion, so it's really immaterial compared to your overall SOTP; right?

A. It's smaller than other parts.

Q. It's about 1.5 percent of your total?

A. I'll believe you on that calculation.

Q. You have a calculator next to you, if you want to confirm that.

A. I'd rather not.

Q. So, it is a very small part of your SOTP valuation?

A. Yes, it is a small part of the SOTP valuation.

Q. Now, except for Biologics, where you used the Market Price when it listed in 2016, did you make any use of hindsight in your valuation?

A. Well, your question is compounded, but I will help you out. Calculating Samsung Biologics, I didn't really use hindsight. I used what would be the best approximation of Market Value. Like I said, it doesn't matter that much because it's a small part.

For SC&T Core, I used contemporaneous market multiples and expectation of EBITDA. For publicly traded holdings I used contemporaneous Market Values. For privately held holdings I used the latest value--latest Book Value of those privately held companies.

Q. Right.

So, what you're explaining your valuation is based on information that was available to the market at the time; right?

A. No.

Q. Well, except for Biologics, which part of your valuation was not based on information that was available at the time?

A. Well, to calculate the but-for value, I'm calculating the Intrinsic Value of these Shares, okay? So, for SC&T Core, I believe I should use contemporaneous numbers, so, contemporaneous multiples, contemporaneous expectations of EBITDA known at the time, yes.

For publicly traded holdings, also known at the time. I used the Stock Prices at the time. For privately held holdings, I used the latest Book Value of holdings of those holdings as of June. So, were they known at the time--were they not known at the time, what matters is what was that Book Value at the time to calculate the Intrinsic Value.

And actually, if I had used an earlier number, my results would have been higher damages.

Q. Your result would have been higher damages if you had used a higher--an earlier number, okay.

A. Yeah.

Q. So?

A. Choosing the Intrinsic Value of those privately held holdings as of June 2015 is more conservative than if I had looked at what was the Book Value of those holdings known at the time.

Q. So, then in that case, analysts and market participants on 17 July 2015 could have performed a very similar valuation that you did for purpose of this Arbitration, didn't you? Isn't that correct?

A. It's fair to say that, yes.

Q. But they did not, sir, did they?

A. Of course not. They were living in the actual world, not in the but-for world.

Remember that the vote was widely expected to pass. Widely expected. Actually, the small--the slim winning margin was a big surprise to the market, so why would analysts be valuing the stock in a but-for world? They don't do that. They're in the business of trying to predict where the Stock Price is going, not what it could have been but for Korea's Measures that weren't even known at the time.

Q. Let's turn to Professor Dow's First Report at Page 94, please, and we will be looking at Figure 23.

A. Could you repeat the page number, please?

Q. Sure. 94, nine-four.

A. I see it.

Figure 23?

Q. 23.

A. Yes.

Q. And you're familiar with that figure, sir?

A. Yes. I remember that figure, yes.

Q. It was in Professor Dow's First Report to which you replied in your Second Report; right?

A. Yeah.

Q. And you didn't comment on that figure in your work, Second Report?

A. I don't remember if I did or not.

Q. Now, in that figure, Professor Dow has plotted the valuation of analysts at the time and plotted your valuation; right? And shows that your valuation is much higher than that of the analysts; right?

A. That's what this figure shows. Right now I don't remember, but I believe I found Analyst Reports that were not reflected here, but again--I mean, my answer is the same: They're looking at the actual world, not at but-for, so this is apples and oranges.

Q. You told us literally all of the analysts at the time were using the SOTP valuation--right?--and it seems that the analysts, at least if this graph is to be trusted, the analysts came to fairly wildly diverging conclusions as to the valuation of SC&T at the time using the SOTP methodology; right?

A. Diverging from what?

Q. As between one another. Right? Their valuations are in between 60,000, I think it's per millions of Korean wons, to 110. That's a fairly wide variation as between their own valuation between the analysts'--not your valuation, the analysts'.

A. Reading this chart?

Q. Yes.

A. That's what it shows, but I actually--I mean, I need to check this, but it's actually quite bizarre that all the analysts' targets seem to be clustered around the same date, but they're issuing it through time. So, I don't understand this--what analysis was done here.

Q. Right.

A. Regardless, yes, there are differences of opinion. And I can also tell you that the analysts are trying to explain the target--the actual Market Price.

Q. Right.

But this difference of opinion, sir, goes to the point that an SOTP valuation is necessarily subjective, isn't it?

A. I think what you mean is a valuation is subjective. There is nothing about SOTP. SOTP is just I value each part, and I just do a plus sign on them and add them up. There is nothing magical about SOTP.

Q. But you told us that virtually all of the analysts use the SOTP approach, and their results are widely divergent, according to this chart.

I mean, you have to agree there is a degree of subjectivity in the SOTP analysis; right?

A. There is a degree of subjectivity in a valuation.

Q. Right.

A. There is nothing again magical about SOTP. You're just adding stuff up.

Q. Right.

And your valuation, sir, just happens to be much higher than all the other valuations that were conducted at the time; right?

A. Again, it's apples and oranges, I was doing a but-for valuation. You're asking me to compare to valuations in the actual world where the Merger was expected to pass and that value transfer to be realized, so this figure is just apples and oranges.

Q. Thank you, sir.

Mr. Chairman, I think it would be a good time to break, if that's agreeable.

PRESIDENT SACHS: Let's have a break now and resume at 10:30, please.

(Brief recess.)

MR. NYER: If FTI could put back up on the screen the figure that we were--from the Dow First Report that we were looking at before the break, Page 94 of Dow First Report.

BY MR. NYER:

Q. Now, your valuation, sir, as of July 2015 is about double the Market Price, isn't it?

A. As of July 17, 2015, yes, considerably higher, yes. That's a but-for valuation, not the actual valuation.

Q. I appreciate that.

And I understand that essentially in your opinion SC&T then traded at a 50 percent discount to its Fair Market Value as reflected by your SOTP valuation; right?

A. That's approximately right. Due to the expected value transfer it would be trading below, yes.

Q. Now, an explanation for the discounts, and I assume you're going to disagree with me--but an explanation for that discount could be just that your SOTP valuation is overstated, couldn't it?

A. Could be, but it's not.

Q. If your SOTP valuation were overstated, then the Market Price would be shown to be trading at a discount to your SOTP valuation; right?

A. Mine and everybody else. These analysts had SOTPs, yes.

Q. Your explanation for the discount--and we went through that briefly this morning--is that the Market Price--the market was depressed because it anticipated a merger with Cheil; right?

A. The market anticipated a value transfer that

became locked in by Korea's Measures.
Q. Now, is your opinion, sir, that this was the sole reason for the entire observed discounts to the SOTP valuation?
A. Yes.
Q. And your position, sir, is that this entire discount would have disappeared had the Merger been rejected; right?
A. Had the Merger been rejected, the threat of value transfer would be gone; and, therefore, the price would go up to its Sum Of The Parts, or its Intrinsic Value.
Q. The entire discount would have disappeared; right?
A. Yes, that's what I said.
Q. Because you calculate damages as the difference between your SOTP valuation and the Market Price, don't you?
A. I calculate damages as a difference between the but-for value, which is its Intrinsic Value, and an actual value for which I had three scenarios, one of which, the highest, that I picked, was the actual price on July 2015. There were other measures of actual value, that I conservatively chose not to take.
Q. Now, isn't it true, sir, that a discount to

the SOTP Value of SC&T had been observed by analysts for a very long time?

A. For a long time, there had been discounts and also premiums on SOTP of SC&T, and of course we have Cheil as well, which was a Premium. I don't know if your question was just about the SC&T.

Q. SC&T only.

A. Okay.

Q. Historically SC&T was trading at a discount to its SOTP valuation; right?

A. You're asking the same question, so I will give you the same answer. So there--SC&T had been trading at a discount and sometimes at a premium in the past.

Q. Let's look at one of the Analyst Reports that you cite in your Reports. If you could turn to Exhibit CRA-48.

If FTI could put that on the screen as well.

Are you familiar with reports from Samsung Securities, sir?

A. I have seen this report before.

Q. Right.

It's one of the three Analyst Reports that you cite in support of your statement that the price was affected by the rumor of the Merger; right?

A. I don't recall in which paragraph, but if you point me to it, I'll just take a look.
Q. Paragraph 49 in your First Report.
A. I see it.
Q. Para 49, the First Report, second sentence: "For example, in January 2015, Samsung Securities noted that Shares plunged again last week. We attribute the recent pullback to...rumors of a merger with Cheil Industries, which listed on December 18, 2014."
Do you see that?
A. Yes. Yes, I do.
Q. So, let's go back to the Reports, CRA-48, the Analyst Report, and just go back to the exhibit.
Now, I think you--what you quote in your Report is in the first paragraph of that Analyst Report, and the third sentence with: We attribute the recent pullback to--
A. Um-hmm.
Q. --fresh concerns over the Roy Hill Project, the possibility of provisioning for the Saudi Qurayyah IPP project, and three, rumors of the merger with Cheil Industries, which listed on December 18, 2014.
Now, in the quote in your Report that we just saw, you left out the first and second reason for

the pullback; right?
A. That's right.
Q. Yeah. You included an ellipses--
A. Yes.
Q. --instead of words.
A. Right.
Q. Now, if you follow me to--further into that first paragraph, the analyst explains that: We believe the Shares will rebound after the SC&T announced its results. And we advise investors to take this opportunity to go bottom fishing."
Do you see that?
A. I do.
Q. Noting that, two: "The Shares are greatly undervalued, trading at a 30.3 percent discount to NAV"--Net Asset Value--"comparable to the 35.3 percent discount to NAV at which they traded at the end of 2013."
Do you see that?
A. I do.
Q. Now, the end of 2013, sir, that's--sorry.
If the discount in January 2015 is less than it was at the end of 2013, that means that the discount was observed at the end of 2013; right?
A. I don't understand the question, but I will

tell you that this says that this analyst's SOTP valuation, which is not comparable to mine because of the method that I explained, shows a 33.3 percent discount to NAV at year-end 2013.

Q. And the end of 2013, that's before any rumor about the possible Merger between Cheil and SC&T existed; sir, right?

A. I can't say that for sure. I can tell you that succession concerns started a long time ago. Now, that would be impounding on - that expected value transfer would be impounding on.

Q. We will come back to this.

At the end of 2013, sir, that's but before the IPO of Cheil had even been announced in May 2014, isn't it? That's a very simple question.

A. I just didn't catch everything. If you can repeat.

Q. The end of 2013, that's before the IPO of Cheil had been announced in May 2014; right?

A. Yes, that's right.

Q. You said that concern about the succession had existed for some time, and I think you did mention something about this in your presentation this morning. You did mention something at Slide 9 of your presentation. You explained that succession concern

commenced before the Cheil IPO; right?
A. That's right.
Q. Now, the only--the only sources that you cite here on this slide are what I think are Analyst Reports from 2014; right?
A. Yes. They're from 2014, yes.
Q. Right.
Those are the only sources you cite for the existence of succession concerns affecting the Market Price; right?
A. These are the only sources I cite in this slide.
Q. That's right.
A. But are you asking me if these are the only sources I ever cited about succession concerns? Then my answer is "no."
Q. Now, would you agree with me that, in your Second Report, you explain that the discounts had been observed since the Cheil IPO? That's what you stated in your Report.
A. I don't believe--if I did, I don't believe I meant from the date of the Cheil IPO. What I think I meant was at least since then, but we can go to the specific paragraph, if you want, but those concerns have existed for a long time, not just when Cheil IPO,

as I explained in this presentation this morning.
     Q.   Let's go to Paragraph 6 of your First Report.
          Sorry, Paragraph 6 of your Second Report. I apologize.
          And if FTI could put that up on the screen.
          You explain midway through that paragraph--let me know when you're ready.
     A.   I'm there.
     Q.   You explained midway through that paragraph, and I think it's on Page 6: "For this reason, since the Cheil IPO SC&T's investors have been concerned about the potential value extraction to Cheil that such an acquisition would enable"--and then you conclude: "Therefore, the traded Shares, with that understanding in mind, at the discount to their Fair Market Value." Right? That was the time--
          (Overlapping speakers.)
     A.   --(unclear) Yes.
     Q.   That was the timeline you considered in your Second Report.
     A.   That is what I said. I don't know exactly what you mean by that timeline I considered. What I mean, those concerns have obviously existed for a long time. I mean, even here on the screen you have a

quote--or it just got taken out, but you had a quote from May 2014, well before the IPO, so those succession concerns had been existing for a long time.

Q. Now, would those succession--would a merger with Cheil have affected the price of SC&T even before Cheil was its own company?

A. Would you repeat the question, please.

Q. Would the merger with Cheil have affected the price of SC&T even before Cheil was a publicly listed company?

Before there was a prospect of a merger between Cheil and SC&T, would a merger between Cheil and SC&T have weighted down on the price of SC&T?

A. Before it was even announced?

Q. Before it was even possible.

A. Possible? It had been possible for a long time, even before Cheil was public.

As I explained in our presentation, it was widely expected.

Q. Now if you turn to--if you could please turn to Exhibit DOW-25. It's an expert exhibit to Mr. Dow--Professor Dow's Expert Report.

Do you see here an Analyst Report from UBS?

A. May I see the full Analyst Report, please?

Q. Sure. You have an iPad in front of you.

You should have an iPad in front of you to access the entire--

A. Is this it?

Q. I think that would be it, right.

A. Looks like a speaker. Is this an iPad?

Many wires here.

(Pause.)

Q. Do you have the document in front of you?

A. No.

Q. So, maybe you can read the start with the Analyst Report on the screen, shown by FTI.

A. Okay.

Q. I'm specifically interested in the second paragraph: "Higher discount needed to value Group stake held by SC&T."

Do you see that?

And the analyst here explains that "historically SC&T has traded at an average 31 percent discount to NAV (excluding 2007-08)." Do you see that?

A. Yes, I see it.

But I'd still like to see the full report.

Q. Sure.

A. Can that be shown to me?

What I mean by that, I'm not trying to be

difficult.
     Q.   No, no, no.
     A.   I'm just saying (unclear)--
          (Overlapping speakers.)
     Q.   I appreciate it.
     A.   --the summary from the first page, I'd like to see where that conclusion comes from.
     Q.   Maybe we can proceed with the line of questions, and I'll give you a chance to review the entire report, if you want to clarify any of your answers.
          PRESIDENT SACHS: Could you just remind us of the date of this Report?
          MR. NYER: Of course. April 27, 2015.
          PRESIDENT SACHS: Thank you.
          BY MR. NYER:
     Q.   Now I want to focus on the use of the word "historically" here.
          (Overlapping speakers.)
          MR. PAPE: Can I just check that the Witness has the full document?
          THE WITNESS: I don't. All I have is the screen of FTI.
          MR. PAPE: I understand that FTI is trying to bring it up. I suggest that we wait until the

Witness has it before we proceed with these questions.

MR. NYER: I'm happy to wait.

(Pause.)

BY MR. NYER:

Q. We will provide you with our own copy.

A. You have it in print?

Q. Yes. We will provide you a copy.

A. I have it here now. Thank you.

How do I zoom out from this? Oh, I just click here--

Q. Yeah.

(Pause.)

A. Would you like to ask me questions now or ask me to review it and then ask me the questions?

Q. I'm going to ask you a question now, and you'd be able to review it as we go. I think we need to progress a bit.

Now, UBS, in that paragraph, again states that historically, SC&T has traded at an average of 31 percent discount to NAV.

Now, "historically" means in the past; right?

A. Yes. It's a historic average that has wide dispersion. That's Figure 2 of the same report show that it had been trading at a premium before.

Q. So you wouldn't use the word "historically" to refer to something that happened just a few months earlier; right?
A. It could be, but what matters is not what I would say "historical." What matters is what this person would say "historically."
Q. Right.
In fact, this person makes clear that his time horizon is in years; right?
A. Yes, but you don't have to do that. You can look at Figure 2. That shows the discount over time, and your average shows that it's a widely varying discount that at times was actually a premium.
Q. The analyst at UBS excludes from his statements the period 2007 to 2008, so his conclusion is that a discount existed before 2007; right? That's a fair conclusion.
A. We don't have to do that. I mean, we don't have to infer it. You can just look at Figure 2. All the numbers are there.
Q. Surely, you discount in 2006, sir, was not due to the anticipation of the Merger with Cheil in 2015, was it?
A. I haven't analyzed that, but I don't know if there were succession concerns back then.

Q. Historical discounts, sir, can't have been related to the Merger of Cheil; right?
A. Excuse me?
Q. The historical discounts that is observed in SC&T cannot have been related to the Merger with Cheil; right?
A. I don't see why not. The Merger with Cheil is a manifestation of the succession concerns while trying to keep control of the key assets of the group that would require acquiring SC&T at a discount.
Now, if you're asking me, in 2006-2007, I don't think anybody on this case examined the causes of that discount back then.
Q. Right.
If the discount back then was not due to the Merger, there is no reason to assume that that discount, historical discount, would have disappeared if the Merger had been rejected; right?
A. 2006-2007 is ancient history. I don't see why it could be relevant here. We should be looking at close to the Valuation Date.
Now, if you're telling me when did the succession concern start? I don't know if they were as early as 2006-2007. I can't tell you. I know they were earlier. I mean, it's a fact of life, people get

older, succession concerns start, so it--that doesn't have to be a date where the group announces that there will be succession concerns, and actually it's something that was prevalent amongst chaebols and many other mergers in Korea at the time between chaebols or motivated by succession concerns. That was fresh in investors' minds.

Q. Is your evidence, sir, that it is implausible that any other factor may have contributed to the discounts that has been observed?

A. Yes, of course, for various reasons. Like I explained. Professor Wolfenzon will testify to that. You don't have to look far. Look at Cheil. Cheil was trading at a premium. If discounts are so prevalent, why was Cheil trading at premium? Look at Figure 2 of this Report. It shows premiums that time. Why--you're looking at the average, but there--sometimes there are premiums, so looking at an average discount of 31 percent is completely uninformative as to what we deduct for a discount.

Q. You cannot conceive of a single reason why a discount to NAV may have existed absent the Merger.

A. I just explained, and the answer is no.

Q. Okay. So, I'd like to speak about your valuation of SC&T's holdings in publicly traded

companies, and if we can--
A. Can I just move this a little bit?
Q. Of course.
If FTI can pull up on the screen the Table 3 at Page 16 of your First Report.
Do you have Table 3 in front of you?
A. First Report?
Q. First Report, Page 16.
A. Yes, I see it.
Q. So, we see here your valuation of SC&T's holdings in variously publicly traded companies; right?
A. Yes.
Q. And, as I think we've established earlier, you've used the Market Price as of July 2017--2015, sorry--as of 17 July 2015, to make that determination.
A. That's right.
Q. And you used the undiscounted Market Price; right?
A. Undiscounted--I don't know what the discount could there be, but yes, I used the Market Price.
Q. Okay. Now, SC&T, we see that they have the holding--the 3.51 percent holding in Samsung Electronics, which you valued at the Market Price at $6.79 billion; right? Do you see that?

A. That's right.
Q. And they also have a holding of--17.08 percent holding in Samsung SDS, which you valued at $3.24 million.
Do you see that?
A. I do.
Q. Now, those are--those two holdings present the bulk of your valuation, and your total valuation of the holdings is $10.72 million--billion dollars; right?
A. That's right.
Q. Now, SC&T acquired its holdings in those publicly traded companies for much less than $10.72 billion, didn't it?
A. I believe that's true, although I don't have that for a fact.
Q. Well--
A. I believe that's true.
Q. Yeah. And I think we can establish it. If you turn to--FTI, if you could keep this on the screen and then put side-by-side Exhibit DOW-2 at Page 62, Exhibit DOW-2 at Page 62, and we will be looking at SC&T Annual Reports for 2014.
Do you see that?
A. I do.

Q. 62 of the document, not 62 of the PDF, please.
And you see here, a list of the list of equities held by SC&T.
Do you see that?
A. Yes.
Q. And we see here, the holding in Samsung Electronics, the same 3.51 percent percentage ownership.
Do you see that?
A. Yes.
Q. And we see also the holding in Samsung SDS, with the same 17.08 percent percentage ownership.
Do you see that?
A. Yes, I do.
Q. Now, that document, the financials provide the acquisition costs of those several holdings; right?
A. Yes.
Q. Do you see that?
The total acquisition costs for all those holdings is, in Korean wons--so I'm probably going to get this wrong--but I think it's KRW 875 billion; right?
How much is that in U.S. dollars, sir?

A. I don't know.
Q. Well, assuming an exchange rate of one U.S. dollar for 1,100 Korean wons, can you make the calculation?
A. I'd rather not, but I will take your indication of what that number is.
Q. Well, that number would be $.77 billion.
A. Okay.
Q. So, SEC acquired its list of the holdings for $.77 billion, and as of the Valuation Date, in July 2015, its listed holdings were worth $10.72 billion; right?
A. That's what these documents show.
Q. Now, if SC&T were to sell its listed holdings, it would realize almost $10 billion in capital gains?
A. If--I believe so, yes, if it were to sell them. I don't see any indication they want to sell them.
Q. Now, in your experience, sir, capital gains are taxed by governments across the world?
A. Yes.
Q. In Korea just as here in the U.S.; right?
A. Yes.
Q. So, SC&T would have had to pay tax on those

$10 billion of capital gains; right?
A. If it sold them, I think so. I'm no tax expert. You have to ask tax expert--
Q. Right.
A. --but that would be my--my non-tax expert guess.
Q. I'm not a tax expert either. The capital gain tax in the U.S., long term, is about, what, 20 percent?
A. Yes.
Q. And again, I mean, I don't presume that you are a tax expert in Korea, but let's say that the tax rates on capital gains in Korea is about 24 percent.
What liability, tax liability, would SC&T face from having to pay tax on the $10 billion of capital gains in Korea? Assume that the tax rate is 24 percent.
A. It'd be 24 percent of that difference between the acquisition costs and the Market Value of holdings, again with the caveat that I don't fully understand the capital gains rules and regulations in Korea.
Q. And that would be how much in capital gains, assuming 24 percent?
A. I don't know. I'd have to calculate it.

Q. $2.4 billion?
A. Perhaps.
Q. Now, $2.4 billion, that's a huge contingent liability, isn't it?
A. It's--like you said, it's contingent, contingent on selling those. Is it huge? I would say yeah, it's large, yes.
Q. It's 15 percent of your SOTP valuation; right?
A. About.
Q. Now--
A. I don't know the number. I'd have to calculate it.
Q. Is your position, sir, that market participants, who were valuing SC&T at the time, would not have reflected that huge liability when valuing SC&T's listed holdings?
A. There is no reason for market participants to think that SC&T was going to sell those holdings. They had never said they were going to sell.
And actually, they were holding them for control.
So, I mean--you--I mean, to be--to be--to give you a more complete answer, I have seen Analyst Reports doing that, like, saying there's a--there

should be discount for that. But what they're actually doing, and it is common, is they're trying to get from their Sum Of The Parts to the actual Market Price, and they will--what you will see is across Analyst Reports, they'll come up with different explanations that don't match each other, don't make sense like this one. They're just trying to get to the Market Price because they're in the business of recommending buys and sells of the actual Market Price, not but for.

But again to answer more precisely your question, there's n--there is no indication they were going to sell these, so there is no reason to put a discount on capital gains on selling these holdings.

Q. So, at a theoretical level, sir, is your evidence that the market would price in exactly the same way a vehicle that holds $11 million of listed holdings with no capital gain liability associated with it, and a vehicle that holds the same--exact same portfolio of listed holdings but with a huge liability for capital gains? Is your evidence that the market would value them at exactly the same value?

A. No. If there was a huge liability for capital gains it would be lower, but there's no such huge liability for capital gains because they're not trying to sell them. So yeah, they'd be different but SC&T would be the former, not the latter.

Q. Assume that as of today, there is no plan to sell them, would the market value the company with the huge contingent capital gain liability the same as a company with no such contingent liability? That's your evidence?

A. Yes. It's also the evidence of how people value companies--let's forget about Korean chaebols. I value a company that has holdings in other companies. You don't value them with a contingent liability. You just value the parts. You value how much it was, how much it's worth. You don't put in, oh, but if they sell it sometime in the future, then there will be a liability. Nobody does that because there's no point to sell them. And besides, there could be other corporate restructurings that could lead to transferring control. I don't know. But it would be--it's not--there was no plan to sell. There was no indication there'd be a sale.

Q. So, I mean, you said that's how people value companies, but you just explained that some--you've seen some Analyst Reports where people are applying discounts for the potential tax liabilities. You just don't disagree with them, but you've seen some people

do that?
     A.   I do. They're trying their best to try to get to the actual Market Price and the fact is they expected a value transfer, so...
     Q.   Now, let me think about another potential reason for a discount.
          Think about the exact same company holding, you know, investments in listed companies, chaired and managed by Warren Buffet. And think about the exact same company chaired and managed by Donald Trump. Would the markets give those two companies the exact same value, sir?
     A.   I don't know which side of the aisle this crowd here leans, so. I believe management of a company is important.
     Q.   And it would be reflected in its valuation; right?
     A.   Can you--I'm not sure that I understand with the hypothetical you're putting before me. Are you talking about the company that's just holdings in other companies and nothing else?
     Q.   Yes.
          Could management of such a company--
          (overlapping speakers.)
     Q.   --result in premium or a discount?

A. There's no management if all they have is holdings in other companies.

Q. Well--

A. If all they have is a basket of stocks, there's no management going on.

Q. Well, I think they can decide how they're going to use their listed holdings, they were going to use them for succession purposes or other--other reasons; right? There is management. You--have to decide how you exercise your Shareholder Rights. There's always management.

So, think about the company with Warren Buffet at the top, a company with Donald Trump. Would those companies be valued the same way?

A. You're almost saying, like, they're a mutual fund, all they have is stocks in other companies and you buy and sell them. They don't really manage them. They buy and sell them. Is that what you're saying? They would be worth the same. They would be worth the same. All you have is a basket of stocks.

And actually, we're doing here a hypothetical. What the fact is, you can just look after the Merger. You don't have to go look at hypotheticals with Berkshire Hathaway or the Trump organization or corporation. You can just look at this very same company, you can see, even if you don't believe there is an expected value transfer, Cheil is trading a huge premium, I would like to see how you explain that you don't have a holding-company discount. And further, after the Merger, there was no holding-company discount. I showed that in my Report, so you don't have to look at comparables. Look at this company. After the Merger, no holding-company discount, and that's in my blue and green chart. You start going down the Net Premium between the two or the total premium of the merged firms is about zero.

So, if you're saying there is a liability for a contingent liability, then that wouldn't make any sense. That the Net Premium would be zero.

Q. Now, as I think we established, you did not apply--in valuing SC&T's listed holdings, you used Market Price, you did not discount the Market Price by any factor; right?

A. Yes, of course.

Q. Okay. If we could turn to Exhibit DOW-25. You should see an UBS Analyst Report, and I think we've seen it earlier. That's the UBS Analyst Report from 27th April 2015.

And if you follow me to Page 7, you'll see here what's called a price target derivation, and figure 10, Samsung C&T SOTP, Samsung C&T Sum Of The Parts. That's what the analyst was doing; right? Yes?

A. Yes.

Q. Now, this analyst did not value SC&T's holdings in Samsung Electronics and other Samsung companies at the Market Price; right? It started from the Market Price, and then applied a 50 percent discount to the Market Price; right?

A. That's right. They're trying their best. They're living in the actual world. Remember, they're not in the but-for world. They're trying their best to show a Stock Price that makes sense to show a fundamental valuation that makes sense with the current Market Price without saying there is an expected value transfer.

Q. Now, you've reviewed other UBS Analyst Reports that apply a similar discount to listed holdings; right?

A. I don't remember.

Q. With the 30 percent discount, you have seen those reports?

A. I don't know if the UBS Reports generally apply such a discount nor the--or whether they explain it. But I--

Q. You've seen other reports applying a similar discount; right?
A. I have seen reports, like I explained, applying discounts to try to get closer to the Market price. They're living in the actual world.
Q. There are dozens of reports in the Record of this Arbitration that applied discounts to the listed holdings of SC&T; right?
A. As I said, yes, they're all in the actual world.
Q. Now, I think you referenced, during your presentation, sir, that your valuation of SC&T was in line with the valuation prepared by ISS? You did mention that?
A. Yes, I said it was similar.
Q. "Similar."
A. Yes.
Q. And ISS, sir, is a proxy advisory firm; right?
A. Yeah, I think it's the largest or most followed in the world.
Q. And what they do is that they make recommendation on how Institutional Investors may want to vote on specific corporate events?
A. Yes.

Q. They're not market analysts; right? ISS?
A. They don't--they aren't in the business of recommending stocks to investors and in return getting brokerage fees. They're independent, they provide their own opinions and they don't get brokerage fees from trading.
Q. Now, they're not following the stock day in and day out; right? They're not market analysts as you were when you worked for an investment bank in Lisbon; right?
A. They're--they're not--I don't know if they're following the stocks. I have no indication, no--I don't think so, but I--don't quote me on that.
Q. Now, the parties to a disputed merger would try to convince proxy advisory firms like ISS; right?
A. I don't know the answer to that.
Q. They would approach them to convince them of the validity of their views on the Merger; right?
A. I don't know that for sure. I think so, but I can't tell you for sure. I mean, I don't--I don't know.
Q. That's why we speak of those events as "proxy fights"; right?
A. No, that's not why. I mean, proxy fights are fights for the votes. I don't understand proxy

fights as fighting for the--
Q. The recommendations--
A. --of ISS.
Q. Not fighting--the recommendation of the people who are going to recommend on how you should exercise your votes; right?
A. I don't know the answer to that.
Q. Now, ISS is exactly the type of firm that any management would have tried to convince to support its vote against the Merger; right?
A. I don't know the answer to that.
Q. Are you aware, sir, that Mason approached ISS before ISS issued the Report that you referenced during your Opening Presentation this morning?
A. I don't remember having seen that.
Q. Let's turn to Exhibit C-125, please.
And we looked at this e-mail earlier this week with Mr. Garschina. If we can start from the bottom of the e-mail, we can--well, actually, we can start one e-mail above.
Mr. Garschina, on June 7, 2015, writing to Emilio Gomez-Villalva asking--trying to get gist of Elliott's letter to the NPS.
Do you see that?
A. I do.

Q. Should we go public? Who can we count as No votes?
Do you see that?
A. I do.
Q. Okay. And then, Mr. Garschina continues to ask questions about how other Shareholders are going to vote, what the NPS is going to do.
Do you see that?
A. I do.
Q. Now, you should follow me to the response by Mr. Emilio Gomez-Villalva. You see that Mr. Gomez replies here: "I asked or asked for letter," which presumably refers to Elliott's letter to the NPS.
Do you see that?
A. Yes.
Q. And then "Justin and I talking tomorrow to ISS."
Do you see that?
A. Yes.
Q. Now, is it plausible, sir, that Elliott, too, spoke with ISS?
A. It's possible. I have no idea if it did or not. I have no idea what they said, so...
Q. Now--
ARBITRATOR GLOSTER: Mr. Nyer, I don't

understand what the relevance is of this Expert's speculation as to whether or not ISS communicated with Mason.

MR. NYER: That's a fair point, Dame Gloster. I will move away from this.

ARBITRATOR GLOSTER: Thank you.

BY MR. NYER:

Q. Dr. Duarte-Silva, I mean, you are aware that ISS' valuation and recommendation was criticized at the time and that its valuation was criticized as hugely optimistic at the time. You're aware of that?

A. I don't recall right now but I wouldn't be surprised by people saying it's optimistic or pessimistic. Everyone has their own opinion.

Q. Now, let's turn to Exhibit DOW-53.

And you'll see here, an article from a Korean business paper about the Samsung proxy fight rages before Friday vote.

Are you familiar with that document, sir?

A. I may have seen it before. I don't remember.

Q. Go to Page 4 of that document.

And the middle--towards the middle of the page, the Report explains that Hana Daetoo Securities also said that ISS overestimated the Enterprise Value

of Samsung C&T when making its argument about the firm's undervaluation.
Do you see that?
A. Yes. I can read that.
Q. And, of course, ISS was hugely optimistic about Samsung's C&T Enterprise Value.
Do you see that?
A. I do but, I mean, to comment on this, I have to see the Analyst Report. I don't know how Hana Daetoo Securities was valuing it.
Q. Let's see what people were saying about ISS. If you go to--further down, that--one paragraph down, some interested parties also complained that ISS didn't take into account that Samsung C&T is not only heavily discount--it is not the only heavily discounted listed company in Korea.
Do you see that?
A. Yes. It's talking about the Korea discount that both sides here agree is not at issue here.
Q. Right.
A. Because all of my companies are Korean.
Q. And then about--
(Overlapping speakers.)
Q. Four or five paragraphs down, experts and scholars alike question the credibility of proxy

advisors like ISS.
Do you see that?
A. I can read that.
Q. Yeah. So, isn't it fair, at least on the face of that document, that there were question raised about the role played by ISS in this proxy fight that was playing out in the Samsung Group?
A. That's what this document says, that people disagree. Some people disagree.
Again, I'd have to look at the basis for this analysis. I'm here as an economist, but if you just want me to read documents, I'm happy to do so.
Q. Well, I think it's a fair line of questions, sir, because you did rely this morning on the ISS valuation as being consistent.
A. Not at all, no. I indicated that it was similar. I did not at all rely on the ISS valuation. I performed my own valuation and showed it was near Mason's valuation, near ISS's valuation, below KB Investment's valuation. But my opinion is my opinion. I don't rely on ISS at all.
Q. Let's turn to Samsung Electronics and your assessment of the--Mason's loss associated with Samsung Electronics.
A. Okay.

Q. It is not your opinion that Samsung Electronics was trading at a discount to its Fair Market Value in the summer of 2015, is it?
A. I have no such opinion.
Q. In fact, you used Samsung Electronics' Market Price in valuing SC&T's stake in Samsung Electronics, as we have just seen; right?
A. I did, yeah.
Q. And you do that because you accept that the Electronics Market Price was reliable--(a) reliable in particular of the value of Samsung Electronics shown by the aggregate opinion of Stock Market investors based on information available to them; right?
A. If the SEC valuation would be higher like Mason believed at the time, my Sum Of The Parts would have been higher and damages would have been higher, so I didn't do that.
Q. Right.
You haven't seen any evidence that Samsung Electronics' Fair Market Value was different than its Market Price; right?
A. I was never asked to look into that, I never looked. I don't know if it was higher or lower. I took the Market Price.
Q. Well, you did accept the Market Price in

your valuation, so you must have found some opinion as to whether the Market Price of Samsung Electronics was a reliable indicator of value?

A. It's more like I had no reason to believe without investigating it that it should be higher or lower, so I just used the market value.

I didn't look into that. I just assumed, used the Market Price.

Q. So, Mason received the Fair Market Value for its Electronics Shares when it sold them in July and August 2015, didn't it?

A. Sold the Shares and got the Market Price, yes.

Q. And you have no reason to think that the Market Price wasn't the Fair Market Value at the time; right?

A. I didn't look into that at all.

Q. Now, you calculate Mason's loss associated with Electronics by comparing the actual proceeds that were earned by Mason when it sold its Shares in August 2015, and what you say are the but-for proceeds that Mason would have earned if it had held its Shares all the way through January 11th, 2017; right?

A. That's right.

Q. And you pick 11 January 2017 because that is when the Samsung Electronics Market Price reached Mason's price target; right?

A. 11 January 2017 is the date when SEC's Share Price reached the level in Mason's internal valuation of SEC before the Merger Vote.

Q. Now, you conclude, based on that analysis, that had Mason sold its Shares in January 2017 it would have made an extra $44.2 million; right?

A. $44.2 million is the difference between the but-for proceeds in January 2017 and the actual proceeds of 2015 moved forward to the same date to January 2017.

Q. Now, instead of--your conclusion is based on the fact that, instead of selling its Shares for about $85 million in 2017--2015, Mason would have sold them for almost $130 million in 2017; right?

A. Would you repeat the question, please?

Q. Well, I guess we can look at Paragraph--

A. I got lost with your words. If you want to repeat, I can try again.

Q. You wouldn't be the first one.

We can look at Paragraph 198 of your Second Report.

A. I'm there.

Q. And, here, 198, and we're actually looking at the table, Table 10, which is just above that paragraph.

So, what you're doing here, you're calculating the sales proceeds as of 2015, that's $84.4 million; right?

A. That's right.

Q. And then you compare that to what the proceeds would have been in January 2017, that's about $130 million; right?

A. Yes.

I mean, the next table over moved the 84.4 to January 2017.

Q. Right.

A. As a form of mitigation.

Q. It's only--

(Overlapping speakers.)

A. So, that's the appropriate comparison.

Q. Right.

A. Then the next table would be an appropriate comparison.

Q. It's only about $800,000, so I won't fuss about that.

A. Yes, yes.

Q. Now, the Market Price in Samsung Electronics increased by about 50 percent during that period--right?--between July-August 2015 and January 2017.

A. About right.

Q. That's a substantial return; right?

A. It's a return consistent with Mason's internal valuation, Analyst Reports at that time. Yes, it's substantial, yes.

Q. You're an economist; right?

A. Yes.

Q. And from an economic perspective, the return on a share or of a security is compensation for the Investment risk taken by the Investor, isn't it?

A. The expected return or the required return compensates for risk on an ex ante basis, but the realization doesn't have to have been commensurate with that risk. You may get lucky or you may get unlucky. So you could have a stock that wasn't very risky, and you would expect--I don't expect a very high return because below risk but actually gives you a high return or vice versa.

Q. And the risk that we're speaking about here is the risk that your capital would be lost in part or in full--right?--that's your risk.

A. Well, the risk is really systematic risk, and it is symmetrical up or down. So, on an ex ante basis, the risk that you care about is a systematic risk, meaning the risk of covariation with the market.

Q. Right. The higher the risk of loss, the higher the potential return; right?

A. The higher the required return.

Q. Now, was Mason exposed to any investment risk with respect to its Shares in Samsung Electronics after it sold them in 2015?

A. No, and that's why in the actual world I use those sales proceeds and I move them forward to the Valuation Date of--sorry.

To the date of January 2017 at the cash rate commensurate with low risk.

Q. The Risk-Free Rate you used to make the adjustment?

A. Yes, like a cash rate, very low.

So, that actual world sale proceeds should be moved forward at the rate commensurate with cash.

Q. Was the Risk-Free Rate of Return anywhere close to 50 percent during that period, sir?

A. No, not at all.

Q. Now, if you could turn to Paragraph 196 of your Second Report. And you say in your first sentence: "As I explained in my previous report, I assumed that Mason would have held its Electronics

Shares until the Share Price matched its price target for those Shares."

Do you see that?

A. That's right.

Q. And as we discussed, the Share Price reached that price target on January 11, 2017?

A. Yes.

Q. Now, I mean, your assessment of loss would be invalidated if that assumption proved to be incorrect; right?

A. My assessment of loss is based on this assumption. If you could take out the assumption, I would have other assumptions. My opinion is based on this assumption.

Q. Now, did you make that assumption on instructions from counsel?

A. Yes, that was an assumption I was asked to make.

Q. Now, I'm asking you, it's not listed in your instructions that we looked at initially. Paragraph 11 of your First Report.

A. I would have to look through the whole report, but I can tell you that was the case. I was asked to assume that.

Q. Did you make any inquiries to ensure that

that instruction was reasonable?
A. I remember asking would they have--would Mason have held its Shares, and I was told yes, that is reasonable. Assume that.
Q. So, you did make inquiries to insure that in fact Mason would have been able to hold on to the Shares through January 2017?
A. Yes. I was told they would have been able to and planned to hold--
Q. --sorry.
A. --until then, until it reached the target.
Q. Now, I think you explain in your Report, in your Second Report--I don't propose to take you there immediately at least--you explained that, between July 2015, at least the time of the Merger Vote and when Mason started selling its Shares in Electronics, and January 2017, approximately 389 investors withdrew some or all of the capital from the Mason Fund. Do you remember expressing that--
A. I remember investors left, many investors left. I don't know if it was 300 or so.
Q. Well, it's what you say at Paragraph 213 of your Second Report, if you want to refresh your memory.
A. Okay.

Q. Now, what you're referring to here are investors leaving, it's what is known as redemptions; right?
A. Yes. They withdrew some or all of their capital, some or all, not some--for some they didn't withdrew completely.
Q. Now, in practice, how does a hedge fund typically fund redemptions?
A. By selling Shares, so in the actual world they had to sell Shares, the actual with Korea's Measures.
Q. Right.
Now, to fund redemptions, you sell Shares, you liquidate positions and then use the cash to pay your investors--
A. If you don't have cash on the sidelines, you have to do that, yes.
Q. Now, your position in this Arbitration is that, and I'm quoting Paragraph 214 of your Second Report, you say that there is no evidence that the investors left because of Mason's losses on its SC&T and SEC investments. So, your position is that in the but-for world the Investors still would have left the Mason Fund; right?
A. Let me read a few paragraphs above, please.

(Witness reviews document.)
A. I want to make sure we are talking about the framework for the Incentive Allocation, not about the SEC damages now; is that right?
Q. No, no, we were looking at what you said in that context; right? The position you took in that context.
A. Yes, I say Professor Dow has not offered any evidence that the Investors left because of Mason's losses on its SC&T and SEC investments. I read that in Professor Dow's opinion.
Q. Right.
And so, there is no evidence that in the but-for world--there is no evidence that the Investors left because of Mason's loss in SC&T and SEC investments; right? So your position is that in the but-for world too, those Investors would still have left the Fund; right?
A. When I compute the Incentive Allocation, both I and Professor Dow assume that the investors that were in the Fund in the actual world post the Korea Measures or left or stayed or got in, are the same as in the but-for world. We make that simplifying assumption.
I did offer another assumption, which was

that in the but-for world there would have been more investors, meaning the but-for world would have more investors, AUM will be higher than in the actual world, and that led to damages from Incentive Allocation that were naturally higher the higher with a higher AUM, and the damages were 2.2 million instead of .9 million, and nevertheless I present .9 million.

Q. Now, the 389 investors who withdrew from the Mason Fund between July 2015 and January 2017 that you reference in your Report, that was the bulk of Mason's investors; right? How many--

A. On that size, I don't know what "bulk" means, but it was a significant number of investors, yes, let's say that.

Q. How many investors are left in the Mason Fund today?

A. I don't know the answer to that. I would have to look.

Q. Let's turn to Professor Dow's First Report, Table 12 at Page 107.

A. I see it.

Q. You're familiar with that table in Professor Dow's First Report?

A. Yes. Table 12.

Are we in Dow's First Report?

Q. We are.
And Professor Dow lists here the number of investors from 2015 to 2019. Do you see that?
A. Dollars?
Q. The number of investors.
A. Oh, "accounts," yes. Yes, I see that.
Q. And the assets under management from 2015 to 2019; right?
A. Yes.
Q. And the amount of redemptions, in that amount of redemptions?
A. Yes.
Q. As of January 1st, according to this table, as of January 1st, 2015, Mason had 510 investors; right?
A. Yes.
Q. And as of January 2017, Mason had 89 investors left; right?
A. Yes.
Q. And the Assets Under Management had decreased from $5.4 billion to about a billion dollars; right?
A. Yes.
Q. And Mason had to repay about $4 billion of redemptions--right?--during that period.

A. About.
Q. Now, to pay almost $4 billion in redemptions, 4/5ths of its fund, Mason would have had to sell positions; right?
A. I imagine. I don't know that for a fact, but it seems reasonable to infer that.
Q. Now, sitting here today, you're not able to tell us, Mr. Duarte-Silva, that Mason would not have been required to liquidate its Samsung Electronics Holding to fund these redemptions; right?
A. One second.
The actual proceeds were $84 million; right? 485. It's a lot less than the AUM that you see here, so it doesn't follow that it would have to sell its SEC Shares. It's possible. I'll tell you that. It's possible.
Q. In that two-year period they needed to find $4 billion; right?
A. No, but I'm saying they still have like a billion 48 million, so they don't have to sell the SEC Shares.
Q. And they--
A. Also, this is the actual world, this is not the but-for world. So you are asking me what would happen in the but-for world. But-for world, without

Korea's Measures, that's not this chart, that's not this table, and you're asking me to go look at the but-for proceeds by looking at what actually happened with the sales due to Korea's Measures.

Q. Have you done any analysis to confirm that--to satisfy yourself that the Investors, the 389 investors who withdrew from the Fund between 2015 and 2017, did so because of the trade on Samsung Electronics--on SC&T and Samsung Electronics?

A. That's not--that's a fact question that goes beyond my expertise. One would have to look at the flow of funds. One looks--and it was an analysis that wasn't done here. I will highlight, however, that you're again looking at confounding but-for and actual. This is an actual. What's on the screen is an actual with Korea's Measures, and you're asking me to consider if in the but-for world they would have been able to hold those Shares until January 2017. It's apples and oranges again.

Q. I would submit that that fact is hugely relevant to the instructions that you accepted that Mason would have kept its Shares in Samsung Electronics through January 2017, but I think we can leave it at that.

Now, as we discussed, you assumed that Mason

would have kept its Shares through January 2017.
Now, following the Merger Vote, Mason sold its Shares--right?--in the actual world. I think we established that.
A. You're talking about the SEC?
Q. We're speaking about the Electronics, sorry.
A. After the vote, they sold their Shares, yeah, that's my table, you see the formula.
Q. And they received $84 million after selling those Shares; right?
A. That's right.
Q. Now, if Mason had kept its Electronics Shares through January 2017, Mason would not have received $84 million from selling those Shares in August 2015; right?
A. If they had held the Shares until 2017, they wouldn't have sold them in 2015 and, therefore, they wouldn't have gotten the proceeds in 2015.
Q. Because the $84 million would have been tied up in the Shares; right?
A. I don't know what "tied up" means. If you don't sell shares, you don't get proceeds for them.
Q. So, in the but-for world, Mason would not have had the $84 million available to it in August 2015; right?

A. It would be in the value of the Shares--they might have 84 million elsewhere, other Shares, cash on the sidelines. I don't know that.

Q. We are in the but-for world. In the but-for world, the $85 million would not be in cash in Mason's bank account. They would be in the Shares in Samsung Electronics through January 2017; right?

A. I agree with that. I just want to make sure that in that same but-for world there's other value in other Shares, there might be cash on the sidelines equivalent to 84 million which it's possible.

Q. Now, in your two reports in this Arbitration, sir, you have not considered what Mason did with the $84 million in proceeds it received in August 2015; right? You haven't considered that?

A. You mean what actually happened to them?

Q. Yeah.

A. Well, cash is fungible; right? So, where did those $84 million go, all those dollar bills, if you could count them, where did they go? It's mixed with all the other funds; right? You can't track those 84 million, and those 84 million were put in that other stock. You just don't do that. Everything is fungible.

So, what I did was I grabbed those

84 million and I put a cash rate on it, which is reasonable.

Q. I would disagree with the notion that cash is fungible when you have to repay $4 billion, but knowing what Mason actually did with the $84 million is not relevant to your instruction to assess Mason's loss with respect to its investment in Shares in SC&T caused by Korea's Measures. That wasn't relevant at all. That's your position?

A. Well, you're starting from the premise that I think is incorrect that the fungibility of the cash is at dispute. I mean, cash is fungible.

But what I will tell you is this: I have grabbed the 84 million, I put the cash rate on it until--until the but-for date, so everything is on the same return basis.

But I also did--I mean, "back of the envelope," I don't have it in my Report but I put it in my presentation now--what I did was I looked at this AUM over time; right? Going down. And I said those 84 million. If they're on an average basis and for simplicity the actual AUM, so about 75 percent of that cash is out the door with all these redemptions; right? So there's only 25 percent of those 84 million. And then I looked at how much the Fund returned in that time period. I grabbed Professor Dow's, in his Second Report, he has--let me get it. I'll tell you where it is.

But I can give you the details, but essentially I looked at the performance, and it was about 2 or 3 percent a year. So, it was even lower than the cash rate. But in simple terms, I got 84, three quarters are out the door with redemptions, so there is only one-quarter to apply the Fund's returns to. When I do that, I actually end up with less than my cash rate.

Q. Right.

That's an analysis that you conducted between Monday this week and today sitting for your testimony; right?

A. It's the first time I heard of the mitigation argument of SEC explained clearly, so I explained how my mitigation was, and it was conservative based on the analysis I had done before.

Q. And your analysis assumes at least part of the $85 million in proceeds went to repaying redemptions in the Funds; right?

A. Yes.

Q. Yeah.

A. But I mean, I stand by my mitigation

analysis. It's just like a sideline comment. I think the mitigation argument should be that you apply a cash rate to cash proceeds.

Q. Last line of questions. We're getting to the end.

A. If I could just finish my other question, cash proceeds is using a cash rate. I don't think I need to look at how much the Fund actually returned or how it would have expected to return because, on a risk-adjusted basis, those expected returns should be similar to cash.

Q. Now, Mason's stated investment thesis for both SC&T and Samsung Electronics was to wait for SC&T and Samsung Electronics' share price to reflect their fundamental value and then to sell at that point; right?

And we can go to Mr. Garschina's report--Statement, if you want, if that helps you.

A. Investment of SEC is relevant to my Report when I calculate damages to SEC, from SEC Shares. The SC&T damages are calculated based on what would be the but-for Fair Market Value and the actual Fair Market Value.

Q. Right.

So, let's have a look at Mr. Garschina's

Third Statement, and we will look at--we look at Paragraph 15 and 16. And 15 concerns Electronics, 16 concerns SC&T, sorry.

In 15, Mr. Garschina explains that: "Our plan was to monitor developments at Samsung and the Share Prices of Samsung Electronics and its affiliates closely over time. Once Samsung Electronics' fundamental value, as estimated conservatively in Emilio's model, was unlocked and reflected in the share price, our investment strategy would have been achieved. At that point, we would have been happy with the price, and I would have made the decision to exit the Investment."

Do you see that?

A. Yes.

Q. In 16, the immediate following paragraph, Mr. Garschina explains: "The same investment strategy underpinned our investment in SC&T."

Do you see that?

A. Yes.

Q. Now, to realize its investment thesis, Mason would have had to sell its Shares at some point; right?

A. They would realize the returns on the sale of the share.

Q. Right.
Now, I think you would agree that a Stock Sale typically is a taxable event; right?
A. Yes, if there is a gain, I think they have to pay taxes on it.
Q. Now, in your opinion, Mason would have realized a profit on its sales of SC&T and SEC Shares; right?
A. But for Korea's Measures there would have been a profit in both sets of Shares.
Q. So, in both instances, Mason would have been liable to pay taxes to realize its investment thesis; right?
A. You're asking me stuff that is beyond my expertise, but I can tell as almost like a layman, I think so.
Q. Does your analysis factor in the taxes that Mason's--the tax liability that Mason would have faced on either SC&T or Samsung Electronics?
A. I don't know if there would be a tax liability.
Q. You have not accounted for--
A. I didn't account for any tax liability. I don't know that there is one or there isn't. It's beyond my expertise.

Q. So, your damages are calculated on a pre-tax basis; right?
A. Yes.
On a post-tax basis, I don't know how much they would be, whether they would be the same or lower. I don't know.
Q. Okay. Thank you very much.
A. Thank you.
PRESIDENT SACHS: I turn to the Claimant. Are there questions?
MR. PAPE: No re-examination. Thank you.
PRESIDENT SACHS: Thank you very much.
I turn to my two colleagues. Do you have questions to Dr. Duarte-Silva?
ARBITRATOR MAYER: I don't. Thank you.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR GLOSTER: I've got a couple, and they're just by way of aiding my comprehension.
First of all, if you go to Exhibit 25 to Mr. Dow's Report, which was a UBS Analyst Report. If FTI could put it up on the screen, I would be grateful.
Could you tell me, and maybe you can't tell from the document, but you see there a bit further down the page that, in that last paragraph, they come

up with a Sum Of The Parts price, and my question for you arising out of the cross-examination as to whether or not potential capital gains tax would be included in an SOTP valuation, can you tell, looking at that, whether UBS have included potential gains tax in their SOTP target? Or is it impossible to tell?

THE WITNESS: I will read this paragraph now and I will inform you in a minute.

(witness reviews document.)

THE WITNESS: This paragraph shows discounts without explaining the reason.

ARBITRATOR GLOSTER: Yeah.

THE WITNESS: So, I don't know if it is--

ARBITRATOR GLOSTER: You can't tell. I mean, I can't tell. But I just wondered as the economist whether you could tell me whether they'd included it.

THE WITNESS: There are discounts here that are not explained.

ARBITRATOR GLOSTER: Yes.

THE WITNESS: My opinion is they are trying to get close to the actual--the world in which the Merger is likely.

Presenting a price valuation that is so much higher than the current valuation would not be helpful to their clients, to their investors, where a merger was widely expected to pass.

ARBITRATOR GLOSTER: Yes. Thank you.

And my other question is, could you look at Page 45 of your presentation.

REALTIME STENOGRAPHER: Can you repeat the number?

ARBITRATOR GLOSTER: Yes, Page 45 of Mr. Duarte-Silva's presentation this morning.

THE WITNESS: I am there.

ARBITRATOR GLOSTER: It's to do with your methodology. And again, I would be helped by your comments.

You see that you calculate the but-for price as at 11 January 2017, on the basis that that's the date when Mason would have sold in the but-for world when the Shares would have reached their internal valuation. I just would; like to understand why you think it's not appropriate to do the but-for--to calculate the but-for price as at the sale date when, if you like, the loss was crystallized when the Shares were sold? So, in other words, if you did it the end of July and the beginning of August 2015, presumably it would be possible to come up with a but-for price then.

I don't think you have come up with that price, but tell me if you have. But why is it not appropriate to calculate the but-for price as at 6 August 2015 when the position was closed?

THE WITNESS: Dame Gloster, I valued the but-for sales proceeds based on when that internal valuation would have been reached.

ARBITRATOR GLOSTER: Yes, I know that. What I'm trying to understand is the rationale for doing that.

THE WITNESS: Well, the simplest rationale is that it would be hard for me to assume that in 2015 those Shares could be sold for $129 million because nobody was buying them at that level back then, so assuming that the but-for price of SEC would have been the internal valuation of SEC by Mason, would seem to me overly aggressive, and I chose not to do so.

So, the actual price to but-for.

ARBITRATOR GLOSTER: But would you have been able to calculate a but-for price as at 6 August 2015, on the assumptions that the deal hadn't--the merger hadn't gone through?

THE WITNESS: That would require me valuing SEC on my own and assessing what that but-for value would have been. If the--but for Korea's Measures. I

did not do that. I was never asked to do that.
ARBITRATOR GLOSTER: Okay. Thank you very much. That's very helpful.
THE WITNESS: Of course.
PRESIDENT SACHS: Yes, actually I had the same question and the second question that Dame Elizabeth put.
So, you're not saying in the but-for world in August 2015 the Share Price for SEC would have been the one that was reached in January 2017. That's not what you're saying. You're saying I took the target price, and then checked when exactly that was reached.
THE WITNESS: Your description is correct.
PRESIDENT SACHS: Okay. Understood. Thank you.
So, your testimony now has come to an end. You are released as an expert witness, but I presume you will stay in the room during the testimony of Professor Dow?
THE WITNESS: I may, yes.
PRESIDENT SACHS: Was this part of the--it could be helpful if the Tribunal has questions--
THE WITNESS: Of course, I will be here then.
PRESIDENT SACHS: --to put to you after

having heard Professor Dow.

So, thank you very much.

(Witness steps down.)

PRESIDENT SACHS: We will have our lunch break now for 45 minutes, meaning at 12:45.

(Whereupon, at 12:00 p.m. (EDT), the Hearing was adjourned until 12:45 p.m. (EDT) the same day.)

AFTERNOON SESSION

PROFESSOR JAMES DOW, RESPONDENT'S WITNESS, CALLED

PRESIDENT SACHS: So, everybody is now back, and we can give the floor to Professor Dow. Okay, would you please invite Professor Dow to come to see us.

So, good afternoon, Professor Dow.

THE WITNESS: Good afternoon, Mr. President.

PRESIDENT SACHS: And you are here as an expert witness. I guess it's not the first time you're appearing before an arbitral tribunal.

THE WITNESS: I have done it before.

PRESIDENT SACHS: So in front of you is a Declaration. Please read the Declaration for the record.

THE WITNESS: I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT SACHS: And could you come closer to the microphone, please.

THE WITNESS: I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT SACHS: Thank you, Professor Dow. We now give you the floor for your presentation--

THE WITNESS: Thank you.

PRESIDENT SACHS: --of which we received a handout earlier today.

DIRECT PRESENTATION

THE WITNESS: Thank you. Slide 2, if I may.

(Pause.)

THE WITNESS: Okay, Slide 2, please.

I'm a professor at London Business School. I did my Ph.D. at Princeton University. I've taught for most of my career at London Business School where I have taught Corporate Finance and Valuation for over 30 years, and I also taught at the University of Pennsylvania and the European University Institute.

My research is on the economics of how price dislocations can arise when investors have different opinions and information, and have constraints such as limited capital and so forth.

Slide 3.

Mason's claimed damages on the SC&T Shares, bought after the Merger Announcement, as you can see at the bottom of the left-hand panel, Mason's position was acquired almost entirely after the announcement is for USD 169 million, which represents 63.3 percent return over a five-week period on their net investment of USD 219 million, and that is extraordinarily high return, of course, if you annualize it, it equates to 12,000 percent, approximately.

So, let me discuss my opinions.

Okay. Slide 4. I'm going to give my affirmative opinion of damages in this case. I will then respond to Mason's Claim on SC&T. I will address Mason's Claim for SEC investments, and I'll give certain other opinions.

Let's go to Slides 5 and 6.

Key points: Under the fair-market-value standard, damages are zero, should the Tribunal find liability. I will explain the relationship between Fair Market Value, Market Price, and Sum Of The Parts, which I think is the most important part of my testimony.

I will show the Tribunal that evidence confirms that the Fair Market Value of SC&T is not its Sum Of The Parts, and that the discount would have remained in the but-for world. If we go to Slides 7 and 8.

Now, what is crucial about mergers in Korea is that they are designed to ensure fair Merger Ratios and they do this by making the Merger Ratio be the ratio of Market Prices. I conclude from this--and this is absolutely essential--since Stock Market

Prices are fair Market Values, and I will argue that they are, exchanges at Market Prices cannot lead to damages.

Slide 9.

To summarize my opinions on SC&T, the Market Price of SC&T was a reliable measure of their Market Value. There are no damages, therefore, under that standard.

Another point which is important, should the Tribunal disagree with me and decide that the Measures did reduce the value of SC&T, I still say that Mason suffered no loss because it bought the Shares at that reduced value, okay? So, if the Tribunal disagrees with me and says that the Measures impair the value of the Shares, Mason bought the Shares at that impaired value, and then obviously gave them up in the Exchange at that same impaired value; hence, no loss.

Let's go to Slides 10 and 11.

The Fair Market Value is Market Price. Members of the Tribunal will no doubt be familiar with the standard definition of "Fair Market Value." It's the price at which willing buyers and sellers trade.

Now, many traders participate in the Stock Market. They include many well-informed and well-capitalized investors. They can do all kind of analysis when setting the Market Price.

So, the Market Price results from their valuations and their analysis. That analysis, of course, includes a Sum Of The Parts analysis, which is quite easy to do.

Conclusion: Because having done whatever analysis they wish to do, they then trade at and form the Market Price, it follows that the Market Price is the Fair Market Value.

Slide 12.

Sum Of The Parts is not the Fair Market Value because Claimant discards the Market Price and argues instead that it's Sum Of The Parts. I will give theoretical reasons why that is not plausible, but the fundamental reason is that market participants know Sum Of The Parts and choose to trade at Market Price, thereby forming a Market Price that is different; and note, the evidence tells us that the discount to Sum Of The Parts existed long before the Measure, as I will show you in Slide 17. The discount existed afterwards in the merged entity, as we can see from Professor Bae's report, and, apart from the time series evidence, we can look at the cross-section, we can look at other Korean companies, Sum Of The Parts of similar magnitude exist in other Korean companies, including chaebol companies.

So, conclusion: The Fair Market Value of SC&T was not the Sum Of The Parts, and the Measures were not the cause of the discount.

Slide 13, this is the most important slide in my presentation.

So, when I teach valuation, I give several lectures in which I set out the standard textbook stuff on Discounted Cash Flow, Cost of Capital, multiples analysis, and so on. But when I finish that, I take a break, and I say, "Let's have a little chat." And I take a coin from my pocket, which nowadays I have procured on purpose because I no longer carry them, on my slide I have KRW 100, about 6 U.S. cents. I take a glass off the table--we don't have one here--and I ask the students what is this coin worth? They would reply KRW 100. I then pop it into the glass and say this is a transparent corporate vehicle, a company, that owns some assets, and the asset, in fact, is the coin that we see.

Now, what's the company worth? They Reply 100 won. what's the value of a share if the company has 100 Shares? They reply KRW 1.

Then I say, "Well, what about the affair with the taxes incurred by removing the coin from the glass and handing it back to investors?" They say, all right, less than one hundred for the company, less than one for the share.

What if there are management expenses? Oh, okay, less.

What if the company is managed by Warren Buffet, who is an excellent manager, and we'll take that coin and reinvest it according to what Buffet calls the "$1 principle"; in other words, creating more value than it originally started out with. And they say, well, then it would be worth more than KRW 100 for the company, unless, of course, if it was a bad manager.

Particularly pertinent in this case, costs of corporate governance. If I bought 40 shares in a company where the controlling interests owns 60 shares, I probably wouldn't value those shares at KRW 1 each. I would value them at less. There could be judgment. This coin is easy to value, but other corporate assets obviously valued by multiples or DCF are not so easy.

And importantly, also, we sometimes see unexplained residuals. Let me explain and give by way of example.

Royal Dutch Shell, Members of the Tribunal may have noticed, are about to unify, but for a hundred years, the Shell Oil Company has been owned by the Royal Dutch Shares, and the Shell Transport & Trading Shares, domiciled respectively in The Netherlands and the UK, and these Shares which have identical cash entitlements and every other kind of entitlement have nevertheless traded at different values. There isn't an economic explanation for that, although people have tried. These deviations have at times reached 20 percent, and they sometimes have gone one way, sometimes gone the other way. And, notoriously, Long-Term Capital Management was forced into a crisis which was part of a Global Financial Crisis when it tried to hold this apparently obvious convergence trade for a long period of time, and instead it diverged, and they made huge losses.

So, differences between Market Price and Sum Of The Parts are often persistent. Whether or not we can explain them, they often disappear, shrink or grow.

Conclusion: Sum Of The Parts is, of course, a standard step in valuing a company, but one cannot stop there. One must acknowledge that sometimes the Market Price is different.

Slide 14.

Okay. A Tribunal might take the view, and it's possible, I suppose, that the Market Price of SC&T was a little bit off and requires adjustment. I'll argue that it wasn't. They might even take a very different view, which is what Mason and its experts advocate, and that is to just throw away the Market Price and concentrate instead on Sum Of The Parts.

Suppose the Tribunal were to instruct me to estimate the value of SC&T without reference to the Market Price but purely looking at Sum Of The Parts. What would I do in response to such an instruction? The answer is I would take Sum Of The Parts, I'd use a reasonable value for multiples and so on for the core unlisted business, and I would apply a reasonable discount to the results.

I note the capital gains tax if the portfolio listed holdings were to be liquidated would amount to about 10 to 15 percent of the total Sum Of The Parts value, and that is roughly consistent with typical analyst discounts. They tend to take 30 to 50 percent on the listed parts.

There is no need to discuss why they do that, but they do, in fact, do that.

And also, a reasonable discount would be consistent with what we see on other Korean Holding Companies.

Conclusion: Fair Market Value estimated from SOTP would be similar to the Market Value, Market Price anyway. And I also have tables in both Reports where I do certain corrections to Dr. Duarte-Silva's valuations of Sum Of The Parts and notably taking discount and show that his value would then reduce from about a hundred to 60 in U.S. dollar terms.

Slide 15, please, and 16.

Now let's simply look at the data. In Korea, discounts to Sum Of The Parts are a fact of life. It doesn't matter whether you have a theory of why they are there or we think it's unreasonable. The fact is they do trade at discounts. So Korea's other two leading chaebols, SK and LG, trade at discounts, shown here at 29 and 49 percent. I brought a sample of Korean chaebols trade at between 30 and 60 percent discount Sum Of The Parts. Nomura and Elliott two exhibits--from two exhibits that were shown in this case, have discounts in 2014 that range from 20 to 50 for Nomura and 10 to 35 for Elliott.

Slide 17.

Let's look at what's happened over time to the discount. Here we see analyses going back to 2008 by Nomura and Elliott. You can see that SC&T has often traded at large discounts. The discount has moved around. It's sometimes been up to 50 percent, according to Nomura. It's sometimes been a premium according to both of those analyses, although more often according to Nomura than according to Elliott.

I'm not going to give a narrative that explains the story of these ups and downs because Share Prices move a great deal, and it's difficult always, and it's not really scientific, and I could elaborate on that, to try and give a narrative of those--that kind. But I think this illustrates that the discount is long-standing and was there long before the Merger.

And also, as a side point, these two graphs are quite different in shape and in magnitude at times, illustrating that Sum Of The Parts has an element of subjectivity.

On Slide 18, we see Dr. Duarte-Silva's version of that graph, and I've extended it back using his methodology, as explained in my Second Report, Appendix E. I've extended it back to an earlier period, and we can see that it's quite consistently in the 30 percent--more than 50 percent region.

Okay. Slide 19.

Stock analysts apply SOTP discounts to value SC&T. I give them many--I list there the kind of discounts that they use.

Moving on, what about the but-for world? Slides 20 and 21. What would have happened but-for the Merger?

I'll just comment on one aspect of this. Suppose that the market had woken up on July 17 and seen that the Merger was rejected. Now, it's been argued by Mason, less so by its experts, that the discount in their reports was caused by governance issues, and I think that's plausible, but the governance issues would not have changed on July 17 if the Merger had been rejected. The market would have woken up and seen this, which, to me, looks like the family tree of Lucrezia Borgia, but is, in fact, Professor Bae's diagram of the ownership structure of the Samsung chaebol, and I simply put it to the Tribunal that this is not a clean ownership structure from the point of view of corporate governance.

I also note that any theory that the Merger rejection would have cured the discount would rely on the idea these corporate governance would have been eradicated, and that any future merger, among other things, would have been often made impossible, and I find that implausible.

In particular, Slide 22, other cases where mergers were rejected have not eliminated discounts. Samsung's own example in 2014 between Heavy Industry and Engineering shows that, and Hyundai's experience in March 2018 of its motor division proposed to spin it off and merge with Glovis also shows that.

Next: My response to Mason's SC&T's claim.

Slide 24.

I'm going to talk about the different mechanisms put forward by Mason's experts, manipulation, fear of the Merger, and timing. And I'm going to talk about some empirical evidence.

Slide 25 and 26.

So, Mason's SC&T damages are based on Dr. Duarte-Silva's estimated Sum Of The Parts. I graph here the Share Price of SC&T, and in purple Dr. Duarte-Silva's estimated Sum Of The Parts, which I'm showing it to you moving around because we need to remember that when the SC&T Share Price moves or when the discount moves, everything moves. Stock Prices move. So the value of the whole, the SOTP, the SC&T price, Cheil's value, all of those things are moving around, too, okay? So we can't say that the SOTP value was a fixed amount. And again, on the bottom you can see that Mason bought its shares after the Merger Announcement.

Slide 27.

Mason's experts put forward three mechanisms. I think Professor Wolfenzon lists there three in the place that I quoted. Prof--Dr. Duarte-Silva agrees with at least two of them, but collectively these are the three mechanisms they put forward for why the price was not SOTP.

First, price manipulation by withholding information. Second, fear of the merger. Third, timing of the Merger Ratio.

They argue that even though the Merger took place at Market Prices, which normally can't give rise to damages, there was a value transfer in this case because the Market Prices were distorted by these three mechanisms. And this is called--I call it the "Merger value transfer theory."

I note also that, not in the Experts' Reports but in Mason's legal pleadings is an alternative explanation which is that the Merger prevented governance in--corporate governance improvement, and in my diagram of the Borgia family tree, I addressed that point. I consider that implausible.

Slide 28.

But the experts do not actually advocate that theory in their reports.

Slide 29.

Manipulation. Manipulation did not cause a discount. Why not? Well, for one thing, if we have a company trading at a discount and some good news arise, well, then both the Market Price and Sum Of The Parts would increase. Okay, if good news arrives relative to the listed components, they'll go up in value, of course; and if the good news contains the core business, then a proper valuation will incorporate an increase.

So, the argument that an SOTP discount could be caused by undisclosed information is incorrect.

Slide 30.

To create damages, manipulation must have occurred before the Merger Announcement if it's going to distort a Merger Ratio, and I note that--so, that particular window is of special interest, so the formula in Korea takes Market Prices one day, one week, one month before the announcement and averages them, so it's that one-month period which is relevant, if manipulation is alleged to have changed Merger Ratio.

I note also that Mason bought Shares after the Merger Announcement. So, if the Shares were pushed down, then it bought them at the low price.

Slide 31.

Mason's experts do not quantify the impact of the alleged manipulation, but I have quantified it. In the case of a Qatar Contract, it's very small. Very generously I estimated at 2 percent, and I could explain why that's very generous.

The warehouse fire at Cheil, boosting the value of Cheil allegedly, was, you know, failure to disclosing that allegedly boosted Cheil's value, and that was trivial. 25 million U.S. is nothing for a company like Cheil. It's one-eighth of 1 percent to the market cap. That's before the Merger announcement. Potentially, it might have an effect on the Merger Ratio, but obviously only trivial magnitudes.

Other announcements that are worth mentioning, the IPO of Bioepis, I tested and showed they had no effect on the price. The alleged non-disclosure of the Bioepis option was in fact disclosed by Bioepis, so it was public information, and the planned tourist development that was announced and then canceled, I note there that cannot get drawn into damages because if the Share prices were boosted in that way, Mason in fact sold its Shares before the cancellation.

Slide 32. Fear of the Merger, possibly the one that the experts lean on most.

Fear of the Merger can't cause the discount, and that's for a simple reason explained in Slide 33.

If the market believes an acquisition target is going to accept a below-value offer, that will indeed depress the price, okay? If I have an asset and I think it will be taken from me at less than its value, that will depress the price. But that's impossible when the Merger Ratio is the Market Price as is required in Korea. I can fear that an asset will be taken from me, but not if it's going to be taken from me at the Market Price, okay? So, it's mathematically impossible and logically impossible--I don't think you need to do the math--to see that taking the asset at the Market Price cannot of itself depress the Market Price.

Right. Slide 34.

Timing: Timing of the Merger did not cause the discount. Okay. Why did it not cause the discount? Well, because when Dr. Duarte-Silva spoke this morning about timing, it was as if you could look back with hindsight and pick the so-called "best Merger Ratios," but prices cannot be predicted in advance on Stock Markets. J.P. Morgan famously was asked once by a nervous young man what his prediction was for the Stock Market, and he replied: "I believe the market is going to fluctuate." There is a photograph of him characteristically robust in expressing his view.

Slide 36. If timing were possible, price movement would be predictable, and that's not possible in financial markets. Arbitragers would be easily able to make money. That would eliminate the predictability, and that's just why we say that major stock markets are not predictable. Indeed, I show some by direct tests, but that's the case here; but, in any case, stock market prices on stock exchanges simply aren't predictable. That's important because we need to get away from the idea that there's a value out there which is fixed and there's a Market Value which is somehow disconnected, bounces around and can be predicted in the long run to converge to a value. That's not how it is. The price is the value. The price is not predictable. We can't predict any kind of convergence.

And I gave you the example, Members of the

Tribunal, Mr. President, I gave you the example of Royal Dutch Shell clearly in some sense ought to have converged to parity of valuation but never did.

Slide 37. The Merger Value Transfer Theory is empirically rejected. So the Merger Value Transfer Theory is that this is a zero-sum game, and the Merger was about taking value from SC&T and giving it to Cheil. If that's the case, then on Slide 38, we can see that anything that makes the Merger more likely would be good for us--good for Cheil--sorry, bad for SC&T. If the possibility of the Merger goes down, then that's good for SC&T, according to this theory. And my second test, Cheil and SC&T would be going in different directions.

Okay. I test that by looking at a number of dates and something happened that increased the probability of the Merger or decreased probability of the Merger, and that test is shown on Page 39.

Now, I note here that Dr. Duarte-Silva disputes this analysis because he says I should have looked at excess returns net of market movements, and he also contests the release of information on certain dates.

So, this first suggestion to look at excess returns makes no difference, so it's still true that one or both of the two tests fail on every single day in question. Okay, so either SC&T doesn't go up with an increase in probability--sorry, doesn't go down with an increase in probability, or second test, SC&T and Cheil do not move in opposite directions.

ARBITRATOR GLOSTER: I'm sorry, Professor Dow, you've got to explain to me what's an excess return in this context? I just need to follow every word.

THE WITNESS: Yes. Thank you.

If the Stock Price of a company goes up 5 percent but the market goes up by 6 percent, we would say that that's not really an increase in the Company's Share Price because it went up by less than the market. So, if the Company goes up by 5 and the market goes up by 6, we would say that's an excess return of minus one. It's done one less than the market.

So, the point is, when looking at returns--I'm trying to see if a company has done well or badly on a particular day--we net off what the market has done, and we look at the excess.

ARBITRATOR GLOSTER: I don't see why the excess is minus 1 percent.

THE WITNESS: Oh, see, if the market--

ARBITRATOR GLOSTER: I don't quite see why you describe that as an excess. I see what you're saying, but...

(Overlapping speakers.)

THE WITNESS: Okay. The market goes up by four and the company goes up by five.

ARBITRATOR GLOSTER: Yeah.

THE WITNESS: The Company has gone up by one more the market.

ARBITRATOR GLOSTER: Yes, and is that called the excess?

THE WITNESS: That's the excess.

ARBITRATOR GLOSTER: Yeah. And so--

(Overlapping speakers.)

ARBITRATOR GLOSTER: Okay. Okay, I'm done.

THE WITNESS: We can also do more complicated modeling adjusting not only for the market but for other risk factors, but that is the gist of the idea.

Anyway, in this context, it makes no difference because my table with excess returns and my table with unadjusted returns actually looks very similar; and has the same conclusions that one or both tests fail in every seven--in every one of those instances.

Slide 40. I actually disagree on the dates where Dr. Duarte-Silva has said that one of the--one of the dates--sorry.

Dr. Duarte-Silva, forgive me, has said that I should test only on dates that are individually significant, and here, I strongly disagree because we need to look at all the evidence when we do statistics. So, when we have multiple pieces of evidence, even if one of them is individually insignificant, together they tell us a picture which may be significant. So, the Tribunal is probably familiar with the line from the Oscar Wilde play: "To lose one parent is misfortune; to lose two starts to look like carelessness," and the point there is one thing might be insignificant, but the two of them together suggests a pattern. Obviously it was a joke in the play, but generally that illustrates the point that we must look at individually insignificant pieces of evidence and look at the whole picture and see if that's significance.

Okay. Also, I point out that, on the announcement day, there was a massive increase in value for both SC&T and Cheil. You've probably heard of a six-sigma event, so this is very unlikely event. This was a ten-sigma event for SC&T, and a five-sigma event for Cheil, so very, very significantly positive events.

And I know that on the voting day, the SC&T price went down, but if we combine evidence from the announcement and the vote, it's highly significant, and I show that at as 6.3 percent.

That's a little technical, forgive me. But that concludes what I have to say about SEC. Can I please move on to SEC--sorry, SCT. Let's move on to SEC in Slide 42.

Okay. Now, on Slide 43, this is a complicated or strange claim. So, the Measures are not alleged to have changed SEC price. At least Dr. Duarte-Silva's analysis uses the assumption that the Measures--you know, the price of SEC would have followed the same path regardless.

And that somehow there was a--an impact on Mason's motivation, which they call the--valid--the--you know, their investment thesis was falsified, and that's why they had to sell.

Now, that theory relies on having no link between the Measures and the price of SEC Shares.

Slide 44.

This is very incoherent.

First of all, the Claim is unrealistic

because it was an aspirational target. Why should merger rejection have caused SEC Shares to sharply increase in value? That's, I think, Mason's thesis. It's logically inconsistent in the sense that the Mason's thesis, as I understand it--immediate increase in value--would require a but-for world that models that, where SEC Shares go up a lot, quickly. But Dr. Duarte-Silva does not model that. He has that rather unusual analysis where the price part is the same.

Simultaneously, he assumes that it was somehow unattractive to hold the Shares, but that's not consistent. If the price part was unaffected by the Measures, as he assumes, it's not reasonable to say that it--they stopped being attractive to hold.

I note also that, you know, okay, SEC Shares went up, but so what? Share Prices often do. With hindsight, it always looks, or very often looks, great to have invested in the Stock Market a couple of years ago, but at the time that wasn't so obvious because a rise in price which we get most of the time is, of course, an offset against a possible risk of that not happening. So, we own risk premiums by holding Shares, but we are holding risk as well, so Mason is asking for the Risk Premium but not the risk.

Also I note, just giving investors what they hope an asset would be worth, if the Tribunal followed that logic, you know, Mason hoped it would be worth whatever, so let's give them that, that would mean that you'd give damages of different amounts to different investors, some of whom are optimistic and some who are less optimistic. And I don't think that would make sense.

Okay, slide 45.

By the way, Mason's price target is very high. Although, it's one of the world's largest companies and it is the largest company in Korea--Electronics--their price target is very simplistic. Mr. Garschina calls it first-year MBA level. In my course you have to do better than that.

So, for the semiconductor component, which is the biggest part of SEC, they use an international component. Mason's Experts say you should always use Korean components--comparables, and that would reduce the discount a lot. Mason also just adds two to the multiples without explanation. If we undo that, we get only a 16 percent discount to purported value rather than 46 percent. This is from one of my Working Papers.

Finally, my other opinions.

If we go to Slide 47, the interest of 5 percent is not justifiable. It's too high. The compounding also doesn't make sense.

The Incentive Allocation is overstated. Okay, let me explain here. Mason is asking that whatever damages the Tribunal might give should go to the tiny rump or small amount, small rump of remaining investors, as we heard this morning most of the investors left Mason. Now, if that were the case, those remaining investors would be getting windfall; and, by doing that, it would trigger a high water mark for management compensation. Okay, and that is the point I make in my Reports there.

But I also draw the Tribunal's attention to the idea that whatever compensation might be given, should only go to some of the Investors rather than all of the Investors at the time.

Mitigation is possible. Mason could have continued to hold SEC if they thought it was going to follow Dr. Duarte-Silva's price path.

And finally, the currency of the Award should be in Korean won.

Okay. I'll just mention at the end, there were a couple of errata, and that refers to a couple of cases where Dr. Duarte-Silva has contested the date at which information was released to the market. One of those he is correct, the other one he is not correct; but those--the correction on the first date does not at--alter the substance of my analysis.

And Slides 49 and 50 show the resulting modified tables in my Reports.

Mr. President and Members of the Tribunal, thank you for your attention.

PRESIDENT SACHS: Thank you.

We will now go to cross-examination. Who will be in charge of this? Ms. Lamb?

MS. LAMB: It will be me. Thank you, sir.

PRESIDENT SACHS: Please, proceed.

CROSS-EXAMINATION

BY MS. LAMB:

Q. Let's start, Professor Dow, with your Second Report, please, Paragraph 95.

A. Second Report--

Q. Second Report, please, Paragraph 95, and you're criticizing Dr. Duarte-Silva here, and you say: "In his First Report, he provides no evidence to support his assumption that the Merger Vote would have failed in the but-for world. I challenged this assumption by pointing out that, but for Korea's Alleged Conduct, a number of things may have

occurred," and the very first that you'd identify is that the NPS may still have voted in favor of the Merger.
Is that still your opinion, Professor Dow?
A. I--
Q. That the NPS would--may still have voted in favor of the Merger?
A. But for Korea's Alleged Conduct, I don't know that it would have voted for the Merger. So, I say: Yes, it may still have voted in favor of the Merger.
Q. Now, when you settled on this conclusion, then and now, had you considered the particular guidelines that NPS was obliged to follow when exercising Voting Rights in a merger scenario?
A. Yes, I believe I had.
Q. You don't reference any of those in your Report. You don't reference any of the Guidelines. You don't exhibit them among the very many exhibits to your two Reports, do you?
A. No, I don't believe I did.
But let me explain what I meant there.
Well, what is Korea's Alleged Conduct? It is--I mean, if Korea--if Korea had not leaned on the NPS to vote in favor of the Merger, maybe the NPS

would still have voted in the favor of the Merger.

Q. And my question is: In forming that opinion, did you look at--did you consider the particular guidelines that the NPS was obliged to follow when exercising Voting Rights in a merger scenario? Did you look at the relevant NPS Guidelines?

A. I don't recall, but I believe I did.

Q. Let's have a look, shall we, at C-75. This is where we see, indeed the Guidelines. It's Number 34, subsection 1. And you'll see here, that these are the Guidelines when NPS is voting on a proposed Merger.

And the rule is to be "Assessed on a case-by-case basis," as we see, "but vote against if it is expected that the shareholder value may be damaged."

Do you see that?

A. I do.

Q. And do you recall reflecting on that rule when forming your opinion as to what NPS may have done in the but-for world?

A. I don't have a problem with that line because--

Q. No, that wasn't my question.

A. Because I don't think that the vote for the Merger damaged shareholder value, necessarily.

Q. That wasn't my question. Respectfully, I would ask you to try and listen to my question and answer my question. My question was: Do you recall specifically reflecting on this rule when you formed your opinion that NPS may still have voted for the Merger in the but-for scenario? Did you have the rule in mind?

A. I did not have the rule in mind. But I did have in mind that I would have expected the NPS to vote in a logical fashion for shareholder value.

Q. To use your wording, let's have a little chat then, about some of the ways in which an assessment could reasonably be made as to whether a proposed Merger may damage shareholder value.

Do you agree that it would be reasonable to consider, for example, the primary revenue projections for the merged entities?

A. Among others things, of course.

Q. The estimated combined income of the merged entities?

A. Absolutely, among other things.

Q. "Among other things."

What about the robustness of any revenue

target set for the merged entities?
     A.   Yeah, why not?
     Q.   Do you agree it would be appropriate to analyze the, sort of, the deal accretion, and form a view as to whether the proposal suggested accretion rather than dilution?
     A.   No. I disagree.
     Q.   So, it's your opinion that it wouldn't be reasonable to analyze whether the deal created additional value for Shareholders?
     A.   Value yes; accretion, no.
          Accretion is an accounting anomaly. As I teach in my course: Earnings, dilution and accretion--and you'll find paragraphs in the standard in textbooks--that explain that mechanically, depending on the Growth Rate of target versus acquirer, mergers that are value-neutral benchmark could automatically either cause accretion or dilution. But this is a case where an accounting metric is not reliable because accounting metrics, you know, are shortcuts to shareholder value. Sometimes they're reliable, sometimes they're not. And accretion and dilution is a classic fallacy, and it's wrong.
     Q.   Well, let's put aside the technique.

A. Yeah.
Q. Do you agree that it would be reasonable to consider whether the deal created additional value?
A. Of course.
Q. For Shareholders or rather was financially disadvantageous?
A. I had previously said that.
Q. And so, to that end, do you agree that it would be reasonable to consider any realistic synergies between the various businesses in the to-be-combined group?
A. I would, but I take a broad view of synergies, and I think that the--mostly--you know, in the case of a merger, it's obviously proforma to produce some cost savings or something like that. I think that misses the point in most Merger cases, but I don't disagree that you should look at it anyway.
Q. If management is advocating the Merger on the basis of proposed synergies, do you agree that it would be reasonable to take a look at those synergies and ask yourself whether the overall narrative and proposition there was, indeed, compelling?
A. Well, management always says there are synergies, and I always think it would be reasonable to look at it. But as I've said, I don't put a huge

amount of credence--it depends a little bit on the circumstances. To give you an example, some cases we combine companies and we can remove some duplicative costs or share resources, and then it's very easy to do an exercise in which we estimate how costs will fall or earnings will rise in the next year or two. Most Mergers, that's not really the point and there are broader less quantifiable considerations that determine whether the Merger makes sense or not.

Q. You'd want to see, for example, some good evidence, then, of any claimed synergies or benefits, beyond just what management says?

A. I'd look at the synergies, but I wouldn't factor that.

The kind of synergies that are prepared proforma in Mergers are interesting numbers, but they're not the whole story.

Q. Having sort of--having considered, if you will, the fundamentals of the proposed Merger, would you ask yourself, well, what are the prospects for the Company on a stand-alone basis?

A. Yeah.

Q. And then compare that?

A. To give an example, right now, Johnson & Johnson is de-merging, it's a de-merger not a merger, but it's the same idea. I don't think splitting Johnson--and the market views that favorably--I don't think splitting Johnson & Johnson into the Healthcare Division and the Consumer Products Division is going to generate, you know, quantified--the equivalent of Merger synergies is the quantifiable cost reductions or anything like that, but the argument is rather that management would be more focused with the two companies running separately.

So, again, with a merger, you know, it may be to do with management focus, it may be to do with something like that. The sort of thing isn't captured by synergies.

Q. And do you think it would be reasonable to consider what external analysts were saying about the rationale? Will they buy into the rationale for the Merger?

A. I would look at that, among other things, yes.

Q. And what--would you want to know whether the Board had considered any alternatives to a merger, and if so, what they were, and why they were rejected?

A. Yes.

Q. And would you be concerned to know whether the Board itself has expressed a view as to whether

the deal was financially attractive for Shareholders?
A. Well, they almost always say it is. Hostile takeovers are quite rare.
Q. If they say nothing at all, that would be a red flag, wouldn't it?
A. I don't know.
Q. I mean--
A. It would be unusual if they said nothing at all.
Q. If management couldn't bring itself to claim a financial advantage for its Shareholders, would that not be a red flag to you with regard to the potential impact on shareholder value?
A. I'm not sure what your question is because--are you saying that if management doesn't want the Merger, it would be a red flag? My answer is, if management doesn't want the Merger, it's actually quite a good idea to have the Merger.
(overlapping speakers.)
Q. My--just to be clear because I don't want you to misunderstand my question. If the Board was not willing to commit to a view as to whether the Merger was financially attractive for Shareholders, would that raise a red flag for you if you were asking yourself the question: Is this going to impact on

shareholder value?

A. Let me give you an example. Sometimes management says it's a bad idea, and it won't be good for Shareholders.

Q. Well, what--

(Overlapping speakers.)

A. In that case, I think it would be a good idea.

Q. What if--

A. --that contested Mergers are actually quite good for Shareholders.

Q. Let's use this hypothesis. Let's assume that management is advocating the Merger and the Board is supportive of the Merger, but the Board will not give an opinion, will not--the Board has not given an opinion that, in its view, the deal is financially attractive to Shareholders?

A. What do you mean by financially attractive, please. Because I have a feeling we're not talking hypotheticals here. We're misguidedly talking about this Merger.

Q. That's generally--it's generally how these things work.

A. If you could be precise about what you mean by financially attractive, I could probably give you a

better answer.
Q. We'll come on to the facts, sir, in a little while, but I did sense some reluctance to your answer.
A. No, no. I'm happy to answer if you tell me what you mean by "financially attractive."
Q. Do you think it would be reasonable for someone, considering impact on shareholder value, to consider the overall governance, if you will, around the Merger transaction?
A. Absolutely. In this case, absolutely.
Q. And do you consider that would be reasonable to look at any dissenting views in the market and understand what the views--what the reasons for the dissent was?
A. Absolutely.
Q. And would you take a good look at, for example, the views of the well-known proxy advisors as to the proposed transaction?
A. Well, I would look at everything, is the short answer, and that includes obviously the well-known proxy advisors, but I'll inject a note of caution here. Proxy advisors are notorious for being more radical than the way Shareholders actually vote, and there is empirical research to document that claim.

So on average, proxy advisors recommend things which are contrarian compared to what Shareholders actually vote for.

Now, given that Shareholders actually own the Shares and proxy advisors may have different incentives, the question arises: Do proxy advisors have an incentive to possibly generate controversy because that's good for their business? So, there is academic research, which I could point you to in the public domain, suggesting that's the explanation for the fact that proxy advisors are generally--take a contrarian view compared to what Shareholders vote for.

Q. And are you aware of any research that suggests that the Korean Corporate Governance Advisory Service provides especially radical views?

A. No, but it's generally called--you know, proxy advisers generally, ISS, for example, but I don't see why Korea would be any different. I mean. proxy advisers make money by selling their advice.

Q. Unless, I suppose, they're a not-for-profit organization?

A. Yeah.

Q. Like the Korean Corporate Governance--

A. Maybe.

Q. --Service, for example. Let's consider, then, some of those factors as they applied to the proposed Merger in our case.

Can we please get Exhibit C-9 up. So, this is the ISS Report.

A. Yes.

Q. And you're familiar with this, aren't you? Because it's cited in your First Report.

A. I am. I am familiar with this document.

Q. Now, ISS--now, that's, for better or worse, one of the world's leading international proxy advisory firms; yes?

A. It is.

Q. And many--we do know that many of the world's Institutional Investors, including pension funds, are clients of ISS?

A. They are.

Q. So, looking, then, at the section "Strategic Rationale." So, one of the first things that ISS does is to question the revenue and synergy targets of the proposed Merger. Do you see there, "while management puts forward a list of revenue and synergy targets. The targets appear to be hugely optimistic, and how such targets could be achieved remain unclear." The question over the fashion business, "Shareholders are left guessing how the Merger's synergy, with a trading division generating just 0.6 percent operating margin, will help contribute to the three-fold profit growth of the merged entities."

So, the concern there is really as to the economic robustness, to put it another way, of the Merger fundamentals, isn't it?

A. Well, we know that ISS didn't like the Merger, but that's just one view. There were many analysts and many participants who no doubt read the ISS Report, which they should have done, and the other Analyst Reports and voted accordingly. And most of the Shareholders voted for the Merger.

Q. This was the view of someone who gives advice to Institutional Investors, and they were expressing a concern as to the impact on shareholder value; no?

A. I can read that, so yes.

Q. Let's look at the revenue target for the overall business. What was, do you recall, management's revenue targets--

A. I don't recall.

Q. --for the Merged entity?

I think we could find that actually in C-86, which is the Glass Lewis Report.

I'm so sorry, C-83, the Glass Lewis Report.

So, management's--if we look at Page 6, we find the reference. We learn in the first paragraph that there has been an investor deck, if we can pull that out, that cites the 2020 revenue target of KRW 60 trillion.

Do you see that?

A. I do.

Q. And you're familiar with Glass Lewis?

A. I'm not, actually.

Q. So, it's--do you know that it's another of the major advisories again, provides sort of institutional--

A. Another proxy--

Q. It's a proxy advisor including for Institutional Investors.

So, what do they have to say, then, about that projection? Well, you may see that they asked some questions about, if you will, the backup for that, they say SC&T's documentation has been rather Spartan in terms of providing a more granular quantitative guidance on these benefits.

So, a major advisor asking some pretty direct questions as to the robustness of these revenue projections.

Do you agree that it would be reasonable in the but-for world for NPS to have asked itself the question, is this going to impact on shareholder value here? No backup, apparently. Scant backup, for the overall revenue target to KRW 60 trillion, is that a red flag for someone asking themselves the question might this merger impact on shareholder value?

A.   Literally, if you ask me might the Merger impact on shareholder value, I would say every merger might impact on shareholder value.

Q.   And if operating under a rule that says vote No if it might impact on shareholder value, then in the but-for world, NPS would have to vote No?

A.   Well, they should vote No if they think it's bad for Shareholders or bad for their shareholders, so yeah, I mean, that's--that's a very empty statement, but I would make that statement.

Now, how informative is this particular document? I don't know. They should look at all the documents. They got different views of different participants. This is one among many.

Q.   Let's talk about the actual asserted synergies for this Merger.

Did you, if you will, analyze those synergies for yourself when coming to your but-for

view of how the NPS might have voted?
     A.   I don't put a lot of weight on those, as I said earlier.
     Q.   Okay. So, let's have a look at what ISS had to say about them, so that's C-9. And if we can pull up Page 2, please.
          ISS seems to have shared your view, the first paragraph, "they're vague and unconvincing" was their view as to the asserted synergies.
     A.   I don't believe I said that, but that is what they say here.
     Q.   Looking at--looking at what Glass Lewis thought perhaps, C-83, if we may, Page 6. If we go down to Paragraph 4, it's the paragraph beginning "Further undermining the Board's presented case," "is the fact that management's rather substantial growth projections are predicated on unclear or, at the very least, high risk links between disparate businesses," and again, their focus is on the fashion segment and the prediction that this is going to grow from 1.9 trillion in 2014 to 10 trillion in 2020.
          The conclusion is in the last sentence there: "We are concerned this framework--which assumes substantial benefits will accrue through the combination of otherwise divergent industries such as

fashion and construction--appears both loosely defined and optimistic, and may not fully--may not reflect a fully risk-adjusted depiction of the combined firm's potential." And in your view, they were right to be skeptical of synergies as, if you will, a value driver of the Merger?

A. That's not my view. What I say is--what I have said is, first of all, proxy advisors are often contrarian.

Second, as part of the normal functioning of any Stock Market, people share their opinions, some of whom will be positive, some of whom will be negative, and the Shareholders take all of that into account when they vote.

And, finally, I've said that I don't think this particular Merger was really about synergies as is commonly understood to be the case, the kind of quantifiable things that you can write down as affecting earnings in the next year or two, but rather it is about broader issues.

Q. Well, the real reasons for the Merger of course, became clear once the corruption investigations began.

I just want to come back to this idea of contrarian views of proxy advisors.

A. Sure.
Q. The view--the conclusion that was reached here was by reference to objective data, so they looked at Cheil fashion segment's actual revenues, and then they looked at the projected revenues, some five times X, and asked the question, in a combination of a fashion business and a construction industry, are we really seeing that sort of value through the Merger?
(Overlapping speakers.)
A. The workers are going to be wearing very interesting uniforms when they're building the building.
Q. Indeed, indeed.
I think you will agree with me that that was not a contrarian conclusion?
A. Their Report is advocating against the Merger, as I understand, as is ISS, and we saw this morning that journalists thought the ISS Report was wildly optimistic about the but for, the potential value of SC&T as a stand-alone.
I would say regardless of whether this is biased or not or anything like that, I don't think that's the point. The point is that in any Merger--two points. In any merger, there are positive views, there are negative views, that information gets

shared with participants and they vote accordingly. And secondly, I think that, you know, in many mergers, the numbers that are written down as synergies are a little bit proforma. And they don't paint a full picture of what's going on.

Q. Coming back to my narrow question, the conclusion on the projected synergy value of the Merger between the fashion segment and the construction segment could hardly be described as contrarian, could it?

A. Well, I'm not sure because you can have financial synergies, you can have management being more focused with a better corporate structure, so you could--you can even, you can combine disparate businesses and make something out of them.

Berkshire Hathaway is an example of a conglomerate that does that well. So, it's not because of operating synergies of this kind or cost synergies. It's perhaps because of the overall management and financial structure that these companies will operate in following the Merger.

Q. I'm going to suggest that even Warren Buffet would struggle to create a five X synergy between a fashion business and a construction conglomerate.

A. Well, Warren Buffet has, if I recall from his Shareholders' letters, he has a shirt maker that he likes, and he has--I don't know about construction, but he certainly has a lot of, you know, very basic value businesses, so he has combined them effectively in Berkshire Hathaway, but I don't think it's through cost synergies or--

Q. No.

A. --sharing, you know, that kind of thing.

Q. No, no, I'm sure that's right.

Let's have a look at the proposed financial terms of this Merger.

Can I just remind you of your First Report then, if you want to take a look at Para 134.

And I'm particularly looking at the conclusion: A Merger Ratio based on market prices cannot be unfair to the shareholders of either company," so I'm just going to ask some questions about that?

A. Sure, except in the case of misinformation.

Q. And there is a dispute as you know is between the Parties as to whether, indeed, there was any misinformation, but I'm focusing now--

A. As I addressed in my presentation earlier.

Q. What I'm addressing now, what I'm going to address in my question is the conclusion that a Merger

Ratio that is calculated based on Market Prices cannot be unfair to Shareholders in the absence of market manipulation, for want of a better expression.
You're aware, I'm sure, that certain advisors were questioning the timing of the announcement, given SC&T's then trending Share Price?
A. I don't like calling Share Price movements "trends" because that suggests easy predictability. But I am aware that statements have been made about the Merger Ratio being, as they put it, "unfavorable", low. I don't buy into the idea that the movements in the price ratio reflected necessarily either more or less good value for SC&T.
Q. Let's have a look at what the Korean Corporate Governance Service had to say about that. If we pull up, please, Exhibit C-192, the first page.
So, what we can see from heading Number 1, "Recommendation", is that this is an analysis report made as to the NPS regarding this Merger. Looking down, please, at Item 3, "Reasoning," and you can see here that, in forming its conclusion, the Korean Corporate Governance Service very much has in mind detailed Guideline No. 34, that's the one we looked at on how the NPS should vote its Shares when considering a merger proposal.

Professor Dow, is it, in your view, reasonable for us to assume that the Korean Corporate Governance Service was well-placed to understand the implications of current Stock Prices, given its familiarity with the domestic index?

A. I don't think that they would be any better than a good international investor, but hopefully they were competent.

Q. Is it reasonable, do you think, to assume that any assessment by the Korean service as to the appropriateness of the timing of the Merger was informed by considerable knowledge on their part?

A. Well, I've seen some analyses, and I'm not sure it's this one, which suggest that, as the Merger Ratio changed over time in line with relative prices changing, the Merger Ratio accordingly became more or less attractive.

Now, if that's what they're arguing here, it is unreasonable--it's wrong--because when the Merger Ratio changes being the relative price ratio, it is because the values of the two companies have changed; and, therefore, it is--a change in the Merger Ratio is neither good nor bad for shareholder value in SC&T.

To put it another way, if the price of SC&T--for example, if the Cheil price goes up, that's because Cheil is more valuable. The Merger Ratio would give me fewer Shares of Cheil in the combined entity because of this, but that's because I'm getting something that is more valuable. That's why the price of Cheil went up.

So, changes in the Merger Ratio reflect changes in the relative value of the two companies.

Now, some of the discussion I have seen. We haven't got there yet so this may not be it. And indeed, in Dr. Duarte-Silva's discussion this morning, he was assuming that a low ratio is bad for SC&T, and a high ratio is good for SC&T. That is fundamentally wrong.

Q. Let's just have a look at what they had to say about the timing--

A. Yes.

Q. --of the Merger Announcement.

Perhaps before we leave this page, we will just remind ourselves ultimately what the conclusion of the Korean Corporate Governance Service was. There's a table there in the middle of Page 1. So, the considered view of the Korean Corporate Governance Service having considered in particular Guideline No. 34, was to disapprove--disapprove the Merger.

If we go on to Page 2, we will find the

discussion of the timing and this comes under the heading "adequacy of the Merger decision." And if we look at the third bullet there, they say: "To examine the adequacy of the timing of the determination of the merger ratio, the daily share price from the time of the merger decision has been reviewed, and as a result, the merger ratio was determined at the time when it was most disadvantageous to SC&T during the period."

So, they're raising a red flag basically as to the timing of the Merger Announcement.

A. That is complete rubbish what they have written there.

Q. Before you--

(Overlapping speakers.)

BY MS. LAMB:

Q. Before you give your opinion of their competence--apologies to the Court Reporter.

My question to you: Do you agree with me that, rightly or wrongly, they were raising a red flag as to the timing of the Merger Announcement?

A. Well, if I can--I can read that sentence, so I can read that they thought it was disadvantageous, but I disagree with the proposition that it was disadvantageous because it was low.

Q. They didn't only consider the Share Price as such over that period. If we go over the next page, top of the next page, we will see that they engaged in a price:book ratio analysis, they reviewed the price ratio over the past five years and again concluded that the Merger Ratio was determined at the lowest price:book ratio during that period surveyed, so another red flag from the Korean Corporate Advisory Service?

A. Not a red flag.

Q. Not a red flag?

A. No.

Because, for example, banks are often discussed in terms of price:book ratio. As an example of a company--companies that are often discussed in this manner.

Now, I've often thought, oh, I should buy Shares in this bank because it has a low price:book ratio, but why does it have a low price:book ratio? Because it's made lots of horrible errors, made lots of bad loans, lost lots of money and shown that it has bad risk management. That's why its price is low.

So, if your price:book ratio is low, as Warren Buffet often puts it, if you don't mind me quoting him again, it tells you that management has taken a dollar of Shareholders' money and turned it into something worth less than a dollar.

Therefore, if something has a low price:book ratio, that doesn't make it attractive to buy. That's not a valid criterion.

Q. That's not the reason, though, why they were conducting the analysis, is it?

A. Well, it seems to be saying in this paragraph, and there isn't a theory articulated in this sentence. You seem to be suggesting that their analysis is, if it's got a low price:book ratio, then it's undervalued, and I disagree with that proposition. I say if it's got a low price:book ratio, that is--if a company has a low price:book value, that is because it's not valuable.

Q. What they were doing was testing the proposition with a Merger Ratio based on Market Price was a fair reflection of shareholder value?

A. False. They thought they might have been doing that, but if Market Prices are fair, then a Merger Ratio based on Market Prices is fair.

Now, most people I think would agree that Market Prices are fair, but everybody, even those who disagree with that proposition would have to agree that Book Values are not correct economic values.

Nobody could argue that a Book Value is a good guide to value, except under very special circumstances. Why is that? Because a Book Value is what you paid for an asset when you first created it or first acquired it. Since then a lot of stuff has happened. Assets trade at values that are different from their Book Value, but they trade at what they're actually worth and the Book Value merely records what they cost to acquire.

Q. So, the Korean Corporate Governance Service who, I think we can safely assume, has some familiarity with the stock-price movements in their market. They did not just take the Stock Price at face value and conclude this is a fair Merger Ratio, I will stop there and ask no further questions. That's not what happened here, is it?

A. Correct. But what they're doing is looking at a very crude and unreliable metric. Price:book ratio is not helpful here. The fact that they're using that is not a very good sign about their competence, as I'm sure everybody in the room is aware.

Q. Whether they are or aren't--

A. Yeah.

Q. --my point is that what they didn't do was just take the Stock Price at face value and say that's a fair Merger Ratio, I will stop there, and I will ask no further questions.

A. Well, indeed.

Q. And others performed--others performed their own, if you will, validation assessments?

A. Different analysts looked into this, wrote their Reports, Shareholders read those Reports, formed their own views, voted accordingly.

Q. Just looking as to the sort of, if you will, a wrap-up conclusion, can we just look at the third bullet, then.

So, having considered these two validation points, if you will--I understand that you dispute the correctness of using those--

A. Yes.

Q. --but nonetheless they clearly felt driven to do that.

They say: "As the merger ratio was determined at the point in time most unfavorable to SC&T shareholders, during the time when the PBR," price:book ratio, "was at its lowest in the past five years and the merger ratio fails to provide a sufficient reflection of the asset value, the merger ratio gives rise to concerns of shareholder value impairment for SC&T." That's a clear conclusion there, isn't it, from the Korean Governance.

A. That is what they say. But I mean, I think that's an interesting paragraph that you have shown me because that really gets to the heart of this case because what I'm saying is it's not as if assets have values which are somehow intrinsic and disconnected from the price, and then prices bounce around and are different numbers. Rather, prices, one starts by presuming, prices reflect values, unless you have a specific explanation of why the price is distorted such as manipulation, that could be an explanation. Otherwise, we take the price as being the value.

Now, just because a price has gone down, that's like saying, oh, we should have invested in the Stock Market ten years ago because it's gone up since then. I mean, yes, that's true, with the benefit of hindsight, but at the time the Stock Market was fairly valued given what people thought it was worth. Today it's fairly valued given what people think it's worth, and you can't time the market. It's not as if there is an Intrinsic Value that doesn't work and then the price is something else entirely.

And unfortunately, I'm sorry that their conclusion, if these are the three reasons they're using to reach their conclusion, they're three very bad reasons. Now, perhaps they had other reasons which were better reasons; in that case, they're conclusion may be more reliable.

Q. There certainly are other conclusions and we can take a look at those.

Thinking about, though, the but-for world in which the NPS is now voting the Merger, absent the pressure, the Measures, whatever you want to call them, in the face of the advice of their proxy advisors, they couldn't realistically have concluded that there was no risk to shareholder value, could they?

A. Well, risk is always present in financial markets.

Q. So they would have had to conclude that there may be risk to shareholder value, including given the advice of their proxy advisors?

A. Every financial decision has risk. If I do A, there is risk; if I do the opposite. If I do not-A, there's risk.

Q. Glass Lewis also had some concerns about the fairness of the Merger terms, and they also wanted to look beyond just the Stock Price. But perhaps we can have a look at that. So, that's going to be C-83, the bottom of Page 7.

So, the section begins with "Compounding our concerns." I'm sorry, it's under the heading "VALUATION."

"Compounding our concerns with the board's meager strategic case and potential procedural conflicts associated with the [redacted] Family are the salient financial terms." They observe that "the case presented by SC&T management is thin", and they observe that "the observation does not, to be clear, speak to whether the Agreement is actually financially attractive for investors, irrespective of its legal compliance". So management is not speaking with a clear voice as to whether the Agreement is actually financially attractive for investors, irrespective of its legal compliance.

So, this indeed was the case according to the observations of Glass Lewis, although management was advocating the Merger, they were not willing to, if you will, come out and say "this, in our view, is, indeed, financially attractive for investors."

In the but-for world, this should have raised a red flag, shouldn't it, for anyone asking themselves the question, "is this Merger going to have impact on shareholder value?"

A. I'm not sure what you're asking me, because you've used the phrase "raise a red flag" many times. I would expect any investor voting on any merger to do thorough analysis of the attractiveness and to review all the reports by analysts, positive and negative, and to do their own analysis, so I'm not sure what you're asking me or what you mean when you say "raise a red flag."

Q. If I'm asking myself the question, is this Merger likely to be financially advantageous for me as an SCT Shareholder, should I perhaps have some concern about the fact that management isn't willing to stand up and say this is a good deal for my Shareholders?

A. Yes, you should have some concern.

Q. You know, I'm sure, that Elliott raised its own concerns as to the proposed Merger. I believe you're also acting in the Elliott Case; that's right, isn't it?

A. I did act in the Elliott Case.

Q. So, what we see in the last paragraph of Page 7, so they ask, among other things, a question as to Cheil's brief trading history, and really how does this history reflect the operational fundamentals which seem to be underpinning management's material, so Elliott, if you will, shining something of a light on the—management's assumptions in making its various projections.

Were those concerns reasonable concerns, for anyone looking at the likely financial implications of the Merger, concerns that they should have focused on?

A. What they're saying here is, I think, that they think Elliott is too expensive, the Share Price is too high. They say that doesn't reflect the operating operational fundamentals, so I think they're saying that they think Elliott's Share Price was too high. So, I would say--sorry, Cheil's Share Price was too high.

Q. Indeed.

A. So, I say, if you have a 30 billion company on one of the world's largest Stock Exchanges, and you think its price was somehow too high, you better explain to me why its Share Price was too high.

Now, if you say there was some false information about it, I could analyze that. I would need to know why you think the Share Price is too high. Otherwise, I presume on a heavily traded company on a major Stock Exchange, the price is the value. It's the price at which informed investors are willing to buy and sell to each other.

Q. Elliott seems to be saying the data just

isn't compelling here?
A. They think the price is too high, but the Market obviously disagreed because the price at which other people were trading on balance reflected a lower valuation. So, clearly, Elliott thought Cheil was not worth as much as the price, but that was only their view. Because if everybody in the Market had agreed with Elliott, then Cheil would have traded at a lower price, so the balance of views in the Market was to disagree with Elliott, and that's normal in a financial market. There will always be people who have different points of view. Some people think it should be worth more, some people think it should be worth less.
Q. The Stock Price of SC&T rallied very considerably, didn't it, once Elliott announced it objection to the Merger?
A. Can we see?
Q. Why don't we pull up C-9, Page 1. So, we're back in the ISS Report again and we see that conveniently there is a chart there.
A. Well--
Q. And what we're looking at is that there is, indeed, a sizable bounce when Elliott steps in and announces its opposition to the Merger.

A. So, I--
Q. Can I start with: Do you agree that that's what the chart here is showing, it's showing the Share Price at the time that Elliott opposes the Merger?
A. Well, I agree that it's a graph of the Share Price.
Okay. Now, interpreting graphs, for Share Prices and linking them to events, let's talk about that. Share Prices move a lot. The average share has a volatility of probably 25 to 50 percent annually, which means, for example, over a three-month period, a 40 percent annual volatility translates to a 20 percent volatility over three months. I'm sorry, this is a bit technical, but I will get there.
So, over any three-month period, a typical company's Share Price we'd expect it to move up or down in the region of 40 percent up and 40 percent down. That's two standard deviations.
So, the ordinary noise in any company's Share is very substantial. If we then want to look at a graph like this and say the movements were attributable to a specific thing that happened over that time, we run into the problem that that ordinary noise that Share Prices have, very substantial, is conflated with a particular event we're interested in,

such as Elliott's opposition to the Merger.
So, that is why we look very often at one-day movements rather than pictures like this. We look at one-day movements such as on the day of the Merger what happened to SC&T's Share Price, okay. Now, that's called an event study, I did that on Page 40 of my presentation, or 39. Just now I showed you the results of that, it's in both of my Reports.
So, if we look at the second line of Slide 39 of my presentation this morning, we see what I think is a more appropriate thing to be asking in relation to Elliott's opposition. What effect did it have on SC&T's Share Price? We can see that SC&T's Share Price went up by 10, and so did Cheil's.
Even on one day, it's still--there's still background noise, there's still other things happening, but that's the best we can do.
Q. Given, as you have described it, the substantial noise and volatility of Share Price movements, that's why people in the real world, if they are contemplating buying a company, do not only look at the Share Price of the Company, do they? They look at the fundamentals in order to establish value; that's right, isn't it?
A. Well, they do their own analysis. They look

at Sum Of The Parts, they look at Discounted Cash Flow, they look at all kinds of things. They look at relative multiples. Absolutely, they look at all those things.

Q. Indeed, the Share Price is only giving them one side of a much more complicated story, isn't it?

A. I would say it's giving them the aggregate of what traders think of that particular moment.

But, of course, if you are an active investor, you are trying to bet that the Share Price is wrong. Of course, it's very difficult to make trading profits against the Market, but some investors do that, and...

What's not plausible is to say that I can double my money in five weeks reliably, but good investors can outperform by a very little amount every year.

Q. Just coming back to this concept of the, in your view, fairness of the Exchange Ratio--

A. Yeah.

Q. --there were others who didn't just focus on the Market Price, but indeed looked, if you will, behind those numbers and did, for example, a Sum Of The Parts analysis. And as we're in the ISS Report, perhaps we could just flick forward to Page 14.

A. Yeah.

Q. So I think we can assume ISS had access to Stock Prices and all the other public information, so it looks at market reaction to the Merger.

Do you see that under the heading "Market Reaction"? It goes on then to do a Sum Of The Parts.

A. Yeah.

Q. Now, in terms of valuation--sorry, I just want to pull up the first--the italicized.

Now, I'm sure you will agree with this statement, "a valuation is as much art as science, highly dependent on the underlying assumptions over which reasonable people can disagree. As such, our analysis is meant merely to indicate a potential range of value which, in our opinion, based on public information, appears to be reasonable."

So, they're not pretending that they're locking in a definitive per-share value. They're just using a range of metrics to give a reasonable range. Would you agree with that?

A. Perhaps that's the standard boilerplate they put at the beginning of every report.

Q. A report that they put into the Market with their own name on it? Are you suggesting that ISS puts language into the Market that it has absolutely

no conviction in?
A. No, sitting on the fence in this quote, it looks like a standard disclaimer.
Q. Let's take a look at--
A. I don't disagree with it. It's so broad that one can't disagree with it.
Q. So, they're just giving a potential range of values that, in their view, appear to be reasonable.
A. Well, when they do their Sum Of The Parts on Page 14, the same page we're looking at, they do advocate that as being relevant and showing potential for improvement.
If you look at Page 15, they acknowledge the fact, that they haven't taken a discount on the listed components and they acknowledge the fact that everybody else does take a discount on the listed components, and maybe they should be doing so as well.
Q. Notwithstanding the discount issue, and we certainly will come on to that, if we can go to the table that's on a Page 14 because the ultimate conclusion there, based on ISS's valuation, is that there is an inherent discount here of almost 50 percent. So, when they're asking themselves the fairness question, what they have concluded is that there is a significant undervalue here, even before

you take into account any further discount that might be applicable.

A. "Undervalue" is a loaded term. I don't think even they would say that's an undervalue because they're not claiming that the Sum Of The Parts value is the value as you read to me in that disclaimer just now. They intend it only as an indication of possible outcomes.

Q. Well, they've concluded that the Exchange Ratio is at a 49.8 percent discount to SC&T's Sum Of The Parts value. That's what the conclusion is.

A. They have concluded that.

And by the way, if you follow market practice and take a discount on listed components as they discuss on the following page, you get something very close to the Market Price. And I made that point in Slide 14 of my presentation earlier, where I showed that this whole discussion of price versus Sum Of The Parts is a red herring because, if you do a Sum Of The Parts and apply a reasonable discount, you get back to very close to the Market Price.

And I've also got in my Second Report, if you look at Table 4, Page 77 of my Second Report, you will see that making that adjustment and a couple of other smaller adjustments to Dr. Duarte-Silva's own analysis also take the Sum Of The Parts from over $100 a share down to $63 a share, which is not too far away from the Market Price.

Q. Nonetheless, there are a range of views in the Market that the Market Price was not a reflection of a fair Merger Ratio?

A. Well, you have shown me the two proxy advisors who describe it as unfair, perhaps. I don't believe that Market Prices are fair or unfair. I believe that if you have some evidence that they were manipulated or distorted, then I can consider that; but otherwise, I consider Market Prices to be fair estimates of value.

Q. Let's have a look at the ratio through the eyes of Glass Lewis, if don't mind. That's C-83, Page 9.

So, what we see in this table is there's sort of a quantitative assessment, if you will. Their conclusion appears underneath the statistical data there, it's in the paragraph: "The foregoing factors collectively appear to portray a circumstance in which SCT investors--despite being offered an exchange ratio that meets the strict definitions imposed by relevant South Korean regulation--are being asked to trade their materially undervalued stakes in the Company for

Cheil's equity, which has little in the way of fundamental support for its overheated valuation." And they express that, if you will, through the percentage figures given above.

So, again, this is another voice that is not just looking at the Market Price and saying that's fair, I need ask no further questions. This is another recognized voice in the Market expressing serious concerns as to whether the price, in fact, is very disadvantageous to SCT. Do you see that?

A. I can read what it says here.

Q. But for--

A. I mean, it would be interesting to look at those numbers but scan just above that paragraph, I can see them in gray on my screen. They seem to be looking at some very crude metrics, net income, EBITDA.

And I mean, they're just looking at, you know, what SCT's contribution to total sales revenue versus Cheil's contribution to total sales revenue, that doesn't tell you very much at all about the relative values of Cheil and SCT because, of course, Cheil and SCT might have different margins, might have different growth. Likewise, for the various earnings metrics they've put under there, Cheil and SC&T might have different growth rates. So, simply looking at the ratio of earnings between the two companies doesn't tell you the ratio of values between the two companies. And if that's what they're relying on then, I don't think they're doing a very good job.

Q. It's a lengthy report, they give a number of reasons. What they don't do, though--and this is really my point--what they don't do is just take--just accept the Market Value of the Shares as a conclusion that the Merger Ratio is, by definition, fair. They ask many further questions as to others. Do you accept that?

A. I agree and I think different analysts did their different analyses, Shareholders should have read all that stuff, formed their own opinions, done their own analysis, too. And no doubt the major shareholders did do that and voted accordingly.

Q. And considered any voting rules that might apply to them like the one we looked at?

A. Well, I think most Shareholders, I hope, would act to increase shareholder value.

MS. LAMB: Sir, this may be a convenient moment for a break. I think we were due one at 2:45, and I'm about to move on to a different subject.

PRESIDENT SACHS: Very good. Very good.

Yes. There will be questions later.

Yes, we have a 15-minute break. Meaning we resume at 3:00, please.

(Brief recess.)

PRESIDENT SACHS: Ms. Lamb, please proceed.

MS. LAMB: Thank you.

BY MS. LAMB:

Q. We are just waiting for both--there we are. We are all back.

After the Merger Announcement, we know that the Shares went up in value. We looked at that graph on Page 1 of the ISS Report. Some analysts, some observers took the view that, nonetheless, that suggested skepticism with the current bid, didn't they?

A. No doubt.

Q. Shall we look at--

A. I'm happy to take that, yes.

Q. Why don't we just look at one particular example, and then you can let us know your view.

So, we are still in, I believe, C-83. We're at the back end of the Glass Lewis Report, Page 9.

And it's the paragraph above "CONCLUSION."

So, this is after its observations about overheated valuations of Cheil and concerns about fairness for SCT investors. It says: "As a final note in this regard, it's worth considering SCT's shares are currently trading materially above--indeed, 5.1 percent above--implied deal value, based on closing prices as of July 1. Given a regulatory circumstance in which Cheil cannot simply raise its offer to meet or exceed current market value, we believe this suggests significant skepticism with regard to the current bid." So, that was their interpretation based on that regulatory impediment, and they want others to take that view.

Nonetheless, your view is somewhat different. You believe that we are to infer from the post merger movement in the Share Prices market, confidence rather than significant skepticism with the current bid?

A. Well, mathematically, if the Shares are not trading at the Merger Ratio, that could imply--that could imply that the market believes the Merger doesn't have a 100 probability of success. And it could also imply that the Market has certain expectations about how the prices will evolve.

Could you tell me, please, when this report was dated?

Q. And that would be relevant to your answer

because...?
A. Because the Merger Ratio might be fixed at that date or it might not yet have been fixed.
Q. It's fixed at this date. You can assume for the purposes of your answer that it's fixed.
A. In fact, this Report seems to be dated July 17, if I see at bottom left-hand corner.
MS. LAMB: The date of the Shareholders' Meeting.
MR. GOPALAN: Excuse me, I'm sorry to interrupt. Ms. Lamb, if we could just provide the Witness with the date of document. He has asked for it.
MS. LAMB: Perhaps we can pull up the first page then of the document.
PRESIDENT SACHS: Yes, please do so.
BY MS. LAMB:
Q. So, the published date is 1 July.
Do you see that?
A. Thank you.
Q. Would you like to elaborate your answer?
A. I think I got it all in.
Q. Okay. Earlier in our questions, we talked about some of the factors that it might be reasonable to take into account when considering whether a merger

proposal is financially advantageous. And one of the things you agreed would be reasonable to do, would be to look at the stand-alone value of the Company.

A. By definition.

Q. In our case, we're looking at SCT. What was its stand-alone value, and what does that tell us when we look at the proposed Merger, what is that value telling us about whether the proposed Merger is financially advantageous to the SCT Shareholders?

A. Okay. You asked me what is its value and what does that tell us?

Q. I'm asking you--

A. The answer is its stand-alone value is what it would be worth if the Merger does not go ahead.

Q. Indeed.

And so, other commentators had a look at that, didn't they, to test the proposition, is the proposed Merger, indeed, financially advantageous for SCT Shareholders? And that was a rational thing to do; do you agree?

A. Well, by definition, a merger is financially advantageous if the merged value is larger than the stand-alone value.

Q. So, SCT was a long-established business, wasn't it?

A. Yes, I believe so.
Q. And its global revenues in the financial year before the Merger, ballpark?
A. I don't know, but I would say its Market Capitalization was ball-parked a little under 10 billion U.S.
Q. I think we see from Paragraph 137 of your First Statement, actually the Financial Statements. Why don't we just take a quick look at that, so that's Professor Dow's First Report, Para 137.
And what you tell us here is that the global revenues in the Year 2014 were $27 billion, and the footnote actually gives us the source, and I believe you just take it from the Annual Report. Could we just see what Footnote 164? From the Consolidated Financial Statements.
So, given the long-standing history of SC&T and those revenues, some of the advisors and certainly the proxy advisors were skeptical, weren't they, of what was being said as to the supposed dwindling fortunes of SC&T?
A. Some of the--well, the proxy advisors we know were negative about the Merger, those two. Other analysts, no doubt, actually I'm not sure, but certainly some people who've commented such as Elliott

have thought that they thought the Merger was disadvantageous. You mentioned given the long trading history. I don't really see how that's relevant. The point is some people certainly agreed or believed that the Merger was disadvantageous. Others obviously took the opposite view.

Q. Given that it was a long-established business, a snapshot picture of its Share Price on any given day was never going to tell the full story of the valuation of that business, was it?

A. I disagree.

Q. Looking at a snapshot picture of the Stock Price, when macro events produce an impact on the Market, the price on that day they're not going to tell us what the Fair Market Value of the enterprise is, is it?

A. I'm not sure I understand the question. The Fair Market Value is the price at which willing buyers are willing to trade with willing sellers and that is the Market Price.

Q. If the Stock Market tanks on any given day by reason of a macro event, it's not telling us that the long-term prospects of SC&T are necessarily impacted, is it?

A. Well, if the Stock Market tanks--let's take an example, when COVID happened, the Stock Market did tank by, I think, 30 percent-ish. That was telling us that the Market thought COVID was going to be very bad for the long-term prospects of companies in the Stock Market.

So, yes, indeed it was telling us when it tanked that the long-term prospects had just got a lot worse.

Q. And if I was looking to buy one of these companies at that time, I wouldn't just look, though, at the Stock Price, would I? I would look at the underlying fundamentals of the business?

A. Well, you should always look at the underlying fundamentals.

There's two ways to invest. One way, which most investors follow, is index investing, which is simply what I do most of the time, because I know that for someone like me it's futile to try to do otherwise. What many investors, if not most investors do, is simply trust the Market Prices. What active investors do is to form their own opinion and believe that they have a slightly better view than the Market, and some of those active investors turn out to be right, and some of them turn out to be wrong.

But what is not true is that the Market tank is a temporary blip while the value of companies was carrying on as before, and that is the wrong framework to be employing.

Q. In this case, the proxy advisors were really very skeptical of what was being described as dwindling fortunes of SC&T in light of, for example, its trading history, its asset base--all the other business fundamentals--

A. Well, we know that the proxy advisors were opposed to the Merger. We saw this morning a newspaper article which said that many equity analysts thought the proxy advisors, or particularly ISS, was being overly optimistic about SC&T's stand-alone value.

Q. The newspaper article we looked at this morning, that's featured in your Report. You cite that, don't you, as a reason for expressing a view that ISS takes a contrarian view?

A. I don't recall the incident, but I'm sure you're right. If you could take me to my Report where I say that, we can look at it.

Q. Let me just ask you first, do you--do you diligence the press reports that you rely on when you use them in your Expert Opinions?

A. I'm sorry, I don't know what you mean.

Q. Do you ask yourself the question: Is the person or newspaper writing the view that I am espousing, in any way connected to the underlying facts such that it might be relevant to kick the tires, if you were, on the views being expressed?

A. Well, my Report doesn't particularly rely on analysts' views. I've relied instead on the economics, so I'm not that interested in what one analyst says versus what another analyst says, and therefore I have not done so in the case of that newspaper article, if that's what you're driving at.

Q. So, your confirmation, just to be clear, is that you didn't diligence it.

Are you surprised to know that the newspaper report that you have, in fact, relied on is owned by the--[redacted]'s wife's family, i.e. Samsung itself, had an interest in a newspaper whose article you relied on?

A. Where did I rely on that?

Q. Dow 53, I believe, is the cite.

Can we find the reference to the Report? We will find it so you can take a look at it. The title of the article, "Samsung proxy fight rages." This is an article that you've selected. And I was simply asking you whether you diligenced, for example, the owners of the newspaper before relying on it. But I think the answer you gave me was "no."

A. I don't believe I relied on it for the purpose that you have just put. Certainly that's not done in Paragraph 152.

MR. GOPALAN: I'm sorry, if I could just interrupt. Ms. Lamb, is that fact you just asserted in evidence?

MS. LAMB: I believe it is, yes.

MR. GOPALAN: If you wouldn't mind providing us the reference. We'll just take a look.

MS. LAMB: Indeed.

C-45 and C-101.

The Witness has answered the question, so you can make, I'm sure, whatever submissions you wish to make as to that fact.

THE WITNESS: As I say, I don't rely on Analyst Reports, one way or the other, for my main conclusions.

BY MS. LAMB:

Q. Let's return to the issue of SC&T's--the views that were being espoused of SC&T's future fortune, if you will, by the Merger proponents at the time of the Merger and what others thought about that. Please, can we be back in C-83, the Glass Lewis

Report, and please can we turn up Page 6 and look at the third paragraph that begins: "We would further suggest management's arguments regarding SCT's stand-alone prospects are both exceedingly brief--again, comprising a single slide--and flatly unconvincing."

It's a fairly damning assessment, I'm sure you will agree, as to management's arguments at the very least.

A. I think we've covered this ground already. I said that I accept that this Report is negative about the Merger.

Q. What we're told is that when management was trying to pitch this to the market, rather than putting forward--and we see this from the paragraph here, rather than putting forward its own ordinary course of business projections, i.e., what did it really think the Company's fortunes were, instead it relied on certain other sources and did not perform any comparison of those forward operating figures with its own data, and so the concern was being expressed, and you can see it here, what's the veracity of these estimates relative to internal projections.

A. I'm not sure--I don't understand that question there.

Q. Well, I'm looking at the observations that are being made by Glass Lewis and their raising serious questions as to how it can be said that SC&T as a stand-alone prospect should really be viewed so negatively, even management can't tell us how these figures stack up as against its own internal projections.

Now, let's put ourselves back in the but-for world again, so NPS is going to vote again on the Merger, and it's going to ask itself the question: Is this deal financially advantageous for SCT Shareholders?" Ought it not to be concerned that management was not willing to put forward even its own internal projections, should it not have been concerned about some of these assessments as to SCT's supposedly dwindling stand-alone prospects?

I'm sorry, that was a very long question, and you will tell me if it's too long.

A. No, I won't tell you that.

I will tell you that this discussion is missing the point. Let's suppose we take two companies that have no synergies whatsoever. They have nothing to do with each other. We put them together in a merger at Market Prices and nothing changes. There is no synergy, no improvement, no nothing. We just put them together, and we do so at Market Prices. Is that good or bad for the Shareholders of one of the companies? Answer: It's neutral. It's neutral because we're putting them together, nothing changes, and we're putting them together as an exchange in Fair Market Values, so there is no gain or loss to either Shareholders. And therefore this lengthy discussion of whether there are any synergies, whether the whatever would have improved the fashion and the construction industries would have gone nicely together, none of that matters for whether SC&T Shareholders would have lost value because--by the Merger--because the whole point is the Merger is taking place at Fair Market Values. The Shareholders in SC&T who don't like the Merger and have to give up their Shares in the Merger, are not losing anything because they're losing the Fair Market Value of their Shares, and they're getting back Shares at equivalent value.

Now, I've often--often--sometimes, I can recall one example, where I invested in a company which I thought was undervalued, and I did my own analysis, which was pretty crude, and I thought, oh, in the long run it will be worth more. It was taken away from me in a merger, the Merger was close to

Market Prices and I was a bit disappointed, but so what? I didn't lose anything in terms of Market Value. I did lose in terms of my own subjective model, but who knows whether I was right or whether I was wrong. Probably I wasn't right, if I was there was only a small chance that I would have made money on this bet.

Q.   The National Pension Service wasn't really in the position to make decisions on the basis--on that basis, though, was it, because it had to satisfy itself, according to its rule, that if--if, indeed, it appreciated that there may be an adverse effect for Shareholders, it had to vote against, didn't it?

A.   I don't think so.

Q.   Or was it in a position to just take a punt, put it that way?

A.   I'm not sure what you're saying.

If I'm a shareholder, obviously all Shareholders, like the NPS, would like to maximize shareholder value. If something comes along which I think is broadly neutral or possibly has a small advantage, I would vote in favor. If it's--if I didn't--I mean, nobody thinks something is literally neutral--but if I thought it was almost entirely neutral, who knows what I would do, but I don't think it matters.

Q. The NPS had a sizable stake, as we know, in SCT. The Korean Corporate Governance Service raised some concerns, didn't it, as to the haste with which the Merger had been announced, and generally speaking, the governance around the merger proposal. Let's have a look at some of the reasons for that.

Perhaps we could take a look at C-192, Page 9, please. Again, this is the advice that's been given to the NPS, and we are still asking ourselves the question, what would NPS have done in the but-for world acting in accordance with its rules.

So, just stepping back--

A. But none of this matters.

Q. It matters because--

A. Because they have voted against a transaction that was at Market Prices, so what?

PRESIDENT SACHS: I'm sorry, she asked you a question, and please answer the question.

THE WITNESS: I'm sorry.

BY MS. LAMB:

Q. It matters because the Tribunal needs to answer the question, how would NPS have voted in a real world and applying its Voting Guidelines and the strictures that apply to it. It needs to form its own assessment of what the likely vote would be, so it does matter, respectfully.

A. May I state my position on this?

Q. Well, we are looking at the question how would NPS have voted in the but-for scenario applying its rules. If you have an answer to that, then it's responsive to my question; otherwise, perhaps we could move on with my questions.

A. Well, my answer that I gave in my Report says I don't know, and, but, I mean of course, I accept that it's quite - quite likely - possible, if not likely, that they would have voted against the Merger.

Q. Thank you.

A. That's not important for my analysis.

Q. It's important for my analysis. Thank you.

When we spoke at the beginning of our questioning I asked you, if you were looking at a proposed transaction, would you want to know about the overall governance around the merger proposal, is one of the things you might look at considering an investment, the relative speed with which the merging entities had decided to embark on this course of action?

A. I would look at everything, so that includes

what you just said.
Q. In this case, the Korean Corporate Governance Service had--had reservations about that, in particular, because it was concerned that, given the haste, I think it was only one month from the beginning of the negotiations to the announcement of the deal, how could they have looked at other alternatives to the Merger before recommending the Merger to Shareholders? Informing an assessment of overall investment decision, would you consider then that a decision to announce a merger within just a month of starting the negotiations, was something to look a little more carefully at, at least?
A. Your question is, is it unusual to announce a merger within a month of negotiations, and honestly, I don't know, but I don't think it sounds very unusual.
Q. My question--
A. As a general proposition, I'm sure there are mergers which are consummated or recommended within that time scale.
Q. We looked earlier at one of the labyrinth documents of the corporate group. This was not a straightforward combination of entities, was it? These were sprawling conglomerates.

Given the size of the proposed transaction, was it reasonable, do you think, for the proxy advisors to ask some questions as to whether the Merger parties might have been acting in haste?

A. Well, I think that's such a broad question that the answer can only be "yes," it would have been reasonable to look at that because, of course it would be reasonable to look at everything.

Q. One of the things they asked themselves was, given, if you will, existing relationships within the group, why did they need to go ahead and merge? Because surely they can exploit these synergies if, indeed, they exist already. Indeed, why are they not already exploiting these synergies? Do you think that was a fair observation?

A. Well, my role as a damages expert, I don't think is to offer an opinion on whether it was a good merger, particularly, but rather to inquire whether SC&T Shareholders were damaged by the Merger or by Korea's alleged actions which may have contributed to the Merger happening.

So, given that the Merger was done at Market Prices, my main focus has been to explain that that implies SCT Shareholders were not damaged. And that's a very different question from offering an affirmative opinion of my own of whether the Merger was a good thing or a bad thing.

Rather, I would say, if you want to answer that question, don't look at me, look to me for advice. Many other people have already given their own advice, including the proxy advisors that you referred to, looked to what the Shareholders did and the Majority of them did vote for the Merger, and so presumably they thought it made some sense.

Q. The reason I'm asking you some of these questions at least, is because you have offered an opinion as to the fairness of the Merger Ratio.

A. Correct.

Q. And some of these elements do, respectfully, challenge that assumption.

And you have also offered--

A. I'm sorry, in what way do they challenge?

PRESIDENT SACHS: Wait for the question.

THE WITNESS: I apologize.

BY MS. LAMB:

Q. And you did also offer an opinion in both of your Reports as to what NPS might have done in the but-for world, and so I just want to be clear that that's why I'm asking you these questions. I've had no objection through all of this from your counsel.

If there is a question that you feel goes beyond your area of expertise, please do say, and I can stop.

A. I would like to clarify that the place in my Reports where I say that the Merger Vote outcome would not 100 percent have been different, 100 percent certainty being different in the but-for world, that's a relatively small part of my analysis. So, mostly my analysis says the Exchange took place at Market Prices; that's fair; end of story. Now, that's one comment I would like to make.

Secondly, I think you said something that, to the effect that these topics that we're discussing speak to the--speak to the validity of my damages analysis; and, if that was the case, I think we should discuss that because I don't believe they do speak--

Q. I didn't, to be very clear. I said to you that the reason I have been asking many of these questions is because I want to challenge your opinion that the Merger Ratio was fair.

A. I don't think any of the topics we have been discussing have anything to do with that.

Q. And ultimately the Tribunal, of course, will be the one to decide, but I can put questions to you if I consider that they, in fact, are issues that very much undermine the fairness of the Merger Ratio, and

I've taken you to a number of Analyst Reports who share that view. They shared the view that the price grossly undervalued the proposition in the hands of the SCT Shareholders.

A. I agree that you have been arguing that the price grossly undervalued SC&T, and my testimony is that the price was a Fair Market Value.

Q. That's clear. Thank you.

Let's talk about possible scenarios for what could happen to the Stock Price after the Merger Vote, depending on the outcome of the vote. If you don't mind, we will take a look at CRA-47. It's an Analyst Report from the Macquarie bank.

So, what we see here is that the analysts are considering three possible scenarios. First scenario, 50 percent probability; second, 40 percent probability; and the third, that the Merger is blocked, and they give up.

Looking at the second of those scenarios, so there, their view was that if the Merger was blocked at the July EGM, that would lead to a strong rally in Samsung's C&T price. Now, you have a different view, but nonetheless others in the Market took the view that the price would rally?

A. They say there that they believe the

discount would disappear because Elliott- and- the dissenting Party would request dividend payment in equities, including Samsung Electronics Shares.

Q. Would you--

A. I think that means that--it's not quite clear what it means because these companies pay very little dividends, as is a custom in Korea, but I think that means what they intended to say was Elliott and the others would get SC&T to liquidate its listed holdings. And I say, as I've analyzed this morning, yeah, obviously at some level that would lead to the market reflecting the value of those listed investment holdings.

Two observations, there would be tax liability in that event, Number 1; and, secondly, I don't know how plausible it would be that SC&T would actually have liquidated its listed portfolio. But I don't--I don't think I've offered an opinion in my Reports that analyzes that paragraph.

Q. Fair enough. I'll ask no further questions on that.

You do look at, though, what happens to the Stock Price after the Merger Vote is announced?

A. Correct.

Q. And, in the end, the market reacted

negatively.
A. Correct, for both companies. Both Cheil and SC&T went down.
Q. I mean, at very basic level. Doesn't it rather emphasize the thinness and lack of credibility of the entire merger proposal?
A. Well, the price reaction on that day is very different to the price reaction on the announcement day. So, on Slide 40 of my presentation this morning, I highlighted that. I said that, indeed, the prices go down on the vote, and they go up on the Announcement. Those pieces of information appear to contradict each other. That happens. These tests are trying to separate out noise from the impacts of the events, but it's a statistical exercise. It's not fully deterministic.
And the best I say, really, is that if we combine the two dates, and the market's reaction on the two dates, which I do at the bottom of Slide 40, there is a 6.3 percent increase for SC&T.
So yes, I fully agree that the Merger Announcement SC&T went up by 17 percent. It went down by 10 on the vote. How do I put those two pieces of information together? Well, I don't have a full explanation because it's a statistical exercise, and

who knows, but the best I can do is to combine them and say that it's a significantly positive increase of 6.3 percent.

Q. What the Share Price is telling us after the Announcement of the vote is that investors just didn't buy into the merger proposal. I mean, otherwise, they would have stayed in wouldn't they? To reap the rewards of the so-called "synergies."

A. It could have been selling pressure. Obviously, the investors who didn't like the Merger, such as--I think Mason itself starts selling right after the vote. So, it could have been selling pressure.

But the explanation I just gave ignored any short-term short-selling pressure. So, that's an additional factor.

We did see a big spike in transaction volume--I'm not sure where that's showing but it's somewhere in my Reports--the day after the vote, there was an enormous transaction volume. So, there may have been selling pressure, and that might have been responsible for the drop, I don't know, but that suggests that the drop wasn't information. It was mere selling pressure, and I haven't made that argument in my Reports, so I don't rely on that.

Q. No, I mean, the stock was dropped like a stone, wasn't it? Let's face it.
A. Well, as I've said, and it's shown on Page--Slide 40 of my presentation this morning, there was a rise on the Announcement and a fall on the vote.
Q. Let's move on to the discount.
A. Sure.
Q. In your Report, you refer your First Report--I think both Reports, you refer to the Korea discount?
A. Correct.
Q. As a discount that's generally applicable to companies that operate in Korea, compared with companies in other jurisdictions. Just at a very general level so the Tribunal knows where we're going with this subject.
Now, I think you agree that Dr. Duarte-Silva's valuation uses only Korean firms as its comparables, and use Stock Price--sorry, Stock Market Prices for the listed holdings and does not, therefore, require a Korea discount as such.
A. Correct.
Q. So, let's have a look at the holding-company discount.
In your First Report, your strong view was

that the holding company discount is particularly prevalent among Korean Holding Companies and, therefore, typically should be applied to value Korean Holding Companies using the Sum Of The Parts method. That was your opinion?

A. Sounds right.

Q. Shall we--I'm sorry, I'm asking you this without--without your--let us just turn up Para 154 of your First Report.

So, final sentence--I'm sorry, do read the paragraph, if you wish to.

A. Yeah. Final sentence: "A recent academic study examined this discount and reported that Korean Holding Companies traded below their fundamental value." I shouldn't have said that, it should have been Sum Of The Parts throughout the period.

And, indeed, on Page 16 of my presentation this morning, I think that is the same study that was represented as the Korean empirical study of a broader sample of chaebols, if I'm not mistaken, it is the same study.

Q. Thank you.

Now, elsewhere in your Report, you distinguished between holding companies, defined as such under Korean Law, and those that do not meet the

specific definition of a holding company under Korean Law, for full clarification--
(overlapping speakers.)
A. Correct.
For me, as an economist, this is not an important distinction. I appreciate that may be different for lawyers.
Q. So, just so we're clear, what we're talking about here. In Footnote 43, the definition that you use, you say: "A company that makes--this is as to the distinction--
A. Um-hmm.
Q. --between holding company, as defined as such, is Korean Law and those that do not meet the specific definition of a "holding company" under Korean Law." You cite to the definition of that as, "a company that makes controlling any domestic company's business through the ownership of stocks as its primary business and whose assets--whose total assets are above the amount determined by Presidential Decree."
And you agree, I think, that neither SC&T nor Cheil meet that definition?
A. It's not relevant for me anyway.
Q. Well--I'm sorry, do you agree that neither

SC&T nor Cheil meet that definition.
(Overlapping speakers.)
A. If you put it to me that they did, that they did not meet the definition, I'm happy to agree.
Q. In Paragraph 154 of your Report that we were just looking at, you assumed, I think, that this study to which you were referring concerned Korean holding companies uncapitalized, if you will. You--
A. In the ordinary sense of the word.
Q. You haven't drawn a distinction?
A. To me, as an economist, there is no distinction.
Q. Could we have a look at the academic study. I think it's Dow 56.
So, is this a peer-reviewed publication, what do we know about this article that you shared?
A. It's not a particularly well-known international publication. I don't know if it's peer-reviewed. It's about Korean companies, so it's published in a Korean journal.
Q. So you didn't, as it were, do a due diligence as such before relying on it?
A. Well, it's easy to compute a discount, so--I mean...
Q. Is that a "no"?

A. I think it's reasonable, but I didn't.
Q. You didn't due-diligence it as such?
A. Due-diligence, you mean what exactly?
Q. Is it a peer-reviewed article? I don't think you can give me the answer.
A. I don't know the answer.
Q. We could see that it's based on research conducted in 2017. Just looking at the first sentence at the abstract, then, this study finds that holding companies--i.e., those that are founded pursuant so Korea's Monopoly Regulation and Fair Trade Act--are traded at lower values than are other companies in the Stock Market, so the study's findings concern companies that are Korean Holding Companies within the Korean Law definition; is that right?
A. I agree that it says that.
Q. Yeah. So, when you suggested that the study applied to Korean Holding Companies generally, without making this legal distinction, that wasn't quite right, was it?
A. To me, as an economist, it makes no difference.
Q. But it wasn't quite right because it was--it is making a distinction between these two types of holding companies?

A. Can you points me to the statement where I say it's not quite right?

Q. Well, I think you told us the distinction doesn't matter to you. You haven't made a distinction.

A. Correct.

Q. And the study is only finding that holding companies--i.e., those founded pursuant to Korea's Monopoly Regulation and Fair Trade Act--are those that trade at lower values than other companies in the Stock Market. So, if to the authors of this report, it seems to be a significant distinction. That's the only point I'm making.

A. I don't know whether they consider it significant, but that is presumably what they're looking at in this report.

Q. And you, yourself, haven't researched or published in the area of Korean Holding Companies or the Korea discount?

A. No.

Q. And--

A. Nor would I have done if you removed the adjective "Korean" from that statement, from that question.

Q. So, no published materials of your own on

discount theories or discount rates. No further questions on the Korea discount in that case.
Just a few more questions, in fact. SEC. Let's talk about SEC.
Now, you don't perform your own valuation of SEC. Again, we're looking at the Stock Price?
A. Correct.
Q. And--
A. And I don't see it as my role to perform another valuation of my own when many people have already done so, both SC&T, Cheil, and SEC. Rather, my point is to draw the Tribunal's attention to Market Prices.
Q. A criticism that you have of the SEC methodology--damages methodology, if you will--for Mason is that it's speculating because it's projecting out into the future how SEC prices might have traded; is that right?
A. Well, it appears to be saying that in the actual world and in the but-for world--indeed it is saying if you looked at the model that Dr. Duarte-Silva has produced--that model says that, in the actual world and in the but-for world, SEC Share Prices--we know they would have followed the path that they actually did with hindsight turned out to follow,

and furthermore it was the same path, but the but-for path was the same as the actual path.

Q. We do know, of course, as a matter of fact, how the SEC Shares performed over time because that's--

A. In hindsight, of course we do.

Q. It's publicly available data, of course; that's an obvious point.

So, if the Tribunal was asking itself the question what would the Shares have been worth had Mason hung on to them, all they had to do, under your theory of the case, is look at Stock Price?

A. I'm sorry, I don't quite understand why you put it that way.

Q. Well, I'm asking you the question.

A. Yes.

Q. If the Tribunal decides that, but for Korea's measures, Mason would have hung on to its SEC Shares for a given period. It doesn't need to speculate as to what SEC's value would be at that time because it can simply look at what SEC's Stock Price actually was at that time, and you say that's the Fair Market Value.

A. I say if the Tribunal wishes to award damages for SEC, it should pick a Valuation Date which is close to July 2015, it should look at SEC's price, and it should look at SEC's but-for price at around that time. So, to me, that would have been a more standard methodology, I think.

Q. If the Tribunal decides, however, that in the but-for world, Mason, indeed, would have hung on to its SEC Shares and realized whatever appreciation in their value would have followed, on your theory of Fair Market Value, they just need to look at the Stock Price of SEC at the relevant date, at that relevant future date.

A. I don't think that's a standard damages approach, which normally crystallizes damages at the time of the bad act.

Q. That wasn't what I was just asking. I was just asking if they can identify, on your theory, Fair Market Value by looking at the Stock Price of SEC at the date they determined to be the right date.

A. I'm not sure what the question is. If the Tribunal were to decide--

Q. That Mason would have hung on to its Shares--

A. Yes.

Q. --in SEC for a defined period.

A. Yes.

Q. So, if the Tribunal decides that, indeed, Mason would have followed its target price that it generated in the ordinary course of business, and so it determined that it would have hung on to those Shares for another 18 months, then the Tribunal can answer the question, what was the value of the SEC Shares at that date by simply looking at SEC's actual Stock Price at that date. It doesn't have to speculate. It can just look at the historical data.

A. I don't agree.

If the Tribunal--and it's normal in damages cases that somebody who owns an asset which was taken or damaged might have carried on holding it into the future, but the normal way to assess damages is to crystallize the damages at the time of the so-called "bad act," and to compare actual and but-for values around that time. So, I disagree.

The fact that--you know, in most damages cases, the damaged party would have carried on holding the asset for some time into the future, nevertheless damages are assessed and crystallizing of the date of the bad act.

Q. Mason says it would have hung on to those Shares--that is its evidence--and ultimately the Tribunal will decide whether they think Mason has the

better of the argument on that.
But if they form the conclusion that, indeed, Mason would have held on to the SEC Shares in accordance with its investment thesis, they don't have to speculate as to how the stock might have performed, do they, because they can look at actual real-life data; that's right, isn't it?
A. That's incorrect, in my opinion. That would not be the standard way to correct that to compute damages.
Q. I'm not asking for your opinion as to what you believe the standard method should be.
A. You asked me--please.
Q. I was simply asking the question whether the Tribunal needs to speculate or whether they can just look at actual real-life data as to how SEC Shares actually performed in the real world over the Relevant Period.
A. If the Tribunal determines that Mason would have held the Shares for longer, the SEC Shares, but for this vote, I say the Tribunal should estimate damages based on the actual--comparing the actual versus but-for values of the SEC Shares at the time of the bad act.
Q. Your testimony is very clear.

A. Thank you.
Q. I have no further questions. Thank you.
A. Thank you.
Mr. President, Members of the Tribunal, thank you.
PRESIDENT SACHS: Will there be a redirect?
MR. GOPALAN: Yes, very briefly.
PRESIDENT SACHS: Okay. Please proceed, Mr. Gopalan.
MR. GOPALAN: Thank you, Mr. President.

REDIRECT EXAMINATION

BY MR. GOPALAN:
Q. Professor Dow, you were taken to a report by ISS, the proxy advisor on SC&T from early July 2015. That's Exhibit C-9, if FTI could bring that up, please.
Counsel asked you several questions about this document, and you referenced Page 15 in your testimony. If we could just go to that page, please.
Now, you weren't given--you weren't taken to this page, so I just want to give you a chance to identify the paragraph you were referring to and make the point you wanted to make.
A. Thank you.
So, ISS conduct a Sum Of The Parts on

Page 14 which we saw earlier.

On Page 15, ISS say--a further question is whether this large discount is an anomaly. Conglomerates typically trade at a discount, and many analysts apply a 30 percent discount to the value of minority stakes in unlisted and sometimes even listed companies.

That's all I have to say.

Q. Okay. You were also taken to Dow 56, and we don't need to pull that up. It's a study concerning Korean Holding Companies, and you said: "As an economic matter, there would be no difference between de facto and legal holding companies." Can you explain what you meant by that?

A. Right. What I meant is what--you know, why do holding companies trade at a discount? And is that affected to buy--why do holding companies generally trade at a discount, should we say, and is that affected by whether they were Korean de facto holding companies--sorry, Korean official holding companies or simply de facto holding companies.

On Slide 13 of my presentation this morning--sorry, after lunch, I gave various reasons why a company that owns other assets such as other companies could trade at less than the summed values of those constituents.

And corporate governance could obviously be a reason for that. The controlling interest has all kinds of ways of taking decisions that the Minority interests might not like. If I buy Shares, Minority Shares, in a company with a controlling interest, I, in most parts of the world, would think that--view that as a negative. Presumably there are other attractions to balance that.

I don't see why being designated an official Korean Holding Company should change that.

MR. GOPALAN: No further questions. Thank you.

PRESIDENT SACHS: Thank you very much.

We may have some questions.

QUESTIONS FROM THE TRIBUNAL

PRESIDENT SACHS: Could you please turn to Page 14 of your presentation of today. Now, that's the slide which is entitled "Price vs. SOTP is a Red Herring."

Now, if one were to assume that the Tribunal considers that there was corruption and the bad act, as you called it, and we were to look into quantum, we understand that you and Dr. Duarte-Silva at least agreed that the fair-market-value standard is the correct standard to measure the alleged damages with respect to Mason's Shares. Now, you disagree on how, then, to define the Fair Market Value.

But if you were to further assume that the Tribunal would consider that the Market Price is not the most reliable or suitable indicator for determining the Fair Market Value because, for example, the Stock Price was depressed by the threat of the Merger, and/or deliberate market manipulation, all of this hypothetically. You say in this slide that your alternative calculation, based on the SOTP method, would arrive to a similar result.

Now, our first question is: Do we find this alternative calculation also in your Reports? Then please point us to where you did this exercise.

THE WITNESS: So, in my Second Report--

PRESIDENT SACHS: Yes.

THE WITNESS: --Table 4, which is on Page 77, we see a slightly different version obviously of a similar adjustment or similar calculation.

I make three adjustments to illustrate. I'm clearly not saying this is correct, but I'm saying take Dr. Duarte-Silva's model and make three modifications to it.

PRESIDENT SACHS: Okay.

THE WITNESS: The first one is I take issue with one of his multiples, and I take the median multiple instead of the average, thereby discarding one of the multiples for reasons which I explained in my reports.

By the way, I note in Paragraph 202 that this issue is also discussed in my First Report in Table 9; so, to some extent, from the table we're looking at now, duplicates what is in my First Report.

So, first of all, I adjust the multiples and then adjust valuation of Biologics.

PRESIDENT SACHS: Show us in the chart where you did this.

THE WITNESS: Yes.

If you look at Table 4, you can see three numbers have a gray box around them.

PRESIDENT SACHS: Um-hmm.

THE WITNESS: And that highlight shows the three adjustments I have made. So, by adjusting the multiples slightly, I would say the SC&T Core is worth more like 4.5 billion U.S. Biologics is worth 68 million. And most important of the three adjustments I take 30 percent discount, holding-company discount, as most of the analysts do.

PRESIDENT SACHS: Okay.

THE WITNESS: And then--and then the net result is the value of the share, instead of it being a hundred as Dr. Duarte-Silva claims, it's only 63.

PRESIDENT SACHS: So that we understand this in terms of the prices for the Shares on the table, so on the one side we have the Claimants' claim for loss of 164.7 million. I'm sorry, the Market Price of the Shares--sorry. The Market Price of the Shares as of 17 July 2015, which was 164.7 million--I think you mentioned this also in your today's slide--and on the other side we have the Claimants' claim for the SC&T Shares of 311.9, so there is a gap.

And now you say when you apply those discounts, you arrive to the same amount, meaning you would arrive at a price, if I understand you correctly, of 164.7, around. Because you say that if you apply the SOTP method--

THE WITNESS: Yes.

PRESIDENT SACHS: --you arrive at the Market Price, and the Market Price, as of mid-of July, was 164.7 million.

THE WITNESS: Okay. It would be helpful. This table is in U.S. dollars. In my First Report--

PRESIDENT SACHS: Just the general approach.

THE WITNESS: General approach, that's

exactly what I'm saying.
PRESIDENT SACHS: First point, capital gains tax. Is this to be found here in Table 4, or is this reflected in one of the gray redactions that you pointed us to?
THE WITNESS: To be clear, the calculation on Slide 14 is not quite the same as Table 4.
PRESIDENT SACHS: Okay.
THE WITNESS: However, the discount that analysts typically take, I believe, has an element of capturing capital gains; an important element.
PRESIDENT SACHS: Okay. But you will understand it's difficult for us to follow that calculation on Page 14--
THE WITNESS: Yes.
PRESIDENT SACHS: --with your clear conclusion that the Fair Market Value estimated from SOTP would be similar to the Market Price.
THE WITNESS: I apologize for that.
I did the calculation on Page 14, to keep things simple, as I thought it, by just saying let's just take tax, for example, let's assume liquidation, this is what would come. Maybe it would be better if you rely on Table 4.
PRESIDENT SACHS: We like things to be

simple, but when we see here those three deductions, the first question is their margins, 10 to 15 percent; then analyst discounts, typical 30 to 50 percent; you refer to Slide 19, but Slide 19, there is actually only UBS that provides for 50 percent, and the other banks it's more 30 percent; and then there is the Korean Holding Companies.

So, if you were apply the lower end of those margins, would the results still be the same?

THE WITNESS: Well, sir, in Table 4, I do use 30 percent, which is the lower end. And, indeed, on Slide 19, as you correctly say, 30 percent is more frequently used than the higher numbers.

PRESIDENT SACHS: Okay. And the Korean Holding Companies discount, is that cumulative or alternative to the second discount? You have a chapter on the relationship between the two, but it was difficult to--

THE WITNESS: Yes.

PRESIDENT SACHS: --follow.

THE WITNESS: Okay.

Okay. So the Korea discount says any company in Korea is worth less than a Company with the same earnings internationally. That's the Korea discount. And in terms of my coin in the glass, it's like saying that the coin is already worth less, has a small value, and KRW 100 was already quite small compared to business.

The holding-company discount says, when you put the coin into the glass or when you put the constituent into a holding company, then Sum Of The Parts doesn't work. Sum Of The Parts overestimates the value. At least the market is telling us that.

So, the parts are less valuable because they're in Korea. The Sum Of The Parts is a further overestimate and requires another discount.

PRESIDENT SACHS: So, it's cumulative?

THE WITNESS: Yes.

PRESIDENT SACHS: That's your view?

THE WITNESS: That's my view.

I think the Korea discount is uncontroversial. We don't disagree on that. We do disagree on--

PRESIDENT SACHS: The holding?

THE WITNESS: --the holdings discounts, and I gave you the theory about the time series and the cross-section.

PRESIDENT SACHS: Yes.

And as regards capital gains tax, is this applicable in any event? I mean, I'm not a tax lawyer, and I understand that many of the lawyers here are not tax lawyers, but this would become relevant in case of a de-merger, for example. As long as the group stays at it is, there is no gain tax, so it's a dormant tax, if I may say so. And do you need to take into account such a dormant tax?

THE WITNESS: Okay. So, on Slide 14, I focused exclusively on tax. I think--well, I highlighted tax as one of the reasons because, indeed, as in the case of a liquidation or de-merger, that would have immediate effect. I don't think capital gains tax is the only reason for the discount. I think the governance issue is one of the main reasons for the discount.

Does capital gains tax, nevertheless, have impact when there is no immediate plan to liquidate? I would say "yes," it nevertheless has an impact.

Two observations there, and one of them is a little bit theoretical, so I may not convince, but it is a standard idea in finance that the deferring of capital gains tax liability does not, on a risky asset, does not--does not reduce the impact of the capital gains liability in the sense that if I wait 10 years before selling, then I will have an even bigger capital gain, and the Present Value of that capital gain appropriately discounted will still be the same as it was. So, that is a standard argument in finance, which I appreciate is a little technical, but I can explain further, if wished.

The other point is perhaps a simpler one, which is even if one has no immediate plans to sell, it's plain an asset without this contingent liability must be worth more than with the contingent liability because one might sell at some point in the future.

PRESIDENT SACHS: Okay. Thank you for this clarification.

I turn to my two colleagues.

ARBITRATOR MAYER: No questions from me. Thank you.

ARBITRATOR GLOSTER: I've got a couple of questions.

PRESIDENT SACHS: Yes. Please proceed.

ARBITRATOR GLOSTER: Just picking up from your point on capital gains tax, is it right that, unless a capital gains tax had accrued, it wouldn't appear, for example, in the Company's Audited Accounts? And you have value of an asset? You have against it, or correct me if I'm wrong, a contingent liability for CGT unless there had been an intention, expressed intention, to sell?

THE WITNESS: I believe you are correct.
ARBITRATOR GLOSTER: Thank you.
And just going back to your Slide 11--and I think you've clarified this now, but am I right that your primary thesis that no damage was suffered by Mason as a result of the Merger is based on your premise that there is no difference between the quoted Market Price for the Shares and Fair Market Value?
THE WITNESS: Correct.
ARBITRATOR GLOSTER: And that appears to be what you're saying on Page 11.
THE WITNESS: That is correct. The Market Price itself is the result of traders buying and selling, and it's the price they all collectively helped to form.
ARBITRATOR GLOSTER: And is there any kind of economic learning to kind of support that thesis?
THE WITNESS: Yes.
ARBITRATOR GLOSTER: Right. Okay.
THE WITNESS: There is something called "Efficient Markets Theory."
ARBITRATOR GLOSTER: Is that referred to in your Report?
THE WITNESS: I talked quite a bit about market efficiency, yes, and I did some empirical tests

of it. So market efficiency, it is quoted--it is explained in my Report. I quote a textbook, a standard textbook, on saying that one can trust Market Prices. I don't remember the paragraph right now.

ARBITRATOR GLOSTER: Yeah, okay. I can look at that.

THE WITNESS: It absolutely is key to my analysis, and it's a central plank of finance theory, and indeed most financial practice.

Most financial--even active investors who think they can beat the market will start with the point of view that it's very, very difficult to out-guess the market.

ARBITRATOR GLOSTER: Is that premise or assertion correct when one is doing a calculation on the hypothetical but-for scenario?

THE WITNESS: In general, one would have to--in general, one might have to form an independent view of what would happen in the but-for scenario, as I'm sure Members of the Tribunal have had to do in cases. So, my argument is that, because the Exchange was happening at Market Prices, therefore there was no loss of value.

ARBITRATOR GLOSTER: But as I understand this--and I think you have just given your views on this in responses to questions from the Chairman--your Slide 14 departs from your primary assertion, and then looks at the position on the basis that you get away from simply the quoted price.

THE WITNESS: My main argument is to rely on the quoted price.

ARBITRATOR GLOSTER: Right. And that's your earlier slide.

THE WITNESS: My 14.

I say, it doesn't even matter--

ARBITRATOR GLOSTER: Yes.

THE WITNESS: --as Sum Of The Parts done in the way that most analysts do it doesn't necessarily give you very different price value to the price anyway.

ARBITRATOR GLOSTER: Thank you very much.

THE WITNESS: Thank you.

PRESIDENT SACHS: All right. No further questions triggered by the Tribunal's questions? No?

Then we thank you, Professor Dow, for your testimony, expert testimony, which has now come to an end, and our fourth hearing day has also come to an end.

Are there housekeeping matter?

MS. LAMB: I have a small point of order, but perhaps we could let Professor Dow go before we do that.

PRESIDENT SACHS: Yes.

(Witness steps down.)

MS. LAMB: Sir, the point of order is this: Professor Dow did not, in the course of these proceedings, offer his own Sum Of The Parts valuation. His Reports have been focused on critiquing Dr. Duarte-Silva's Sum Of The Parts valuation. I did not understand the table that we were looking at on Page 77 of his Report as urging with any seriousness his own alternative Sum Of The Parts analysis. In his own words: "I offer this figure only to illustrate the materiality of some of the inappropriate assumptions by Dr. Duarte-Silva."

And, really, what we have--I'm loath to not say the Tribunal can ask whatever questions it wants--of course it can--but effectively what we have in Slide 14 for the first time is a rival Sum Of The Parts model using things that haven't really been the subject of considered and determined written analysis in this case. So it's a point of order. I consider this as being putting a new theory through, and independent Sum Of The Parts theory through, at a stage when it's too late to do that.

PRESIDENT SACHS: The point is taken.
Do you want to react?
MR. GOPALAN: Yes.
Professor Dow was quite clear: It's just an illustration. It's not a rival Sum Of The Parts valuation. It's a way to illustrate his critique of Dr. Duarte-Silva's valuation. That's all we propose to say on it.
PRESIDENT SACHS: That should satisfy your concern. Nevertheless, the questions were put, and the Tribunal will discuss this internally.
All right. So, see you tomorrow; and tomorrow, as we said, we will start with the short discussion of Professor Mayer's questions. 8:30, please.
MR. GOPALAN: Thank you.
(Whereupon, at 4:17 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