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

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

HEARING ON PRELIMINARY OBJECTIONS, Volume 1

Wednesday, October 2, 2019

New York International Arbitration Center
150 East 42nd Street
17th Floor Conference Room
New York, New York

The hearing in the above-entitled matter came on at 9:27 a.m. before:

PROFESSOR DR. KLAUS SACHS, President of the Tribunal

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

PROFESSOR PIERRE MAYER, Co-Arbitrator

Also present:

Registry and Administrative Secretary to the Tribunal:

DR. LEVENT SABANOGULLARI

Assistant to the Tribunal:

MR. MARCUS WEILER

Court Reporter:

MR. DAVID A. KASDAN
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
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C O N T E N T S

P R O C E E D I N G S

PRESIDENT SACHS: Good morning, ladies and gentlemen.

Can you hear me? I hope so.

It's 9:27. If you don't mind, we'll start three minutes ahead of our schedule.

So, welcome to New York, to this Hearing on Preliminary Objections in PCA Case Number 2018-55, Mason Capital L.P. and Mason Capital Management LLC versus the Republic of Korea.

We understand it's the national holiday of Korea today, so we will express our congratulations to the State. I'd like to mention it's also our national holiday in Germany today, so we share this situation that we sit rather than to celebrate.

This being said, we've got your program that you are proposing and that the Tribunal accepted, which would start with the Opening Arguments this morning.

Are there any housekeeping matters that you would like to address before we invite the Respondent to start with its objections?

I start with the Respondent.

Sorry?

MR. FRIEDLAND: No.

PRESIDENT SACHS: Okay. Claimant?

MS. SALOMON: No.

PRESIDENT SACHS: Thank you very much.

Okay. Then we will invite the Respondent to deliver its Opening Statement.

(Pause.)

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

MR. FRIEDLAND: We have three Preliminary Objections, and they proceed from two core propositions. I'm going to briefly introduce these two propositions and then come back to them.

The first of our core propositions is that, under the FTA and international law, a Claimant can bring a claim only as to assets that the Claimant beneficially owns. To state this in the converse: Under the FTA and international law, a Claimant cannot bring a claim to the extent that another entity beneficially owns the assets in question. And it's our position that the FTA makes clear in Article 11.16 the need for beneficial ownership, and that's our first slide.

And this Article--and you know it--allows a Claimant to submit a claim either on its own behalf or its own loss or damage or on behalf of an enterprise incorporated in Korea. Now, there's no claim on behalf of a locally incorporated enterprise, so each Claimant here has to be submitting, in our submission, its claim on its

own behalf for its own loss or damage. And if, as we say is the case here, the GP's claim is for loss or damage incurred by another entity, then the GP's claim is not submitted on its own behalf for loss or damage incurred by it.

Now, the FTA, in another Article, 11.22--it's our second slide--says: "The Tribunal shall decide the issues in dispute in accordance with this FTA and applicable rules of international law." And it's our submission, as you know, that the requirement that the Claimant hold a beneficial interest is an applicable rule of international law. And this is a rule recognized most prominently in the Occidental Case, and there an ICSID annulment committee comprised of Juan Armesto, Florentino Feliciano, and Rodrigo Oreamuno annulled 40 percent of the damages awarded because the Claimant lacked beneficial interest in that 40 percent.

And the Committee ruled that the requirement of a beneficial interest is a principle of international law so uncontroversial and so well-established that it was an annullable excess of power for the ICSID Tribunal there not to apply it, and the next slide is the key passage:

"The position as regards beneficial ownership is a reflection of a more general principle of International Investment Law: Claimants are only permitted to submit

their own claims, held for their own benefit, not those held (be it as nominees, agents or otherwise) on behalf of third parties not protected by the relevant treaty." And I'll return to this.

Now, if you decide both that the Occidental Annulment Committee and the other cases that we've cited with similar rulings are wrong and that "on its own behalf then Claimant must have incurred its own loss or damage" language that we saw in Article 11.16 doesn't mean what we submit it means, then at least two of our three Preliminary Objections fail. But if you decide the beneficial ownership is required, then our second core proposition becomes decisive, and it's a factual one. And it concerns the evidence or lack of evidence of the GP's beneficial interest in the Samsung Shares. And the key point here, which I will develop, is that you could easily learn what the GP's beneficial interest is in respect to the Samsung Shares by looking at the Capital Accounts of the Partnership. We explained this in our Reply. But Mason has withheld the Capital Accounts, and this leads to, as I will develop, the failure of proof as to the GP's beneficial interest.

Now, we understand Mason now to be saying that the GP's beneficial interest is its performance fee or what's called the "Incentive Allocation." Now, as I will

discuss, it's our position that Mason hasn't proven the GP's Incentive Allocation; but, even if it had, it's for sure it's not disputed that the GP's beneficial interest insofar as it consists of the Incentive Allocation could be no more than 20 percent of the amount claimed by the GP.

So, on Mason's own case, if you accept our submission that a beneficial interest is required, the GP's claim has to be reduced by 80 percent in your ruling on these Preliminary Objections, but I hope to show you that, under the record here, there's a failure of proof as to the 20 percent, meaning the 20 percent comes out to 0 percent.

Now, it's a strange circumstance that you might not know from reading the Rejoinder what our Preliminary Objections are all about, from reading Mason's Rejoinder. There's 35 pages about investment law and about Korean law. There's very little about the FTA or on the jurisprudence of beneficial interest, and there's virtually nothing on the facts pertaining to the GP's beneficial interest. So, I'm going to talk about the facts in this opening. I'll do that first. I'll also talk a bit about the Limited Partnership Agreement, the "LPA," and about Cayman Partnership Law. I'll then present our "no standing" and legal deficiency objections,

and my Partner Damian Nyer will then present our objection on the GP status as an investor.

In its Counter-Memorial Mason argued that the GP has an indivisible beneficial interest in the entirety of the Samsung investment, and you see that here in Slide 4, the "GP's legal and indivisible beneficial ownership extended to all of the Samsung Shares."

Now, Mason seems to have amended this position in its Rejoinder. That submission includes a second report by Rolf Lindsay, Slide 5, and he says there: "Each Partner has an indivisible beneficial interest in each of the Partnership assets. That is not the same as saying that any Partner is entitled to any specific asset. On the contrary: Each of the Partners is interested in all of the Partnership assets, and in each case to the extent of its beneficial interest."

Now, I expect that the Experts can agree that the indivisibility of a Partner's interest in the Partnership assets means just that individual Partners don't have rights to particular assets of the Partnership. When a distribution or liquidation occurs, a Partner has a divisible interest in those assets in proportion to the size of its beneficial interest in the Partnership. And you need to know what was in the Capital Account of each Partner relative to what the other Partner's Capital

Account had as of the time of distribution or liquidation to know what each Partner would get.

So, the Parties now seem to agree that the GP's beneficial interest in the Samsung Shares wasn't and isn't a hundred percent, and we need to determine the extent of that beneficial interest in order to know whether GP can claim on its own behalf. And it's unclear to me how the indivisibility concept is at all relevant to this inquiry.

And I want to make sure we're clear here as to what the issue is and isn't here. The issue here is not whether under Cayman law the GP is empowered to bring a claim on behalf of the entire Partnership; that's undisputed. That's not the issue under the FTA and international law. The issue under the FTA and international law is what the GP can claim as its own loss or damage in view of its beneficial interest in the Samsung Shares, and the "beneficial interest" doctrine makes a difference under the FTA and international law even where it might not make such a difference to issues of jurisdiction or standing under national laws such as Cayman law; and this is because the FTA, or under the FTA, as under all BITs, nationality is decisive: The FTA protects U.S. companies; it doesn't protect Cayman companies.

Now, the Parties agree about where we need to

look, at least initially, to identify the GP's beneficial interest in the Samsung Shares, and it's the LPA. It's right on Slide 6.

Now, if we pause preliminarily, just for a moment on the first sentence, Rolf Lindsay has taken Issue with Rachel Reynolds's use of the phrase "Partnership Interests"--she uses it because it's used here--but I'm going to leave that disagreement, such as it is, to the Experts because I don't get the significance of the disagreement. It seems to me a disagreement about labels, not substance, and the rest of this provision is clear and unambiguous: "The Partner's economic interest shall be expressed as a percentage equal to the balance in the Capital Account of such Partner divided by the aggregate balance in the Capital Accounts of all the Partners at any given time."

The phrase "economic interest" is exactly what beneficial interests under international law connotes. It might be an even better way of saying it. And we see that to determine the interest--the extent of any Partner's economic interest, we need to look at the relative percentages of the amount in each Partner's Capital Account. Now, we also see the words: "at any given time." Each Partner's relative percentage naturally changes from time to time in view of what each puts into or takes out

from its Capital Account, so the inquiry needs to be temporally focused.

Now, the alleged wrong that gives rise to the claims here was the SC&T-Cheil merger vote. That vote was on July 17, 2015, so that date seems to us to be the date that matters for any valuation of the GP's alleged lost interest.

Now, I won't display it, but Article 4 of the LPA describes the three ways that money can enter the GP's Capital Account: First, the GP can make a capital contribution, which would then be part of the Partnership's investment capital. Second, Net Profits that the Partnership makes from its investments could be allocated to the GP's Capital Account, and this would be done in proportion to the size of the GP's Capital Account balance compared to the L.P.'s, Limited Partner's capital balance. And third, the GP could receive a fee, the Incentive Allocation, from the L.P. Whatever the source, the money will go into the GP's Capital Account. And that's not a fact that's unknown to the hedge fund people that run Mason. The significance of the Capital Account isn't the subtlety that they need explained to them by lawyers or arbitrators. If outside this arbitration you were to ask them what's their economic interest or beneficial interest in the Partnership, they'd say in a

second, "Let's look at the Capital Accounts." They know this better than anyone.

Now, in our Reply, we made a point of the fact that under the LPA we need to see the Capital Accounts to know the GP's economic or beneficial interest. This is Slide 17--I'm not going to read the whole thing--Slide 7, not 17--in Paragraph 17, you see we say here that the GP had not shown, as of then--Mason had not shown as of then to withhold from you and from us the Capital Accounts, and Mason since then has decided that it remains in Mason's best interests to continue to withhold the Capital Accounts.

So, what might be in the GP's Capital Account? Mason doesn't argue that the GP put capital contributions into the Capital Account. It also doesn't argue that Net Profits were allocated to its Capital Account. So, those two potential sources for the GP's beneficial interest we can set aside.

Mason does suggest that the GP at one point had accumulated Incentive Allocations in its Capital Account--I'll return to that in a moment--and Mason also says, as we know, that it was deprived of an Incentive Allocation and that this constitutes a loss or damage to its beneficial interest to the extent you were to decide a beneficial interest is required.

So, the question becomes what's the evidentiary value of Mason's submissions on its allegedly lost Incentive Allocation in light of its choice not to submit the Capital Accounts or other documents such as Financial Statements?

I've mentioned that Mason's case on the Incentive Allocation, if proven, would establish, at most, a 20 percent interest on the part of the GP in the Samsung Shares, and we get that 20 percent from LPA 4.06, which is Slide 8, and you can see the GP's Incentive Allocation is 20 percent of the L.P.'s cumulative net return on the whole portfolio, and the word "cumulative" tells us that the Incentive Allocation isn't calculated or awarded on the basis of a single investment. It's assessed on the basis of the performance of the entire portfolio, and the cumulative net profits in a given year have to be higher than any cumulative past losses in order for the GP to get an Incentive Allocation for that year. That's referred to as "CUNL."

And to say it the way Mason says it, the portfolio in a given year has to surpass the previous high watermark of the portfolio as a whole in order for the GP to get an Incentive Allocation that year, and that's what Mason's CFO Satzinger says in his Witness Statement, and he explains here, Slide 9, that the GP got no Incentive

Allocation in 2015.

Now, the evidentiary import of all of this is that in order to show you the GP would get an Incentive Allocation--that's what it says it lost--at all in a given year, Mason would need to prove that the portfolio in its entirety was making money and that the profits in that year were higher than accumulated past losses. So, if the non-Samsung parts of the portfolio had performed poorly enough, either that year or in prior years, the GP wouldn't get an Incentive Allocation in or for 2015 regardless of how the Samsung Shares should have allegedly performed, and this means that it's not enough for Mason to make allegations about how the Samsung Shares should have performed. That, by itself, couldn't and doesn't show you that the GP would have gotten an Incentive Allocation in 2015 in relation to the Samsung Shares.

Incentive Allocations aren't rewarded in relation to any single shareholding standing alone. Now, the Capital Accounts plus the Partnership's Financial Statements would tell us how the Partnership's portfolio fared, as of 2015. Because Mason has chosen to withhold the Capital Accounts and the Financial Statements, Mason hasn't shown you that, as of July 2015, that the portfolio as a whole was performing well enough that the GP would have gotten any Incentive Allocation, regardless of how it

says the Samsung Shares should have performed.

And there's an interesting Concession in this regard buried in the slide before you. It's buried in two words here. Satzinger is saying here that the GP didn't earn any Incentive Allocation in 2015 due, in part, to losses associated with the Investments in the Samsung Shares. Now, if the Samsung Shares had been the sole cause of the absence of an Incentive Allocation, this Witness Statement surely would have said that. So, what this is acknowledging, then, is that the absence of an Incentive Allocation in 2015 was due, in part, to losses associated with investments other than the Samsung Shares.

So, what fairly are we to infer from a withholding of the Capital Accounts and Financial Statements? The reasonable inference, I would suggest, has to be that, had these documents been produced, they would show that the GP would have gotten far less than 20 percent, potentially 0 percent, in 2015, even if the Samsung Shares had performed as Mason alleges they should have. I'd also expect that, if the Capital Accounts and Financials showed anything even near 20 percent, Mason would have produced them.

Now, moving beyond the unproven Incentive Allocation for 2015, there is a suggestion Rolf Lindsay's Second Report that the alleged losses on the Samsung

Shares might have caused or might still cause the GP to get a lower Incentive Allocation in future years after 2015. I follow the logic of that suggestion, but I don't get the relevance. It's not a claim advanced or mentioned in the Notice of Arbitration. It's not mentioned by either of Mason's fact witnesses. And they had ample opportunity to try to substantiate the suggestion made by their expert because the results are in for a year since 2015, but they have chosen not even to try to prove the Incentive Allocation--maybe loss, maybe not loss--for later years just like they chose not to try to prove it for 2015.

Now, another way that Incentive Allocations could generate an arguable beneficial interest for the GP would be by an accumulation of Incentive Allocations that the GP chose to keep in its Capital Account. Now, as I mentioned, Mason's CFO, in fact, says in his Witness Statement, that the GP had as of May 2014, accumulated Incentive Allocations of approximately $350 million. Now, if you compare that to what we know the L.P. had contributed in capital as of May 2014, the GP's beneficial interest would come out to about 5 percent as of May 2014, so that's not surprisingly a calculation that we haven't seen from Mason.

But the more important point is that the CFO

doesn't say whether this money was still in the GP's Capital Account at the time of the merger vote in July 2015. The hedge fund people running the GP might have decided to cash in some of their chips after May 2014 or they might have lost some or all of what they kept in their Capital Account because we know that 2014 was a bad year for Mason. If we had the Capital Accounts, we wouldn't have to guess about any of this.

And the repeated references in Mason's submissions to May 2014 raises a question for us. What's the legal relevance of that date? I don't know. Mason says that it first invested in SEC by buying swaps in May 2014. Mason continued to buy and sell Samsung Shares over the following months until the merger vote in July 2015. How that makes May 2014 the relevant date for valuation of alleged loss rising from the alleged harm done when the merger was approved, I don't know.

Now, two final comments on beneficial interests before I move on to our "no standing" and legal deficiency preliminary objections:

First, it's uncontroversial that the GP holds the Partnership assets as Trustee on behalf of the Partnership, not on its own behalf. And we can see this in the ELP Law itself. Next slide is 10, you can see is ELP Section 16.1. And this isn't, to my knowledge, and

couldn't be contested.

So, given the GP status as Trustee of the Partnership's assets, the question might arise to you: Wouldn't it be okay for you to render an award for the entirety of the Claim in favor of the GP and the GP as Trustee would then just distribute to the L.P. the L.P. share, and by doing that we could avoid all this fuss about beneficial interest. And the answer is: The L.P. is a Cayman entity. It's not protected under the FTA and to allow the Cayman L.P. to benefit from this Claim would violate the FTA and international law, and there are arbitral decisions directly on point.

Come with me to Slide 11, on the top there's Impregilo, that Impregilo may be obliged to account to its Partners in respect of any damages obtained in these proceedings is also an internal JV matter, which has no bearing on Pakistan's agreed exposure under the BIT. And then you have from Stern's dissent in the Occidental Case. It's a principle that is affirmed: "Either OEPC will not transmit 40 percent of the amount received in damages to Andes and it will then be unjustly enriched or OEPC will indeed transmit 40 percent of the amount received in damages to Andes"--and Andes is the Party here--it's the analogue or the homologue to the L.P. here--"and the Tribunal will therefore have compensated Andes through

OEPC, in violation of the principles of limited jurisdiction ratione personae. This would be an improper recovery on behalf of an entity not protected by the BIT.

And my final comment now in this introduction. What we submit to be Mason's failure of proof on the GP's beneficial interest is a failure to prove facts regarding standing and jurisdiction. We have contested by our Preliminary Objections that the GP has any beneficial interest in the Samsung Shares. Mason's Reply can't be that it will prove later the GP's beneficial interest.

I'm on Slide 12 now. This is from the Blue Bank Case: "All facts that are dispositive for purposes of jurisdiction must be proven at the jurisdictional stage." And this isn't just a formality. The purpose of bifurcation is to resolve, finally, the preliminary issues presented. That purpose would obviously be undermined if the preliminary factual issues bearing upon jurisdiction or standing were left unresolved.

And this is what the Tribunal said in Khan Resources: "Where the determination on jurisdiction depends on facts, these facts must be proven at the jurisdictional stage and cannot be taken pro tem, whether or not they will remain relevant for the determination on the merits. This logically follows from the purpose of bifurcation between a jurisdictional and a merits phase,

which is to allow for the complete determination of jurisdictional issues during a preliminary phase."

I'm now going to move on to our "no standing" objection.

So, this objection arises, as you know, under the language of Article 11.16. I have already shown you this, it's now on Slide 14. Our position is that the ordinary meaning of this Article is that a Claimant has standing to bring only two types of claims: Either on its own behalf in regard to a claim where the Claimant itself has incurred loss or damage, or on behalf of an enterprise of the Respondent. Mason doesn't invoke the second category.

Now, as to the first category, Mason argues that legal ownership or control is all that's required under the FTA. But even if legal ownership or control satisfies other provisions of the FTA, Mason still needs to satisfy the requirements of this provision in order to submit a claim to arbitration under the FTA. This provision is Mason's gateway to arbitration under the FTA. And Mason's position, in our submission, doesn't account for the ordinary meaning of "on its own behalf," and that ordinary meaning is reinforced by the requirement that it's the Claimant that must have incurred the loss or damage. If another entity, not the Claimant, has the beneficial interest, then that other entity is the one that incurs

the loss.

Mason's position also doesn't account in our submission for the way that this Article is structured. The Article identifies two categories of permissible claims--there is no third category. There is no category for a claim on behalf of the non-party that's not locally incorporated. Korea has consented to arbitrate only the two categories of claims that you see here. Mason attacks our position for, as Mason says "fabricating a standing requirement where none is expressed." I don't know if Mason is saying that the word "standing" itself has to be used or if the words "beneficial interest" themselves have to be used. They don't have to be used. We call it a "standing requirement," but it can be called just the requirement for bringing a claim under the FTA. Doesn't matter.

There is also no need for the FTA to use the words "beneficial interest." It's enough in our submission for the FTA to say that the Claimant must submit a claim on its own behalf for its own loss or damage.

Mason argues that the FTA is lex specialis with respect to standing and that you can't consider extrinsic international law principles such as the "beneficial interest" doctrine, but we've seen that Article 11.22 of

the FTA says that: "You shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law." In view of that language, I don't see the basis to exclude application of international law unless an FTA provision were clearly inconsistent with the proffered principle of international law. There are no instances cited to you or known in which the "lex specialis" doctrine has been applied to exclude consideration of international law consistent with the language of a treaty. Of course, if you think it's inconsistent with the language of the Treaty, then we lose ab initio.

Here's what was said relevantly in the Loewen case: "An important principle of international law should not be held to have been tacitly dispensed with by an international agreement, in the absence of words making clear an intention to do so." Under the FTA here, the drafters weren't trying tacitly to dispense with international law, they were explicitly bringing it in.

Now, Mason says that Occidental is distinguishable because Mason turned--Occidental turned on what Mason calls the use by the Claimants there of, and I'm quoting, "an idiosyncratic temporary contractual arrangement."

Two points in response.

First, the Occidental ruling on beneficial interest did not turn on the particularities of the case. I've already displayed to you the passage. Here it is again. I'm not going to read it again. You can see we're on Slide 16. The Committee states the principle. It's a general principle of international law. Its expression of the principle is in no way contingent on the facts of the case, whether idiosyncratic or not.

And this isn't changed. The generality of the principle isn't changed by the fact that the Committee endorsed the Dissenting Opinion of Professor Stern. The disagreement between Stern and the majority wasn't about whether beneficial interest is required under international law. It wasn't about whether the doctrine is an established rule of international law. The disagreement was entirely about whether under the facts of the case legal ownership and beneficial ownership were split.

And second response: The facts in Occidental were comparable to ours. The Claimant in Occidental legally owned the Investment, just like Mason says that the GP owned the Shares here; and, like our FTA, the BIT in Occidental defined "investment" as, and I'm quoting, "every kind of investment owned or controlled, directly or indirectly, by investors of the other Party." So, if

Mason's theory were right, the Claimant's legal ownership in Occidental would have been enough to establish jurisdiction and standing, but it wasn't. Beneficial ownership was required.

Now, Mason says that Occidental is our sole source for the "beneficial interest" doctrine, and Mason argues on that basis that a single case can't establish a general principle of investment law. Well, first, even if it were the sole case, it's a significant one. The committee was comprised of eminent jurists, and ICSID annulment committees have jurisdiction to annul only for manifest excess of power; and, second, Occidental isn't the only support for the principle. We've given you in our briefs other cases that support the beneficial interest doctrine, none discusses beneficial interest to the same extent as does Occidental, but they're consistent with the key passage in Occidental.

I don't have time to go through that case law and you probably don't want me to go through that now anyway.

So, now I'm going to go on to our legal deficiency objection. This objection has the same basis in principle as the "no standing" objection, but is derived from a different provision of the FTA. It's not Article 11.16. It's Article 11.20. I'm not going to read it aloud. It refers to Article 11.26, which I'm also not

going to display. It concerns the Tribunal's power to issue an award.

Now, it's our position, as you've now heard me say a few different ways, that the GP can't recover the amounts claimed because the loss is that of another entity, and this is a principle that dates back at least to the Chorzów Factory case.

I'm now on Slide 18.

This principle, recognized by the Chorzów Factory case, has the effect of excluding from the damage to the estimated injury resulting for third parties, and as Chorzów dictum was, in fact, expressly confirmed and endorsed by the Occidental Committee.

I'm now on Slide 19.

The dictum in Chorzów Factory confirms the Committee's conclusion: "As a matter of international law, the Occidental Tribunal was precluded from awarding Claimants damages reflecting 100 percent of the investment because it was required to exclude from the compensation the injury caused to a third party, who was the beneficial owner of a 40 percent interest in the expropriated investment."

Now, under Article 11.26(c) for the purposes of this Preliminary Objection, the Tribunal shall assume to be true Claimants' factual allegations in support of any

claim in the Notice of Arbitration, so it's the Notice of Arbitration that matters for the purpose of assuming the facts as alleged.

The specification of the Notice of Arbitration also means that facts advanced in subsequent submissions by Mason are not to be presumed true. They can be proven true, but they've got to be proven, and proven at this Preliminary Objections stage.

So, let's look at what Mason said in its Notice of Arbitration about Claimants' interests in the Samsung Shares.

It's the next slide. I'm on 20 now.

First, in describing in Paragraph 57, the other Claimant's, not the GP's, interest in the Samsung Shares, Mason writes that the "Domestic Fund owned the Shares." Very simple.

And then when Mason describes the GP's ownership interest, Mason says that the GP legally owned and controlled the Shares. At the end of the sentence there's a footnote, and the footnote says that the GP holds the Shares on trust, and the footnote cites Section 16.1 of the ELP law, and we have already seen this, it's the next slide. The GP holds all Partnership Assets on trust.

So, under the Notice of Arbitration, the GP's interest was that of a Trustee, and as a Trustee, its

interest wasn't a beneficial one because a Trustee obviously isn't the beneficial owner of assets held on trust. To the extent that Mason now wants to argue that the GP has a beneficial interest, Mason is entitled to try to do that, but it has to prove it and it hasn't.

So, I've come to the end of my portion of our presentation. Our submission so far is this: First, beneficial interest is a requirement of both the FTA Article 11.16 and international law.

Second, we've contested that the GP has a beneficial interest needed to establish standing and jurisdiction and a legal right to recover, and because we've contested that, Mason's burden is to establish that what the GP's beneficial interest is at this preliminary objections phase, Mason can't say that it will prove the GP's beneficial interest at a later stage, and Mason, in fact, hasn't said that.

And third, even if Mason had chosen to prove and had proven that the GP was entitled to an Incentive Allocation in 2015, the GP's claim would still need to be reduced by at least 80 percent, even under Mason's own case on the facts.

And, fourth, by withholding the Capital Accounts and Financials, Mason has failed to prove any beneficial interest held by the GP. Mason has made allegations about

the Incentive Allocation, but the allegations aren't supported by the obvious proof held by Mason. You need to see the Capital Accounts and perhaps Financial Statements in order to know whether the conditions for the GP to receive an Incentive Allocation in respect of the Samsung Shares were satisfied.

So, on this record, the GP's beneficial interest isn't 20 percent, it's 0 percent.

My Partner, Damien Nyer will continue the presentation.

PRESIDENT SACHS: Thank you, Mr. Friedland.

MR. NYER: Good morning.

PRESIDENT SACHS: Mr. Nyer, the floor is yours.

MR. NYER: Our last objection is that the GP, the General Partner, does not qualify as an investor under the FTA, and this is for two reasons:

First, the General Partner, the GP, did not make an investment within the meaning of the FTA.

Second, under Korean law, the GP did not have ownership or control of the Samsung Shares.

And I will start with the first prong of our argument.

We start, as we should, with the language of the Treaty, and I'm on Slide 23 of our deck. We've set out on the slide Article 11.28 of the FTA which defines

"investment." It defines "investments" as every asset that an Investor owns or controls, directly or indirectly, that has the characteristics of an "investment," including such characteristics as commitment of capital or other resources, the expectation of gain of profit, or the assumption of risk."

The reference to the characteristics of an "investment," we say, tells us something. It tells us that an investment, has an inherent meaning. And the cases, as you well know, have identified four such characteristics. You are no doubt familiar with them, and they are largely uncontroversial.

The first characteristic of an "investment" is that the Investment involves a contribution of capital and resources by the investor.

The second characteristic, an investment involves risks, and specifically the risk of losing one's contribution to the investment.

The third characteristic is that an investment involves an expectation of gain and profit.

And the fourth characteristic that the cases have upheld is that an investment plays out over time. An investment is not short-term speculation in the market.

Now, Mason tells you that this last requirement does not appear--is not listed in this definition of

"investment" in Article 11.28. It is not explicitly listed and, therefore, it would be inappropriate to consider the "duration" requirement in this case.

We have two responses. First, we disagree that the "duration" requirement is atextual. The notion of "duration" can be found right here in the text in front of you on Slide 23. Duration can be found in the concept of commitment of capital and resources, we say.

Second response is that, in any event, the characteristics of investments that are listed in Article 11.28 of the BIT--of the FTA, this list is not exhaustive, and does not purport to be exhaustive. That's what the use of the term "including" tells us.

Now, the cases, as I've mentioned, have demonstrated that the duration requirements--that duration is a requirement of an investment and is implied in the plain meaning of the term "investment." Mason told us in Rejoinder that we are relying on ICSID, inapplicable ICSID jurisprudence, but it is not true. I'm on Slide 24, and we've listed three cases that are non-ICSID cases that have endorsed the duration requirements as being part of the plain meaning of an "investment."

And this requirement, the "duration" requirement, accords with the common understanding of an "investment," and I would like to stop to maybe consider a hypothetical:

If I were to go in a casino in Korea and bet $100 in a slot machine or at the poker table, I would certainly have committed capital, contributed capital. I would certainly have an expectation of gain or profit, and I would certainly face the risk of losing my contribution. But no one would say that, by doing so, I would have made an investment. And what is missing in my gamble in the casino in Korea is this concept of "commitment and duration."

So, we have four characteristics of an investment, we say.

ARBITRATOR GLOSTER: Can I just interrupt? I'm sorry. Might I interrupt?

MR. NYER: Sure.

ARBITRATOR GLOSTER: There are a lot of cases in the reports that try and differentiate between what is a "speculation" and what is an "investment." It's very fact-sensitive, very difficult, and incredibly controversial.

Did you need this fourth requirement to make good your case? I don't think so.

MR. NYER: I think you would need it as the casino example shows.

ARBITRATOR GLOSTER: Well, the casino is one extreme end of the spectrum, but as you go along the

spectrum, it can be very difficult, in my experience, to differentiate between what is speculation and what is "investment."

MR. NYER: And I will not dispute the fact that it is a difficult factual inquiry, but it is an inquiry that you have to conduct.

ARBITRATOR GLOSTER: And you say it's an inquiry that can be done here?

MR. NYER: I'm saying it's an inquiry that can be done here and it is an inquiry that tribunals routinely conduct.

ARBITRATOR GLOSTER: I know that. And come to very different conclusions.

Anyway, thank you.

MR. NYER: So, we say that there are about four characteristics of investments that you would have to find in this case to conclude that there is an "investment." There is no dispute that the acquisition of the Samsung Shares by the General Partner on behalf of the Partnership involved an expectation of profit and gain by the General Partner, that's the Incentive Allocations that Mr. Friedland referred to. Our position, though, is that the acquisition by the GP--the acquisition of the Samsung Shares by the GP cannot meet the other three requirements and, therefore, the GP can't be an investor under the FTA,

and this is so because the acquisition of shares was made using someone else's capital, the L.P.'s capital, on behalf and at the risk of someone else, the L.P.'s or the Partnership, and for the purpose of short-term speculation, Arbitrator Gloster, and we hope to show that during the testimonies--during the course of this Hearing.

So, we'll start with the notion of "contribution."

For an investment to exist, we say that the GP must have contributed capital or other resources. The key issue for you to decide is whether the GP itself must have contributed capital and resources. Mr. Friedland has explained at some length that there is no evidence that the GP used its own capital to purchase the Samsung Shares. It used the L.P.'s, the Limited Partner's, capital. And we say that the GP cannot achieve investor status based on someone else's contributions and capital. The GP itself must have made the contributions.

Now, we're not just saying this but the FTA explicitly requires it, in our submission. And if you would follow me to Slide 25, we've set out the FTA's definition of "investor". To be an investor of a party means: "A party or state enterprise thereof, or a national or an enterprise of a party, that attempts to make, is making or has made an investment in the territory

of the other Party." And we're saying that this language, explicit language, in the FTA makes clear that the GP itself must establish that it has made an investment, and that it has committed its resources and capital.

Now, Mason, in its Rejoinder says that we're applying the FTA's characteristic of investments and in particular the requirement of the commitment of capital and resources to the definition of an investor. According to Mason, it is enough that the GP holds shares and that shares as a general matter reflect contribution of capital by someone at some point.

Now, I don't really see the arguments, given the plain language of the FTA that is displayed in front of you on Slide 25, and the requirement that the investor makes or has made or is attempting to make an investment. But even if the FTA were not explicit, we have support in multiple cases that we've briefed in our submissions. And those cases have found that an investor must itself have contributed to the Investment. And for ease of reference, we've set them out on Slides 26 and 27, but looking at the first one, on Slide 26, the KT Asia Tribunal was considering in that case that the question before it was whether the Claimant must itself have made a contribution or whether it can benefit from a contribution made by someone else; here, it's ultimate beneficial owner. And

the Tribunal in that case found that indeed the Claimants to be an investor and to have made an investment needed to have made the contribution itself. And there are several other cases that we've listed but held similarly.

Now, Mason in its Rejoinder dismisses those cases or this line of cases as being somehow the brainchild of Professor Rusty Park. That's not true. Park chaired the Alapli Case, but Quiborax and the KT Asia Case from which I just quoted were chaired by Gabrielle Kaufmann-Kohler. The Blue Bank Case was chaired by Söderlund, and Clorox was chaired by Yves Derains, so it is a fairly representative cross-section of prominent arbitrators that have come to this conclusion that one must make itself an investment, a contribution.

Now, Mason says in its Rejoinder as well that our position runs counter to the well-established principle that the origin of capital used to make an investment should be irrelevant to jurisdiction. It's a nice sound bite, but it's not responsive, in our submission. It is true that arbitral tribunals will ordinarily not lift the corporate veil to conduct an inquiry into the nationality--that is the origin--of the invested capital. That is, as you well know, the Tokios Tokelés and Ukraine Case and the issue of the round-trip investment routed through a third country with--a treaty with your State.

So, in that sense, the origin of the invested capital is irrelevant.

But that principle says nothing about whether to qualify as an investor, it is enough for a person to use someone else's capital on someone else's behalf and at someone else's risk. That's not what this principle says.

And as a matter of fact, several tribunals have directly addressed this "origin of capital" argument made by Mason and found that it was no response to the principle that the purported investor must itself have made contributions. And if you follow me to Slide 28, we've set out quotes from two cases. One is Gaëta and Guinea and Caratube-Kazakhstan. And you will see that the Gaëta, the Tribunal chaired by Professor Pierre Tercier, noted that even if the origin of--or sort of the source of the Investment is not relevant to Article 25 of the ICSID Convention, one must still demonstrate that the Investor made a contribution of some kind. The Investor must in particular show that it made the Investment payment on its own behalf, and that the payment was in fact made. In other words, even if the Investor received funds from third parties, it must actually assume the risk and demonstrate that it has done so.

And I will invite you to read for yourself the Gaëta Case. It is a brave attempt by Professor Tercier to

reconcile the fairly confusing case law in this area.

Now, in fairness, Mason, in its Rejoinder, has found and cited a case that does support its argument, Eiser versus Spain, and I'm sure we'll hear a lot about Eiser and Spain today and for the rest of the week. Our position is that Eiser just cannot be reconciled with those two cases that we just looked at, but it also cannot reconcile with a series of cases that we've discussed that have held that an Investor must make its own contributions. Our submission is that the Eiser Tribunal chaired by John Crook read too much in the "origin of capital" debate.

Now, if we are right--

ARBITRATOR GLOSTER: So, you're saying it's wrong?

MR. NYER: We're saying it's wrong, yes.

If we are right and if Eiser is wrong, Mason's decision to withhold the Capital Accounts is a big problem for its position, not only as to the beneficial ownership status interest that Mr. Friedland discussed, but also as to its status as an investor.

Now, to get around this problem, Mason says in its Rejoinder that the GP made contributions in kind, if not in capital, and we will hear Mr. Garschina's, Mason's principal evidence, this afternoon on this topic. But the

gist of that evidence so far has been that Mason or some Mason affiliates spent a lot of time considering whether and when to deploy--to acquire and sell the Samsung Shares on behalf of the Cayman Fund, on behalf of the Partnership.

Now, our position is that if the General Partner does not make an investment and does not become an investor by using someone else's capital on someone else's behalf, a fortiori, time spent considering whether and when to use that capital cannot itself be an investment.

I will now turn to the second characteristic of an "investment" that we say Mason cannot show in this case, and this is the assumption of risk by the Investor. And our argument here mirrors the "no contribution" argument, and the point is that not having contributed to its own capital to the acquisition of the Shares, the General Partner did not run the risk of losing that capital, did not run the risk of losing its contribution and, thus, did not assume any investment risk. The Partnership, and in particular the Limited Partner as the entity that put up the money, bore the risk.

Now, we have support in the cases for the proposition that the relevant investment risk is the risk of losing one's contribution to the purported investments. And if you follow us to Slide 29, we have set out quotes

from, again, the KT Asia case and the Blue Bank case. KT Asia, noting in particular that the Claimant, that they made no contribution to the investments and, having made no contribution, incurred no risk of losing such inexistent contribution. Not only did the Claimant not make any contribution, nor was it meant to absorb any financial losses.

And once again, we say that this approach, this principle that the relevant investment risk is the risk of losing your contribution to the Investment, this approach accords with the common understanding of what an "investment" is: An investor puts its capital at risk in the hope of making a profit.

So, if the GP, the General Partner, did not run the risk of losing its own capital and resources, the question for you becomes whether the GP assumed any other risk with respect to the acquisition of the Samsung Shares that can fairly be regarded as an investment risk characteristic of an investment.

And we say that it is highly relevant to this inquiry that you will have to make that for all practical purposes, the General Partner was and is insulated from any trading and other losses that the Partnership could have suffered.

If you follow me to Slide 30, we've set out an

excerpt from the LPA, the Limited Partnership Agreement. We've quoted from the "Object and Purposes" of the Limited Partnership: "The primary purpose of the Partnership shall be to purchase, sell or hold, for investment or speculation, securities on margin or otherwise, for the account and risk of the Partnership," not for the account and risk of the General Partner.

And as a matter of fact, if we read through the LPA, we will find a very broad exemption of liability clause, and you will find that on Slide 31, the "exculpation" clause tells us that: "The General Partner shall not be liable to any other Partner or the Partnership for any losses suffered by the Partnership unless such loss is caused by such covered person's gross negligence, wilful misconduct, or breach of fiduciary duty."

And if that were not clear enough, the Partnership agreements and the exculpation clause go on to state that: "The General Partner shall not be liable for errors in judgment or for any acts or omissions that do not constitute gross negligence, wilful misconduct or breach of fiduciary duty."

Now, Mason tells you that the General Partner still bore the risk of its own wilful negligence or breach of fiduciary duty, and the issue for you to decide here is

whether the risk of suffering the consequences of one's own misconduct is a risk that can fairly be said to be a characteristic of an "investment," and we say it is not.

Now, Mason also argues that the General Partner assumed the risk that it would not earn its performance fee, the Incentive Allocation, if the Samsung Shares, for example, were to perform poorly.

Now, our position is that it makes little sense to consider the possibility of not making a profit to be an investment risk. From a basic economic perspective, a transaction where your capital is safe and not committed and where the worst that can happen to you is not to make a profit is the opposite of a risky transaction.

That brings me to the third characteristic of an investment that we say Mason cannot meet in this case. An investment plays out over time, and an investment is not short-term speculation. There must be some duration associated with the Investment.

Now, the cases generally requires a commitment of capital or resources over a period of years. Brief periods of 16 months and five months were found to be insufficient. And if you follow me to Slide 32, we have quotes from the KT Asia case and the Romak case that respectively found that 16 months' holding of shares in KT Asia was insufficient and did not involve the kind of

duration envisaged by the meaning of "investment." And, similarly, Romak was a five-month long purported investment.

Now, the issue for you, and that's the one you raised, Arbitrator Gloster, would be to discern what the intended duration of Mason's holding of the Samsung Shares was. And Mason claims in its Rejoinder that it intended to hold the Samsung Shares for years. They bought them early on, and there was a restructuring coming on--coming in, and a generational shift at Samsung, and they were hoping that holding those Shares through the years and with those changing of management and structure at Samsung, the Shares would appreciate and they would make money out of that, and that plan was frustrated when the SC&T and Cheil merger vote was approved. They had to sell their Shares earlier than planned.

Now, typically, tribunals in your position would be able to rely on business plans, internal business plans, investment plans, contracts, to determine the duration of a project or the intent of duration of a project, but there is nothing of the sort here. You only have the self-serving evidence of Mason's principal, Mr. Garschina, and a curated selection of e-mails.

Now, we will hear Mr. Garschina's evidence this afternoon, and his evidence will be tested on

cross-examination, tested against whatever limited documentary record we have, shows Mason, indeed, intended to do with the Shares.

But for the moment, I want to leave you with one thought on this topic. The patient and cautious approach described in the Rejoinder is hardly consistent with Mason's typical investment approach. Mason is not in the Mom-and-Pop buy-and-hold long-term strategy. They're not a Warren Buffet of sort whose holding perspective or holding horizon is forever. It's a hedge fund, and it is a hedge fund of a very particular type. They focus and specialize in something known as "event driven strategies" and "merger arbitrage." They actively trade in and out of securities around events known as "catalysts" that they speculate may impact the value of the Shares, and depending on their speculation as to how a given event is going to impact the Shares will trade in and out.

And now even by the standard of events--events-driven hedge fund, Mason is noted for its short-termism, and it's not us saying it. If you go to Slide 33, we have an excerpt from a Due-Diligence Report on Mason that was obtained by the Rhode Island Office of the General Treasurer and published by the Rhode Island Office of the General Treasurer in connection with the contemplated investments by the Rhode Island Pension Fund

in Mason.

And you will see here that the Due-Diligence Reports reported Mason's investment horizon tends to be shorter than most event-driven and distressed managers, with an average holding period of three to nine months. And what we hope to show by the end of the week is that the little evidence that we have at this stage in the case is consistent with his statement, and suggests that Mason's holding of the Shares was speculative and short-term.

And if that's the case, that holding of the Shares is incapable of amounting to a commitment under the text of the FTA, and to constitute an investment under the FTA.

Now, that brings me to the second independent reason why the GP, the General Partner, does not qualify as an investor under the FTA, and that reason is that, under Korean law, the General Partner never owned or controlled the Samsung Shares, and we will hear from the Korean law experts on this. For the purpose of this opening, I will only make some brief observations:

Preliminary comments: It is largely undisputed that Korean law is relevant to determining whether someone owns or controls shares in the Korean company. And we cited in our Reply commentaries by Professor Douglas,

explaining that those questions have to be considered by reference to the lex situs, and the lex situs with respect to shares is the municipal law where the company is incorporated. It would be Respondent Legal Authority 39.

Now, we say as a matter of Korean law, the General Partner did not own or control the Samsung Shares because it was the Cayman Fund and not the General Partner that was the registered Shareholder of the Samsung entities at issue.

And if you follow me to Slide 35, we've set out an excerpt from the Shareholder register of SC&T, which is one of the Samsung entities in which Mason invested, and you will see that the entity that is identified as owning the Shares is Mason Capital Master Fund L.P., identified with a country code of KY, that's Cayman, and Mason Capital Master Fund L.P. is the Cayman Fund, is not the Claimant in this arbitration.

Now, we also see that another entity that owns shares in SC&T is Mason Capital L.P., and that is the Domestic Fund, and the Domestic Fund is one of the Claimants in this arbitration.

Now, we've set out on Slide 36 excerpts from the Samsung Electronics, "SEC," Shareholder register. And once again, Mason Capital Master Fund, L.P., the Cayman Fund, not the General Partner, is identified as the

registered Shareholder.

Now, I'm not the corporate law expert here, and we will hear from the Korean law experts, but what I know is that if you want to know who owns shares and who is entitled to vote shares and who is entitled to exercise Shareholders' rights with respect to those shares, the first place we look at are the Shareholder registers of the Company.

Now, Mason says it's just a fiction, that because the Cayman Fund does not have legal personality as a matter of Cayman law, it did not have capacity to acquire the Shares--to acquire the Shares and Shareholder rights under Korean law, and that, therefore, the Shareholder registers should be disregarded.

Now, Mason bears a huge burden of persuasion on this argument, that this is a fiction and that you should disregard those entries in the Shareholder's register. And as you know, the issue is--the question is hotly debated by the Korean law professors who will be appearing before you.

Suffice to say here that Respondent's expert, Professor Rho, has cited to several decisions of the Korean supreme courts that can be read as suggesting that an exempted Limited Partnership, a Cayman law-exempted Limited Partnership, the exact same entity that is at

issue here, may have capacity to acquire shares.

Now, Mason's expert on Korean law, Professor Kwon, sought to distinguish these authorities and disagreed with Professor Rho, and the three new Korean law authorities that were submitted last week, or earlier this week, go to that debate. They will be discussed by the Experts.

The point is if our reading of Korean law is right, and if you're bound by the accounting of the Shareholders' registers, that means that the Cayman Fund, not the General Partner, was the Party that owned and controlled the Shares as a matter of Korean law.

Now, Mason says in its Rejoinder, well, that doesn't really matter. That doesn't matter because the General Partner, in any event, owned and controlled those Shares indirectly as the text of the FTA permits, and it owned and controlled those Shares indirectly because the General Partner owns and controls the Cayman Fund.

And we have two responses to this argument: The first response, and our position, is that the argument isn't sound as a matter of law and logic. The General Partner does not own the Cayman Fund. It holds the Cayman Fund's assets on trust for the Fund. It's not an ownership relationship. And the General Partner does not control the Cayman Fund. It is a fiduciary that acts on

behalf and in the name of the Cayman Fund and in its best interest.

Now, in other words, the General Partner owns and controls the Cayman Fund just as much as an agent would own and control its principal. It doesn't.

Now, in any event--and that's our second response to the indirect control argument--in any event, we say that the arguments that the General Partner owned and controlled the Cayman Fund and thus, indirectly, the Samsung Shares that were purchased by the Cayman Fund, is not an argument that the General Partner should be heard to make in this arbitration, and this is so because of a series of inconsistent representations that were made by Masons at the time it applied for foreign investment registration in Korea, at the time it applied to be authorized to buy shares in the Korean company.

If you follow us to Slide 37, we have excerpts from this foreign investment registration application. And the first comment you will see that the--so that was the investment registration application for the Cayman Fund so the Cayman Fund could purchase the Shares, and Mason was required to identify the first major shareholder in the Cayman Fund. And you will see that the first major shareholder in the Cayman Fund here is identified as Mason Capital LTD, that's the Limited Partner, and you will see

that the share of equity of Mason Capital LTD is listed at a hundred percent.

So the Limited Partner owns a hundred percent of the Cayman Fund. That was the representation made to the Korean authorities.

Now, the General Partner is mentioned on this application, and that's the second red box, "Related Entities." Management company is identified as being Mason Capital Management LLC. That is the General Partner and the second Claimant in this arbitration. But you will see that this Mason Management LLC company is identified not as a U.S. entity; it is identified as a Cayman Island entity.

Now, we don't know why Mason chose to make these representations in the application for foreign registration. It might have been innocent, inadvertent, or it might have been driven by some perceived tax benefit or some desire for secrecy, but what we know is that those representations fly in the face of the arguments made to this Tribunal that the Cayman Fund was owned and controlled by U.S. person entitled to protection under the U.S.-Korea FTA, the GP.

Now, this concludes my presentation on this aspect of our last objection. And to conclude, a final recap on this last objection, we say that the GP has

failed to prove to you that it has made an investment in Korea, and, therefore, it cannot be an investor under the FTA.

And that is because, first, the--first, a short-term bet on the Stock Market made with someone else's money and at someone else's risk does not meet the criteria international tribunals have recognized for an investment.

And, second, and in any event, the General Partner never owned and controlled the Investment in the Samsung Shares under the applicable law here, Korean law, the Cayman Fund did.

Thank you.

PRESIDENT SACHS: Thank you, Mr. Nyer.

This concludes your opening?

MR. NYER: It does.

PRESIDENT SACHS: Okay. Fine. So, we will have a break a little bit earlier than I think provided of 15 minutes, and we resume at 11:00, please.

(Brief recess.)

PRESIDENT SACHS: So, may we then invite the Claimants to deliver their opening, please.

OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

MS. SALOMON: Good morning. I'm Claudia Salomon, Partner at Latham & Watkins and counsel for the Claimants.

Also here is Jim McGovern, General Counsel and Chief Compliance Officer of Mason Capital.

We submit that the Tribunal's competence over the General Partner's claim under the Treaty is clear: The General Partner has established that it satisfies the Treaty's definition of "investor," and the Samsung Shares satisfy the Treaty's definition of "investment."

This morning I will go through each of the jurisdictional requirements defined by the Treaty and how the General Partner's investment in the Samsung Shares meets these requirements, and I'll also explain how Korea has attempted to redefine or add other requirements, but in any event, the General Partner meets even those stricter definitions.

And then I'll turn to Korea's objection to the General Partner's so-called "standing" premised on a general principle related to beneficial ownership of an investment and explain how the Treaty does not impose a requirement of beneficial ownership, but nonetheless the General Partner beneficially owns the Shares.

Now, fundamentally this morning we heard from Respondent's counsel that they are responding to a case that we are simply not making. We are not asserting the General Partner's claim is on behalf of anyone. The General Partner is asserting its own claim. They, we

submit, are making jurisdictional arguments as they go along, and their argument is littered with mistakes regarding how a fund actually works.

Then my co-counsel, Mr. John Kim of KL Partners, will address the "11th hour" argument under Korean law that Korea has raised, which is actually inconsistent with the position taken by their Cayman law experts.

And I'll conclude with an explanation regarding why Korea has not established its objection to the General Partner's damages claim. Their entire discussion of what evidence is needed to prove damages is for a later phase of this case. All that we need to prove at this time is as a matter of law, we are capable of making a claim. It is not a jurisdictional argument that they're actually raising.

Now, later today, you will hear from Ken Garschina. He is the co-Managing Member and co-founder of Mason Management LLC, and you'll hear from Derek Satzinger, the CFO. And tomorrow you will hear from Mason's two expert witnesses, Rolf Lindsay and Professor Kwon.

Now, Mr. Lindsay is a partner and head of the investment funds group at Walker's. He's considered one of the big figures in the Cayman Islands investment funds community. And when trying to understand what the law

means, specifically the Exempt Limited Partnership Law in the Cayman Islands means, it's not every day that you get to hear from the person who actually wrote the law. But in this case, Mr. Lindsay was the Chair of the committee that drafted the Exempt Limited Partnership Law at issue here. And Professor Kwon is currently the Dean at the Kyung Hee University School of Law. He has LLM from Berkeley, an SJD from Georgetown. He's published numerous papers and books on Korean corporate law, including one that got an award last year for the outstanding academic book by the National Academy of Sciences.

So, before diving into Korea's Preliminary Objection, it's important to note why we're here; and, as the Tribunal will recall, this case arises out of Korea's interference with Mason's investment in two publicly traded companies that form part of the Samsung Group: Samsung Electronics, referred to as "SEC," and SC&T. Mason's case is that the former President of Korea, conspiring with her confidante, took almost $8 million in bribes from the Lee Family, which controlled Samsung; and, in exchange, President Park and other senior government officials subverted the procedures at the National Pension Service, a shareholder in companies in the Samsung Group, so it would vote in favor of a merger between the two Samsung companies.

And as was later revealed, this merger vote was a key step in the transfer of power from the Head of the Lee Family to his son JY Lee.

Now, this isn't just a series of assertions that Mason has made in this arbitration. For her involvement in this merger, President Park has since been impeached, removed from office, and found guilty of bribery, abuse of power, and coercion, and sentenced to 25 years of prison. And the Seoul High Court, in hearing that case, expressly found that part of Samsung's donations were, indeed, a bribe, citing an implicit understanding between the President and JY Lee for Government support of the merger, and these findings have been upheld by the Korean Supreme Court.

And the Minister of Health responsible for supervising the National Pension Service and the Chief Investment Officer have likewise been convicted and sentenced to prison for their involvement in the scheme.

But before any of this corruption was publicly known, in the view of Mason and many others at the time, Samsung Electronics was thought to be fundamentally undervalued. Samsung was thought to be undervalued due to its poor corporate governance, overly complicated holding structure, and general perception that Samsung was acting for the benefit of the controlling family and not for the

benefit of the Shareholders. Mason believed that if the merger vote failed, as it should because it wasn't in the interest of the Shareholders, that failure would signal to the market that Samsung was on the path to good governance and structural reform; and, as a result, Samsung Shares would increase in value.

And based on that analysis, the General Partner made a substantial investment in Samsung amounting to $400 million at its peak and about $144 million before the merger announcement. The corruption, however, derailed Mason's investment. The merger resulted in a loss and damage to Mason in an amount currently estimated to be no less than $200 million.

Now, Korea cannot dispute any of the conduct I've just described, all of which has been conclusively established by the Korean courts. So, perhaps recognizing that they will lack substantive defenses on the merits, they have now raised a series of haphazard objections to the Tribunal's jurisdiction, elevating form over substance, and ignoring the plain text of the Treaty.

Now I want to provide a little background on Mason. They are not day traders, they're not gamblers, as Korea's counsel deliberately and pejoratively described them. Mason Capital is an investment firm based in New York. It was founded by two U.S. nationals, Mr. Garschina

and his co-founder Michael Martino, back in 2000. And, in short, the reason Mason exists is to make and identify investments. Mason has a team of analysts and traders who carefully research and value potential investments in companies based in the United States and abroad. And once Mason's founders give the green light to make an investment, the operations team executes the investment with the assistance of brokers and the trading team.

And then the investment teams continue to actively monitor, review and engage with the companies that Mason invests in as well as with other market participants to maximize Mason's potential profit from the Investment.

Now, as an investment firm, Mason is financially backed by a range of institutional investors, including charitable foundations, universities, and pension funds that recognize the value of Mason's investment expertise, experience, and contacts. But to be clear--and I'll discuss this further--when Mason makes an investment, Mason owns the investment. It's not executing investments for others like a broker or a trustee might do.

So, if you look at Slide 4, you can see that Mason purchased the Samsung Shares two ways. On the right, what's titled the "Delaware fund," you can see that Claimant Mason Capital L.P. purchased about one-third of

the Shares, and that purchase and ownership of the Shares is not at issue in this Preliminary Objection that has been raised by Korea. And on the left what's titled the "Cayman Fund," you see that Mason Management LLC, another Claimant, which we refer to as the General Partner, purchased about two-thirds of the Shares. And to illustrate here, there is the General Partner; there is also a Limited Partner in the exempt limited partnership formed under the Cayman Islands, but as Mr. Lindsay will explain, that is not an entity; it is a partnership that exists under the law. And Mason Management LLC, the General Partner, the straight line represents the legal ownership of the Shares pursuant to Cayman law, and that both the Delaware--both the General Partner and the Limited Partner have beneficial ownership and indivisible beneficial ownership of the Shares, and I'll explain that further.

Now, to make its investment in Korea, Mason used a common structure known as the "exempt limited partnership," the "ELP," as it's sometimes referenced, and I'm going to refer to that ELP as the Partnership.

ARBITRATOR GLOSTER: But it has no separate legal personality? It's just a bundle of rights and obligations?

MS. SALOMON: Exactly.

ARBITRATOR GLOSTER: And there are some jurisdictions where a Partnership such as that will have a separate legal identity, but not under Cayman law?

MS. SALOMON: That's exactly right.

It is, in fact, a structure that is unique to Cayman law, but it's not unremarkable. It is used by most U.S. hedge funds, private-equity funds, and Asia funds involved in cross-border investment. And, indeed, more than $1.6 trillion in cross-border investment uses this type of structure. These objections raised by Korea latch on to the way in which the General Partner made its investment in what Korea sees as a smoking gun, that the Shares are recorded in the name of the Partnership, but this is normal practice, and the consequences of which are dealt with under Cayman law.

Now, it is entirely unremarkable that the Partnership was named on the Registry for the General Partner's investment in Samsung. It's, in fact, common practice for entities using an exempt limited partnership structure to list the name of the Partnership as opposed to the name of the General Partner on the applicable Shareholder Registry to distinguish the Shares that are purchased in this way. It's so common, in fact, that the Exempt Limited Partnership Law includes a provision, and that is highlighted here on Slide 5; it's the Exempt

Limited Partnership Law Section 16(1), and that's Claimants' Legal Authority 22, that specifically addresses what happens in the very scenario that happened here.

In relevant part, Section 16(1) states that "any rights or property or conveyed into or vested in the name of the exempt Limited Partnership shall be held or deemed to be held by the General Partner." So, in short, the fact that the Samsung Shareholder Registry reflects shares recorded in the name of the Partnership simply means those shares are owned by the General Partner. Under Cayman law, the Partnership cannot own shares. It cannot enter into contracts. The Partnership, as Dame Gloster correctly recognized, has no separate legal personality or capability. And this is, in fact, not in dispute among the Cayman law experts.

Korea's preliminary objection was so haphazard that, in its Memorial, it asserted, as I show on Slide 6, that the Statement of Holdings does not establish the General Partner's alleged legal ownership of the Shares. It established that the General Partner lacked legal ownership. But once Korea finally engaged a Cayman law expert, she contradicted the very argument that Korea initially made, and confirmed that the General Partner was the legal owner of the Samsung Shares.

Now, the position that Korea's Cayman law expert

is making is actually inconsistent with its own Korean law expert asserting that the Partnership is the owner of the Shares, but that would then mean that the Shares, as a legal matter, were not owned by anyone, which would upend a very significant amount of cross-border investment.

It is not that we are disregarding the Register. It is for Korea and for anyone else who sees the Register to understand what that means, and this is not anyone hiding the ball. The name of the General Partner is publicly known, and it is known that when the name of the Partnership is listed as the owner, one then sees that the General Partner is the owner and can identify easily who the General Partner is.

Importantly, the General Partner is the sole person with the authority to conduct the business of the Partnership. In other words, the General Partner has sole and complete control over the Partnership. And, indeed, the Limited Partner is precluded from conducting the business of the Partnership, and if it did, it loses its limitation on liability. The General Partner makes all decisions with respect to the business, the General Partner enters into all contracts, the General Partner engages in all legal proceedings with respect to the business of the Partnership, and that is, indeed, this case. The General Partner bears sole unlimited liability

in the event that the Limited Partnership is insolvent.

This complete control over the Partnership is also affirmed by the Limited Partnership Agreement between the General Partner and the Limited Partner. It states in Section 3.02 that the management, control, and conduct of the business of the Partnership is vested exclusively in the General Partner. And that is exactly what happened here: The General Partner made the decision to buy, and subsequently sell the Samsung Shares. The General Partner has the power to vote at shareholder meetings at Samsung, the right to receive dividends, the right to engage in shareholder advocacy.

And as detailed in Mr. Lindsay's reports--and you'll hear from him tomorrow--the General Partner also has an indivisible beneficial ownership interest in the Samsung Shares. The General Partner's beneficial interest in the assets doesn't turn on the definition of "Partnership Interest" in the Limited Partnership Agreement, as Korea's Cayman law expert asserts.

Latching on to that term, Korea contends the General Partner's beneficial interest is equal to the balance of its Capital Account divided by the total value of the assets, and Korea is simply incorrect.

As Mr. Lindsay explains, the term "Partnership Interest" only applies when a Limited Partner withdraws or

an additional General Partner joins the Limited Partnership, neither of which occurred here. Instead, as a matter of Cayman law, the General Partner has that indivisible beneficial interest in all of the assets held by--all of the assets, including the Cayman Shares.

And the General Partner also has a beneficial interest in any gain or any loss in the value of the assets. Korea is characterizing the General Partner's interest as only one way, only if the Shares made profit, but that is not how this works. If the Shares lose value, that value is taken into account in the entire universe of assets that then determine the Incentive Allocation of the General Partner.

PRESIDENT SACHS: I'm not sure whether I follow you on this point. Could you rephrase that?

MS. SALOMON: Certainly.

If--for example, there are three assets, two do well and make profit, and the Samsung Shares are the one asset loses money. That loss is calculated with the profit to assess the total profit of the bundle of assets. So, if there is a tremendous loss in one, it could mean that there is no profitability in total, and then the General Partner receives no asset allocation.

So, it is not--it carries over into consideration of the entire set of assets.

PRESIDENT SACHS: Please proceed.

MS. SALOMON: And, as with any investment, the General Partner's goal is to make investments, though, that increase in value. If the investments increase, the General Partner at the end of every fiscal period is entitled to 20 percent of the profits for the entire set of assets, and that's what's known as the "Incentive Allocation." And I was describing, if the investments lose money, the General Partner gets shouldered with what is known as a Cumulative Unrecovered Net Loss, and while the General Partner still has to keep actively managing its investment, it does not get a cut for doing so. That burden is shouldered until the loss is recouped in full.

So, when the investments made by the General Partner perform well, the General Partner stands to earn a considerable profit, but conversely, when those investments suffer losses, the General Partner earns nothing and, in fact, loses money unless and until the investment losses are recouped in full.

So, the important take-away is that the General Partner is the driving force behind the investment. It's the sole entity that determines what investments to make. It's the sole entity that owns the investment, and the sole entity that actively manages the investment once it's been acquired.

And contrary to what's been insinuated, there's no concealment, there's no bad faith, the owner of the Shares is readily discoverable. It's a matter of public record, who is the General Partner of any Partnership. And as Mr. Lindsay explains, it's understood that when an asset is recorded in the name of the Partnership, the owner is the General Partner.

And to be clear, the General Partner is not bringing a claim on behalf of the Partnership. The Partnership has no separate legal existence and, therefore, has no claim. The General Partner is bringing its own claim because it is the legal owner of the assets and because it has exclusive control of those assets.

And the Limited Partner is not the real investor. The sole role of the Limited Partner is to provide capital to the Partnership. That is, the Limited Partner added cash to the bundle of assets the General Partner owned and controlled. The Limited Partner is otherwise passive, played no role in the General Partner's investment in Samsung. All decision-making authority is with the General Partner.

And, to be clear, the General Partner is not a trustee in the way that Korea is describing. In a trustee-beneficiary relationship, the beneficiary retains decision-making control. And that's not the case here,

legally or practically with the Partnership. The General Partner has full decision-making authority, controls all actions of the Partnership without input from the Limited Partner or for that matter, anyone else.

ARBITRATOR GLOSTER: Can I just pick you up on the point you said a moment ago? You said that, in a trustee-beneficiary relationship, the beneficiary maintains, I think you said this control or this decision-making control. That's not always the case. It just depends on the terms of the trust, doesn't it?

MS. SALOMON: Yes, certainly.

ARBITRATOR GLOSTER: I mean, you may well have a trustee who makes all the investment decisions?

MS. SALOMON: That's certainly the case.

ARBITRATOR GLOSTER: It depends whether it's a Bare Trust or a trust with specific terms. So, I'm not quite sure the point you're making there.

MS. SALOMON: Korea is putting forth that this is akin to a Bare Trust. And we submit that that is not the case. Now, of course, it would depend, as you describe, on what is in the Trustee agreement.

But the additional key distinguishing feature is that, under a Bare Trust, the trustee doesn't have interest in the assets, and here, the General Partner has the interest.

ARBITRATOR GLOSTER: Yes, thank you.

MS. SALOMON: Now, Korea has grabbed onto the language in the law in section 16.1 that uses "upon trust of," but that is a term of art used in the law and doesn't in any way communicate that this is like a trustee relationship where a trustee would not have interest in the asset. That's very different than here.

Now, I want to turn to the language in the Treaty. The Treaty is the fundamental basis for this Tribunal's jurisdiction, so the critical question that the Tribunal must decide is whether the General Partner is an "investor" as defined in the Treaty and whether the General Partner's purchase of the Samsung Shares is an "investment" as defined in the Treaty.

Now, just to review briefly the definition of "investor." It's important to note that the question before the Tribunal is not as Korea has suggested, whether the General Partner is the investor or the only investor. The question is whether the General Partner is an investor. It's well-established that a single investment may have a range of different covered investors, including entities in chains, shareholders or lenders.

So, here we have this point very clearly stated in RREEF versus Spain highlighted on Slide 8, that there's nothing in the Energy Charter Treaty, and we submit that

that's equally applicable in the Treaty here, that says there can be only one single investor for each investment. It cannot be the case as stated in RREEF versus Spain that there can only be one single investor for each single investment. The very concept of indirect investor and indirect investment contained within those concepts are that there may be a chain of ownership and control that involves more than one entity.

ARBITRATOR MAYER: I'm sorry, do you mean by that that the Limited Partnership, if it had a nationality protected, could also have made the Claim?

MS. SALOMON: In this case, the legal owner is the--the only legal owner is the General Partner, so whether a beneficial ownership would be sufficient is not something that we are addressing here. Only that the General Partner is the only legal owner. In general, there could be more than one investor.

ARBITRATOR MAYER: Thank you.

ARBITRATOR GLOSTER: But the Limited Partner, you say--I'm sorry, the Limited Partnership has got no separate identity, you say, so it couldn't make a claim as the Partnership.

MS. SALOMON: Right, that's exactly right.

ARBITRATOR GLOSTER: So far as the Limited Partner is concerned, are you saying that it could or

could not make a claim and be an investor?

MS. SALOMON: In this case, the Limited Partner, as you described, is not entitled to make a claim and, therefore, in this particular circumstance, the Limited Partner would not be--

ARBITRATOR GLOSTER: But if this had the protection of nationality--

MS. SALOMON: Even if it had the protection of nationality in this circumstance, the only Party that can bring the Claim is the General Partner.

ARBITRATOR GLOSTER: And that is because...?

MS. SALOMON: It is the Party under the Partnership Agreement that has the control and under the Exempt Limited Partnership Law of the Cayman Islands, the General Partner is the only owner of the Shares, the legal owner of the Shares.

ARBITRATOR GLOSTER: Yes, I see. Thank you.

MS. SALOMON: And, indeed, the Limited Partner is precluded from taking any steps to pursue a claim or doing anything with regard to the Partnership.

Now, I just want to go back to the language of the Treaty that defines "investor." The Treaty's definition of "investor" includes a national or enterprise of a Party that attempts to make, is making or has made an investment in the territory of the other Parties, and the

General Partner easily satisfies this definition because it is a U.S. enterprise that made an investment. And you can see on Slide 9 that the "enterprise of a Party" means "an enterprise constituted or organized under the law of a Party," and that certainly is the case, and Korea does not dispute that the General Partner is a U.S. enterprise.

And nor does Korea dispute the purchasing of the Samsung Shares is an "investment" in Korea. Instead of conceding, as they should, that the General Partner is an investor as defined by the Treaty, they argue that the phrase "an investment" in the definition of "investor" requires the General Partner to demonstrate it possesses the characteristics of an "investment". This seems rather circular, that the definition of "investor" would require a Claimant to demonstrate that the Investor has the characteristics of an "investment", namely the commitment of capital, expectation of gain or profit, assumption of risk. We submit that's nonsensical.

The characteristics of an "investment" identified in the Treaty appear as one would logically expect. You can see on Slide 10 the definition of "investment." The characteristics are in the definition of investment in order to identify the types of assets entitled to treaty protection in contrast to assets that are not entitled to protection, such as cross-border sale of goods.

So, in other words, to determine whether the Shares are an "investment," the Treaty dictates that the Tribunal consider whether the Shares required a commitment of capital carried an expectation of gain or profit or carried a risk. The Treaty does not require, as Korea suggests, that the General Partner must satisfy those conditions. And that would, under Korea's interpretation, render much of the definition of investor meaningless.

And again, going back to the definition of "investor," Korea concedes that the purpose of the phrase "attempts to make, is making or has made an investment" is to expand the scope of treaty protection and it protects investors even before they have successfully made an investment. Now, logically an investor's investment thwarted before it is made has not committed capital, cannot expect a gain, and has no risk because no capital has been committed, so it simply cannot be the case that an investor must demonstrate those characteristics in order to bring a claim.

But, in any event, if that is the test, the General Partner's investment certainly satisfies those characteristics, and just to go through those.

It cannot be disputed that some entity committed capital in order to acquire the Samsung Shares. Korea argues that it's not the General Partner because the

ultimate source of money which was used to purchase the Shares was not the General Partner, but there is no support for Korea's contention that the Tribunal should look at the original source of the money.

Consider a scenario where the General Partner borrowed money from a bank, used the money to purchase the Samsung Shares. It would defy logic to say that it was really the bank who committed the capital for the share purchase. And it would be equally illogical to say the bank would be the rightful Claimant in this arbitration, and that's precisely what Korea is arguing.

And Korea's argument ignores the fact that the General Partner is the legal owner of the Shares and has sole and complete control, so it is the General Partner that committed the capital to make the investment.

And in addition to the contribution of capital, the General Partner contributed additional financial resources to the Samsung investment which Korea dismisses. As Mr. Garschina has explained, the General Partner has spent hundreds of hours investigating, analyzing, actively managing its investment in the Samsung Shares. This active management involves retaining local experts, engaging with other investors, as well as engaging with Samsung.

Now, on the category of expectation of gain or

profit, Korea does not dispute that the General Partner expected to gain from its investment--indeed, an expectation of profit via an Incentive Allocation is the whole rationale for the General Partner's existence--and that way the incentive of the General Partner are perfectly aligned with the entities who invest their money with the General Partner.

And, as for the category of "assumption of risk," Korea's contention that the General Partner assumed no risk in connection with the Samsung's investment is simply incorrect. First and foremost, the General Partner bore risk in relation to the performance of the Samsung investment. Were it not to perform, it would not only be a waste of the General Partner's commitment of time and resources, but it would also contaminate the General Partner's entitlement to profit or gain from its other investments, and that risk materialized here because the General Partner received no Incentive Allocation in respect of the Samsung Shares, and its losses continued to burden the General Partner for subsequent years.

And the General Partner bears a range of fiduciary, statutory, contract, and third-party risks. As explained by Mr. Lindsay, the General Partner has a fiduciary burden to act in the utmost good faith with respect to its management and investment decisions, and

must act in the best interest of the Partnership. It's not indemnified for breach of this duty, even if that breach is unintended. And under Cayman law, the General Partner bears personal responsibility for all of the obligations of the Partner.

ARBITRATOR GLOSTER: Could I justify ask--I'm sure it's in the evidence somewhere--the Third-Party Investors in the Cayman Islands-exempted company, they put in the money, in fact, into Mason Capital Limited Cayman Islands, and do they have some sort of unit investment, or is it an open-ended investment fund? I mean, they don't maintain beneficial entitlement to their money, do they?

MS. SALOMON: It's an open-ended relationship, but they--

ARBITRATOR GLOSTER: I mean, what do they have? Do they have shares in Mason Capital Limited, or do they have shares in a fund, or what's the position there?

MS. SALOMON: They don't have shares because they are purchasing. They have an Investment Agreement with Mason.

ARBITRATOR GLOSTER: Yes.

MS. SALOMON: And their rights then to withdraw or their rights to subsequent profits is defined by that Investment Agreement.

ARBITRATOR GLOSTER: Yes, so there is no question

of them maintaining ownership of the money or anything that Mason Capital Limited buys with their money?

MS. SALOMON: That's right.

ARBITRATOR GLOSTER: Thank you.

MS. SALOMON: So, as I was mentioning, under Cayman law, the General Partner bears personal responsibility for all of the obligations of the Partnership, and the General Partner is the Party responsible for compliance with financial, tax, and accounting regulations and personally accountable in the event of any breaches.

And, as Korea has argued, these characteristics often reinforce one another, and that's likewise the case here. As Mr. Lindsay put it succinctly, there are very few business activities that provide the financial benefits of investment fund sponsorship without the assumption of significant and material risk. The General Partner's investment in Samsung is no exception.

The cases that Korea cites in support of this proposition fail to provide any useful analogies or reference points for the Tribunal. These cases are the exceptions which prove the rule. The Investments in question in KT Asia, which is RLA-17, and Caratube, RLA-12, were made by an unprotected third party and transferred for little or no consideration to a protected

Party in anticipation of a dispute.

Unsurprisingly, tribunals found that these would-be claimants had not contributed to the investment or taken risk given the way in which they received the investment, and a similar situation occurred in Blue Bank: Where an unprotected trustee had been replaced with a protected trustee to obtain investment protection.

But more fundamentally for the Tribunal, the trustee in Blue Bank was a trustee with no personal interest in the investment, no ownership in the investment, no control over what investments were made or any exposure whatsoever to the performance of the investments. None of these things are true here with respect to the General Partner. The General Partner's role in the investment is fundamentally different from a trustee as we've described, particularly the trustee in Blue Bank.

So, looking at the definition again of "investment," the Treaty defines an "investment" as every asset that an investor owns or controls. So, before applying the facts of Mason's investment to the Treaty definition, I want to note two important aspects of these definitions. First, as Vandevelde has observed, the Treaty's broad and flexible definition of investment has important implications for the General Partner's claim

here. The source of funds is irrelevant, and the ultimate fruits of an investment, where they go, is equally irrelevant.

And, second, the Treaty's definition of an investment includes every asset that has the characteristics of an "investment," and it also identifies a variety of forms that an investment could take. And it's important to note that shares and stock and other forms of equity participation in an investment are the principal forms of investment covered by treaties like the one at issue here--that's described in Caplan and Sharpe, Claimants' Legal Authority 48.

So, with those points in mind, I want to discuss what the Treaty actually requires to qualify as an "investor" and an "investment."

The General Partner is a Delaware Limited Liability Company and, therefore, entitled to bring claims for investments it owns or controls, and here there can be no doubt that the General Partner both owned the Samsung Shares and controlled the Shares.

Cayman law is clear that an exempt Limited Partnership, like the Partnership, cannot own property. All property is legally owned by the General Partner, and that's even true if the property like the Samsung Shares are recorded in the name of the Partnership.

So, the legal partner--the General Partner was the legal owner. And, as detailed in Mr. Lindsay's Expert Report, Cayman law dictates that the General Partner had exclusive control over all property.

And the Samsung Shares have the requisite characteristics of an "investment". While the fact that the shares and stock appear in the Treaty's list is illustrative and may not be dispositive, it must be given considerable weight or the language of the Treaty would be rendered meaningless. These characteristics are designed to be illustrative, and the presence or absence of any one characteristic is not determinative. But, as I've just described in the context of an investor, the Shares clearly have all three.

And more importantly, Korea does not dispute that the Shares themselves possess all three of the characteristics listed in the Treaty.

But they add this additional fourth characteristic, "duration." That appears nowhere in the text of the Treaty, and their effort to add a durational requirement fails for two key reasons.

First, there is no basis to import a durational requirement where none is actually here.

And second, if the requirement is there, the General Partner's investment certainly satisfies it.

Korea is saying that somehow this durational requirement is signaled silently, reflected in a body of authorities under international investment law, but importing a durational requirement would render meaningless the portion of the Treaty's definition of investor that includes entities attempting to make investments because investors whose investments were thwarted before they got off the ground could certainly never satisfy Korea's purported durational requirement.

And anyway, Korea's purported body of authorities doesn't withstand scrutiny even when looking at them closely. Those cases concern the definition under--of "investment" under Article 25 of the ICSID Convention, in particular Salini versus Morocco, and the tribunals analyzing those treaties, like one at issue here, have consistently refused to apply this test. As the tribunal in Clorox-Spain observed, there is no doubt that, in the ordinary meaning, an investment comprises the use of money or other assets with the expectation of gaining a profit.

In short, the General Partner's investment was clearly not a short-term bet. The critical consideration, as KT Asia suggests, is the intended duration of the investment. This ensures the respondent state cannot take advantage of their own wrongdoing committed early in an investment's lifespan. Here, Korea cannot take advantage

of its wrongful interference with the Samsung Shares 14 months into the General Partner's investment when that investment was clearly made for the longer term.

Mr. Garschina has explained that the investment was driven by an assessment of Samsung's unrealized underlying value, the opportunity for that value to be unlocked through corporate restructuring and governance changes. The correspondence at the time reflects that view, and notes a range of factors that would influence Samsung's corporate restructuring over the space of years.

And the General Partner's contemporaneous actions provides even further support. Why go to the trouble and expense of spending months or years researching an investment, including sending a Mason employee to Korea for further meetings and research for a short-term investment? This is not day-trading. Korea's reliance on a very select extract from a 2010 Due-Diligence Report is fundamentally misplaced. As the report notes directly before Korea's extract, the Fund may be invested in situations that play out over extended periods of time and thus exposed to market risk.

Now, while not specifically addressed in Korea's Opening Statement, they have asserted that there is an activity requirement that must be considered, and I want to address that. They argue that the use of the phrase

"has made an investment" in the definition of "investor" requires a showing that the General Partner made an active contribution to the investment. Again, this purported requirement is nowhere in the Treaty. Instead, they rely on three decisions which I have identified on Slide 11.

ARBITRATOR GLOSTER: Could you give us the reference, please, as to where the Respondents, you say, impose or suggest this requirement should be imposed?

MS. SALOMON: Yes, I will give you the reference in a moment.

ARBITRATOR GLOSTER: Oh later, if you like.

MS. SALOMON: And they rely on the three cases included in Slide 11, and their Legal Authority Numbers are included on the slide.

Now, we submit these decisions are clear outliers both in their approach to treaty interpretation and their unique facts. As an initial matter, subsequent tribunals have steadfastly refused to interpret investment treaties as requiring Claimants to have an ongoing active role in the investment. Thus, these three cases relied upon by Korea are of little persuasive value, and they are, indeed, distinguishable on the facts.

As you can see from the slide, the structures used by the prospective claimants in Korea bear little resemblance to the structures--sorry, let me just start

again.

The structures used by the prospective claimants in those cases bear little resemblance to the structure used by Mason. In Alapli, the Claimant was a Dutch B.V. established after the investment took place for the sole purpose of claiming treaty protection. The Award--the Tribunal in that case found that Dutch B.V. acted merely as a passive conduit playing no meaningful role in the investment.

In Clorox-Spain, the Claimant was a Spanish entity established 10 years after the investment took place, and which received the investment for zero consideration.

And in Quiborax, the Tribunal declined jurisdiction over one particular claimant because he had been gifted a token share in the investment for no consideration and played no role in making the investment. Here, to the contrary, the General Partner was not a post-investment creation used to obtain the Treaty's protection. This fund structure was set up in 2000, years before the Samsung Shares were purchased. The General Partner pre-existed the investment by five years, actively selected, paid for, and acquired the Shares, and was actively involved in its investment until it decided to dispose of the Shares.

And to address the question from Dame Gloster, Korea makes this argument in its Reply Paragraphs 33 to 40, but we would ask you to note particularly Paragraph 37, and we have addressed the arguments made there.

ARBITRATOR GLOSTER: Thank you.

MS. SALOMON: I will turn now to Korea's argument about beneficial ownership. They argue that Korea lacks standing to bring its claim on the basis--sorry--it argues that the General Partner lacks standing to bring its claim on the basis that it lacks beneficial ownership in the Samsung Shares, and this objection fails for two reasons:

First, as I have explained--and you'll hear more from Mr. Lindsay tomorrow--as a matter of Cayman law, the General Partner has an indivisible beneficial interest in all Partnership assets, including the Samsung Shares.

Second, and more fundamentally, there is simply no basis for such a "beneficial ownership" requirement in the Treaty. Korea has attempted to create this "beneficial ownership" requirement from two sources: Article 11.16 of the Treaty, which is on Slide 12, and the general principle of international investment law, developed from decisions in a handful of cases.

So, turning to the first source, Article 11.16, and I would ask you to look closely at the text of the

Treaty. This Article has nothing to do with "beneficial ownership." As is clear on its face, it addresses an entirely different issue. As commentators, tribunals and contracting parties themselves have repeatedly noted, the function of this Article 11.16 and similar provisions in other treaties is to permit foreign investors to bring derivative claims and set out a special regime for these kinds of claims, and that is included in Article 11.16(b). So, it's clarifying the Claimant can bring its own claim on its own behalf, and the derivative claim on behalf of an enterprise of the Respondent. We clearly satisfy the first half because it is the General Partner bringing its own claim, not on behalf of anyone else.

As Article 11.16 also prescribes that the Claimant has suffered loss or damage by reason of or arising out of a breach, and the authorities cited by Korea explain that simply means that some loss has to actually be suffered--some loss suffered--before a claim can be brought and the loss is actually caused by a breach. None of the commentators--and to be clear, none of the commentators, decisions or non-disputing party submissions cited by Korea support its interpretation of Article 11.16.

And such an interpretation would contravene the actual language of the Treaty, which expressly permits

claims for investments the Claimant owned directly or indirectly without limiting the nature of ownership.

Given that the "beneficial ownership" principle finds no support in the text, they've argued that such a principle nonetheless exists as a general principle of international investment law. On that basis, the decisions in a handful of investment cases have somehow overridden the international agreement of two sovereign states because they did not expressly exclude a "beneficial ownership" requirement. It is not on the Contracting States to expressly exclude a requirement for it to not be required.

First, the rights invoked by Mason in this case have been created by the Treaty. The Contracting Parties have clearly and consciously defined those rights, including defining "investors" and "investments" which it protects. Each and every treaty defines its own scope of protection.

And, second, the very idea of a binding general principle of international investment law which overrides the express terms of a treaty is misguided. The decisions like this one interpreting and applying the terms of a specific treaty are not independent sources of international law, which override the terms of other treaties.

So, if you look at the cases cited by Korea in our Chart 13, a general principle of international investment law requiring beneficial ownership simply does not exist. In reality, the only case which suggests such a principle is Occidental versus Ecuador, which Professor Mayer, who advanced these arguments on behalf of Ecuador, will undoubtedly know. The facts of Occidental, however, bear little resemblance to the facts here. First, that case concerned a transfer of interests by the original investor to a third party. It's of little relevance here whether the General Partner is the original investor in the Shares as part of an Exempt Limited Partnership structure.

And second, the transfer in Occidental was completed in violation of the applicable law, and there is no such illegality alleged or could be alleged.

And, third, Occidental had transferred the complete bundle of rights and obligations in the investment and not simply certain rights derived therefrom. Here, the General Partner has a material interest in the success of the Samsung investment, retained its statutory and fiduciary obligations to maintain the Samsung Investment.

And finally, on Occidental, it transferred all control of the Investments. It was AEC, the transferee,

whose instructions the nominees agreed to follow and who thus controlled its share of the investment, and that is not this case. The General Partner has complete control and authority over the Shares.

And the other decisions cited by Korea do not deal with the impact of beneficial ownership on a Claimant's standing. These decisions address a variety of other legal issues and come to a number of different conclusions based on the terms of the treaties at issue and the particular facts of the case. They simply do not support Korea's contention that there exists a general principle that investment treaties require beneficial ownership.

Korea argues what matters in Impregilo was the limited beneficial interest, and that's a reconstruction of the Decision. The case stands for the proposition that where legal ownership, beneficial ownership, liability and control are all proportionally split between Shareholders, one Shareholder cannot bring a claim for more than its share.

Blue Bank, as I previously mentioned, is inapposite. In that Decision, it was premised on the fact that the claimant was a mere trustee in furtherance of certain third party interests. Blue Bank had no skin in the game in relation to the trust assets, and that's

completely different here.

Zhinvali, again, they do not evidence the existence of a principle which denies standing on the basis of beneficial ownership. It relates to the ability of a company to bring claims for its shareholders which did not consent to the arbitration.

In PSEG, the tribunal declined jurisdiction over two third-party service providers. These cases provide no relevance to the Tribunal's decision here.

Instead, we would ask you to look at the Legal Authorities included on Slide 14, particularly Douglas, which is Claimants' Legal Authority 49, "whereas control is the touchtone for the quality of the relationship between the Claimant and its investment, other possible contenders must be excluded, among them is the suggested requirement of beneficial ownership."

Not only are the facts of Korea's beneficial ownership cases plainly different from the present case, there's a clear line of authorities where tribunals have rejected the same objections raised by Korea and exercised jurisdiction over the claims of General Partners in English Limited Partnerships.

As with Cayman ELPs, an English Limited Partnership, has no separate capacity, legal personality, or existence. And likewise, as with Cayman General

Partners, English General Partners have legal and beneficial ownership, as well as control, over the assets.

So, in both Eiser and RREEF, the General Partner brought a claim under an investment treaty for losses of a Partnership asset. And just like Korea, the Respondent State in those cases claimed that the General Partner didn't contribute capital, and, instead, the capital had been contributed by the Limited Partners.

The tribunals in these cases flatly rejected the argument that Korea is making here. And as the Tribunal in Eiser explained, the origin of capital invested by an investor in an investment are not relevant for purposes of jurisdiction.

There is no justifiable basis to depart from these authorities here. Like the tribunals in Eiser and RREEF, the Tribunal is obliged to exercise its jurisdiction over the General Partner's claims.

I will pause here to allow my co-counsel, Mr. Kim, to address the Korean law arguments, and then I will address the damages issues.

PRESIDENT SACHS: Thank you, Ms. Salomon.

Mr. Kim, please.

MR. KIM: Thank you, Claudia.

Mr. President, Members of the Tribunal, my name is John Kim. I'm an attorney at the Korean law firm of KL

Partners in Seoul, Korea.

As my colleague, Ms. Salomon, has explained, the General Partner is clearly a U.S. investor under the KORUS FTA. Contrary to Respondent's presentation on Korean law this morning, the same is true regardless of whose name is recorded in the relevant Shareholder's Registry or under the foreign investment registration in Korea.

During this portion of our opening, I will explain the irrelevance of Korean law to the issue of ownership in these proceedings, and the real meaning and the fact of the various Korean law arguments that have belatedly been put forward by Respondent in these proceedings.

At the time of its Memorial, Korea, too, was also of the view that Korean law is not relevant. There is not a single mention of matters relating to Korean law in its Memorial. However, presumably now, recognizing that the General Partner is both the legal and beneficial owner under Cayman law, Korea has belatedly introduced Korean law for the first time in its Reply, a last-resort attempt to construct yet another baseless objection to the Tribunal's jurisdiction.

Even now, days before these proceedings, Korea continues to add last-minute Korean authorities in an attempt to contrive some relevance to Korean law.

Korea's Korean law argument is premised on a single assumption that the Cayman Fund, or "ELP," and not the General Partner may have capacity to acquire shares under Korean law; and I paraphrase from Respondent's presentation earlier this morning. According to Korea, if the ELP was the owner of the Samsung Shares, then the General Partner cannot be an investor under the Treaty.

First, as I will explain later on in this presentation, even if Korean law were to apply, Korea's assumption is simply incorrect. There are no circumstances under which a Cayman-exempted Limited Partnership with no legal personality can be the owner of shares under Korean law. This is simply impossible.

Second, it is a clear and basic principle under private international law that matters related to corporate legal capacity and having capacity to own property are governed by the laws of the place of its establishment. This is obvious and uncontroversial. Therefore, in order to determine whether the Cayman Fund is capable of being the owner of the Samsung Shares, one must look to Cayman law. In other words, Korean law is not relevant to the issues before this Tribunal in these preliminary proceedings.

Although this is obvious in its own right, Korea's own act on private international law confirms the

same. Article 16 of the Act on private international law, which can be found at CLA-54, expressly states, and I quote: "Corporations and other organizations shall be governed by the applicable law of the establishment thereof." This is simple and clear: Cayman law applies, and this should be the beginning and end of it as it relates to Korean law in these proceedings.

However, since Cayman law offers no support to Korea's preliminary objection, Korea now argues that since the Samsung Shares were recorded in the name of the Cayman Fund in the Shareholder's Registry of Samsung SC&T and Samsung Electronics, this means as a legal matter that the Fund, rather than the General Partner, is the owner of the Samsung Shares. However, this is incorrect even as a matter of Korean law.

First, in Korea, a Shareholder's Registry is not determinative of ownership. Companies utilize Shareholder Registries in order to have a uniform means of handling matters related to their shares, and to identify Parties who can assert their status as a shareholder vis-à-vis the Company. This protects companies in case of disputes between Shareholders or those who claim to be Shareholders over who is entitled to exercise Shareholder rights. The Registry determines who can exercise Shareholder rights. It does not resolve or decide questions of ownership.

Under Korean law, the ability to exercise Shareholder rights, which are exercised vis-à-vis the Company, is distinct and separate from ownership rights, which is a fundamental economic interest that can be exercised against the world. As Korea's Korean law expert, Professor Rho, has stated in his Report, and I quote: "The Supreme Court makes a distinction between the ownership of shares, on the one hand, and the exercise of Shareholder rights, on the other hand. Ownership of shares is an issue of who holds title of the stocks, and an entity lacking ownership of shares cannot claim to any third party that it is a Shareholder of the Company. Exercise of Shareholder rights is an issue of who can exercise specific Shareholder rights such as voting rights vis-à-vis the Company." And that can be found at RER-2, Paragraph 26.

Let me give you a very simple example: If Party A validly transfers its shares to Party B, and Party B pays Party A for the shares--and there's no dispute among the Parties--Party B would clearly be the legal owner of the shares. This would be true even if the Parties didn't get around--for whatever reason, lazy, mistake, oversight--to notifying the Company and updating the Shareholder's Registry. Simply put, the Shareholder's Registry does not determine share ownership.

In addition, even if Korean law were to apply, there are no circumstances under which the Cayman Fund can be the owner of shares under Korean law. The Fund has no legal personality at all and, therefore, lacks the requisite legal capacity to own or hold property. It cannot be the owner of the Samsung Shares.

As mentioned in the Korean Civil Law Commentaries found at CLA-52, a legal capacity to have rights under Korean law means the standing or eligibility to have rights. This is derived from a similar principle under German law--and please excuse me in advance for my pronunciation--"Rechts-fähigkeit"--I could spell it for the Reporter later--this is derived from a similar principle under German law--and I'll skip the pronunciation--as explained by Professor Kwon, a legal capacity to have rights is a fundamental status that is unaffected by legally imposed restrictions or limitations and applies to both natural persons and organizations.

It is an undisputed principle under Korean law that a person or organization that does not have a legal capacity to have rights cannot hold any rights including ownership rights.

In this regard, both Parties and their respective Cayman law experts agree, that the Cayman ELP has no legal personality, no separate existence from the General

Partner and Limited Partner, and no separate capacity to contract, bring claims, or own or control assets.

Accordingly, since the Fund has no legal capacity to own assets under Cayman law, it cannot be the owner of the Samsung Shares under Korean law. This is a fundamental status that remains unchanged and unaffected, regardless of how a particular Korean statute may treat an organization for the limited purpose of that statute.

In case of foreign organizations, it is true that there are a number of Korean statutes that extend their application to cover foreign organizations, even if they are a type of organization that does not have a legal capacity under Korean law or, as in the present case, does not have a legal capacity under the laws of the place of its establishment. This extended application helps to minimize regulatory arbitrage and potential loopholes to circumvent the statute.

However, those statutes do not have any determinative effect on ownership or otherwise displace the general principle that a legal capacity to have rights is a fundamental status that remains unaffected by how a particular statute may treat such foreign organization for the purpose of that statute.

In his Expert Report, Korea's expert, Professor Rho, relies on three such statutes, namely the Capital

Markets Act, the Corporate Tax Act, and the Civil Procedure Act, to support his argument that the Cayman Fund can, indeed, be the legal owner of the Samsung Shares, even if it does not have a legal capacity to hold rights or to own shares pursuant to Cayman law.

First, Professor Rho relies on the fact that the term "foreign corporation, et cetera," is defined under the Capital Markets Act to include foreign funds or associations, and argues that the Cayman Exempted Limited Partnership is therefore capable of acquiring listed securities. Clearly, this is a stretch.

The relevant provisions of the Capital Markets Act are simply permissive and state that foreign corporations, et cetera, may acquire listed shares, which is quite natural and quite obvious. The Act says nothing about ownership or whether an organization without legal personality or a legal capacity to have rights can even acquire shares because, of course, it cannot.

The second statute that Professor Rho relies upon is the Corporate Tax Act. In his Report, at Paragraph 20 of his Report, Professor Rho states that, and I quote--and this is the entirety of his argument: "The Supreme Court of Korea has ruled that a Limited Partnership established pursuant to the laws of the Cayman Islands was a foreign corporation within the meaning of the former Corporate Tax

Act."

While the conclusion that Professor Rho hopes to be drawn from this statement is unclear, it is clear that this has nothing to do with share ownership. This Supreme Court case relates solely to tax treatment under the Corporate Tax Act and does not have broader application.

Lastly, Professor Rho refers to Korea's Civil Procedure Act which mentions that a foreigner without litigation capacity in its home country may be deemed to have litigation capacity in Korea. Based on that, and while this may be true, this, again, clearly has nothing to do with a legal capacity to have rights or ownership rights.

If not already clear, as Professor Kwon has explained in his Expert Report, Professor Rho's reliance on these statutes is futile and misleading. None of the statutes raised by Korea's Korean law expert relate to ownership and are completely irrelevant.

The same is true for Korea's reliance on the foreign investment registration regime in Korea. This is for administrative purposes and to supervise compliance where certain investment restrictions or limits placed on foreign investment and to record affiliation. Again, this has no bearing on the question of attribution of share ownership.

In conclusion, based on Article 16 of Korea's Act on Private International Law, the question of whether the Cayman Fund itself is capable of being the owner of the Samsung Shares must be determined based on Cayman law. This is clear. But even if Korean law was relevant and should be applied, the Cayman Fund cannot and is not capable of being the owner of the Samsung Shares since it does not have any legal personality or capacity to have rights in the first place.

This conclusion cannot be changed or simply altered based on the fact that a foreign investment registration was filed in the name of the Cayman Fund or that the Fund's name was recorded in the Shareholder's Registry. As I have explained, neither document is determinative of share ownership, nor can they change the status of the Cayman Fund under applicable, namely Cayman, law.

Contrary to Korea's arguments in these proceedings, if the Fund has no legal capacity to have rights, there are no circumstances under which Korean law--under Korean law whereby the Fund can be attributed with share ownership of the Shares in Samsung SC&T or Samsung Electronics. Therefore, ownership of the Samsung Shares should be determined according to Cayman law and the Fund's internal legal relations.

Thank you.

PRESIDENT SACHS: Thank you, Mr. Kim.

MS. SALOMON: Members of the Tribunal, I want to address Korea's objection to the Tribunal's jurisdiction that the General Partner's claim should be dismissed on the basis of Article 11.20.6 of the Treaty.

Now, that Article concerns objections that, as a matter of law, the claim submitted is not a claim for which an award in favor of the Claimant may be made.

So, before turning to the substance of the argument, an important note about the procedure that Korea has invoked under this Article. That procedure is truly exceptional. Granting Korea's damages objection at the very outset of the case would deprive the General Partner of its right to have its claim heard following a full presentation of the evidence.

The burden of proof Korea must meet here is high. To establish this objection, Korea must prove that the General Partner's claims are "demonstrably doomed to failure" and "legally hopeless"; and that language may be found in the Bridgestone case versus Panama at CLA-28, and The Renco Group versus Peru at CLA-43.

As the Tribunal in Pac Rim observed, to grant such an objection, a tribunal must have reached a position both as to all relevant questions of law and all relevant

alleged or undisputed facts that an award should be made finally dismissing the Claimant's claims at the very outset. There are many reasons, says the Pac Rim Tribunal, why a tribunal might reasonably decide not to exercise such a power, even where it considered such a claim appeared likely but not certain to fail if assessed only at the time of the Preliminary Objection. That's CLA-36.

So, in other words, the Tribunal must accept as true the facts alleged in the Notice of Arbitration and deny Korea's damages objection unless, as a matter of law, the General Partner's claim cannot succeed.

So, this objection fails unless an award could not possibly be made in the General Partner's favor because the General Partner is legally precluded from obtaining any damages whatsoever in connection with its Samsung investment, and that is plainly not the case here. Korea's arguments about what proof the General Partner has submitted with regard to its damages, its focus on the accounts ledger is simply irrelevant for this phase of the case. It need not prove its full damages case at this time.

Korea's arguing that the General Partner is not capable of suffering damages, but they simply reiterate the same erroneous arguments regarding the General

Partner's ownership and control, contending the General Partner is not the real investor and that the General Partner has no risk. But it's important to understand what Korea is asking this Tribunal to do if it accepts Korea's position. It's asking the Tribunal to eliminate treaty protection for an entire sector of cross-border investment, not just Mason, but more than $1.6 trillion in cross-border investment that uses the Cayman Master Fund structure.

Now, Korea's complaints about Mason's structure, we have explained, have no merit. The General Partner has legal title including to the Shares. And once the General Partner is permitted to present its case in full, the record will establish that, absent Korea's illegal interference in violation of the Treaty, the Shares would have increased in value, and instead, due to Korea's illegal interference, they declined in value, and the General Partner suffered loss.

Because the General Partner has legal title, the damages are the difference between the sale price and what they would have been worth absent Korea's illegal interference. But even ignoring that the General Partner has legal title, the General Partner suffered additional damages as a result of Korea's breach.

As explained by Mason's CFO, the losses

associated with the Samsung investment contributed to the General Partner receiving zero Incentive Allocation in 2015. Absent Korea's interference, the Shares would have increased in value. The General Partner would have received 20 percent of that increase as its Incentive Allocation.

The General Partner spent considerable resources researching/managing the Samsung investment, including hundreds of hours spent by analysts traveling to Korea meeting with Samsung, but those costs were never recovered because Korea caused the Shares to be sold at a loss.

Additionally, the poor performance of the Shares resulted in reputational damage to the General Partner which, in turn, results in lost profits.

The entire business model of the General Partner is premised on delivering market-beating results to its investors in sharing in those profits, but when investments lose money, it hinders the General Partner's ability to attract new investors and causes existing investors to take their money elsewhere.

We, therefore, submit that Korea has failed to carry its hefty burden of proving the General Partner is legally precluded from obtaining any damages whatsoever, even if its claim were to succeed.

The Tribunal's competence over the General

Partner's claim under the Treaty is clear. The General Partner satisfies the definition of "Investor." The Samsung Shares satisfy the Treaty's definition of "investment." The Tribunal should reject Korea's attempts to rewrite the terms of the Treaty.

We respectfully request that the Tribunal comply with that mandate in which it's obliged to exercise jurisdiction it has under the Treaty and here, the General Partner's claim.

Thank you.

PRESIDENT SACHS: Thank you, Ms. Salomon.

This brings us to the end of the openings. We will now have a lunch break and resume at 2:00. Thank you very much.

(Whereupon, at 12:46 p.m., the Hearing was adjourned until 2:00 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT SACHS: So, good afternoon, Mr. Garschina.

THE WITNESS: Good afternoon.

KENNETH GARSCHINA, CLAIMANTS' WITNESS, CALLED

PRESIDENT SACHS: You're here as a fact witness named by the Claimant. Could you please read the statement which is in front of you.

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

PRESIDENT SACHS: Thank you, Mr. Garschina.

You submitted two Witness Statements in these proceedings, the first one dated 17th of April, and the second one 4th of September, both of 2019. Is there anything you would like to correct or amend in any of these two Witness Statements?

THE WITNESS: No.

PRESIDENT SACHS: Thank you.

Will there be direct?

MR. WATSULA: A short direct, yeah.

PRESIDENT SACHS: A short direct, so please proceed.

DIRECT EXAMINATION

BY MR. WATSULA:

Q. Good afternoon, could you state your full name for the record, please?

A. Ken Garschina.

Q. And you are the Co-founder and Managing Member of Mason Management LLC; is that right?

A. Yes.

Q. Can you speak a little bit about your educational background for the Tribunal.

A. Sure.

I went to high school, public high school, on Long Island, Garden City. I graduated from there in 1989. I matriculated to the College of the Holy Cross in Western Massachusetts, graduated from there in 1993 with a Bachelor's in economics.

Q. What did you do before you co-founded Mason?

A. My previous employer was another hedge fund called "KS Capital," where I was an analyst initially and then a Portfolio Manager specializing in risk arbitrage and distressed securities.

Q. And you left there to co-found Mason; is that right?

A. Yes. On July 1st of 2000.

Q. And there is one other Co-founder and one other Managing Member of Mason; correct?

A. Yes.

Q. And who is that?
A. Mr. Michael Martino.
Q. What are your duties and responsibilities as a Managing Member of Mason?
A. Mike and myself have co-duties as managing the firm, overseeing, effectively CEO of the firm, and most importantly overseeing, managing and being responsible for the research and decision-making process and the investment process.
Q. And can you give the Tribunal a brief explanation of what it is exactly that Mason does?
A. Sure.
Mason Capital is a venture hedge fund, and "venture" broadly speaking encompasses many subdisciplines, including bankruptcy investing, risk arbitrage investing, litigation-driven investing, whether a company is undergoing a legal predicament. Other forms of venture of investing such as restructurings, recapitalizations, liquidations, and generally speaking we invest to provide alpha to our clients, meaning we're not investing to get the returns or similar types of returns that the Stock Market would give. We're looking for uncorrelated returns, returns that are driven by the events that take place around companies that are going to drive the prices of the underlying securities.

Q. Thank you.

MR. WATSULA: No further questions from Claimants at this time.

PRESIDENT SACHS: Thank you very much.

Who will do the cross?

MR. NYER: I will do the cross, Mr. President.

PRESIDENT SACHS: Mr. Nyer, thank you.

MR. NYER: We have a binder of documents that we'll provide to the Tribunal, Mr. Garschina and counsel for Claimants.

CROSS-EXAMINATION

BY MR. NYER:

Q. Mr. Garschina, good afternoon.

A. Hello.

(Pause.)

Q. Mr. Garschina, good afternoon again.

You are the Co-founder and Principal of Mason Capital Management LLC; right?

A. That's correct.

Q. And you refer to this entity as the "Investment Manager"; right?

A. Excuse me?

Q. Do you refer to this entity in your Witness Statement as the "Investment Manager?" Are you familiar with that?

A. Can you point that to me?
Q. Sure, sure.
Paragraph 2 of your First Witness Statement.
A. Yes, that's one of the entities, yes.
Q. Now, Mr. Satzinger explains that the Investment Manager of Mason Capital Management LLC employs the staff which works on Mason Capital's behalf; is that correct?
A. The General Partner, I believe, employs staff, yes.
Q. The--and Mason Capital Management.
A. I'm not sure exactly which of the entities the paychecks go out from, but in general, the Mason entities employ staff, yes.
Q. But specifically the Investment Manager of Mason Capital Management LLC, is that the entity that employs staff, the Mason staff?
A. I'm not sure.
Q. You're not sure.
Is that the entity that rents your offices in New York?
A. Again, there are many boxes for legal reasons, different kind of legal reasons, and I'm not the expert on that.
Q. Okay. Fair enough.
How many employees does the Mason Group employ

overall?

A. It varies. When we started, we had no employees, just myself and my partner. Currently, we have I approximate around 20.

Q. Now, as far as you know, the Investment Manager is not a Claimant in this arbitration; do you know that?

A. I don't know.

Q. Mason manages two funds?

A. We have one pool of capital that is divided into two entities for legal--for tax reasons.

Q. And one of these entities is the Domestic Fund or has been referred to as the "Domestic Fund"; right?

A. Yes.

Q. And the second one is the offshore/Cayman Fund?

A. That's a tax entity. All the decision-making on investments is done at the top Mason entities; that's where all the decision-making ability rests in myself and my partner and I think where the staff was employed, but I'm not positive, but all the intellectual capital which is what we provide to our investors is done at the Mason--the top level of the Partnership.

Q. Understood, understood, but they are two entities, one offshore and one domestic?

A. There are two entities, I believe, for tax reasons.

Q. Understood.
A. But the one investment strategy and the investments are run completely pari passu, meaning the exact same investments.
Q. The Cayman tax entity that you mentioned, do you understand that it is incorporated as a Cayman-exempted Limited Partnership?
A. You mean that's what it says.
Q. And do you understand that these entities are called Mason Capital Master Fund LLP?
A. Yes.
Q. And that entity is not a Party to this arbitration; you understand that?
A. No, I don't.
Q. Maybe you learned that, but the Second Claimant in this arbitration is an entity called "Mason Management LLC"; are you aware of that?
A. Yes. I believe that's one of the General Partner entities.
Q. That is a General Partner. And it is a Delaware LLC that you co-founded with Mr. Martino, I understand?
A. I'll take your word for it.
Q. Well, you don't have to take my, sir. It's in this paragraph, the first paragraph of your First Witness Statement.

A. Then you know it already.
Q. So, Mason Management LLC serves as the General Partner in both the Domestic Fund and the Cayman Fund? Do you know that?
A. Functionally, which again I am not a legal expert on organizational charts that are done for various legal and tax reasons. The Mason General Partnership has the investment authority to make investment decisions for all the capital that we manage.
Q. The General Partner Mason Management LLC is a special-purpose vehicle, isn't it?
A. I don't know.
Q. And you don't know whether it has any employees, do you?
A. Again, I'm not the human resources department. I do know how to manage money. There are many, many entities, which I'm sure you know, where the--where the pay stubs are sent out from is not of my purview.
Q. Understood.
Now, the Cayman Fund, the offshore fund, also has a Limited Partner; right?
A. Has a Limited Partner?
Q. Yes.
A. I believe there are Limited Partners, not a Limited Partner.

Q. There might be several investors in your Limited Partner in the Cayman offshore entity, but as far as we have been told so far, there is only one Limited Partner? I appreciate that--

A. That's not my area of expertise.

Q. I appreciate that.

That Limited Partner has been referred to as the "feeder fund." Are you familiar with that terminology?

A. No.

Q. And do you understand whether the Limited Partner receives money from third-party investors?

A. I'm not sure where the money comes in of all the different boxes, but I know where all the investment decisions are made.

Q. Now, you spoke earlier on direct examination, you explained the--that Mason was investing to produce alpha. That's what you said, for its client?

A. Yes.

Q. For its clients? Sorry.

A. We have produced alpha for our clients, yes.

Q. And your clients would be third-party investors?

A. Well, the biggest client of the firm is ourselves.

Q. Meaning you, yourself, Mr. Garschina, and Mr. Martino?

A. Mr. Martino, yes.
Q. All right. And do you know--
A. As well as third-party investors.
Q. And are you Shareholders in the Limited Partner?
A. I don't know. I know that we are--we are the General Partnership, and that's where the decision-making authority is and where all our intellectual capital is.
Q. I understand.
And the purpose of your decision-making authority is to produce alpha, which is returns for your clients; right?
A. That's one of the purposes.
Q. If you're successful in producing alpha, you will get a performance fee; right?
A. No, that's not correct.
Q. The Cayman Fund, the offshore structure--
A. Would you like me to say what we do get?
Q. I'm sure your lawyers will come back to this.
A. I see.
Q. We're under the clock here.
A. I have plenty of time.
Q. The Cayman Fund was established in 2009?
A. I'll take your word for it. I'm not sure.
Q. Once again, Paragraph 7 of your First Witness Statement.

A. So you know already.
Q. And it was established first into a Limited Partnership Agreement; is that right?
A. I'm not sure.
Q. You're not familiar with the Limited Partnership Agreements?
A. The "Limited Partnership Agreement"? I mean, in broad strokes I'm familiar with it. I haven't read it in quite some time.
Q. But you've seen the document?
A. It's possible.
Q. Well, if you haven't read it in quite some time, it means you read it at some point; right?
A. I mean, I don't remember, but I'm sure that I read them, yes.
Q. Let's look at it. You'll find it under Tab 6 of your binder.
A. Um-hmm.
MR. NYER: And for the record, we're looking at Exhibit C-30, three-zero.
THE WITNESS: C?
BY MR. NYER:
Q. Tab 6. Tab 6.
A. Okay. I'm on it.
Q. And I will start only looking at the cover page.

You will see the document is entitled "Second Amended and Restated Limited Partnership Agreement" dated January 1st, 2013.

Do you see that?

A. I see it.

Q. Do you have any recollection as to the reasons for the restatements and the amendments of the Limited Partnership Agreement in 2013?

A. No.

Q. If you could turn to Article 1.05. It's on Page 2 of the Limited Partnership Agreement.

A. Um-hmm.

Q. And you should see here a provision entitled "Objects and Purposes."

Do you see that?

A. Yes.

Q. And that provision reads: "The primary purpose of the Partnership shall be to purchase, sell or hold, for investment or speculation, securities, on margin or otherwise, for the account and the risk of the Partnership."

Do you see that?

A. I see it.

Q. So, it does happen from time to time for the Partnership to purchase securities for the purpose of

speculation; right?

A. I don't know what you mean by "purchase."

Q. Acquire securities.

A. I'm not sure what entity acquires the securities for legal reasons. I'm not an expert on that, again.

Q. And, Mr. Garschina, that's a fair point. I won't hold you to any of the legal technicalities.

A. But you're asking me a legal technicality.

Q. I'm asking you: Does it happen that the Cayman Fund purchased securities for the purpose of speculation?

A. I don't know which Cayman entities is, in my layman's understanding, a pass-through entity for tax purposes. It has no function other than for tax purposes. There are certain investors, both onshore and offshore investors. Domestically--in fact, in our funds most of the offshore investors are U.S. non-taxpaying endowments and foundations, and those investors would like to invest in a Cayman entity for their own tax-planning purposes. Again, they're non-taxpaying entities, so it's not for tax avoidance. It's for tax-planning.

The offshore investors would like to invest in a Cayman entity for their own tax-planning purposes; I believe one of the reasons is to avoid dividend tax withholding. That entity is--has no investment authority. It has no power to make investment decisions. All those

decisions are done at the Mason Management General Partner level.

Q. I have to apologize. I wasn't clear. I meant to ask, does it happen that the Cayman Fund purchased securities for the purpose of speculations? Could you answer that question?

A. I don't know what entity actually makes the purchases.

Q. On the basis of this provision 1.05, does the Cayman Fund appear to have the authority to purchase securities for the purpose of speculation?

A. Yes, that's what it says.

Q. Now, Mr. Garschina, one of Mason's core strategies is to make event-driven trades and investments; right?

A. That is our strategy.

Q. And if you could please turn to Tab 16 in your binder, and we're looking at Exhibit R-3?

A. Yes.

Q. And you should see in front of you a report by Cliffwater.

Do you see that?

A. I see it.

Q. And it appears to be a hedge fund investment Due-Diligence Report.

Do you see that?
A. That's what it says.
Q. Dated as of December 2010?
A. That's what it says.
Q. Are you familiar with Cliffwater?
A. I wasn't until my lawyers showed me this document.
Q. And having reviewed the document, do you understand Cliffwater to be an investment advisory firm that provides research and due diligence on hedge funds?
A. It's a report that purports to know about my firm.
Q. And do you have any understanding of the purpose of such a report?
A. They want to sell their knowledge to clients, I'd imagine.
Q. Could you please turn to Page 5 of that document. And you should see at the bottom of the page there is a section starting: "Investment Strategy and Processes (sic)"--"and Process."
A. Yes.
Q. And I read part of this paragraph and ask you a few questions about it.
"Mason engages in event-driven investing that combines deep fundamental analysis with a hard catalyst

and a global perspective. The fund seeks to invest in opportunities where the impact of the event is not yet reflected in the price of the Company's securities. Event-driven positions in a security are driven by both fundamental value and by unusual or extraordinary corporate events that will drive the value of the security in the near-to-medium term."

Do you see that?

A. I do.

Q. Is that a fair description of Mason's investment approach?

A. No.

Q. What specifically in this description would you take issue with?

A. Would you like me to go word by word?

Q. Generally.

A. I'm going to have to take my glasses off.

I don't know what "global perspective" means.

"Seek to invest in opportunities where the impact of the event is not yet reflected." Sometimes yes, sometimes no.

In "near-to-medium term," I don't agree with that.

"Uses skills developed in risk arbitrage and distressed investing, and applies them to interesting long

and short corporate events," I don't know what that means.

We have "partners and senior analysts have expertise in complicated transaction-oriented investments and are therefore, able to invest in complex situations," I agree with that.

So, strikes and gutters.

Q. So, you agree with part of it, and you disagree with part of it?

A. It's a very high level description from someone who really has no knowledge of my firm, as far as I know.

Q. Isn't it true that you saw an event-driven opportunity in the Samsung restructuring?

A. Yes.

Q. And that opportunity was related to the prospect of a leadership's change at Samsung?

A. A leadership change? Can you define that for me.

Q. The transition from the one generation to a second generation?

A. That was a part of it. That's not why--it would be leaving out 80 percent to describe that as the reason.

Q. If I could direct you to Paragraph 8 of your Witness Statement.

A. Which one?

Q. The Second Witness Statement. And you state here: "What prompted us to invest at the time was the

prospect that the transition to the next generation of leadership would require significant restructuring of the Samsung Group."

Do you see that?

A. Um-hmm.

Q. Was that your testimony at the time when you signed this Witness Statement?

A. That's one of the reasons, yeah.

Q. And the transition in leadership--

A. It's not untrue, I guess is what you're getting at.

Q. Understood.

The transition in leadership from in the Lee Family was--would require significant restructuring because the group was complex with many affiliates?

A. Well, the family dynamic was a part of it. Also a part of it was the corporate environment in Korea and the fact that laws had been passed that would require certain structures to be unwound. Those structures, commonly referred to as the "chaebol" system, are a group of circularity-driven--I mean, if you looked at the Mason capital structure, and I'm confused by it, if you looked at the Samsung structure, your brain would explode, so the Government of Korea said this is not hospitable to investment capital. Our securities trade at four times

earnings. It's not good for capital coming into the country for investment, ultimately it's not good for growth. We need to have--we need to be more friendly to capital if it's mobile, globally.

And I think they took steps to redress that by having this law passed that required within a certain amount of time a simplification of these structures. That, combined with the fact that there was a leadership change coming and the perception on our part was that the younger generation would be less wed to the old way of inefficiency, poor capital allocation, self-dealing, run-ins with the law for bribery.

I mean, Samsung was--as far as when I came into the industry, it's fairly been uninvestable for that reason, and there were real signs and legal milestones that change was afoot, so I think--I can go on, but...

Q. I think it's consistent with what you've stated in your Witness Statement, but would you agree, would you not, that there were multiple Samsung entities and there were a number of cross-shareholders as between those various Samsung entities?

A. I mean, it's like an octopus. You can look at it, I'm sure you have. There are many, many, many entities.

Q. And they were trying to unwind those

cross-shareholdings to an extent?

A. It think they were trying to simplify it.

Q. Now, Mason first started looking into Samsung in or about February 2014; right?

A. I believe that's right.

Q. And as an aside, we have some privacy concern, as you may have heard since the Hearing is being broadcast, so I will have some difficulties mentioning the names of the members of your team, and I will refer to them as Mr. L or Mr. G, and we will--or maybe by their first name?

A. Okay.

Q. So, we will try to discern who they are.

A. All right.

Q. If you can turn to Paragraph 4 of your Second Witness Statement.

And in the middle of the paragraph: "For the Investment in Samsung, the core team included Mr. L, Mr. GV, Mr. K, and Mr. R."

Do you see that?

A. Yes.

Q. And those were the team--that was the team working on the Mason project; right?

A. Yes.

Q. And you told us, you have no idea who of those four individuals are employed by Mason Capital or by Mason

Management or by any other entities; right?
A. They're employed by one of them, I'm sure of that.
Q. Okay.
A. Or else they were working for free, which is fine.
Q. Right. And they wouldn't be employed by several of them; right?
A. I wouldn't know about that either, but I'm sure someone does.
Q. Presumably you wouldn't pay twice their salaries; right?
A. If we're feeling extra generous. If the Samsung investment had gone unimpeded by certain things, perhaps.
Q. Fair enough.
If you can turn to Paragraph 18 of your Second Witness Statement.
A. Second one?
Q. Yes.
And you say here that: "The team under my supervision spent hundreds of hours investigating and analyzing Samsung Electronics and the Samsung Group."
Do you see that?
A. Yes, I do.
Q. Now, the purpose of these investigations was not

to provide advice to the management of Samsung on their restructuring; right?

A. No, that's wrong.

Q. It was the purpose, to provide--

A. It's one of the purposes, yeah.

Q. You're a management consulting firm, sir?

A. No.

Q. Now, wasn't the purpose of those investigations to get insight into how the restructuring would play out?

A. Well, there are many purposes of it. One is to--when you--when I think of an investment, the investment doesn't start the day that we commit capital. The investment starts when we begin our research process. By the time we were able to commit capital, we have done our homework, hopefully correctly, not always correctly. And so the investment process, to me, is when we start what you're describing here. The investment starts then. The actual buying and selling you referred to earlier is a mechanism to put that investment research to work. It's like a switch.

So, our investment process is oftentimes long and deliberative, and there is a reason for us to benefit from the investment process, meaning to get to that point where we do turn a switch.

And importantly, you mentioned a management

consultant. We invest in maybe, depends on the year, but five or six new things a year. We look at hundreds of things, so you can think of us as a research organization inside a money management firm.

In fact, often when I come home from work, my wife asks me what did you buy and sell today? And I say nothing. That doesn't mean I'm not investing.

So, part of that investment is to educate myself on what we're looking at, but part of it is also to educate myself so the firm can have a dialogue, hopefully a constructive one, with the firm that we're analyzing or firms that we're analyzing, and we are an active participant in restructuring processes, whether it's the Lehman bankruptcy--I can list scores of things over the years. We have a very iterative dialogue with management teams and sometimes Boards.

In this case, as you rightly point out, we committed a lot of resources, and part of those resources were--we have--we were fortunate to have more than a couple Korean-Americans working at the firm, and part of the reasons they were assigned to look at this particular investment was their ability to interface with Samsung culturally and language-wise, and to go there because they were on vacation and other reasons to go, it's a long trip.

And we had very, very good dialogue with Samsung. They assured us that our analysis and comments were being translated or communicated to the very highest levels and taken into consideration, and that was encouraging to us because they were looking for feedback. It's a company that had been on the outskirts of the capital markets for so long, given their bad corporate governance practices. They were looking for engagement on what to do, how to do it, how to surface value, how are investors going to react to it.

So, in that sense, you mentioned "management consulting," I think not in a legal definition but in a functional back and forth between companies we were analyzing, yes.

Q. I'm sorry, my question must have been quite unclear. I meant to ask: Was a purpose of your investigations to gain insight into how and when the restructuring might play out?

A. How and when, yes.

Q. So, if you could please turn to Paragraph 11 of your Second Witness Statement, and I would like to direct your attention to the last sentence in that paragraph, where you explain that Mr. J noted: "No one really knew what Samsung's plans were except for the family," and Samsung had many potential restructuring scenarios

pre-planned."

Do you see that?

A. Yeah.

Q. Isn't it true that the multiple scenarios that were pre-planned by Samsung were because of the multiple affiliates and cross-shareholdings that we discussed earlier?

A. I don't know why it's true, but it was true.

Q. Now, Samsung could use various affiliates or the family could use various affiliates and structure to pass control from one generation to the other.

Do you understand that?

A. Not really.

Q. They had several options?

A. As it said, we didn't know what the options were. They said that they were deliberating many things. They announced some restructuring plans.

I would not like to speculate, but I can imagine that they looked at hundreds of different restructuring alternatives.

Q. And would it be valuable from your perspective to understand which scenario the family would privilege?

A. It could be atmospherically valuable. I mean, I think different members of the family may want different things. It kind of depends on who you're talking to. Big

family, dynastic change. It's an atmospheric datapoint.

Q. Let's look at the e-mail that you footnote in this paragraph. We're looking at--we will be looking at Tab 10 in your binder, please, and that's an e-mail from Mr. L.

A. Mr. JL?

Q. JL.

A. Okay.

MR. NYER: And, for the record, we're looking at Exhibit C-45.

THE WITNESS: Tab 10; right?

Okay.

BY MR. NYER:

Q. And it's an e-mail from JL sent to the Amagansett at Bloomberg. That's your personal e-mail address?

A. It's not my personal e-mail, but it is one of my work e-mail addresses.

Q. Right. And JL at the time spent a week or so in Korea speaking with various people?

A. Yes. I believe he was on a family vacation which he found some time for work on.

Q. And he produced a 22-page note that he attached to this e-mail on his family vacation; right?

A. This is--a lot of this, I think, is cut and pasted from analyst report, so...

Q. Okay.

A. So, I don't think he produced it. I think it's an amalgamation of different third-party research reports, if I'm looking at it correctly.

Q. Right. And he seems to be speaking about--

A. But he didn't produce it.

Q. He compiled it?

A. He is forwarding to me, I would say.

Q. You did not look to it? Is that what you said?

A. I'm sorry, I think he forwarded me other people's research, that is what he did.

Q. Okay. If you look at the first bullet point in the document Mr. JL attaches to your e-mail to you?

A. We're not referring to the JL firm; am I?

Q. Right. The JL who works for you.

A. Right.

Q. The first bullet point, I'm reading: "The main link to focus on is Samsung life's stake 7.6 percent in Samsung Electronics due to a variety of existing and potential regulations discussed later. This part of the structure could largely dictate how the rest of the chips fall into place."

Do you see that?

A. Maybe I'm looking at the wrong page. It's Tab 10?

Q. Tab 10, and I'm looking at the attachment to the e-mail from JL.

A. The attachment?

Q. Yeah.

A. Which page of the attachment?

Q. First page of the attachment?

A. The main link. Okay, yeah, I see that.

Q. "Due to a variety of potential existing regulations discussed later, this part of the structure would largely dictate how the rest of the chips fall into place."

Do you see that?

A. I do.

Q. Isn't it true that Mason was trying to figure out how the chips would fall in the restructuring?

A. The opportunity was so big, given, as I mentioned, that hundreds of different ways it could be restructured, that we weren't so--we knew we never were going to be able to figure out, given the octopus, what was going to happen, but we thought that, if they did, if they moved towards simplifying it, we would make money, so no one could figure out what they were going to do exactly, but the bigger question we were trying to figure out is are they moving in the right direction.

Q. Depending on how the chips would fall into place,

there would be winners and losers within the Samsung Group, sir; would you agree with that?

A. Not necessarily.

In fact, I think that it's safe to say that the entire structure was so undervalued given the poor record of corporate governance that, as I said, moving in the right direction towards any kind of Western duty-toward-shareholders attitude would have been beneficial to just about the entire group.

Q. If you could please turn to Tab 15 in your binder. And you should be looking at what has been produced as Exhibit C-55, and it's an e-mail from the same JL to you and others at Mason.

Do you see that?

A. I do.

Q. And JL was reporting on conversation with various people in Korea at the time?

A. I'm not sure, but it looks like it.

Q. If you could turn to the second page of that e-mail--

A. Um-hmm.

Q. --there is an entry called "Samsung I R."

Do you see that?

A. I do.

Q. And "Samsung I R" is presumably "investor

relation"?

A. Probably.

Q. Now, if you look at the third paragraph from the bottom on this page, JL writes: "What have investors been asking? Domestic guys been asking on restructuring and trying to figure out which affiliates to own."

Do you see that?

A. I do.

Q. And the domestic guys would be the domestic investors in Korea?

A. Probably.

Q. And why do you think the domestic guys are trying to figure out which affiliates to own?

A. I don't know. I'm not a domestic guy. Well, I am here.

Q. Fair enough.

If you could turn back to Exhibit R-3, that's Tab 16 in the binder--we looked it--it's the Cliffwater Report. And if you could flick through Page 6, I'm sure you've reviewed that paragraph.

A. Um-hmm.

Q. I'm looking at the end of the first full paragraph, starting with "while." "While the Fund may be invested."

Do you see that?

A. Yes.

Q. Last sentence of that paragraph: "Mason's investment horizon tends to be shorter than most event-driven and distressed Managers, with an average holding period of three to nine months."

Do you see that?

A. I do.

Q. And do I understand your testimony to be that the time horizon on your Samsung holdings was longer than three to nine months?

A. It was impossible to tell because of the complexity of it. Typically--I don't want to deviate from your question. What was your question? I'm conscious of your time, would you like me to answer a specific?

Q. I was checking the time as well.

A. Okay.

Q. It was impossible to tell, I think that's good enough.

A. You know, some investments you make, there's a merger agreement, and you're going to get paid a certain amount of money, and it's feasible to bracket a time period where you're going to receive your money. Other investments--and--and having a shorter time, your money invested for a shorter period of time is not a bad thing, it's a good thing, because your Internal Rate of Return

will be higher and your investor's capital will be at risk for a shorter period of time and for less market risk, a lot of other factors that we were not interested in imposing on our investors unnecessarily.

But this investment is more of an open-ended, long-term investment because the gestation period for change in Korea was going to be long. I would compare it to like a long bankruptcy investment where you have the process moves along quite slowly as evidenced by the fact that we're still sitting here in 2019, and they're still restructuring.

Q. Understood.

Let's speak about the specific investment in Samsung Electronics.

A. Okay.

Q. If you could turn to Tab 9 in your binder. And we're looking at what has been labeled as Exhibit C-40.

A. Um-hmm.

Q. You should see--

A. I don't have labels.

Q. Yes, the C exhibits have no branded--the documents are not branded.

A. Okay.

Q. And you should be looking at an e-mail from you from the Amagansett address--

A. Yes.
Q. --to your Partner, Mr. Martino, and some other people at Mason.
A. Yes.
Q. And you sent that e-mail on May 12, 2014; right?
A. That's what it says.
Q. And at the time, I don't think you had any holding in Samsung; right?
A. I believe we were in the investment research process part of the investment.
Q. Now, if you follow me running through this e-mail, it's the third sentence: "The Patriarch has heart attack this weekend."
Do you see that?
A. I do.
Q. And the "patriarch" you are referring to is the Chairman of the Samsung Group?
A. Yes, I believe so.
Q. And then reading on, you explain that the stock has never been cheaper on the nav basis, and that's "Net Asset Value" basis; right?
A. Um-hmm.
COURT REPORTER: Is that a yes?
THE WITNESS: I'm looking for it.
MR. FRIEDLAND: You have to say "yes," instead of

"um-hmm."

THE WITNESS: I haven't made that decision yet, but when I do, I will tell you guys. I promise you.

(Witness reviews document).

THE WITNESS: Can you point out again where that is?

BY MR. NYER:

Q. Sure.

It's the fourth line from the bottom of the first paragraph. "Never been shared on that basis."

A. Okay, yes, I see that.

Q. And then continuing--

A. Yes, I see that.

Q. "There is pressure from Shareholders 70 percent foreign to do something for Shareholders."

Do you see that? "I'm told a lot of pressure."

A. Yes, I see that.

Q. And then we'll get to the sentence I would like to pause with you: "Feels like getting in front of a wave of buying as idea of restructuring one of the two remaining chaebols in Korea gets priced in."

Do you see that?

A. I do.

Q. Now, looking at this sentence today, is it fair to say that you were anticipating that other people may

buy into or other people would realize that the restructuring was coming--

A. Our entire business relies upon other people buying securities from us at higher prices than we ourselves purchase them at, so that would apply to every investment that we make on the long side.

Q. Right, so you wanted to be invested in the securities before the wave of buying-in comes in; right?

A. In order to make money you need to have someone to sell to. I don't know about a "wave," but in Korea, the thesis was always you have horrible corporate governance, you have bad corporate behavior, capital does not want to be there because it doesn't feel protected either by the courts or by the companies' interests, the family's interests is always put first.

And the thesis--and it's not the first time I've looked at Korea as an investment. The thesis was always if you invest at the right time and change is happening, at some point other investors may be investors who aren't as sophisticated in analyzing restructurings, who aren't as--who don't have a JL to go do the work for them and speaking in Korean, will realize that the capital really is being treated better and will come in and buy the securities from you at a higher price. How long that takes, again, this investment was not one that we could

bracket in time very quickly.

Q. Now, you needed to get in front of that wave; right? That's what you say here. As a wave of buying-in coming?

A. I said it feels like--it's a feeling, it's not doing something. I'm feeling.

Q. As a matter of fact, that's what you did; right? You immediately bought some Samsung--

A. When--I don't know when the date of our purchase was.

Q. I believe about a week later, after that e-mail, Mason first entered into swaps over Samsung?

A. I don't know.

Q. I think you say in your First Witness Statement in or around May 2014. We will look at the trading records and see if that happened.

A. Okay. I don't know swap versus cash. There is a difference.

Q. You do use "swaps" in your Witness Statement, so I don't want to be misleading you here.

A. Okay. But I don't know. Sometimes we use swaps, sometimes we use cash. So I'm not evading. I'm just saying I don't know.

Q. The swaps used in that case were total return swaps; right?

A. Swaps, to us, are a financing mechanism.
Q. They're a contractual agreement that you entered into with Goldman Sachs in that case; right?
A. Yes. They're a financing mechanism.
Q. They are a derivative contract entered into with Goldman Sachs in tracking the variation in the price of an underlying security; right?
A. It's a financing mechanism.
Q. And--
A. If you would like me to explain, I'm happy to.
Q. Now, you held those swaps for--you closed them out, you say in your Witness Statement, at Paragraph 16 of your First Witness Statement, you closed the swaps in August 2014.
Do you remember that?
A. I don't.
Q. You can look at your First Witness Statement at Paragraph 15--16, sorry.
A. Yes, I see it.
Q. Now, you had held those swaps for about three months; right? I think--
A. I mean, that's what it says, so, you know--
Q. Is that a "yes"?
A. That's what it says, yeah, and I signed it.
Q. Now, did you make a profit on that trade?

A. I'm not sure about that.

As I spoke to before, our investment process, the investment begins when we start our research process. The switch I referred to before, the buying and the selling, is the mechanism by which we enter into either through cash or swaps, ownership or beneficial ownership of securities. That process of buying and selling is done by the traders of which JL is one. And that process, they're instructed by us, the General Partner, to execute in the best available fashion for them. That requires a lot of things--you probably don't understand but it's essentially computer games at this point, but it's not a process where you buy and you sell all in one, we decide to buy here, we will sell it a year later. It's where they enter into trades, they may sell some, buy it back lower. If they think a large seller is coming, they may get completely out in anticipation of buying it back lower, if a large buyer comes in and they think the price is out of the zone, they will sell it, and it's all a part of optimizing our--and lowering our execution costs for our investors.

Q. You explain in your Witness Statement at the same Paragraph 16 that after closing out those swaps, you purchased directly some Samsung Shares; right?

A. Yes.

Q. And your testimony, as I understand, is that you

intended to hold these Shares until after the restructuring was completed?

A. We intended to hold the Shares--where does it say that in the Witness Statement?

Q. I'm asking you whether that is your testimony, that you intended to hold the Shares until after the restructuring?

A. I think--I think we were going to hold the Shares until not only in the restructuring happened but at a price--inherent in investing is being happy where the price is. You can't just--it's not untrue--

Q. Right.

A. --but there are many reasons.

Q. Right. So, you were intending to hold the Shares until you could make money selling them in the market; right?

A. Or until there was a reason that we had to get out, which happened in this case.

Q. And--

A. Sometimes you have to realize you're wrong and move on.

Q. Understood.

Isn't it true, Mr. Garschina, that shortly after purchasing the Shares in August 2014, Mason then proceeded to sell its entire Samsung Electronics shareholding?

A. Yes. I looked at that record in preparation for this testimony.
Q. Yes, it's true?
A. Yes, it is.
Q. Let's look at the record, and it's great that you have been prepped on that record as well.
A. Well, I didn't want to come in here and not be able to answer questions.
Q. And we all appreciate that.
If you could turn to Tab 7 in your binder.
MR. NYER: And we will be looking at what has been labeled Exhibit C-31, three-one.
THE WITNESS: I don't have labels but the spreadsheet?
BY MR. NYER:
Q. Once again, the Claimants' exhibits have not been branded.
A. I see it.
Q. But is that the trading record that you reviewed in preparation for your testimony today, sir?
A. Yes.
And importantly the reason for me to review it is that I'm not involved in the execution of trades.
Q. Now, if we look at the first three lines in that spreadsheet, on the left we have "buy" "buy" "sell"

"sell," so that tells us what the operation is, if it's a buy or a sell; right?

A. Yes.

Q. Sorry, in the last column?

A. Yeah.

Q. So, the first three lines seem to be the purchase of the swaps--right?--if you look at the Investment Code?

A. That's what it says.

Q. And then we see that on August 1st and August 8th, you sold those swaps.

Do you see that?

A. Yes.

Q. Now, apparently from August 11th to September 12th, so over a period of one month, there is a series of buy orders.

Do you see that?

A. Buy executions, not orders.

Q. Buy executions, yes.

And I will represent to you, and I'm sure you have done the calculations in preparing for your testimony today, but Mason overall bought 141,650 Samsung Shares during that period. I have a calculator--

A. I'll take your word for it. I just have trouble seeing small type, that's all.

Q. I will give you the calculator just in case.

A. No need.
Q. You know it's here.
And then starting on September 23rd through October 10th, 2014, there is a series of sell executions.
Do you see that?
A. October 3rd?
Q. Starting from September 23rd all the way through--
A. These are done in the European--we have the months and the days different.
Q. Right.
A. Yes, I see that. I see that.
Q. And isn't it true that you sold your entire holding of Samsung Electronics--by the 10th of October, you had sold your entire holding of Samsung Electronics?
A. That's what it says. What I would say to you is that part of the execution process often is--it's like when you're going into an ocean, you don't jump in right away, at least I don't, sometimes you put a leg in, sometimes you put an arm in, and you splash water on yourself, and if you don't like it you may go out, but you ultimately go in, and that's part of the execution process for investing. And I think that's what you're seeing here. It's maximizing, getting the lowest price for our investors for which--who we're fiduciaries.

Q. I understand the reasons. But what I'm asking you is that by the 10th of October 2014, isn't it true that Mason had liquidated its entire holding in Samsung Electronics?

A. It looks like that, but again, I would say that that's not the end of the investment. That's part of the execution process.

Q. Now, starting on the 30th of October 2014, then we have a series of buy orders.

Do you see that?

A. Yes.

Q. And they go all the way to the 2nd of April, 2015. That's the penultimate entry on the first page.

Do you see that?

A. Yes.

Q. Now, starting on the 2nd of April through the 3rd of June, Mason sells its holding in Samsung Electronics.

Do you see that?

A. I do.

Q. Now, April 2015, Mr. Garschina, that's four months before the merger votes on the Cheil-SC&T merger; right?

A. I don't know when the vote was.

Q. The Cheil-SC&T merger was announced in May 2015. Does that sound right?

A. You know, it was a long time ago. I will take your word for it, if you--

(Overlapping speakers.)

Q. Assuming the Mason-Cheil merger was announced on the 25th of May 2015, it looks like on the face of this record, Mason started selling its shareholding in Samsung four months earlier; right?

A. I mean, I would have to look at what the net running position was.

Q. But you did sell some positions or part of your position?

A. Where is the net positions after each buy and sell? I can't really evaluate that without looking at that.

Q. I don't know that it is provided on this spreadsheet.

A. Then I would have to--I mean, we buy and sell securities to optimize prices all the time. Clearly, we're not walking away from our investment.

Q. Could you please turn to or turn back to Paragraph 16 in your First Report--in your First Statement. And we looked at this paragraph. It's where you explain--

A. C&T, that one?

Q. No, 16, where you explain the General Partner

first invested in Samsung Electronics in May 2014.

Do you see that?

A. I do.

Q. And then you explain in the same paragraph that you closed out the swaps, and you bought directly some Samsung Shares.

Do you see that?

A. Yes.

Q. Now, if you go to the next paragraph, 17, you explain that by June 2015, Mason's direct investment in Samsung Electronics had grown to about KRW 133 billion.

A. Which paragraph was this?

Q. First sentence of the next paragraph, Paragraph 17.

A. Yes, I see that.

Q. Now, you used the word "grown."

Do you see that?

A. Yes.

Q. You don't say anywhere in your Witness Statements, in your two Witness Statements, Mr. Garschina, that after the period from May 2014 to June 2015 Mason had been trading in and out of Samsung Electronics. You don't say that in your Witness Statements?

A. To me, it's not relevant. Optimizing our price is something completely different from my investment

thesis and my investment research and the ideas I have in my mind.

Q. Now, you don't say anywhere in your Witness Statements, your two Witness Statements, sir, that, by June 2015, Mason had been selling Samsung Electronics shares continuously since April 2015. You don't say that in your Witness Statement.

A. Is that bad?

Q. I'm not suggesting it's bad. I'm just pointing a fact.

A. Okay.

Q. Okay.

A. There are lots of things that are facts that are not in my Witness Statement.

Q. I would like to speak briefly about the--your purchase of the SC&T shares.

A. Yes.

Q. So, that's the second Samsung entity in which Mason purchased shares; right?

A. Yes.

Q. Did it you purchase shares in any other Samsung entities during that period?

A. I don't remember.

Q. Now, you first acquired shares in SC&T in early June 2015?

A. If that's what it says on the document, yes.
Q. Well, as a matter of fact, I don't want to mislead you, and I think we should look at the trading record because I may not have been entirely accurate in my question.
So, if we could look at Tab 8. And we're looking at Exhibit C-32; right?
Do you see that?
A. I don't have the C's, but...
Q. Oh, apologies.
A. Page 1?
Q. First page--
A. Page 1?
Q. --yes.
And are you familiar with this document, sir?
A. I have looked at it.
Q. And do you understand that it is the--or at least it had been represented as being the trading record, Mason's trading record in the SC&T shares?
A. Yes.
Q. Now, we see the first purchase, and that's where I didn't want to be misleading with you. We have a first purchase on April 15th, 2015.
Do you see that?
A. I do.

Q. For 334,000 shares.

Do you see that?

A. Yes.

Q. And then about a week later, you sold those Shares, the entire holding.

A. Yes.

Q. Okay. Now, you then proceeded--oh, sorry.

Mason then proceeded to buy--to buy additional shares in the SC&T, starting in--sorry, I'm getting confused by the European and American dates, the format--I think it's starting 4th of June 2015.

Do you see that? That's the third entry in the log.

A. Yes, I see that.

Q. All right. And so that was then after the announcement of the proposed merger between Cheil and SC&T on the 26th of May 2015; right?

A. I believe so, yes.

Q. Now, by mid-August, you had liquidated your position in SC&T.

A. Yes.

Q. In other words, after the merger votes on the 17th of July 2015; right?

A. Yes. We didn't think the vote would go the way that it did, for various reasons.

Q. So, Mason held the Shares in SC&T for about two months; right? Correct?

A. Well, we started in April and we ended in August--August? Yeah, August.

Q. Sorry, Mason--you started in April, you bought 334,000, you sold them in April, and then you bought in May, in June, early June, and you held them until August. That's about two months.

A. That's the trading record, although I would emphasize that C&T was a proxy for Samsung Electronics. It essentially is a company--maybe still today; I haven't followed it--its primary asset was shares in Samsung Electronics. They had some other peripheral assets. But the reason to buy C&T--there were several reasons, but one of the main reasons to buy it was that it was a cheaper proxy of Samsung Electronics.

So I don't--you haven't pointed me to how much Samsung Electronics we owned at this point.

Q. Right.

A. But what I would say is that it's a--my recollection is that we swapped, not in a financial funding instrument, but we sold some Samsung or just bought Samsung C&T as a cheaper way to buy Samsung Electronics.

So, when I look at our investment at Samsung,

it's in--for restructuring of Samsung, it says as a whole. It's not C&T or Samsung.

And importantly, I think that C&T effectively, its main asset was Samsung Electronics in the cross holdings. So, if you added up the Shares in Samsung Electronics and then added up the other, I believe there was some real estate and a few other operating businesses--I believe there was a blood--some sort of generic biotech business--if you added that up, you are "creating," my word, Samsung Electronics at a cheaper price.

So, when you say we entered C&T and we exited at--and during a short period of time, I would say two things: One, our investment, as I said before, begins the day we start research. Executing in the market is a switch that we turn on when we want to have economic exposure to that investment process.

And two, Samsung and Samsung C&T were not completely disconnected investments since they were overlapping in the sense that they were both inherently exposed to Samsung Electronics and that Samsung C&T was also undergoing a merger vote that we anticipated would have to be--the exchange ratio would have to be increased if the vote was turned out.

As it turned out, fraud was committed, and the

horse was bought, and they ended up buying the vote, in my opinion, and so we exited.

Q. If the exchange ratio on the--for the merger had increased or been more favorable, the SC&T shares would have appreciated on the market; right?

A. I believe had fraud not been committed, they would have had to raise the offer for the Shares, yes.

Q. Let's look at Paragraph 16 in your Witness Statement--in the Second Witness Statement, sorry, and I think it's the paragraph in your Second Witness Statement where you explain essentially what you stated a moment ago.

A. So you already know. I could have saved myself a lot of time. I'm running out of water.

Q. You explained that the main attraction of SC&T was its ownership of Samsung Electronics, and then you quote from one of your colleagues, EGV, who seems to be explaining essentially that Samsung SC&T was worth more than the sum of its parts; right?

A. That's what I just said before.

Q. Right.

And then you conclude this paragraph by saying: "An opportunity to buy a large, indirect stake in Samsung Electronics through SC&T came when the merger with Cheil was announced."

Do you see that?

A. Yes.

Q. Now, I mean, if SC&T was trading at less than the sum of its parts, the opportunity to buy a large--indirectly a large position in Samsung Electronics existed irrespective of the merger, sir. You could have bought before the merger was even announced.

A. I mean, opportunities exist everywhere. It doesn't mean that it's an opportunity that I would like to expose my investors and my own capital to.

Q. Let's have a quick look at the e-mail from your colleague EGV that you quote here. It's Tab 14, one-four, in your binder, and it is Exhibit C-53.

A. Okay. "Looks like a buy." That one?

Q. That's the conclusion, it looks like a buy; right? I'd like to start--

A. No, I'm not saying that's a conclusion. I'm saying that's what it says.

Q. I would like to start from the bottom of the e-mail, and the bottom e-mail from Mr. E to a number of people at Mason you included dated April 12th.

Do you see that?

A. Yes.

Q. And he explains: "I think we should discuss soon and move fast. Why I like it." And then the second

bullet point is the one you quote in your Witness Statement; right?

A. I don't know.

Q. That's the sum of its part, more on the sum of its parts point.

A. Okay.

Q. Less than the sum of its parts.

Now, the next bullet point, and it's on the other side of the page, Mr. E explains: "Fear of C&T merging with Cheil at unfavorable ratio. I think a merger with Cheil would in fact unlock the value because it cannot be done at the value below that of the listed securities at a minimum."

Do you see that?

A. I see that.

Q. And then EVG, Mr. E goes on to explain why Cheil would have to pay more than the current and favorable ratio.

Do you see that?

A. That's his opinion, yes.

Q. And he explains in particular that there is a very large foreign ownership, and that the foreign ownership would oppose any unfavorable deal.

Do you see that?

A. I see that he wrote that, yes.

Q. Right.

Now, I want you to read up the e-mail chain. There was then a response from your partner, Mr. Martino, to Mr. E, and then Mr. E tried to clarify his thinking in this e-mail. And I'm looking at the top e-mail from Mr. EGV sent at 23--or starting with, one, "MKT assumes." Right?

A. Okay.

Q. "MKT assumes"--MKT would stand for market?

A. Market, yes.

Q. --"the risk of merger with Cheil is in the short-term and that is one of the reasons C&T trades low."

Do you see that?

A. Yes.

Q. And then he explains: "My point is that Cheil will have to offer significantly more than current MKT cap"--market cap--"given that C&T trades well below the value of its stakes in the listed company."

Do you see that?

A. I do.

Q. When Mr. EGV speaks of "Cheil will have to offer significantly more," that's the acquisition offer that they would have to make to purchase these Shares in--to purchase C&T? Is that the way you understood it at the time?

A. I mean, I don't remember reading this at the time, so it's hard for me to say.

Q. Well, I mean, if you look at the first sentence of this e-mail, sir, on top of it, that's from you, and it says, "Looks like a buy." So you probably read that e-mail before telling your colleagues that you intended to buy the SC&T shares; fair?

A. It's possible that I read the e-mail prior to writing that. Sometimes I reply to e-mails on my own person rather than in response to content.

Q. On trust.

A. No. It's--sometimes I get 500 e-mails a day, and sometimes I see an e-mail from a person, and I just respond without reading it with something I want to say on my own.

So I can't tell you what that's responding to.

Q. Well, the Korean government is facing a claim for $200 million in this arbitration essentially based on a trade that was approved in this e-mail, sir, so--but--

A. There was--no, the trade was not approved in the e-mail.

Q. But coming back to the--

A. I disagree with that strongly.

Q. Coming back to the paragraph in Mr. E--

A. And importantly, it's $200 million that we lost,

so it's not just someone is handing us $200 million that were not deserved, in our opinion.

Q. Mr. EGV--it's really tedious to have to use the initials, but--

A. That's okay.

Q. --but I apologize for that.

Reading on the paragraph we were looking at, it says: "If timing is uncertain, it could also happen that Cheil doesn't merge with C&T, in which case C&T would trade up."

Do you see that?

A. I see that, and what I would say is that Mr. EGV is an analyst. He has no decision-making authority. His opinions are his own. They're advisory as to Mike and I's decision-making capability.

It's an e-mail about what he thinks. I grant you that.

Q. And you do have--you're the one with decision-making authority; right?

A. Yes.

Q. Right.

And you do respond to this e-mail saying, "Looks like a buy. Ask Mike." Mike is Mr. Martino?

A. I write, "Looks like a buy. Ask Mike." I'm not sure that it was a response to this e-mail. It could have

been a response to the entire situation in my head, which is more important at all times than one e-mail in probably 500 e-mails I've read about this from my analysts.

So I can't tell you--in fact, I'm telling you it's not true that my decision-making was driven by this e-mail. My decision-making was driven by all the research that was done starting over a year prior to this e-mail.

Q. Isn't it true, sir--

A. If it were as simple as you're implying, that would be great.

Q. Isn't it true, sir, that you took a view on the likely outcome of the merger vote? You did.

A. I thought that they would have difficulty getting the vote because I felt that the National Pension System would act like they cared about the money that they managed. I didn't anticipate external factors, like fraud.

Q. You gambled that the merger would be blocked and that Cheil would have--

A. Gambled, no. Gambled, no. If I want to gamble, I can go to Atlantic City.

Q. And I apologize for this. I shouldn't have used a loaded term.

You anticipated that the merger would be blocked and that Cheil would have to increase its offer; right?

A. I thought it would be difficult for them to get the vote.

Q. And to get the vote, they would have to increase their offer; right?

A. No. They could have just lost the vote and not increased their offer.

Q. But one way or the other--

A. But I felt that the price of all the securities in the Samsung structure would go up if they lost the vote, yes.

Q. And that's exactly what Mr. EVG is saying in his e-mail; right? He's saying, well, either we're going to have increase our votes or if they don't win on the votes, then the merger doesn't happen, and then all the--

A. I don't--you know, what he thinks is advisory on my opinion. I don't remember this e-mail, but I remember what I was thinking which I just relayed to you.

Q. Now, there was a number of U.S. hedge fund that was invested in SC&T at the time and that opposed the merger; right?

A. There were many.

Q. Elliott Management was at a--had a fairly large position in SC&T at the time; right?

A. I don't recall what their position was. You would know better than I.

Q. But they did have a position; right?
A. I believe they had a position in the Samsung structure. I don't know what entity it was in. I don't remember what entity it was in.
Q. We can look at the representations that have been made by your lawyers, then, on this topic.
A. Okay.
Q. You should have a copy under Tab 3. You should have a copy of the Notice of Arbitration.
A. Yes.
Q. And I'll direct your attention to Paragraph 30.
A. Yes, I see that. I see that.
Q. And you see here that it is stated that: "Elliott first announced its opposition to the Transaction the next day, on June 4th, 2015, and spent the next several weeks campaigning against the merger." Right?
Do you see that?
A. I see it.
Q. Is it purely coincidental, sir, that Mason started rebuilding its position in SC&T on the day Elliott Management announced its opposition to the merger?
A. I can't tell you.
Q. Do you recall that you started buying SC&T shares on the 4th of June?
A. I don't.

(Comment off microphone.)

MR. NYER: Thank you very much, sir.

PRESIDENT SACHS: That's it?

MR. NYER: That's it.

THE WITNESS: I'm surprised you didn't take much more time.

PRESIDENT SACHS: Would there be--

MR. WATSULA: No further questions from Claimants.

ARBITRATOR GLOSTER: Can I ask a question?

PRESIDENT SACHS: Yes, certainly.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR GLOSTER: I have one question for you, please, maybe two.

You said a number of times that you'd be optimizing your price when you were dipping in and out.

Can you just explain to me what you mean by that?

THE WITNESS: Sure.

ARBITRATOR GLOSTER: What that strategy was?

THE WITNESS: It's--effectively, the markets have become so electronicized that we used to have a system where all the buyers and sellers would be in one place called the "specialist system" here or the "floor trading" system in London or the "DAX floor," and all the buyers and sellers used to be in one place. And you would think

that was a very efficient market, which it is. If you want to buy a car, you go to the place where all the buyers and sellers are, the most centralized market, you're going to get the best price.

One of the things that have happened when electronicization took over the markets is that you have many markets all over the place, so you have dark pools where you buy and sell. A very small amount of the trading is actually done on the floor of the Stock Exchange. If you go down there, there's almost no one there. Different pools of capital everywhere. So it's very difficult to find people to, if you're a buyer, to sell to you, or if you're seller, to buy from you.

So what often happens is you employ a computer program to, it sounds strange, but fight against the people that are trying to game the system against you in executing. And I think it's a horrible fact for the financial markets globally, and is really destabilizing that you have to optimize your trading by looking around all these different entities rather than--you know, it's like buying a used car in the town where there's only one used car for sale and you need one. It requires moving around the system and buying and selling to get the best price over time.

ARBITRATOR GLOSTER: So, what were you doing in

terms of optimizing your price when you bought and sold these tranches we've been looking at? What were you optimizing--were you trying to increase the price, find the buyer, affect the price and buy more cheaply?

THE WITNESS: I don't know specifically because I'm not involved in the execution. I give the order: I want to own this amount over time. The traders make the decision.

It could be that they saw a big seller was out there, a broker called and said, "We have a large seller and they want to get out of the way and buy back at a lower price."

It could be that there was a tumult in the markets for some reason that they wanted to get out of the way. It's--you know, or the research process could have been, as I described, getting in the water, getting out of the water, making our decisions. It's not a (witness snaps fingers) we want to own this right now.

It's like baking a cake. I mean, it's a process on how much you want to own, what's going on in the markets. Every situation is different, really.

ARBITRATOR GLOSTER: Yes, I see. Thank you.

The other point I wanted to ask you about was you said a moment ago that you denied that you'd made the decision by e-mail. I think it was at 15:22:22 on the

Transcript. I just wondered where you did make that decision.

THE WITNESS: Is that the one that says "Looks like a buy"?

ARBITRATOR GLOSTER: Yeah.

You say: "The trade was not approved in the e-mail. I disagree with that strongly."

THE WITNESS: Yeah. Well, for a couple--

ARBITRATOR GLOSTER: I just wondered where you would have made the decision, if not in the e-mail.

THE WITNESS: Okay. That's a good question.

"Looks like a buy," meaning I'm thinking about it. So I'm not saying "buy it." I'm not sending an order to the traders or picking up the phone to the traders and saying "Execute." It's ruminating. "Looks like a buy" is like, "okay, ask Mike," meaning ask my partner who has--we have joint decision-making authority with, looks like Mike talked to him, see what he thinks, maybe we will talk about it tomorrow.

It's not an order. It's a, yeah, it looks interesting.

ARBITRATOR GLOSTER: I see.

But before you made that sort of decision, whether to buy or sell, what would you and Mike--

THE WITNESS: Typically we would confer, yes. I

don't know in this instance whether we did, but typically we would confer, and a direct order to buy and sell would be given to the traders by one of us. That would be the decision to buy it, so...

ARBITRATOR GLOSTER: Thank you.

ARBITRATOR MAYER: One question which is, of course, linked to the questions you've been asked by Respondents for a long time, but I will start at Paragraph 19 of your First Witness Statement so that maybe you can explain better what was exactly the reason why you thought there was an opportunity.

So: "In May 2015, when SC&T and Cheil announced plans to merge (at a ratio that was plainly and obviously unfavorable to SC&T Shareholders) we saw the opportunity to purchase shares in SC&T."

So if you just take the sentence as it is written--

THE WITNESS: The first one?

ARBITRATOR MAYER: That sentence, that only one, the first one.

THE WITNESS: Okay.

ARBITRATOR MAYER: It's even contradictory--

THE WITNESS: The "unfavorable" part? Is that what you want explained, "At a ratio that was plainly"--

ARBITRATOR MAYER: Yes.

THE WITNESS: --"and obviously unfavorable"?
ARBITRATOR MAYER: Yes.
THE WITNESS: Why that is? Yeah.
ARBITRATOR MAYER: Plainly and obviously unfavorable, and we know it was criticized at the time--
THE WITNESS: Yeah. Yeah. Because--
ARBITRATOR MAYER: Wait, no.
My question exactly is: Why was it a good opportunity? Where did you see the possibility of later making a profit?
THE WITNESS: Okay. Well, from a value perspective, if you looked at the assets of C&T, meaning it was largely just Samsung Shares, and you looked at--say the value of C&T was a hundred. 80 of it was Samsung Shares, they were publicly traded, easy to value, another 20 was things that we valued, maybe stakes in other entities in the Samsung Group or private entities or cash, and we come up with an NAV, Net Asset Value, of a hundred of what it's worth.
My recollection is that they were bidding substantially less than that easy math would tell you. Again, the bulk of that easy math is a publicly traded security. It's not hard to figure out what it's worth.
And the reason I thought it was a good opportunity is because I couldn't imagine a fiduciary for

pension assets would vote for that.

ARBITRATOR MAYER: No, that I understand.

But why would it be a good opportunity because the ratio was unfavorable?

THE WITNESS: Because the Samsung Group was embarked on a journey to simplify itself, and as continues today. And, you know, there's been ebbs and flows, but it's grunted along. And this--it's my memory that this particular merger was necessary--a necessary piece of that restructuring and that in our dialogues with them, it's one of the many things that they talked about. And, in fact, there are some analyst reports in here to that--to that end that talk about the Cheil entity being one that needs to be restructured.

And we thought that, like most attempts to restructure, your first offer sometimes is not your best, and that this offer was so demonstrably bad or inferior to the Net Asset Value that the shareholders would say "No." And that's not what happened, so we were wrong.

ARBITRATOR GLOSTER: Just following up from that because I'm not sure that you've answered Professor Mayer's question: What did you think was going to be the outcome of an offer, a merger offer, as a poor ratio? You thought, you just told us, that shareholders were going to vote against it. What did you think was going to happen

next?

THE WITNESS: Well, I didn't know, but there are a couple of possibilities. One was I thought in either scenario the price would trade up because it would have been a very strong statement by the National Pension System, which really had the cusp vote, that things have changed in Korea, which would have been affirming of our original thesis. So I thought the entire shareholder structure would lift. I thought the entire Korean market would lift because it would be a clearly non-disinterested party, the National Pension System, and the local investors, for that matter, who usually would just vote for something that was against a shareholder's interest for some other reason, it would be against--it would be them picking themselves up and saying, "We're getting involved in the norms of the rest of the world as far as how we treat shareholders."

And that if that happened, regardless of whether they increased the offer price or not, it would trade more in line with what clearly was the value in the structure of a hundred, in my analysis. So it would trade up from 65 to a hundred just because the rule of law and shareholder rights had been stood up for by the shareholders themselves.

PRESIDENT SACHS: And to the other scenario?

THE WITNESS: That it was voted through?

I think it depended on how. If it was voted through in a way--look, when something is worth a hundred, clearly on paper it's not illiquid assets. They're liquid assets and someone is bidding 65 for them. And if the shareholders vote for it, I think there's something wrong. So I thought it highly unlikely that that would happen. I wouldn't have risked.

But in that event, I mean, it's hypothetical. They could have come back--yeah, you were going to lose money because the deal was going to go through at a price that was much less than what they're offering.

ARBITRATOR GLOSTER: I've got one more question.

And did you consider what the chances were of Cheil raising its offer if its original offer were refused? I mean, was that in your equation then?

I'm just not quite understanding.

THE WITNESS: It was a--my thinking was firmly of the view that if the deal was voted down, either the security would trade up on its own because shareholder rights have been affirmed, or they would come back with a higher offer.

In either case, I thought the lynchpin for value creation or destruction was the shareholder vote.

ARBITRATOR GLOSTER: Thank you.

PRESIDENT SACHS: Thank you very much. You're now released as a witness.

THE WITNESS: Thank you.

PRESIDENT SACHS: And we will have a 15-minute break.

(Witness steps down.)

PRESIDENT SACHS: Let's say we resume at 4:00 as scheduled.

(Brief recess.)

DEREK SATZINGER, CLAIMANTS' WITNESS, CALLED

PRESIDENT SACHS: Mr. Satzinger, good afternoon.

THE WITNESS: Good afternoon.

PRESIDENT SACHS: In front of you is a Declaration that we would ask you to read aloud.

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

PRESIDENT SACHS: Thank you, Mr. Satzinger.

You submitted two Witness Statements in these proceedings, the first one dated April 18, the second one September 5, 2019.

Is there anything that you would like at this point of time to correct?

THE WITNESS: No.

PRESIDENT SACHS: In other statements?

THE WITNESS: No.

PRESIDENT SACHS: Thank you.

There will be a short direct examination, so please proceed.

DIRECT EXAMINATION

BY MR. WATSULA:

Q. Good afternoon, Mr. Satzinger. Could you state your name for the record, please.

A. Derek Satzinger.

Q. And you are the CFO of Mason Capital Management LLC; correct?

A. Correct.

Q. And could you take a minute to explain your education background to the Tribunal?

A. Yeah. I went to Hofstra University on Long Island. I graduated in 2000 with a Bachelor's in accounting.

Q. And when did you become the CFO at Mason?

A. The CFO in January of 2013.

Q. Okay. So, you had some jobs in between graduating from Hofstra and joining Mason?

A. Yeah. I was at a small accounting firm on Long Island for a year or so, and then I moved over to a large accounting firm in New York City, BDO Seidman, and I was there until 2006, when I joined Mason.

Q. And what was your first role at Mason?
A. Controller.
Q. And you were a controller at Mason up until the time when you became CFO?
A. Correct.
Q. What are your duties and responsibilities as CFO?
A. As CFO, I'm responsible for a staff of three fund accountants and a controller. Their responsibilities are daily position and cash reconciliations. Essentially, everything we do rolls out to reporting to the Portfolio Managers, daily positions and P&Ls, and the reports they need to run the Fund.
Q. And you manage those activities?
A. I manage those activities, yes.
Q. Is it your understanding that this arbitration, the reason why we're here today, concerns shares of two Samsung entities that Mason purchased in 2014 and 2015?
A. Yes.
Q. And you were the CFO of Mason during that time; is that right?
A. Yes.
MR. WATSULA: No further questions at this time.
PRESIDENT SACHS: Okay. Thank you.
We will then proceed with cross-examination, Mr. Satzinger.

THE WITNESS: Sure.

PRESIDENT SACHS: Mr. Nyer, you have the floor.

CROSS-EXAMINATION

BY MR. NYER:

Q. Good afternoon, Mr. Satzinger.

A. Good afternoon.

Q. I'm Damien Nyer, an American here in French, and I'll be asking you a few questions this afternoon.

A. Fine.

Q. You should have in front of you a binder with a few documents that we'll be looking at.

You are the CFO--I want to get the entities right. You're the CFO of Mason Capital Management LLC; right?

A. I would be the CFO of any Mason entity.

Q. But the one you list in your Witness Statement is Mason Capital Management--

A. Mason Capital Management is the entity--that employs the employees, so...

Q. LLG Investment Manager?

A. The Investment Manager.

Q. And the Investment Manager employs all the employees in the group?

A. Yes.

Q. And I'm going to show you a paragraph from

Mr. Garschina's statement. It's not in the binder, but just to clear up. Mr. Garschina didn't have the technical knowledge on those issues. It's Paragraph 4 of the Second Statement of Mr. Garschina, and he lists a core team of four people that worked on the Samsung trade. If you could look at this, please.

A. Sure.

Q. And we have some privacy concerns, so we won't be able to turn the name those people, and we may use initials?

A. Okay.

Q. But are you--did you know all those four people listed?

A. I do.

Q. And they're employed by the Investment Manager?

A. At the time they were, yes.

Q. And they were paid by the Investment Manager?

A. Yes.

Q. Thank you. In your role as CFO of Mason generally, you have access to the books and records of the group?

A. I'm responsible for the books and records of the Mason trading entities. The Chief Operating Officer, John Grizzetti, is responsible for the books and records of the management company and the General Partner.

Q. And the trading entities would include what has been referred to as the Cayman Fund, the offshore fund?
A. Yes.
Q. And you're responsible for the books and records of that entity?
A. Yes, among others, yes.
Q. Are you familiar with the Limited Partnership Agreement of the Cayman Fund?
A. Not--I don't have it memorized, but I'm familiar with its existence, yeah.
Q. You do refer to it in your Witness Statement.
A. Yeah. I'm generally familiar with it.
Q. Could you maybe turn to Tab 5 in your binder where you'll find a copy of the Limited Partnership Agreement. Exhibit C-30. And if you look at the cover page of this document, it is entitled "The Second Amended and Restated Limited Partnership Agreement" of Mason Capital Master Fund, and the date is January 1st 2013.
Do you see that?
A. Yes.
Q. Now, I understand that the Cayman Fund had been established in 2009-2010; right?
A. Cayman Master Fund was established in 2008, yeah.
Q. Do you have a recollection of why the Limited Partnership Agreement was amended and restated in 2013?

A. I don't.

Q. If you please turn to Article 9.03 of the Partnership Agreement, and it would be on Page 20, do you see a provision entitled "Retention and Inspection"?

Do you see that?

A. Yes.

Q. And reading this provision, it states: "At all times during the continuance of the Partnership, the General Partner shall keep or cause to be kept full and true books of accounts of the business and investments of the Partnership, in which shall be entered fully and accurately each transaction of the Partnership."

Do you see that?

A. Yes.

Q. And those are the books and records that you are responsible for maintaining?

A. Yeah, yeah.

Q. Now, it is also stated that all such books of accounts shall at all times be maintained at an Office of the Partnership and shall be open for inspection by the Limited Partner.

Do you see that?

A. Yes.

Q. And those books are maintained in the New York Office of the Masons?

A. Yes. Our official books and records lie with our administrator SS&C, which is in New York, but essentially parallel books and records are kept in our New York office as well.

Q. In what format are those books and records maintained?

A. If it's a trading system, they're in Advent Geneva, which is the system we use for trading. We have live Excel files. If it's investor information, papers and folders in locked file cabinets. A lot of that stuff's been moved to electronic.

Q. How often are those books and records updated?

A. I'm sorry?

Q. How often are they updated?

A. Oh, every day.

Q. Every day. And does the public have access to those books and records?

A. No.

Q. But you have access to them; right?

A. Yes.

Q. If you could turn to Article 4.03 in the Partnership Agreement, and you should see a provision entitled "Capital Account."

Do you see that?

A. Yes.

Q. And reading the beginning of this provision, it states: "A Capital Account shall be established for each Partner on the books of the Partnership, for the General Partner and for each series or subseries of shares issued by a Limited Partner."

Do you see that?

A. Yes.

Q. And to your knowledge, did the General Partner comply with its obligation to establish the Capital Account for each Partners in the books and records of the Partnership?

A. If you're asking if all the capital activity has been reflected in the books and records of the Partnership, yes.

Q. And there is one account for each Partner, one for the General Partner and one for the Limited Partners? How does that work?

A. In the Master Fund, yes, there is a General Partner and a Limited Partner.

Q. Account?

A. Yeah.

Q. And how often are those Capital Accounts records updated?

A. Our capital activity is effective the first day of each month, so officially updated monthly.

Q. Monthly?
A. Yes.
Q. Thank you.
So, if you were to go back to the office now, you could potentially consult the Capital Account records for July 2015?
A. Sure, yeah.
Q. Now, the Capital Account of each Partner reflects both the initial capital contribution of the Partner and their allocated share of profits and losses?
A. If you're looking at that Partner from their inception, yes. We look at monthly snapshots, so the month would be the ending prior month, opening one month is the ending of the prior.
Q. Right.
A. But if you wanted to look from the inception of the Investor, yes, it would be opening capital.
Q. And you would be able to determine the initial capital contribution of each Partner; right?
A. Sure.
Q. If you please could turn to Paragraph 11 of your Second Witness Statement.
A. Yes.
Q. And you state here that you've performed some calculations to provide some further background on Mason's

Capital Master Fund--that's the Cayman Fund's--performance prior to May 2014; right?

Do you see that?

A. Yes.

Q. And you explained that you prepared these calculations by extracting the relevant data from the capital registers which are prepared by an external administrator on a monthly basis?

Do you see that?

A. Yes.

Q. And so, those are the Registers, the accounts which we've just been speaking about?

A. Yeah.

Q. Could you have extracted the data from your system and provided this data with your Witness Statement?

A. The details underlying this statement, is what you're saying?

Q. No, the monthly statements. Could you have printed out the monthly capital register of statements and--

A. Technically, yes, I could have, yeah.

Q. Right.

And they could have been appended to your Witness Statements or provided in some sort--sorry, that's not even a question.

Now, I'd like to speak about the calculations that you've performed with the data from the capital registers.

You said that you performed some calculations regarding the performance of the Cayman Fund prior to May 2014.

Do you see that?

A. Yes.

Q. Now, is it fair that you could have performed the exact same calculation for any month for which the Cayman Fund was operating?

A. Yeah. Those are monthly schedules, yes.

Q. And you could have performed this calculation as of July 2015; right?

A. Sure.

Q. So, let's look at your calculation. I think it's--and first Paragraph 13 of your Second Witness Statement. You explain here that: "By the end of 2010, the General Partner had accumulated approximately USD 3.9 billion in net contributions from the Limited Partner in the Cayman Fund."

Do you see that?

A. Yes.

Q. So, those are the net capital contributions from the Limited Partner, is that cash received from the

General Partner?

A. That's cash received from the Limited Partner, which would be Mason Capital Ltd.

Q. Thank you.

And that cash or those contributions would be reflected in the capital account of the Limited Partner; right?

A. Yes.

Well--yes.

Q. Now, the money--this cash is essentially money that the Limited Partner sourced from third-party investors; right? As far as you understand.

A. Yes.

Q. And you say that you provide the net contribution, is that because there were withdrawals during the period that you looked at?

A. There would be--yeah, there would be contributions and withdrawals probably each month.

Q. Some Partners would take money out of the--

A. Sure.

Q. Reading on, you then explain that, between the end of 2010 and the end of May 2014, the General Partner received a further net $1.57 billion from the Limited Partner.

Do you see that?

A. Yes.
Q. And again, that's net cash received from the Limited Partner; right?
A. Yes.
Q. It's not cash received from the General Partner?
A. Limited Partner.
Q. Now, is there a reason that you've presented the data in two tranches by the end of 2010 and then from the end of 2010 to May 2014?
A. I was asked to.
Q. You were asked to--
A. I was asked to, yeah.
Q. So, that has nothing to do with potential capital raises that the Cayman Fund conducted during that period; right?
A. No.
Q. Now, you calculate the total amounts of net contribution from the Limited Partner is $5.56 billion; right? That's what you have in the parenthetical.
Do you see that?
A. Yes.
Q. And it's a straight addition of the two amounts that you have?
A. Yeah.
Q. Even before we go there, do you have an

understanding why you were asked to--

MR. WATSULA: So, just to be clear, when you're talking about instructions you received from counsel, do not answer those questions.

THE WITNESS: Okay.

BY MR. NYER:

Q. To the extent that the instruction did not come from counsel, do you understand the reason for this presentation?

A. I don't.

Q. Now, if you go to the next paragraph in your Witness Statement, Paragraph 14 of your Second Witness Statement.

A. Yes.

Q. You state here that: "As of the end of May 2014, the Cayman Fund's assets had a value of approximately $6.52 billion."

Do you see that?

A. Yes.

Q. Now, what you're saying is that the assets held by the fund were worth about $960 million more than the cash that had been put in by the Limited Partners; right?

A. Yeah, yeah.

Q. Now, was $960 million, they're not cash that the General Partner put in the Partnership; right?

A. No, that would be appreciated capital.
Q. The $960 million is the appreciation of the?
A. The appreciation from the General Partners investing of that capital.
Q. Sorry, I just want the Transcript to be clear, the $960 million represents the capital appreciation of the cash invested by the Limited Partners?
A. Yeah. I'm saying the investment discretion of the General Partner caused the increase in assets.
Q. Understood. As well as potentially the markets fluctuations during that period?
A. Sure.
Q. Now, if you could turn to Tab 4 in your binder, and you will find a copy of the Rejoinder filed by Mason in this arbitration. And I will direct your attention to Paragraph 58, Page 19 of the Rejoinder.
And you will see here a paragraph that should reference in Footnote 69 your Second Witness Statement Paragraph 13 and 14, those are the paragraphs we just looked at; right?
A. Yes.
Q. Right.
And it is explained here, that consistent with what you said in your Witness Statement, the initial and subsequent contribution of the Limited Partner totaled

approximately $5.56 billion.

Do you see that?

A. Yes.

Q. Now, then it is stated that the General Partner's historic contribution of its investment decision-making management and expertise totaled approximately $.96 billion.

Do you see that?

A. Yes.

Q. And those $960 million, that's what you told us was the capital appreciation of the assets held by the fund over the period?

A. Yes.

Q. They're not cash contribution by the General Partner; right?

A. No.

Q. Okay. You do not state anywhere in your two statements, Mr. Satzinger, the amount of net cash contributed by the General Partner to the Partnership. You don't?

A. No.

Q. Now, that amount would presumably be reflected in the General Partner's Capital Account; right?

A. It would, yes.

Q. And were you asked to determine that amount?

A. No.
Q. Did you calculate the amount of net cash--
MR. WATSULA: Same objection as well. If your answer requires to you discuss conversations you had with counsel, I'm instructing you not to answer.
THE WITNESS: Got it.
BY MR. NYER:
Q. Did you calculate the net cash contributed by the General Partner up to May 2014?
A. I think I was asked to do--I'm sorry, no, I can't answer.
Q. Did you calculate, or did you not calculate?
A. I didn't.
Q. You didn't?
A. No.
Q. Was any cash contributed by the General Partner up to May 2014?
A. The General Partner's--I will say "no" to that, but the General Partner had Incentive Allocations that were not taken in full which carried over and were carried forward into the capital balance. It wasn't necessarily a cash--
Q. Yes, understood. That's helpful.
No cash contributed by the General Partner? The "no" that you said, there was no cash contributed by the

General Partner? And we will come back to the Incentive Allocation. I promise.

A. I'm just saying I'm not sure I agree with that. It didn't redeem cash that was due to them. If you want to look at it two different ways. It's not they didn't wire in money but they also didn't wire out money they were entitled to wire out. These were relatively small balances, but just to be clear.

PRESIDENT SACHS: Your answer was not clear to the Tribunal, so maybe we restart with your question and then you try to formulate your answer in a clearer way.

THE WITNESS: Okay.

COURT REPORTER: And slower.

BY MR. NYER:

Q. And that goes for the two of us. David tends to make this comment quite often.

Was any cash contributed by the General Partner to its Capital Account up to May 2014?

A. No.

Q. Now we can speak about the Incentive Allocation.

A. Sorry.

Q. And I would be looking at the next paragraph.

PRESIDENT SACHS: May I interject the question?

So, on the Capital Account of the General Partner in 2014 when you say there was this accumulated inventive

amount, was that reflected on the Capital Account of the General Partner? Where would that be booked?

THE WITNESS: Yes, that would be in the Capital Account of the General Partner, yes.

PRESIDENT SACHS: And that was all that was on the Capital Account, that amount that you referred to?

THE WITNESS: Yeah.

PRESIDENT SACHS: At that point of time?

THE WITNESS: My remembrance, yes.

PRESIDENT SACHS: Okay. Thank you.

BY MR. NYER:

Q. I just want to follow up on something you said earlier. You said that some of the accumulated allocation or the Incentive Allocation had not been taken out? You mentioned that, do you remember?

A. Yes.

Q. So, did the General Partner take some of its Incentive Allocation out of the Capital Account?

A. It took the majority of it.

Q. The majority of it?

A. Yes.

Q. And do you have--when you speak about the "majority," is it 95 percent or is it 60 percent of it? What is it?

A. Closer to 95, yes.

Q. When did it take it out?
A. Anyway, if we're talking specifically about 2014, fees earned from 2013 would have been--substantially withdrawn in January of 2014.
Q. So, every year the General Partner would take the Incentive Allocation out of the Fund?
A. To the extent there is an Incentive Allocation, yes.
Q. And that makes sense because that's how the General Partner and its founders are making money; right? That's through the Incentive Allocation?
A. Yes.
Q. Thank you.
Now, when you say at Paragraph 16, just to clarify then, that the General Partner had accumulated Incentive Allocation of approximately $350 million, those are the Incentive Allocations that the General Partner received and they took out some part of it, majority of it you told me?
A. Yes.
Q. Okay. Now, if I wanted to determine how much of those Incentive Allocations was left in the Capital Account as of May 2014, I could look at those Capital Account registers that we spoke about earlier?
A. Yes.

Q. Okay. I would like to touch on briefly the topic of Mason's registration process in Korea.

A. Sure.

Q. As a foreign entity that wishes to purchase stocks on the Korean Stock Market, Mason has to register with the Korean authorities. Do you understand that?

A. Yes.

Q. And as a matter of fact, it's a part of your responsibility as a CFO to deal with these type of requirements for investment registration?

A. My responsibility is to get the accounts opened one way or another, yes.

Q. And the registration requirements--did the requirements for investment outside of the U.S., sorry, that's what you say in your Witness Statement. That's part of your responsibility.

A. Sure.

Q. So, let's look at Tab 6 in your binder, and that would be we're looking at Exhibit C-65, and we're looking at an e-mail chain, and for privacy purposes, I will only use the first names of the participants.

A. Okay.

Q. Now, this is an e-mail from Nick to Charlie at Goldman Sachs; right?

A. Yes.

Q. And Goldman is Mason's broker?
A. They're one of our broker, yes.
Q. And the e-mail is dated June 2014; right?
A. Yes.
Q. Now, this e-mail concerns the registration of the Cayman Fund as an investor in Korea; right?
A. Yes, getting--acquiring the ID needed to trade in Korea, yes.
Q. Now, if you turn--maybe keep a finger on this e-mail and if you turn to Tab 7, you look at what has been labeled Exhibit C-66, and it's entitled "Application for Investment Registration Certificate."
Do you see that?
A. Yes.
Q. And that is the attachment to the e-mail under Tab 6; right?
A. I'm not sure.
Q. Well, I think you do discuss those documents in your Witness Statement, sir.
A. I mean, this is the document we would have sent to Goldman.
Q. Right.
A. Yes.
Q. So, Nick sent the e-mail to Goldman at your direction; right?

A. Yes.
Q. He works for you. He's one of the four people?
A. Yes.
Q. Does he check the content of his e-mail to Goldman with you before sending it?
A. No.
Q. I mean, would you expect him to be cautious and diligent in compiling information in sending e-mails?
A. I would expect Goldman to be diligent, which they usually are.
Q. Which they usually are?
A. Yes.
Q. Now, looking at the Application for Investment Registration Certificate under Tab 7, you'll see if you look at the third page, it's signed by John Grizzetti.
Do you see that?
A. Yes.
Q. And John Grizzetti is the COO of the Mason Group?
A. Yes.
Q. Do you expect John to have been cautious in their preparing this form and signing it?
A. No. Nick would have prepared this form and John would have signed it.
Q. Okay. You can look on Page 3, at the bottom of Page 3, you have a note, and Note 1: "The information

above should be true and accurate."

Do you see that?

A. Yes.

Q. And then if you look at the last paragraph, in the last sentence of the paragraph, it says: "I will be held responsible for any consequences arising out of incorrect and inaccurate or incomplete information."

Do you see that?

A. Yes.

Q. Do you, sitting here today, do you think Nick, in preparing this document, for the signature of the COO of the group would have been cautious and careful?

A. Yeah, yes, I do. To the best of his abilities he would have.

Q. So, Nick sent that document to Goldman Sachs--you mentioned that in your Witness Statement--and then there was a response from Goldman Sachs, and I think it's--we can look at it. It's Tab 8 in your binder, and we would be looking at C-67.

Sorry, sorry. Before even we go there, coming back to Tab 7 in the draft application for investment registration. If you look at Item 4(c), so that would be on the second page, "Background Information on Applicant."

Do you see that?

A. We're on Tab 6?

Q. Tab 7, sorry.
A. Tab 7. Oh, I'm sorry.
"Background Information," yes.
Q. Right.
Do you see Item 4(c), "The largest shareholder"?
A. Yes.
Q. And that would be the largest shareholder in the Cayman Fund, as far as you understand?
A. I would have to go through the document, but...
Q. Fair enough.
And you will see under the table it lists Shareholder's name, shareholding ratio, and nationality.
Do you see that?
A. Yes.
Q. And it's empty.
Do you see that?
A. Yes.
Q. Now, you also see under Item 4(d)(i), little "i" one, that's the top item on Page 3, "Related parties to the Applicant, please specify nationality," and Item I(1) is management company, and it's listed Mason Management LLC.
Do you see that?
A. Yes.
Q. And that's the General Partner in the--

A. That's the General Partner.
Q. And the nationality is not listed here; right?
A. Correct.
Q. Now, Nick sends that draft application to Goldman, and we can--let's look at Goldman's response. It's Tab 8.
A. Yes.
Q. Now, Charlie of Goldman here writes back to Nick and says: "Please see below the review from the agent bank. Thanks."
And if you look down, IRC application form--do you understand that to be the Investment registration certificate application that we just looked at?
A. Yeah.
Q. And you look at Item 4(a) here from the--Goldman states, "4(a) and (b) and (c). Please state the requested information on the form." Right?
Do you see that?
A. Yes.
Q. And that Item 4(c) was the Shareholder--largest Shareholder information that we looked at earlier?
A. Yes.
Q. Now, immediately underneath Goldman states: "Item 4(d)(i). Please specify the nationality."
Do you see that?

A. Yes.
Q. And Item 4(d)(i) is the item we looked at relating to the management company identifying Mason Management LLC in the draft form; right?
A. Yes.
Q. So, Goldman seems to be asking Nick to provide the nationality of the management company; right?
A. Yeah.
Q. Now, you state in your Statement that Nick then followed up with Goldman Sachs, and he provided additional information; right?
A. That's my understanding, yes.
Q. Now, if you turn to Tab 9 in your binder, you will be looking--you should be looking at a document labeled R-7.
A. Yes.
Q. And it's entitled "Application Form for Investment Registration."
Do you see that?
A. Yes.
Q. And it's apparently an English translation of a Korean document that is under the blue tab in--under the tab. And I'm not asking you to confirm that it is a translation of that document, but it is presented in that format.

A. Yes.

Q. Now this document, I will represent to you, is the completed application form for investment registration of the Cayman Fund. And if you could please turn to Page 2, Paragraph 4(c), you will see again the entry above the first major Shareholder of the Applicant, first major Shareholder of the Fund; right?

A. Yes.

Q. And you see that now Mason Capital Limited is identified?

Do you see that?

A. Yes.

Q. And Mason Capital Limited is the Limited Partner; right?

A. Yes.

Q. Now, you will see also the share of equity of the Limited Partner is listed as 100 percent; right?

A. Yes.

Q. And you will also see that next to the left of the share of equity, it is stated that the amount contributed is--and I assume it's in U.S. millions of dollars--is $6.162 billion.

Do you see that?

A. Yes.

Q. Now, if you look at the information on the

financial status of the Fund that is provided immediately above the box, you will see that there is a list of assets, liability, and capital.

Do you see that?

A. Yes.

Q. And the capital is also listed in millions of dollars and listed at $6.162 billion.

Do you see that?

A. Yes.

Q. Now, on the face of this information, the Limited Partner and Partner, Mason Capital Limited, contributed the entire capital of the Cayman Fund; right?

A. As is stated here, yes.

Q. Well, and it's also consistent with what you told us about the General Partner having withdrawn its capital or end capital--

A. Well, of this 6.126 billion, the General Partner would have a Capital Account. It would be a rounding error.

Q. It would be rounding error.

A. Essentially, yeah. A couple hundred thousand dollars would be their balance.

Q. The Capital Account--yeah, it would be--you said a couple of hundred thousand dollars, the Capital Account of the General Partner, that would--

A. Yeah, yes.
Q. And so that would be a rounding error compared to the Capital Account of the Limited Partner; right?
A. Yes.
Q. Now, if you go to Item 4(d) in this application, the management company is identified as Mason Management LLC.
Do you see that?
A. Yes.
Q. And now we have the nationality which is entered next to it. It's identified as a Cayman Islands entity.
Do you see that?
A. I do.
Q. All right.
To your knowledge, did Goldman Sachs ask Nick to identify the management company as a Cayman Island company?
A. No, my understanding was that Goldman Sachs asked Nick to update nationalities to be Cayman Islands, and he applied that throughout the form and should not have.
Q. Could you please turn to your First Witness Statement, and that would be Paragraph 15, one-five.
Of the First, sorry. First Witness Statement, one-five.
Now, I'll draw your attention--or I'll direct

your attention to the second sentence in that paragraph starting with "In 2015."

A. Yes.

Q. You explained that: "In 2015, due in part to losses associated with the investments in the Samsung Shares, the previous high watermark was not surpassed, and the General Partner received no Incentive Allocation."

Do you see that?

A. Yes.

Q. And the "high watermark" that you're referring to refers to the mechanism in the Limited Partnership Agreement for calculation of the Incentive Allocation; right?

A. Yes.

Q. And that high watermark depends on the cumulative Net Profits of the Fund--or is based on the Net Asset Value of the Fund at one point? Or how does that work?

A. It's based on the dollar values of a loss, a Net Loss for a year. That would be your high water mark going into the next year.

Q. So, let's say in 2014 you made a loss on your investments.

A. Yes.

Q. Going into 2015, you would have to make up for that loss before being entitled to Incentive Allocation;

right?

A. Yes.

Q. Now, as of 2015--you're speaking about 2015. In 2015, we didn't get--you said that Mason didn't get an Incentive Allocation in this paragraph, but when had the previous high watermark been established?

A. December 31st, 2013.

Q. December 31st, 2013.

A. That was the last time we had charged an Incentive Allocation.

Q. Right.

And the reason for that is the Fund did not perform so well in 2014; right?

A. Correct.

Q. And as I understand, you incurred substantial losses on the planned merger--when the planned merger between the Cheil and--it failed; right?

A. That's part of it.

Q. I also understand that the Fund was down about 12 percent that year, in 2014?

A. That's about right, yeah.

Q. That's roughly an $800 million loss in 2014?

A. I don't know the math.

Are you talking specifically for the Master Fund?

Q. For--yes, for the Master Fund.

A. For the Master Fund. I will trust your math.
Q. Well, maybe for the two funds. Really, I don't want to mislead--I'm in your hands, actually, as to the maths. You have big advantage as a witness here.
A. I have no calculator.
Q. I do have a calculator.
A. Okay.
(Calculator handed to the Witness.)
A. 12 percent of 6 billion would be about $700 million.
Q. 780?
A. 720 million.
Q. $720 million.
Loss in 2014, roughly?
A. Roughly.
Q. Right.
Now, the loss--you lost the Rhode Island Pension Fund in 2014; right, as a result of those losses?
A. I don't know about that.
Q. Fair enough.
Now, if the fund was down $720 million at the end of 2014, going into 2015, to be entitled to an Incentive Allocation, you needed to make up over $720 million loss; right?
A. I don't know how in the weeds we want to get with

this, but big picture, yes--I don't know how in the weeds we want to get, but yes, you would have to recoup the losses in order to be able to charge an Incentive Allocation again, yes.

Q. And assuming the loss was $720 million, you would have first had to make $720 million before being entitled to any sort of Incentive Allocation.

A. Yes.

Q. Now, I want to turn back to Paragraph 15 of your Witness Statement. You said that: "In 2015, the previous high watermark was not surpassed and the General Partner receive no Incentive Allocation due in part to losses associated with investments in the Samsung Shares."

Do you see that?

A. Yes.

Q. Now, what else contributed to the Fund's inability to obtain an Incentive Allocation in 2015?

A. Investment losses is not my--not my responsibilities. I just book them.

Q. Including investment losses from previous years; right? From 2014?

A. I don't understand. You're saying that carried forward from '14?

Q. Right.

A. Yes.

Q. Right.

Now, when you say that the Investment in the Samsung Shares contributed to Mason not receiving an Incentive Allocation, were you expecting to make $700 million on the Samsung Shares in 2015?

A. I don't know.

Q. Well, did you consider when making this statement that your failure to get an Incentive Allocation was due, in part, to losses associated with the Investment in the Samsung Shares? Did you consider at all, whatever absent the loss on the Samsung Shares, the rest of your portfolio would have made up for the loss in 2014, the $720 million losses?

A. Losses never help an Incentive Allocation. If we had investors come in in January 2015, they wouldn't be subject to that $720 million high watermark. So, in effect, Samsung could have affected their ability to charge an Incentive Allocation on those guys.

Q. Now, did you consider--did you consider how much losses the rest of the portfolio had done by the end of 2014-2015, absent the Samsung Shares?

A. In making this statement?

Q. Right.

A. No.

Q. Do you know if you made a profit from the rest of

your portfolio in 2015, excluding the Samsung Shares?

A. I don't know.

Q. Now, in January 2015, Mr. Satzinger, was there anything in the General Partner's Capital Account?

A. I don't remember specifically. It would be a couple of hundred thousand dollars.

Q. A couple of hundred thousand dollars?

A. If at all.

There would be a small balance, yes.

Q. And do you know what percentage of that amount, of that small balance, the General Partner took out of its Capital Account before July 2015?

A. Any capital--any balance sitting in that Capital Account in 2015 was from unwithdrawn Incentive Allocations from 2013.

Q. So, it would have to wait until the next year to--

A. No, they could have taken it at any time.

Q. They could have taken it at any time.

A. Absolutely, sure.

Q. So sitting here today, you don't know whether they, in fact, did take that amount out before July 2015?

A. I don't know.

MR. NYER: Thank you very much, Mr. Satzinger.

PRESIDENT SACHS: Thank you.

Will there be redirect?

MR. WATSULA: No redirect.

PRESIDENT SACHS: We have no further questions. Thank you very much.

THE WITNESS: All right.

PRESIDENT SACHS: Mr. Satzinger, you are now released as a witness.

(Witness steps down.)

PRESIDENT SACHS: And this ends our fact witness testimony and today's session.

Unless you have any observations, we will close today's hearing and resume tomorrow morning at 9:30, we said. All right? I wish you good evening.

(Whereupon, at 4:49 p.m., the Hearing was adjourned until 9:30 a.m. 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