

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

PCA Case No. 2018-55

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In the Matter of Arbitration Between: :

MASON CAPITAL L.P. and MASON MANAGEMENT LLC, :

Claimants, :

and :

THE REPUBLIC OF KOREA, :

Respondent. :

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HEARING ON THE MERITS, Volume 3

Wednesday, March 23, 2022

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

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

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

ALSO PRESENT:

Registry and Administrative Secretary to the  
Tribunal:

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**[REDACTED]**

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P R O C E E D I N G S

1  
2 PRESIDENT SACHS: Good morning, ladies and  
3 gentlemen.

4 Are there any housekeeping matters that we  
5 should discuss before hearing Mr. [REDACTED]?

6 MS. VAZOVA: I don't believe so.

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

10 PRESIDENT SACHS: And the Respondent?

11 MR. VOLKMER: No.

12 PRESIDENT SACHS: Okay. So we'll give the  
13 floor to Mr. [REDACTED].

14 [REDACTED], RESPONDENT'S WITNESS, CALLED

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

21 THE INTERPRETER: Thank you.

22 (Pause.)

23 PRESIDENT SACHS: Good morning, Mr. [REDACTED].  
24 Please make yourself comfortable.

25 Mr. [REDACTED], you are a lawyer, so you are aware

1 of your duties as a witness of fact, and in front of  
2 you is a Declaration that we would like you to read  
3 out for the record.

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

7 PRESIDENT SACHS: Thank you very much.

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

12 THE WITNESS: There is none.

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

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

17 PRESIDENT SACHS: Okay.

18 So we go to cross.

19 MS. VAZOVA: Thank you, Mr. President.

20 CROSS-EXAMINATION

21 BY MS. VAZOVA:

22 Q. Good morning, Mr. [REDACTED].

23 A. Good morning.

24 Q. Thank you for being here, sir. So I will be  
25 asking you some questions this morning. My name is

1 Lilia Vazova. I'm an attorney for Claimants. Before  
2 we get started, you should have a copy of your Witness  
3 Statement in front of you in Korean. Do you?

4 A. Yes, I am looking at it.

5 Q. Great.

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

9 Do you see that?

10 A. Yes, I am looking at that.

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

15 A. I will do so.

16 Q. Now, as you just responded--

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

22 THE INTERPRETER: Would this be better?

23 ARBITRATOR GLOSTER: That's a bit better.

24 THE INTERPRETER: Hello?

25 ARBITRATOR GLOSTER: That's better. That's

1 much better. Thank you.

2 THE INTERPRETER: Thank you.

3 BY MS. VAZOVA:

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

7 A. That is correct.

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

10 A. Yes, correct.

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

13 A. Are we talking about today's testimony?

14 Q. No. I'm talking about the Witness Statement  
15 you submitted in--on August 13, 2021.

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

18 Q. Who asked you to testify?

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

23 Q. Had you previously met before the Ministry  
24 of Justice officials that came to your office to ask  
25 you to testify?

1           A.    It was my first time meeting them, but  
2 before the meeting happened, I received a call from  
3 the Ministry, and I am not sure whether the person who  
4 called me and the person who visited me were the same  
5 person. So the appointment was made through a call,  
6 and the attorneys and the officials at the Ministry  
7 who visited the office were the people that I met for  
8 the first time.

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

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

17                   And I recall it to be around six to seven  
18 years ago or maybe four to five years ago, before  
19 2015.

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

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

24                   And for the Ministry of Employment and  
25 Labor, I had represented their cases for quite a long

1 time, until four years ago.

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

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

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

8 A. Yes.

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

11 A. That is right.

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

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

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

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

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

24 Q. And the title of that document is "Record of  
25 Statement," and then it has your name, [REDACTED];

1 correct?

2 A. That is correct.

3 Q. And that's the record of your statement to  
4 the Seoul Central District Prosecutor's Office from  
5 the interview that took place on November 28, 2016;  
6 correct?

7 A. That is correct.

8 Q. You have reviewed the record of your  
9 statement before; correct?

10 A. Correct.

11 Q. And after you reviewed the record of your  
12 statement, you affirmed its contents; correct, sir?

13 A. That is correct.

14 Q. Can we turn to Page 16 of that document,  
15 please.

16 So, are you there?

17 A. I am looking at it.

18 Q. Okay. And so, as stated here, [REDACTED]

19 [REDACTED]

20 [REDACTED]; right, sir?

21 A. That is right.

22 Q. And you also affirmed that there are no  
23 errors, no additions, and no changes to be made;  
24 correct?

25 A. That is correct.

1 Q. And then you signed and sealed the Statement  
2 Report.

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

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

7 A. That is right.

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

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

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

17 A. That is right.

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

20 A. That is right.

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

24 A. That is correct.

25 Q. And if we may turn to Page 23 of the

1 document in front of you.

2 A. Yes.

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

5 A. That is correct.

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

8 A. That is right.

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

11 A. Yes.

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

15 A. That is correct.

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

22 A. Understood.

23 Q. So, the Special Committee decides how the  
24 Korean National Pension Service will vote on certain  
25 matters; correct?

1           A.    Yes.  The Committee deliberates on the  
2 matters that were requested by the NPS to be  
3 deliberated on.

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

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

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

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

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

20          A.    Yes.

21          Q.    So, when you were asked by the Prosecutor

22 [REDACTED]

23 [REDACTED], you responded: "[REDACTED]

24 [REDACTED]

25 [REDACTED]."

1 Do you see that?

2 A. Yes.

3 Q. So, as you told the Prosecutor, some of the  
4 matters on which the Expert Committee--excuse me, [REDACTED]

5 [REDACTED]  
6 [REDACTED]; right?

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

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

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

21 Q. And [REDACTED] that you identified to the  
22 Special Prosecutor [REDACTED]

23 [REDACTED]  
24 [REDACTED]; correct?

25 A. Correct.

1 Q. And, as you also told the Prosecutor, [REDACTED]  
2 [REDACTED]  
3 [REDACTED];  
4 correct?

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

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

12 A. Okay.

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

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

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

24 A. That is right. NPS refers some matters,  
25 according to the guidelines, and we also made

1 deliberations referring to the guidelines, so these  
2 guidelines are familiar with me.

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

8 A. I am looking at it.

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

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

21 And there is another Article that I am  
22 familiar with that is Article 17, and specifically  
23 Paragraph 4 under Article 17. That is also in  
24 relation to the Special Committee, so that was  
25 provided to us. So, as such, only the parts that are

1 necessary for the Special Committee have been  
2 extracted and given to us, so we did not review the  
3 rest of the document, and it was not necessary for us  
4 to review the rest of the document, either.

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

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

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

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

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

20 A. Yes. In fact, if you look at a certain part  
21 of the document, then it is clear that this guideline  
22 is a guideline that comes above the Guidelines for the  
23 Special Committee in the National Pension Service, so  
24 only the parts that are necessary were given to us for  
25 review.

1 Q. I understand your testimony as to the parts  
2 that are applicable to the work of the Special  
3 Committee. My question was a little different.

4 Do you have an understanding, one way or the  
5 other, whether this document, National Pension Fund  
6 Operational Guidelines, are supposed to be a guideline  
7 for the general operation of the National Pension  
8 Fund?

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

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

20 A. Which tab are we talking about?

21 Q. Oh, apologies. We're still on Tab 144.

22 And I misspoke earlier. I meant Article 1,  
23 subsection 2.

24 A. Yes, I am looking at it.

25 Q. And you see there, under Article 1,

1 subsection 2, how the document is described as a  
2 guideline for the general operation of the Fund?

3 A. Yes, I see that.

4 Q. Do you have any reason to doubt that  
5 description?

6 A. Well, I didn't see this part in my normal  
7 work, and this is the first time that I'm seeing this,  
8 so I'm not in a position to say in any ways, and,  
9 plus, I do not have any experience with this  
10 provision.

11 Q. Okay. This document, the National Pension  
12 Fund Operational Guidelines, it was issued by the  
13 Korean Ministry of Health and Welfare; right, sir?

14 A. It seems to be that way. It has the  
15 Ministry of Health and Welfare in it, the name in it.

16 Q. That's the Ministry of Health and Welfare's  
17 logo on the first page; correct?

18 A. Yes, it seems so.

19 Q. The Special Committee operated under the  
20 Ministry of Health and Welfare; right, sir?

21 A. So, about the hierarchy or the relationship  
22 between the Ministry of Health and Welfare and the  
23 National Pension Fund, we didn't address that or dealt  
24 with that in a serious manner. So, I did not have a  
25 big--I was not fully conscious or aware of where the

1 Committee sits, specifically when I was working,  
2 because our group, the Special Committee, is an  
3 independent group of people who are coming from the  
4 outside of the Ministry of Health and Welfare and the  
5 National Pension Service.

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

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

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

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

23 Q. So, from your perspective as a member of the  
24 Special Committee, the Ministry of Health and Welfare  
25 and NPS were one and the same thing?

1           A.    So, I didn't really give a serious thought  
2 into the relationship between the two; and, whenever a  
3 new administration comes in, it became a big headlines  
4 in the Korean media that the NPS should have an  
5 independence.

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

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

15           Q.    Understood.

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

21           A.    Yes, I am looking at it.

22           Q.    Are you familiar with this document?

23           A.    Yes. I recall having a copy of the full  
24 document with all the provisions in it provided to us  
25 when we had a meeting.

1 Q. Okay. So, unlike the document we looked at  
2 earlier, this document you actually familiar with in  
3 its entirety, not just parts of it?

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

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

16 A. Yes, that is how I read it.

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

21 A. Well, I would say that the--not all of the  
22 document had been deeply looked at, and there are many  
23 provisions that are related to how the Investment  
24 Committee should make a decision before the matter is  
25 referred to the Special Committee in this document.

1           So--and there is a separate guidelines for  
2 the Special Committee, once the matter is referred to  
3 the Special Committee. So, when I was deliberating on  
4 the matters, I didn't think that the Special Committee  
5 would need to follow all these guidelines that are  
6 specified herein. Only the ones that are related the  
7 Special Committee would apply. That was the  
8 impression that I had.

9           Q.    Okay. Let's look at Article 2 of Exhibit  
10 R-55, that's on Page 1.

11          A.    Yes, I am looking at it.

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

17                   Do you see that?

18          A.    Yes, I see that.

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

22          A.    Well, that is not my intent. Within this  
23 document, there would be provisions that are related  
24 to the Special Committee and that are not related to  
25 the Special Committee. And the Article that you have

1 shown me is a general provision, so it will apply to  
2 the Special Committee in principle.

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

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

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

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

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

24 A. That is right.

25 Q. And this Article 3, "Fiduciary Duty," also

1 applied to the Special Committee when the Special  
2 Committee voted on Exercising the Voting Rights for  
3 the Fund; correct?

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

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

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

11 A. Right.

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

16 A. Yes, I agree.

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

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

25 A. That is right.

1 Q. And this Article 4-2, "Responsible  
2 Investment," also applied to the Special Committee  
3 when the Special Committee decided how to exercise the  
4 Fund's Voting Rights; right, sir?

5 A. Yes, I agree.

6 Q. Let's move on to the third document you cite  
7 in Footnote 1 to your Witness Statement. That's  
8 Exhibit R-145. That's going to be behind Tab 145 of  
9 your binder.

10 A. Yes, I have it.

11 Q. And this Document R-145, "Regulations on the  
12 Operation of the Special Committee on the Exercise of  
13 Voting Rights," governs the operations of the Special  
14 Committee of which you were a member; correct?

15 A. That is correct. I almost always looked at  
16 these regulations, and most of the members of the  
17 Special Committee tried to operate the Committee in  
18 compliance with this regulation.

19 Q. As a member of the Special Committee, were  
20 you able to exercise your vote freely?

21 A. The debates were done in a very free manner.  
22 You would be expected--sorry, strike that.

23 You would consider the entity that  
24 recommended you to the Committee. But in the process  
25 of discussion and debate, when there is some--a

1 reasonable point that is made by other members, then  
2 even when that reasonable point may be in opposition  
3 to what the entity that recommended you to the  
4 Committee, that member would likely to change their  
5 mind to a reasonable, you know, manner.

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

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

13           Q.    So, no one told you how to vote; right? The  
14 decision how to vote was yours and yours alone?

15           A.    I don't know what went into respective  
16 members' minds when they made a decision, but there  
17 were many people who changed their mind after debate  
18 and discussions. And, in my case, I was recommended  
19 by an organization that represents the employers. So,  
20 if you look at a--at the cases from the employers'  
21 perspective, the three cases that were mentioned  
22 earlier must have been affirmed by me, but I ended up  
23 voting against them after the discussions with the  
24 members of the Committee.

25           So, I could have been requested to--I could

1 have been given some requests before or after the  
2 meetings, but I was never bound by such requests.

3 Q. Okay. So, ultimately, the decision of how  
4 to vote was yours and yours alone; right, sir?

5 A. Yes. It was up to the conscience and  
6 liberty of the members.

7 Q. Did you always do your very best to act in  
8 the best interests of the National Pension Service  
9 when deciding how to vote on a particular issue?

10 A. Yes. According to the principles set out in  
11 these regulations and guidelines, I had the mid- to  
12 long-term interest of the National Pension Service in  
13 mind, and that was the biggest decision-making  
14 standard that we had, and I believe that was the same  
15 for the other members of the Committee.

16 Q. So, both for and you the other members of  
17 the Committee, first and foremost, was always the best  
18 interests of the National Pension Service?

19 A. Yes, there was the shared motive of  
20 promoting the best interests of the National Pension  
21 Service among all the members. But after the debate,  
22 whether the "Yes" vote would be in the interest of the  
23 NPS or the "No" vote would be in the interest of the  
24 NPS would depend on individual members' discretion.  
25 It will depend on their expertise, their conscience,

1 and their rationale.

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

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

14 And there--while there were still some  
15 people who might not change their mind, but still the  
16 majority moved to the direction of rationality and  
17 reasonability after the debates. That is my  
18 experience.

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

23 A. That is correct.

24 Q. In fact, that's the top priority for the  
25 Special Committee; right, sir?

1 A. That is right.

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

4 A. I am looking at it.

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

8 A. I am looking at it.

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

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

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

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

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

1           A.    Yes, I have it.

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

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

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

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

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

22          Q.    When the Special Committee considered how to  
23 exercise the Fund's Voting Rights, did it consider the  
24 views of the National Pension Service's financial  
25 advisors?

1           A.     The ones that were deliberated by the  
2 Special Committee, when it comes to the gains or the  
3 interests of the National Pension Service, if those  
4 interests can be calculated, then the financial  
5 profits or damages could be calculated as well. But  
6 most of the time, the interests that were--that were  
7 at issue were the morality, ethics, principles, and  
8 the trust from the citizens, and they are related to  
9 the mid- to long-term interests of the National  
10 Pension Service.

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

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

19                     And the thoughts or the belief of the  
20 Special Committee was as follows: The--when the Board  
21 of Directors make a certain decision and it goes  
22 against the morality and the principles, then it will  
23 undermine the long-term interests of the National  
24 Pension Service. And most of the debates that were  
25 held at the Special Committee was in this direction,

1 that if you keep the morality and the ethics, then it  
2 will benefit the National Pension Service in the  
3 long-term.

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

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

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

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

16 PRESIDENT SACHS: Is this all right?

17 MR. PARK: Yes.

18 PRESIDENT SACHS: Thank you.

19 MS. VAZOVA: Thank you for the  
20 clarification.

21 BY MS. VAZOVA:

22 Q. Now, Mr. ■■■, switching gears a little bit.  
23 I want to ask you about the Samsung C&T-Cheil Merger.

24 Now, because the National Pension Service  
25 was the largest Shareholder of Samsung C&T, it held

1 the casting vote on the Merger; right?

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

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

10 A. Yes.

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

13 [REDACTED]

14 [REDACTED]"

15 And then you respond: "[REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]."

21 That's what you told the Prosecutor; right,  
22 Mr. [REDACTED]?

23 A. I think I did mention the "[REDACTED]"  
24 part, but I don't remember checking the "[REDACTED]"  
25 [REDACTED]" part. I think when the Special

1 Prosecutor was making this document, he must have put  
2 the fact in after checking the fact. The Hearing  
3 didn't happen, so I didn't have an opportunity to  
4 check the facts with regards to this particular case,  
5 so I don't remember saying this when I was giving an  
6 answer to the interview.

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

10 Q. You did review this Record of Statement  
11 before you signed and sealed it; right, Mr. [REDACTED]?  
12 That's what you told us earlier.

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

20 Q. There are no facts--

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

24 PRESIDENT SACHS: Yes, please.

25 MR. HAN: Look at the time stamp

1 9:47:44--actually, from 37, so Mr. [REDACTED] says, "the  
2 hearing did not happen," but as I recall Mr. [REDACTED] said  
3 "shimri," so "shimri" so it should be interpreted as  
4 "deliberation" or "discussion," not the "hearing."

5 THE INTERPRETER: I concur.

6 BY MS. VAZOVA:

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

12 A. That's not exactly correct. As you can see,  
13 the interview took place from 3:00 p.m. until  
14 9:00 p.m., so it went on for a--long hours. And a lot  
15 of the questions were given to me with an expectation  
16 of a certain answer. And when the expected answer  
17 doesn't come out, many of the answers that I had given  
18 didn't go on the record.

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

24 And if I can say that the most important  
25 parts overall had been mostly checked.

1 Q. Can we turn back to Page 25 of the document  
2 in front of you, sir. We looked at that language  
3 earlier.

4 A. Which document?

5 Q. 220, Tab 220.

6 A. I am looking at Tab 220.

7 Q. And as you testified earlier, sir, when you  
8 were shown this Record of Statement before you signed  
9 and sealed it, you answered that [REDACTED]

10 [REDACTED]  
11 [REDACTED]; that's correct, right?

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

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

25 Q. You're a lawyer; right, sir? Is it your

1 habit to sign and seal documents without reading them  
2 or without agreeing with their contents?

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

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

10 Q. That's not what you said here, though. You  
11 didn't say "the general flow is correct," you didn't  
12 say "most of the facts were correct." You said there  
13 were "[REDACTED]."  
14 That's the language you certified to.

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

25 And why did it look over? Because, if we

1 start asking about what the specifics, then it  
2 will--the interview would not end, so a lot of the  
3 things that I said and that were not in line with the  
4 Prosecutor's expectations were omitted in this  
5 document.

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

12 Q. You were given the opportunity to clarify or  
13 correct; right?

14 A. So, it was a six-hour-long interview, and  
15 this particular Prosecutor, unlike the earlier General  
16 Prosecutor, created a rather short document after a  
17 long discussion, so I could say that this Report is  
18 full of omission. But I was exhausted, and the  
19 Prosecutor and I agreed that if it is in the large--if  
20 it is in line with the large flow, then we should just  
21 end the interview.

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

1 ended the interview.

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

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

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

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

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

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

24 And there would be a possibility of addition  
25 in the course of such process, and plus there could be

1 some areas that will need to be removed with the  
2 possibility of misunderstanding as well.

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

7 Q. I understand it.

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

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

15 If the item was to be referred to the  
16 Special Committee, would the Special Committee vote  
17 against it? Would the Special Committee have voted  
18 against it? And to that question, I said no one can  
19 make a prediction. There is uncertainty, and I  
20 continued on answering that no one could have made a  
21 prediction, for a long time. The Prosecutor and I  
22 compromised and agreed on the phrase there was  
23 certainty-- [REDACTED] instead of nobody  
24 knows, but my exact wording in the answer was that no  
25 one can make a prediction.

1 Q. And just so we're clear, the Special  
2 Committee never had the opportunity to consider the  
3 Samsung Merger; correct?

4 A. Correct. We did not deliberate on it.

5 Q. And that was because the Samsung Merger was  
6 never referred to the Committee for a vote; right?

7 A. That is right.

8 Q. So, one proposed merger that the Special  
9 Committee did have an opportunity to consider was the  
10 merger between two companies of the SK Group; right?

11 A. Can you ask me the question once again?

12 Q. Sure.

13 One merger that the Special Committee had  
14 the opportunity to consider, because it was referred  
15 to the Committee for a vote, was the merger between  
16 two companies of the SK Group.

17 A. Yes. The item that was deliberated in my  
18 term that is related to a merger was the SK Merger  
19 one.

20 Q. And the SK Merger was referred to the  
21 Special Committee for about approximately one month  
22 before the NPS had to decide how to vote on the  
23 Merger--on the Samsung Merger? Excuse me.

24 A. That was in May, so I think it was around  
25 one or two months before then, yes.

1 Q. And the Special Committee decided that the  
2 National Pension Service should vote against the SK  
3 Merger; right?

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

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

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

12 A. Correct.

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

15 A. I am looking at it.

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

20 A. Yes.

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

25 A. So, SK had the share of treasury stocks of

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

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

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

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

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

25 Q. So, the impacts of the treatment of treasury

1 stocks that you just described, was what it would  
2 cause the loss to the NPS; correct?

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

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

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

25 MR. HAN: Mr. President, while we're on this

1 issue, can I make one simple clarification in terms of  
2 interpretation with the Interpreter?

3 PRESIDENT SACHS: Yes, please proceed.

4 MR. HAN: If you look at time stamp  
5 10:15:15, it reads, "so based on this Special  
6 Committee's discretion," but as I recall, Mr. ■■■ said  
7 in Korean "hwaesa jaeryang," so not "Special  
8 Committee's discretion," but "SK's discretion." Can  
9 counsel for Claimants confirm us that whether that is  
10 correct? I mean, any comments on this proposed  
11 correction?

12 (Comments off microphone.)

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

20 PRESIDENT SACHS: Maybe this can be put to  
21 the Witness so that he can confirm or correct his  
22 earlier statement? We're talking about statement at  
23 10:15:15.

24 THE WITNESS: So, that would be a discretion  
25 of the Parties to the Merger, but more specifically it

1 would be the discretion around whether to retire the  
2 treasury stocks. And depending on the timing of the  
3 retirement of the treasury stocks, as I said earlier,  
4 the amount of stocks that would be allocated to the  
5 Shareholders would change, so you saw it correctly,  
6 that the expression is around when and whether to  
7 require--retire the treasury stocks.

8 BY MS. VAZOVA:

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

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

13 A. That is correct.

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

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

19 A. Yes. And despite that if the allocation  
20 happened after the retirement of the Shares, then it  
21 would have been more fair to the Shareholders in the  
22 entity where the proportion of the treasury stocks  
23 were higher, and there wouldn't have been an  
24 unfairness issue, then. And if so, it is likely that  
25 the Special Committee voted Yes for that.

1 Q. But even though there was no problem with  
2 the timing of when the stocks were retired, the  
3 Special Committee still rejected the Merger because,  
4 under the approach adopted by the Company, the  
5 founding family of the Company would unfairly benefit  
6 at the expense of the other Shareholders; correct?

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

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

24 Q. Can you turn to Tab 227 in your binder,  
25 page--the English version is going to be Page 5, the

1 Korean version also Page 5. And we're going to be  
2 looking at the last paragraph.

3 And you were asked the following question;  
4 right, Mr. [REDACTED]? "[REDACTED]

5 [REDACTED]  
6 [REDACTED]" Do you see that?

7 (Overlapping interpretation with speaker.)

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

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

12 THE WITNESS: Yes, I see it. Yes.

13 BY MS. VAZOVA:

14 Q. So, when you were asked by the Prosecutor

15 [REDACTED]

16 [REDACTED], you responded  
17 as follows: "[REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]."

23 Then you went on to say: "[REDACTED]

24 [REDACTED]

25 [REDACTED]

1

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4

That's what you said, right?

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

8

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11

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

12

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

17

18

Q. Was what the Special Prosecutor summarized here accurate or not accurate, Mr. [REDACTED]?

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

So, if it is understood as the Ordinary

1 Shareholders in the same entity, then it is a  
2 misunderstanding. The Ordinary Shareholders in the  
3 other entity opposed to the entity where the largest  
4 shareholder holds more shares, would be the right way  
5 to put it.

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

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

15 Q. Okay. Now--

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

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

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

24 Now, here you are stated to say on Page 5,  
25 which I quote, "[REDACTED],

1 [REDACTED]," whereas in  
2 your testimony today you seem to say, well, for the  
3 NPS, it was neutral. But here you are quoted saying  
4 that "[REDACTED]  
5 [REDACTED]."

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

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

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

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

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

25 So, in the earlier part of my testimony to

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

8 PRESIDENT SACHS: Thank you.

9 We will now have our break.

10 MR. HAN: Mr. President, I'm sorry--

11 PRESIDENT SACHS: Is there an interpretation  
12 issue?

13 MR. HAN: Yes. I have a fresh memory, I  
14 would like to point out some interpretation now, if I  
15 may.

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

19 As I recall, Mr. [REDACTED] testified that "gumsaga  
20 wonhaneun pyohyundaero yakgan dalajin bubun." In  
21 English it should be "expressions were slightly  
22 modified in a way that the Prosecutor wanted to be,"  
23 but here the translation is "the expressions were  
24 slightly modified to suit what is expected or what  
25 could be the case."

1           PRESIDENT SACHS: I turn to the Claimant.  
2 Do you remember that statement?

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

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

9           We're talking about 9:54:38.

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

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

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

22          MR. HAN: The Claimants took the Witness to  
23 two Statement of Records made to the Prosecutor and  
24 the Special Prosecutor, and those two statements were  
25 interpreted as Witness Statements, but actually at

1 that time Mr. [REDACTED] was not testifying as a witness, so  
2 it should be Statement of Report rather than Witness  
3 Statement. And also there is consistent with  
4 Claimants' own translation of those documents.

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

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

24 PRESIDENT SACHS: Well, I think we take note  
25 of your comments and leave it there, and we will now

1 have our break. We resume at 11:00.

2 Mr. ■■■, you are still under testimony, so  
3 please do not talk to anyone about the case. Thank  
4 you very much.

5 THE WITNESS: Yes.

6 (Brief recess.)

7 PRESIDENT SACHS: All right. We can resume.

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

10 PRESIDENT SACHS: Pardon?

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

13 (Pause.)

14 PRESIDENT SACHS: We can proceed.

15 MS. VAZOVA: Thank you, Mr. Chairman.

16 BY MS. VAZOVA:

17 Q. Welcome back, Mr. ■■■.

18 A. Yes.

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

22 THE INTERPRETER: Was an issue?

23 MS. VAZOVA: Yes.

24 (Through interpretation.)

25 THE WITNESS: Yes, in the end, it was.

1 BY MS. VAZOVA:

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

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

8 MS. VAZOVA: How about now?

9 ARBITRATOR MAYER: Thank you. Thank you.

10 MS. VAZOVA: Thank you, sir.

11 THE WITNESS: Yes, I am looking at it.

12 BY MS. VAZOVA:

13 Q. So, you said there: "[REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]."

19 A. That is correct.

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

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

24 Q. One of the key issues relating for the  
25 Samsung Merger was the adequacy of the Merger Ratio;

1 right, sir?

2 A. Yes, that is how I understood it.

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

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

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

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

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

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

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

25 A. So, generally, when we are deliberating on

1 the case, we receive, as meeting materials, the  
2 positions of both parties, the Shareholders who are in  
3 favor of the Merger and the Shareholders who are  
4 opposing the Merger.

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

10 Q. Okay. That was not quite my question.

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

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

23 So, regardless of any matters, we would be  
24 provided with the positions and the rationale of both  
25 parties, and although I am speaking hypothetically, it

1 is very likely that we would have deliberated almost  
2 fully, considering both parties' opinions, not just  
3 one party's opinion.

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

7 Q. So I understand you weren't provided  
8 material. I understand you did not deliberate on this  
9 issue. My question is: If you were to deliberate on  
10 this, would you consider, as part of your  
11 decision-making, whether or not the NPS would suffer a  
12 loss as a result of the Merger at the proposed ratio?

13 A. That would easily have been a factor to  
14 consider. And back then, when Samsung and Elliott  
15 went to court for the injunction requests, there were  
16 a lot of opinions and rationale from both Parties that  
17 came out through the process, and the Court made a  
18 quite long decision for that case.

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

25 And, based on my recollection, even though

1 the applicant, the plaintiff, made some argument, the  
2 rationale wasn't accepted by the Court.

3 Q. We'll talk about the District Court's  
4 Decision. Before we get to that, though, in addition  
5 to whether the NPS would suffer a loss, the Special  
6 Committee would also consider the moral and ethical  
7 implications of the Merger as proposed; correct?  
8 That's what they did with the SK Merger.

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

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

18 A. Yes, that is how I remember it.

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

21 A. Yes, I have it here.

22 Q. So, in the last sentence of this  
23 Paragraph 36 of your Witness Statement, you explain:  
24 "In its decision which garnered significant media  
25 coverage in the lead-up to the Merger vote, the Seoul

1 Central District Court found that there were no  
2 illegalities in the procedure of the Merger or in the  
3 determination of the number of Samsung C&T and Cheil  
4 shares that would be exchanged for shares in the  
5 merged entity, i.e., (the so-called Merger Ratio)."

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

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

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

13 A. That is correct.

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

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

24 Q. Did the Court opine on whether the NPS would  
25 suffer a loss under the Merger Ratio as proposed?

1           A.    Based on my recollection, even though it is  
2 quite vague, I recall there was some mentioning about  
3 the judgment on the losses as part of the Court  
4 Decision.

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

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

20           Q.    Now in the--

21           A.    --with legal background.

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

24           A.    I do not have any recollection of having  
25 discussed the procedural issues.

1 Q. Let's look at Paragraph 17 of your Witness  
2 Statement, then.

3 A. Yes.

4 Q. So, you say in Paragraph 17 of your Witness  
5 Statement, in relation to the SK Merger, that it was  
6 not the problem of illegality that caused concern but  
7 more of an ethical one; right? That's what you  
8 testified?

9 A. Yes, that's how we viewed it.

10 Q. And both you and the rest of the Special  
11 Committee voted against the SK Merger, even though  
12 there was nothing illegal in how that Merger was being  
13 proposed?

14 A. Yes.

15 Q. So, you alluded to that earlier. You allude  
16 earlier to being contacted by counsel for Samsung, and  
17 I want to take you to Paragraph 23 of your Witness  
18 Statement.

19 A. Yes, I am looking at it.

20 Q. So, you explain in Paragraph 23 of your  
21 Witness Statement that you were contacted by counsel  
22 for Elliott, who suggested a meeting, and you told him  
23 that the meeting would be inappropriate, but you'd  
24 review any materials he may want to send you; correct?

25 A. That is correct.

1 Q. It wasn't just Elliott who tried to meet  
2 with you, though; right? Samsung tried to meet with  
3 you, as well?

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

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

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

22 Q. Okay. I just want to be clear because you  
23 focus on your Witness Statement--in your Witness  
24 Statement in a request to meet from Elliott. It  
25 wasn't just Elliott who was trying to meet with you.

1 It was also Samsung; correct?

2 A. That is correct, and I do recall having said  
3 that Samsung tried to meet me at some part.

4 Q. And you also believed that Samsung tried to  
5 meet with rep--with other members of the Special  
6 Committee, as well; right?

7 A. Well, Samsung representative tried to meet  
8 me, so I would expect that they would have tried to  
9 meet with the other members of the Committee.

10 Q. Understood.

11 Let's turn to Paragraph 30 of your Witness  
12 Statement.

13 A. Yes.

14 Q. And there, you discuss a report that you  
15 were shown by the Prosecutor when you were  
16 interviewed. The report was prepared by the Ministry  
17 of Health and Welfare, forecasting how different  
18 members of the Special Committee would vote; is that  
19 accurate?

20 A. I think it is accurate.

21 Q. So, let's turn to your statement to the  
22 Prosecutor. That's Exhibit C-220, Tab 220 in your  
23 binder.

24 And, in your version, Mr. [REDACTED], we're going  
25 to be looking at Page 17. For those following along

1 the English version, we're going to be on Page 19.

2 A. Yes, I am looking at it.

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

7 A. Yes, I'm looking at it.

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

12 [REDACTED]  
13 [REDACTED]."

14 That's what you said; right?

15 A. So, the Prosecutor [REDACTED]  
16 [REDACTED], saying that [REDACTED]  
17 [REDACTED]  
18 [REDACTED], and [REDACTED]  
19 [REDACTED]. And the premise of the question asked was  
20 that [REDACTED]

21 [REDACTED]. And I answered, [REDACTED]  
22 [REDACTED], and this  
23 opinion is around that particular premise.

24 Q. You also told the Special Prosecutor that  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]; right, Mr. [REDACTED]?

3 A. Yes, and that was a point made on the  
4 assumption that the premise made by the Prosecutor,  
5 the hypothetical premise, was correct, so yes.

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

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

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

20 THE WITNESS: So, that is not something I  
21 could know. The Prosecutor suggested the facts that  
22 he or she is supposed to know, and said that it seems  
23 to be the case that the Government analyzed and  
24 contacted the members. And what I said here was, [REDACTED]

25 [REDACTED]

1 [REDACTED].

2 So, my answer to this question was made  
3 based on a hypothetical situation where what the  
4 Prosecutor suggested was right. And this is not the  
5 fact that I experienced.

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

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

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

20 BY MS. VAZOVA:

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

24 A. Yes, I'm looking at it.

25 Q. So, you told the Special Prosecutor,

1 Mr. [REDACTED], as said here on Page 19/21 of this document,  
2 that [REDACTED]  
3 [REDACTED]; right?

4 A. That is right.

5 Q. But [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]?

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

10 Q. And [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]; right?

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

17 Q. And [REDACTED]  
18 [REDACTED]  
19 [REDACTED]; right? That's what you said  
20 here?

21 A. Yeah, I agree that all the employees at the  
22 National Pension Fund and the members of the Special  
23 Committee should work for the benefit of the National  
24 Pension Service and should prevent the losses to the  
25 National Pension Service.

1 Q. [REDACTED];  
2 right, Mr. [REDACTED]?

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

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

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

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

22 A. If the loss is proven to be--proven to an  
23 extent that would be agreed upon by the majority of  
24 the members of the Special Committee, then it would be  
25 the right decision to make.

1 Q. Now, Mr. [REDACTED], you believe the Samsung Merger  
2 should have been referred to the Special Committee;  
3 right?

4 A. Yes. From the point when I heard that the  
5 decision was not referred to the Special Committee and  
6 when the meeting, interim meeting, was held to have  
7 discussions on our positions, and until now most of  
8 the members of the Special Committee thought--thought  
9 that the matter should have been referred to the  
10 Special Committee, and I also maintain that position,  
11 too.

12 Q. In fact, as you told the Special Prosecutor,  
13 Mr. [REDACTED], [REDACTED]  
14 [REDACTED];  
15 right?

16 A. Yes, that was a position made through the  
17 interim meeting that the Special Committee held on the  
18 decision not to refer the case to the Special  
19 Committee. We reached a collective consensus that the  
20 matter should have been referred to the Special  
21 Committee and we created a press release, and that was  
22 published to media outlets.

23 Q. It is also your view, isn't it, Mr. [REDACTED],  
24 that [REDACTED]

25 [REDACTED]

1 [REDACTED] ?

2 A. Basically, yes, but then there was a very  
3 fierce debate in putting those into words, and let me  
4 continue. At first, most of the Committee members and  
5 myself had discussed expressions like "a breach" of  
6 the Regulations.

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

23 So, in the end, we were able to phrase the  
24 position of the members of the Special Committee in a  
25 non-legal language, such as not reasonable, not

1 appropriate, or regretful. And the consensus was  
2 reached that the Judicial Branch will need to decide  
3 on whether that was a violation or not, so that is how  
4 we came to the final wording in the Report.

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

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

23 Q. Well, thank you for this very detailed  
24 answer. That was not my question at all.

25 I asked whether it was your view, Mr. [REDACTED],



1 THE INTERPRETER: He's asking for the page  
2 in Korean.

3 MS. VAZOVA: It's Page 14 of the Korean  
4 version.

5 Last paragraph.

6 PRESIDENT SACHS: Maybe for the Transcript,  
7 we could read it, if the Interpreter could please read  
8 the passage in English to the record. Starting with  
9 " [REDACTED] ."

10 THE INTERPRETER: " [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] ."

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

25 PRESIDENT SACHS: Thank you. So,

1 "mandatorily." All right.

2 Now, is that still your position?

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

7 PRESIDENT SACHS: Okay.

8 BY MS. VAZOVA:

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

11 A. Yes, I'm looking at it.

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

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

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

17 ARBITRATOR MAYER: Thank you.

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

20 BY MS. VAZOVA:

21 Q. Yes, sir.

22 A. Yes, I am looking at it.

23 Q. So, this is an e-mail from [REDACTED],  
24 chairperson of the Expert Committee on the Exercise of  
25 Voting Rights; right?

1 A. Correct.

2 Q. And the e-mail was addressed to the Joint  
3 Administrative Secretaries of the Expert Committee,  
4 that's [REDACTED] and [REDACTED]; right?

5 A. Correct.

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

8 A. Correct.

9 Q. And then, if you were to turn to the second  
10 paragraph in Chairman [REDACTED]'s e-mail?

11 A. Yes.

12 Q. It reads: "[REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED], " and I'll pause  
18 there just for the transmitter because it's a long  
19 paragraph.

20 A. Yes, I am looking at it, and I agree with  
21 the content.

22 Q. And Chairman [REDACTED] goes to say: "[REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]." Right? That's what it says?

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

7 Q. You're just aware of the content. You also  
8 agree with it, Mr. [REDACTED]?

9 A. Yes, I do agree.

10 Q. Then you also agree that, in consideration  
11 of these past cases, as this paragraph we just looked  
12 at continued to say: "[REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]."

18 You agree with that as well; right?

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

25 And this expression is representation of

1 what I thought at the time of writing the e-mail, and  
2 it is basically the same even after that as well.

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

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

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

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

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

25 So, on Page 13 of the Tab 220, "Because of

1 the ambiguity in the relevant regulations and  
2 instructions, the Expert Committee sympathized with  
3 considerable difficulties that the Fund Management  
4 Office must have confronted in deciding whether to  
5 refer the matter to the Expert Committee to make a  
6 decision on this case". That was our thought on the  
7 discretion part, and the opinion from the Special  
8 Committee is as follows: "However, the Expert  
9 Committee regrettably believes that the motion should  
10 have been referred for its deliberation in view of  
11 past precedents and purpose of the regulation". And  
12 we also added a request further down the line, "We  
13 request the Fund Management Office to further review  
14 and amend the relevant provision to minimize potential  
15 disputes in the future."

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

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

1 Special Committee.

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

5 Q. Well, let's talk about this meeting where  
6 the words of the Press Release were negotiated.

7 I believe you described that in  
8 Paragraphs 38 to 42 of your Witness Statement, if I'm  
9 not mistaken.

10 A. Yes, I'm looking at it.

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

15 A. That is correct.

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

19 A. Well, he didn't insist on a certain phrase  
20 like "regretfully," but what he requested was not to  
21 use the word "violation," and he said that there are  
22 two reasons for his worries of using the word  
23 "violation": Number 1, the public officials could get  
24 into trouble; and, Number 2, that is up to the Courts  
25 to decide.

1 Q. You were so frustrated with Director [REDACTED]'s  
2 behavior at the meeting, Mr. [REDACTED], that you requested  
3 his removal from the meeting; right?

4 A. So, in fact, Mr. [REDACTED]'s stance I would say  
5 or the behavior changed over time from the start to  
6 the end, and from the earlier stage to the middle of  
7 the meeting, he was very adamant about not even  
8 holding the meeting, interim meeting, and the Special  
9 Committee should not be making a deliberation at all.  
10 And in such arguments made by Mr. [REDACTED] was denying the  
11 very existence of this Special Committee and the  
12 authority of the Special Committee.

13 And I thought that Mr. [REDACTED], who doesn't  
14 even have a vote in the Special Committee, was  
15 undermining the authority of the Committee, and just  
16 continued on with the arguments that are nonsensical.  
17 So--and was preventing the overall flow of the  
18 meeting.

19 So, at the mid-point of the interim  
20 meeting--at the mid-point of the meeting that we held  
21 up--up until the mid-point of the meeting that we  
22 held, I was rebutting his argument quite fiercely.  
23 And then even after a certain amount of discussions  
24 that were based on logic, from my side, he didn't  
25 listen, so I even suggested the Chairman to vote on

1 whether to remove Mr. [REDACTED] from the meeting or not.

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

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

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

24           Q.     Understood.

25                   And as you say in Paragraph 42 of your

1 Witness Statement, even though you requested Director  
2 ██████'s removal from the meeting, on reflection, you do  
3 not think that his participation in the Special  
4 Committee Meeting went beyond the scope of the  
5 Administrative Secretaries' duties; is that right?

6 A. Yes, that is right.

7 Q. When did you have an opportunity to reflect  
8 upon that, Mr. ██████?

9 A. Mr. ██████ would attend the Special Committee  
10 Meetings always, and he would deliver the opinions of  
11 the Ministry of Health and Welfare at the meetings so  
12 that these Committee members could consider them, so  
13 his participation itself is within the scope and  
14 responsibilities of the Secretary, I think.

15 Q. Did you reach this conclusion before or  
16 after you were asked to testify in this Arbitration?

17 A. My thought didn't change. If you look at  
18 that incident only where I thought that Mr. ██████  
19 should be removed from the meeting, then it could be  
20 read as him not being allowed or not being able to  
21 participate in the meeting. But his participation is  
22 not a problem, and he--but his attempts to prevent the  
23 decision from being made is unreasonable, but  
24 his--another opinion of changing the legal term to a  
25 non-legal term was acceptable.

1 I mean, only pointing to a single incident  
2 that happened in the course of two to three hours of  
3 fierce debate would be misleading and that required  
4 clarification, that is why it is written here but my  
5 position didn't change.

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

14 A. Yes, I am looking at that.

15 Q. So, when asked about the meeting, Director  
16 [REDACTED] responded as follows: "[REDACTED]  
17 [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED]  
25 [REDACTED]."

1 Do you see that?

2 A. Yes, I am looking at it.

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

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

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

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

23 PRESIDENT SACHS: Thank you.

24 Will there be questions in redirect?

25 MR. HAN: Yes, Mr. President.

1           PRESIDENT SACHS: So please proceed,  
2 Mr. Han.

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

6           PRESIDENT SACHS: Yes.

7           MR. HAN: Thank you.

8                           REDIRECT EXAMINATION

9           BY MR. HAN:

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

13          MR. HAN: Operator, R-144, please.  
14 Article 17, please.

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

17          MS. VAZOVA: It is.

18          MR. HAN: Yes.

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

20          BY MR. HAN:

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

25          A. Yes. They are related to the exercise of

1 Voting Rights, so Article 17-4--17.4 and 17.5 would be  
2 the provisions that I looked at every time we had a  
3 meeting.

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

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

10 MS. VAZOVA: Mr. Chairman, I'm so sorry to  
11 interrupt. I do have to object here. If we look at  
12 Transcript from this morning, 9:00 at 12, I asked the  
13 Witness the questions, "so the only parts of Exhibit  
14 R-144 that you have ever reviewed were Article 5.5 and  
15 17.4, is that your testimony?" The Witness responded,  
16 "that is correct."

17 I'm not familiar with the rest of the  
18 provisions. He disclaimed any knowledge of Article  
19 17.5. I don't ask any questions about Article 17.5.  
20 I don't think this is the proper subject matter for a  
21 redirect examination.

22 PRESIDENT SACHS: Let me put it differently.  
23 I mean, the Tribunal is in a position to read those  
24 provisions, so I doubt whether it's really helpful to  
25 go along this line of questions.

1 MR. HAN: Yes, Mr. President.

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

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

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

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

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

22 MR. HAN: Okay. Will do.

23 (Witness speaking without interpretation.)

24 PRESIDENT SACHS: Mr. [REDACTED], so we were  
25 discussing this, and I said we should move to the next

1 question, so I'm sorry, but since it's now--please  
2 translate what the Witness said.

3 THE INTERPRETER: Yes.

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

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

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

16 BY MR. HAN:

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

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

24 It is not on the tab. So the bundle should  
25 be pulled up. Page 14, please.

1 Can we also see the Korean version, too?

2 THE INTERPRETER: Was that a request to the  
3 operator?

4 MR. HAN: Yes.

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

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

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

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

14 BY MR. HAN:

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

18 A. I'm looking at it.

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

24 Were you aware of this content in the  
25 decision?

1           A.    I didn't have a chance to review it this  
2 thoroughly.

3           Q.    Let me move on to the next question.

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

6           BY MR. HAN:

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

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

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

19          A.    I haven't heard of it.

20          Q.    If you look at the decision on the screen.  
21                And here it says, according to the  
22 Guidelines set for the Exercise of Voting Rights of  
23 NPS, in principle, Voting Rights of Shares are to be  
24 considered and decided by the Investment Committee of  
25 the Investment Management Division.  And if there is

1 an Agenda that is too difficult for the Investment  
2 Management Division to decide, it can exercise its  
3 discretion to request the Agenda to be decided by the  
4 Special Committee.

5 Can you see that?

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

8 (Witness speaking in Korean without  
9 interpretation.)

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

12 BY MR. HAN:

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

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

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

20 PRESIDENT SACHS: Please do so.

21 BY MR. HAN:

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

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

25 THE INTERPRETER: Which paragraph are we

1 looking at?

2 MR. HAN: Paragraph 17.

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

4 BY MR. HAN:

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

9 A. Yes.

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

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

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

24 So, the ethical problem of the timing of the  
25 retirement of treasury stocks would, in the end,

1 affect the Merger Ratio, so we viewed it as a linked  
2 issue.

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

5 PRESIDENT SACHS: Very good.

6 I do have a question, Mr. [REDACTED].

7 QUESTIONS FROM THE TRIBUNAL

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

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

22 THE WITNESS: So, I had made an overall  
23 review of the decision by the Court on the injunction  
24 request, and I do not recall having reviewed the  
25 detailed parts related to the losses, means that I

1 didn't pay attention specifically to that.

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

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

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

20           THE WITNESS: Yes, I said is that.

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

25           PRESIDENT SACHS: R-177?

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

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

7 Do my co-Arbitrators have questions to the  
8 Witness?

9 ARBITRATOR GLOSTER: I don't. Thank you.

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

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

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

23 (Tribunal conferring outside the room.)

24 PRESIDENT SACHS: So, we have two  
25 organizational matters that we would like to discuss

1 with you. The first matter concerns the questions  
2 raised by Professor Mayer. We would suggest that we  
3 hear you on these questions tomorrow, at the end of  
4 tomorrow's witness hearing, expert witness hearing.

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

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

22 Do you want to take a short break  
23 before--yes? Okay. So, let's say, what? 10 minutes?  
24 Okay.

25 (Witness steps down.)

1 (Recess.)

2 PROCEDURAL DISCUSSION

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

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

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

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

21 Let me elaborate just a little on that.

22 As to efficiency, now again is the moment  
23 where we are all in full familiarity with the case. I  
24 would strongly urge you to set a rather tight  
25 timetable in terms of when we will be able to file

1 those Briefs. I would strongly urge you to ask both  
2 Claimant and Respondent file those Briefs at the same  
3 time so as to draw a line under the proceedings, and I  
4 would also strongly urge you to set an approximate  
5 date for an Oral Hearing, if indeed having read those  
6 Briefs you consider you wish to hear from us.

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

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

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

22           ARBITRATOR GLOSTER: Ms. Lamb, can I just  
23 make one point. So far as Post-Hearing Briefs are  
24 concerned, what, speaking for myself, I'm particularly  
25 concerned to have is both sides' submissions as to how

1 the evidence which we have heard or will hear during  
2 this week impacts on both sides' arguments. I am  
3 certainly not looking for a repeat or repetition of  
4 the lengthy memorials which we have already had and  
5 the lengthy openings which we've had. What I would  
6 like--rather than having it in the Transcript, I would  
7 rather have it in a post-hearing brief--is, as I'd  
8 said, your respective submissions as to how we are  
9 assisted either way by the evidence which we have  
10 heard.

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

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

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

21 And we largely agree with the principles  
22 stated by our counterpart, Ms. Lamb, as to the  
23 Post-Hearing Briefs. We would suggest that counsel  
24 discuss between us the appropriate deadlines and a  
25 page limit. And we certainly also agree with the

1 principle stated by the Tribunal that the purpose of  
2 the Post-Hearing Brief is to address what's new from  
3 the Hearing, which could include, by the way, Tribunal  
4 questions raised during the Hearing, not just  
5 evidence, so there we go.

6 Did I cover everything, my colleagues?

7 Okay, that's it.

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

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

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

23 MR. FRIEDLAND: One question: Was there an  
24 assumption or a direction there be two Post-Hearing  
25 Briefs or a single?

1           PRESIDENT SACHS: You didn't mention it, we  
2 didn't mention it, so we leave this to you.

3           MR. FRIEDLAND: Okay.

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

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

9           PRESIDENT SACHS: Simultaneous Briefs?

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

15          PRESIDENT SACHS: Right.

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

1 reflect further on that and include it in their  
2 Post-Hearing Submissions.

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

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

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

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

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

25 PRESIDENT SACHS: Okay. We are flexible.

1 We are flexible. If you feel the Friday program is  
2 lighter, then we should move it to Friday.

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

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

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

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

11 (Whereupon, at 1:16 p.m. (EDT), the Hearing  
12 was adjourned until 8:30 a.m. (EDT) the following  
13 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.



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DAVID A. KASDAN