

Complaint

Plaintiff *** and 34 others

Defendant 1. Tae-Hyun Kim (Chief Executive Officer, National Pension Service)
 2. Ji-Young Ryu (Auditor, National Pension Service)
 3. Won-Joo Seo (Fund Director, National Pension Service)

Damages (Etc.)

Relief Sought by Plaintiffs

Plaintiffs seek the following order:

1. Defendants shall jointly pay KRW 20,500,000 to each Plaintiff.
2. The cost of the litigation shall be borne by Defendants.
3. Paragraph 1 may be executed provisionally.

Cause of Action

1. Status of the Parties

The National Pension Act provides that the National Pension Service (hereinafter, the “**Service**”) shall have one chief executive officer, one auditor, four standing directors, and nine directors as executive officers of the board (Article 30, Paragraph 1 of the National Pension Act), with the chief executive officer being appointed and dismissed by the President upon the recommendation of the Minister of Health and Welfare, and the standing directors, directors (excluding the *ex officio* director), and auditor being appointed by the Minister of Health and Welfare upon the recommendation of the chief executive officer (Article 30, Paragraph 2 of the

National Pension Act). A director who is responsible for the management and operation of the National Pension Fund (hereinafter, the “**Fund Director**”) under Article 101 of the National Pension Act (hereinafter, the “**Fund**”) is a standing director who supports the chief executive officer and oversees the operation of the National Pension Service Investment Management (hereinafter, the “**NPSIM**”). The Fund Director is appointed from persons who possess extensive knowledge and experience in the fields of business administration, economy, and fund operation. A Fund Director Recommendation Committee is established separately, with the chief executive officer as its chair, to recommend a candidate for the Fund Director. Following deliberation, and after approval of the recommendation proposal by the Minister of Health and Welfare, the relevant person is deemed to have been appointed as a standing director (Article 31 of the National Pension Act).

Defendant Tae-Hyun Kim, the chief executive officer of the Service has overseen the operation of the Service since September 1, 2022. Defendant Ji-Young Ryu, the auditor of the Service, has overseen the audit of the operation of the Service across the board, and the details of its financial accounting and fund management since November 15, 2023. Defendant Won-Joo Seo, the Fund Director of the Service, has overseen the operation of the NPSIM within the Service since December 27, 2022.

All Plaintiffs are individuals who reside in the Republic of Korea and are insured by the national pension.

Three of the Plaintiffs reside in Sacheon-si, Gyeongsangnam-do, where the Samcheonpo Power Division of Korea South-East Power Co., Ltd. (hereinafter, “**Samcheonpo Thermal Power Plant**”), and Goseong Hai Thermal Power Plant operated by Goseong Green Power Co., Ltd. (hereinafter, “**Goseong Hai Thermal Power Plant**”), are located in close proximity to their residences.

2. Background to This Claim – National Pension Fund and Carbon Phase-out Declaration

A. Scale of National Pension Fund and Method of Operation

According to the official disclosure made under Article 25 of the National Pension Fund

Operational Guidelines and Article 39 of the National Pension Fund Operational Regulations, the Fund is the world's third-largest pension fund, which manages assets of approximately KRW 999 trillion as of the end of November 2023.

The Fund is established by the Minister of Health and Welfare to secure the financial resources necessary for the national pension services and to establish a reserve fund to be appropriated for the benefits provided under the National Pension Act. The Fund is composed of the pension premiums paid by insured persons, profits accrued from the operation of the Fund, reserves, and surplus in the settlement of revenues and expenses of the Service (Article 101 of the National Pension Act).

The Fund is managed and operated by the Minister of Health and Welfare (Article 102, Paragraph 1 of the National Pension Act), and the Minister of Health and Welfare has to manage and operate the Fund in accordance with the resolutions passed by the National Pension Fund Management Committee to maximize profits for the long-term financial stability of national pension (Article 102, Paragraph 2 of the National Pension Act).

The National Pension Fund Management Committee is a consensus-based administrative organ which deliberates and decides on key matters concerning the operation of the Fund, including matters relating to the guidelines for the operation of the Fund, matters relating to consultation on interest rates on deposits in cases where the Fund is entrusted to the Management Fund, and matters relating to the Fund operation plan (Article 103, Paragraph 1 of the National Pension Act).

The Fund Director oversees the affairs of the National Pension Fund Management Committee, and due to the significance of this role, the selection procedures for the Fund Director are distinct from those applied to ordinary directors.

B. Non-financial Performance Indicator for Companies: ESG

The era of assessing a company's value solely through its profit figures is coming to an end. An index called ESG, which takes the first letters of the English words "environment," "social," and "governance," also known as the sustainability index, has emerged as a new index for investment (hereinafter, "ESG"). In 2006, during the tenure of Secretary General Kofi Annan,

the United Nations (UN) established the UN Principles for Responsible Investment (PRI), a coalition of international investment institutions dedicated to upholding sustainable investment principles. Given that the environment is a global issue and multinational companies can affect it through their business activities worldwide, the UN PRI was established to promote responsible investment practices across all aspects of investment, going beyond the regulation of individual companies.

However, ESG is not merely a tool for promoting an image of being a socially responsible company. Instead, it is recognized that companies adhering to ESG principles can generate profits while maintaining their operations. In particular, ESG is considered to have an effect of incorporating environmental pollution and liabilities for damages to third parties resulting from the company's business activities, which were not previously reflected as factors for financial valuation, as substantive factors in business valuation.

The fact that it has been empirically proven that companies' environmentally friendly practices, extent of consideration for stakeholders, and independence and transparency of governance have an impact on companies' revenue and profits in the long-term underscores the need to proactively adopt ESG—a non-financial factor—as a criterion for investment. Accordingly, ESG serves as both a yardstick that will set the direction of business going forward in the twenty-first century and a global imperative that is already widely accepted.

Since the 2015 Paris Agreement, corporate investment aligned with ESG has gained renewed recognition as the most proactive means to address the global climate crisis and has become a standard for more proactive corporate valuation. Such development is also linked to the coal phase-out declaration made by the Service.¹

¹ BlackRock, as of 2023, is the world's largest asset manager, with assets under management totaling USD 9.2 , equivalent to KRW 12,000 trillion. Even in 2021, its assets under management amounted to USD 8.68 trillion, or KRW 9,600 trillion, and it is also a major shareholder of numerous conglomerates in Korea. In 2020, Larry Fink, BlackRock's CEO, sent a letter to the CEOs of its investee companies emphasizing several times that "the climate crisis is investment crisis. We will adopt sustainability as the top priority for investment." Then, in 2021, a request was made that companies prepare and present their business plans so that 2050 net-zero (reducing substantive carbon emissions to zero) can be achieved under their business models. In other words, the request was made that net carbon emissions be brought down to zero by 2050. This meant that as a corporate investor, it will not invest in companies that fail to make efforts to achieve ESG goals, particularly carbon neutrality, since such companies are forecasted to suffer a decline in future profitability.

BlackRock plans that, by 2030, at least three-quarters of all investment it makes will be in issuers of securities that have set a scientific goal to reduce their net greenhouse gas emissions. BlackRock is the world's largest asset manager, and these steps are also connected to the coal phase-out declaration made by the Service.

C. History and Provisions of Paris Agreement and Efforts Made by Republic of Korea

The Paris Agreement (Multilateral Convention No. 2315; hereinafter, the “**Paris Agreement**”) is a treaty which was adopted by 195 countries at the twenty-first session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP21) held in Paris, France, on December 12, 2015, and the Republic of Korea is one of the state parties to the Agreement.

International agreements for addressing the climate crisis did exist prior to the Paris Agreement. The Kyoto Protocol to the UN Framework Convention on Climate Change (Multilateral Convention No. 1706; hereinafter, “**Kyoto Protocol**”) was adopted at the third session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP3) held in Kyoto, Japan, on December 11, 1997, and entered into force on February 16, 2005². However, the Republic of Korea was not included in the thirty-eight countries that were subject to the obligations under the Kyoto Protocol.

Fifteen years later, at the eighteenth session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP18) held in Doha, Qatar, on November 26, 2012, the second commitment period was set from 2013 to 2020, extending the validity of the Kyoto Protocol by eight years to 2020. It was also agreed that by 2015, an agreement would be prepared for a new system after the Kyoto Protocol.

As a result, the Paris Agreement was adopted on December 12, 2015, and entered into force in the Republic of Korea on December 3, 2016, thereby having the same legal force as national law. Unlike the Kyoto Protocol, the Republic of Korea is not excluded from the application of the Paris Agreement, and there is no limit on the period for implementation.

The state parties to the Paris Agreement, which unlike the Tokyo Protocol has no expiration date, agreed on the detailed terms of the Agreement based on, *inter alia*, the following premises:

² Under the Kyoto Protocol, thirty-eight countries, including the major developed countries in the Western world and Japan, first set their target in relation to emission levels calculated by converting the aggregate anthropogenic emissions of greenhouse gases into carbon dioxide equivalents, with a view to reducing their emissions of such gases by at least 5.2% below 1990 levels in the period 2008 to 2012 (Article 3, Subparagraph 1 of the Kyoto Protocol).

acknowledging that climate change is a common concern of humankind; noting the importance for some of the concept of “climate justice”; affirming the importance of education, training, public awareness, public participation, public access to information, and cooperation at all levels on the matters addressed in the Agreement; and recognizing the importance of engagements of all levels of government and various actors, in accordance with respective national legislations of parties, in addressing climate change (the foregoing has been taken from the recitals to the Paris Agreement, in part).

Meanwhile, in the Republic of Korea, the old Framework Act on Low Carbon, Green Growth was enacted as Act No. 9931 on January 13, 2010, and entered into force on April 14 of the same year, with the greenhouse gas and energy target management system being implemented in January 2012, and after the Paris Agreement, the emissions trading system became operative in January 2015.

On October 22, 2019, in formulating the Second Basic Plan for Climate Change Response under Article 40 of the old Framework Act on Low Carbon, Green Growth, the government of the Republic of Korea presented its reduction targets for 2030. These targets aim to achieve a 24.4% reduction compared to 2017 emission levels of 709.1 million tons and a 37% reduction compared to the 2030 domestic greenhouse emissions projection (BAU) of 850.8 million tons, with the total emissions target, including both domestic and overseas emissions, being limited to 536 million tons.

In this manner, the Republic of Korea was formulating abstract plans to mitigate the climate crisis. However, following criticisms that the existing Framework Act on Low Carbon, Green Growth was insufficient on its own and limited in its legal basis to comprehensively address the considerations required for transitioning to a carbon neutral society—ranging from reducing of greenhouse gases, adapting to the climate crisis, minimizing job losses or harm to local economies and vulnerable social groups in the transition process, to promoting of green growth in which the economy and the environment are in harmony—the Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis (hereinafter, the “**Framework Act on Carbon Neutrality**”) was enacted on September 24, 2021, as Act No. 18469 and continues to this day.

D. Coal Phase-out Declaration by National Pension Service

The National Pension Fund Management Committee, in which the chief executive officer of the Service participates as an *ex officio* member, held its sixth meeting for 2021 on **May 28, 2021**. Recognizing the need to reduce carbon emissions, the committee deliberated and resolved to introduce a restriction on investing in the coal mining and power generation industries. As a result, the following coal phase-out policy has been declared as a preemptive strategy from a risk management perspective in operating the Fund, deciding to: (1) insert a new investment restriction clause in the National Pension Fund Operational Guidelines (Investment Policy); and (2) declare both internally and externally the direction of the Fund's coal phase-out policy to maintain consistency in the direction of the Fund's operation and enhance predictability.

[Excerpt] National Pension Fund Makes “Coal Phase-out Declaration” to Reduce Carbon Emissions

The global spread of COVID-19, a new contagious disease, has opened our eyes to the magnitude of climate change as well as the importance of responsible investment that considers ESG (Environmental, Social and Governance) in the Fund's operation. Accordingly, the **National Pension Fund Management Committee sympathizes with the need to reduce carbon emissions, which is in turn necessary to respond to climate change, and hereby declares that it will introduce an investment restriction strategy for the coal mining and power generation industries.**

In circumstances where the COVID-19 pandemic continues, countries around the globe, multinational companies and major pension funds are taking note of climate change and environmental sustainability. The climate crisis will begin by threatening the survival of the most vulnerable regions and social groups, and neighbors in need, and will ultimately come to threaten the life of mankind as a whole.

The entire world is preparing to make a great transition to a low-carbon economy in order to address these climate issues. Major countries, including the United States and those in Europe (EU), have begun in earnest to engage in discussions about the introduction of carbon border taxes, and moves to restrict transactions and investments to environmentally friendly companies are spreading among multinational platform companies and domestic financial institutions.

In order to be prepared for climate change and international environmental regulations, which are becoming more rigorous, the National Pension Fund, as the world's third-largest pension fund, hereby declares its operational policy of coal phase-out; we will formulate a strategy for the operation of the Fund in a preemptive manner from a risk management aspect.

First, beginning with the coal phase-out declaration, we will not invest in projects for the construction of new coal-fired power plants whether domestic or overseas. Then, we will formulate a phased implementation plan as the preparation phase for the application of the investment restriction strategy. By going through the steps of conducting research on the detailed plan, including the scope and criteria for target industries and ways of selecting target companies, and extensively reflecting the views of various interested parties in the research process, the phased implementation plan will be institutionalized after being debated by the Fund Management Committee.

As a long-term investor which is responsible for ensuring stable retirement income for the citizens, the National Pension Fund will use its endeavors in the interests of sustainability of the national pension and realization of sustainable society. It will also take an active part in the creation of a low-carbon industrial ecosystem and play a leading role in the transition to a carbon-neutral society.

The investment restriction strategy (negative screening) proposed by the Service refers to an investment strategy under which restrictions are placed in investing in or including in the investment portfolio industries and companies that are negatively assessed from an ESG perspective. The National Pension Fund Management Committee decided to adopt a “plan for the introduction of investment restriction strategy,” pursuant to which: (1) starting with the aforementioned coal phase-out declaration, the Fund will not invest in projects for the construction of new coal-fired power plants, whether domestic or overseas; (2) a phased implementation plan will be formulated as the preparation phase for the application of the investment restriction strategy; and (3) the phased implementation plan will be institutionalized by commissioning the relevant research in the second half of 2021 and extensively reflecting the views of various interested parties in the research process.

After deciding to introduce the investment restriction strategy and make the coal phase-out declaration described above, during the preparation phase, the National Pension Research Institute engaged Deloitte Anjin LLC to provide “a research service for the formulation of scope and criteria, etc. for coal mining and power generation projects.” Following the research conducted over approximately one year, the National Pension Fund Management Committee received a final report on the results of the above research during its second meeting for 2022 on April 29, 2022. Based on these results, the committee proceeded with a debate on formulating a phased implementation plan for the investment restriction strategy by obtaining input from relevant government departments, relevant organizations, and experts.

The fact that, if the Service were to introduce the investment restriction strategy, the focus

would fall on whether Korea Electric Power Corporation (KEPCO) and KEPCO's five power-generation subsidiaries, which use coal, would be excluded from investment targets can also be verified from news articles at the time.

E. April 5, 2022: Results of Deloitte Anjin's Research and Plan for Investment Restriction Strategy

1) External Trends in Coal Mining and Power Generation Industries Identified through Research

The final report for the "research service for the formulation of scope and criteria, etc. for coal mining and power generation projects" commissioned by the National Pension Research Institute as described above confirms that the targets and plans adopted by the state parties to the Paris Agreement have in common plans to close down and restrict coal-fired power generation, and the plans adopted by some of the major coal-producing countries also include the suppression of any increase in coal mining output.

The coal industry, which is expected to face closures, restrictions, or constraints, is categorized into upstream activities including mine exploration, development, and mining, and downstream activities including processing, coal-fired power generation, coal chemicals, steel production, etc. In the short term, due to COVID-19 and the economic recovery following its end, there has been an increase in coal supply and coal-fired power generation. However, in the medium to long term, profitability and utilization rate are projected to fall, and costs are expected to increase due to integrated development plans involving the closure of coal-fired power plants, emission trading schemes, and the like. Therefore, the report anticipated that, if such an unfavorable environment were to continue both at policy and market levels, the utilization rate of coal would gradually fall or cease altogether.

2) Response Strategies of Investors Relating to Coal Mining and Power Generation Industries Identified in 2022

Although both pension funds and private financial institutions in international and domestic financial markets are offering various financial products that are related to coal projects, investments in coal projects are currently decreasing both domestically and internationally due

to coal phase-out declarations and introduction of investment restriction strategies made by financial institutions. Consequently, the significant increase in financing costs and the internally required rate of return on new coal mining or power generation projects were expected to pose challenges for future coal projects.

Countries in Europe, North America, and Asia demonstrate differences in the proportion of coal-fired power generation and related investment. The current status of investment restriction strategies can be broadly categorized into three types: (1) institutions that have not introduced the scope and criteria for investment restriction on coal (Type 1); (2) institutions that have applied the scope and criteria for investment restriction on coal in a limited manner (Type 2); and (3) institutions that have proactively applied the scope and criteria for investment restriction on coal to the coal mining and power generation industries (Type 3).

(1) Type 1 includes GPIF of Japan, which has adopted an investment restriction strategy based on domestic asset allocation and coal investment proportions, creating an unfriendly environment for adopting investment restriction strategies, and CPPI of Canada, which operates in a somewhat favorable environment but is affected by factors such as the influence of, and the proportion of employment accounted for by, the coal mining industry. (2) Type 2 includes CalPERS of the United States, where despite an unfriendly environment, factors such as reduced capacity and demand for coal-fired power plants, and the passage of legislation prohibiting investment restrictions have played a role, and AP3 of Sweden, which operates in a favorable environment but is influenced by the reality of some power generation companies, accounting for a significant portion of overseas equity assets, engaging in certain coal-fired power projects, and BlackRock in the United States which, despite facing an unfavorable environment due to the high proportion of passive management following equity indices, applies restriction criteria relating to mining companies in which BlackRock has invested through active management. (3) Type 3 includes the Netherlands' ABP, Norway's GPF, Allianz in Germany, and UBS in Switzerland which operate in a favorable environment for adopting investment restriction strategies and have established investment restriction scopes and criteria encompassing coal mining and power generation companies.

Pension funds and private financial institutions use criteria based on the scope of the coal industry to select candidate companies subject to investment restrictions, utilizing internal resources and external organizations. Subsequently, they conduct in-depth analyses to identify

the companies that are to be subjected to investment restrictions. After this process, many pension funds do not immediately withdraw their investments but instead provide companies with opportunities to explain themselves. Some pension funds encourage the company to make a business transition through engagement procedures, and if the company continues its business within the scope and criteria subject to investment restrictions, then they proceed with divestment.

The current trend is that the types of coal investment restrictions as described above are taking a phased in approach, gradually implementing more restrictions over time.

3) Investment Restriction Strategy Proposed to National Pension Fund Following Relevant Research

In the relevant research, the following was proposed as the detailed scope of investment restriction: (1) with respect to the coal industry, limit the scope to the coal mining and coal-fired power generation industries; (2) with respect to types of coal, limit the scope to coal used in power generation; and (3) with respect to governance, limit the scope so that only those companies that hold the actual controlling interest would be regarded as the same company.

The following detailed criteria were proposed for restricting investment: (1) concerning the quantitative criterion indicator, “proportion of revenue” was proposed, as it is being used by the vast majority of pension funds and private investment institutions and can be used to apply the same standard to both the coal mining and power generation industries; (2) regarding the strength of the quantitative criterion, depending on the direction to be taken by the Service, if the emphasis is to be placed on becoming a leading institution in responding to climate change, a proportion of revenue of 30% was proposed, or if the emphasis is to be placed on the current environment in the domestic electric power industry and energy transition, a proportion of revenue of 50% was proposed; and (3) regarding the qualitative criteria, permitting investment in green bonds, permitting existing investments in integrated energy companies, and permitting existing and new investments in energy transition companies on a conditional basis were proposed.

As for an investment restriction strategy based on these criteria, it was proposed that an investor restriction strategy would be introduced in principle for both the existing and new

assets in equity, bonds, and alternative investments, tying in as much as possible with the national pension's existing stewardship activities. However, in the case of alternative investments, only new investments would be restricted due to the legal risks associated with withdrawing existing investments. For bonds, a simple engagement process was proposed as active shareholder engagement activities are not feasible. Regarding overseas assets, a shorter process was proposed due to the practical difficulties in the engagement process. The investment method considered adopting both direct investment and entrusted investment without distinction, but unlike the existing stewardship, the national pension would either directly engage or provide quantitative and qualitative criteria to entrusted managers and delegate their implementation.

When such an investment restriction strategy is applied to the portfolio as of 2020, domestically, the inclusion of public power generation companies in those subjected to investment restriction would depend on the strength of the quantitative criterion, whereas for overseas investments, the amount to be subjected to investment restriction would depend on the strength of the quantitative and the qualitative criteria, particularly for power generation companies rather than mining companies. It was predicted that if the proposals described above were applied from 2023 onwards, investments in coal mining and power generation companies, which amounted to approximately KRW 3-4 trillion in 2022, would decrease to KRW 200 billion or lower in the 2030s.

In the below, we will address the fact that, despite the relevant research, Defendants have completely failed to implement the investment restriction strategy in accordance with the coal phase-out declaration made by the Service.

3. Duties of Executive Officers of the Service

A. Provisions of National Pension Act and Corporate Regulations

The chief executive officer represents the Service and supervises its operation. The auditor audits and inspects the accounts, management status, and properties of the Service. Standing directors are delegated the duties within their respective areas of responsibility as prescribed by the articles of incorporation of the Service (Article 33 of the National Pension Act).

More specifically, the standing directors support the chief executive officer, and their respective areas of responsibility are prescribed in the organizational rules and by the chief executive officer (Article 13, Paragraph 2 of the articles of incorporation). The Fund Director is responsible for the operation of the NPSIM (Article 3, Paragraph 3, Subparagraph 4 of the organizational rules of the Service), and the auditor oversees the audit of the operation of the Service across the board, and the details of its financial accounting and fund management (Article 3, Paragraph 5 of the organizational rules of the National Pension).

B. Duty to Consider Climate Crisis in Process of Managing and Operating National Pension Fund

1) Legitimacy of Performing Public Duties in Interest of Climate Crisis Response

Security, liberty and happiness, as legally protected interests that must be protected through our legal system, do not solely belong to us as the current holders of fundamental rights, but also to our descendants, including the next generation. For this reason, the preamble to the Constitution of the Republic of Korea contains the text “ensure security, liberty and happiness for ourselves and our posterity forever,” and this has remained unchanged since the enactment of the Constitution. Moreover, even when viewed in light of the text “contribute to...the common prosperity of mankind,” which has existed in the preamble since the amendment of the Constitution in 1980, finding ways in which the mankind would prosper together, regardless of nationality, is an important spirit of our Constitution.

The legislative purpose of the Framework Act on Carbon Neutrality is to “prevent the serious impacts of climate crisis” and to “improve the quality of life of present and future generations, protect the ecosystem and climate system, and contribute to the sustainable development of the international community” (Article 1 of the Framework Act on Carbon Neutrality), which fully embodies the spirit of the Constitution of the Republic of Korea as described above.

Under the Framework Act on Carbon Neutrality, the term “climate change” means a change in the climate system caused by increased concentrations of greenhouse gases as a consequence of human activities, which occurs in addition to natural climate change observed over a considerable period of time (Article 2, Subparagraph 1 of the Framework Act on Carbon

Neutrality). The term “greenhouse gas reduction” means all kinds of activities that reduce or absorb greenhouse gas emissions to mitigate or delay climate change (Article 2, Subparagraph 7 of the Framework Act on Carbon Neutrality). The term “climate crisis” means a state in which there is a need for a radical reduction of greenhouse gases because climate change poses an irreversible risk to human civilization, including water deficiency, food shortages, ocean acidification, rise in sea levels, collapse of ecosystems as well as extreme weather conditions (Article 2, Subparagraph 2 of the Framework Act on Carbon Neutrality).

The serious impacts of climate crisis described above have become an issue that is seriously taken on a normative or ethical level, similar to the harm that would be caused not only to the health of consumers but also to third parties if alcoholic beverages were to be consumed in excess or without moderation (Constitutional Court Decision 96HeonGa18 dated December 26, 1996), the harmful effect cigarettes can have on children or juveniles whose cells and body tissues have yet to mature (see Constitutional Court Decision 2003HeonMa457 dated August 26, 2004), and the harmful effect of mental and physical malaise to individual citizens that can be caused by misuse and abuse of drugs, which lead to physical and mental dependence (see Constitutional Court Decision 2016HeonBa382 dated February 28, 2019).

When compared to the other harm or harmful effects considered above, the serious impacts of the climate crisis have the characteristics of being even more serious and requiring immediate resolution. This is because, as generations pass to our descendants and again to their descendants, the reversibility of these impacts will gradually converge to zero, making it an even more pressing issue to address now.

In particular, in the Seoul Central District Court Decision 2022GoJeong379 dated January 11, 2023, by holding as follows, the court recognized the magnitude of the climate crisis and decided that the purpose behind the defendants’ acts of business obstruction in the relevant case, which were carried out to draw attention on the seriousness of the issue, cannot be regarded as lacking legitimacy.

At present, the whole world is faced with a serious situation presented by the climate crisis, and unless the increase in the global temperature is held so that it is well below 2°C above pre-industrial levels—in other words, no higher than 1.5°C above pre-industrial
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levels—it is possible that the entire world will face an irreversible climate crisis. Although there are several hypotheses on global warming, it cannot be denied that human industrial activities have had an impact on warming of the atmosphere, oceans, and land. This is particularly evident in the rapid increase in Earth's surface temperature since the industrial revolution. As a result of climate change caused by human activities, abnormal weather patterns and natural disasters, including heatwaves, torrential rain, drought, tropical depressions, and widespread wildfires, are occurring all over the world. Recently, due to abnormally high temperature, snow on the ski slopes of the Alps melted, revealing the muddy ground below.

(Omitted) The Paris Agreement sets out the global long-term goal of holding the increase in the global average temperature well below 2°C above pre-industrial levels, with efforts made to limit the increase to 1.5°C. In pursuit of this goal, it requires all countries to take part in climate action from 2020 onwards and submit nationally determined contributions (NDCs) every five years, and take steps domestically to implement the same. It also requires developed countries to take the lead in providing financial resources, while encouraging voluntary participation by developing countries.

(Omitted) Defendants argue that, according to the the standards of the Paris Agreement or research results like those in the IPCC report, the current NDC percentages for 2023 should be further increased to limit the global temperature rise to 1.5°C above pre-industrial levels. When applying factors such as the population percent by country to the globally permitted greenhouse gas emission amount specified in the aforementioned report, calculated to prevent the increase in the global average temperature from exceeding 1.5°C above pre-industrial levels, it cannot be said that Defendants' argument, advocating for substantive preparations for the climate crisis, completely lacks validity. **In addition, considering the current situation where disasters such as heatwaves, floods, and wildfires are frequent due to a global climate crisis, and the potential difficulty of recovery if we surpass a tipping point,** the legitimacy of the purpose cannot be denied from the perspective of conveying a message that greater efforts should be made at both industrial and government levels.

Thus, the issues of climate and environment are the responsibility of all national institutions, including the Service, for which Defendants are accountable.

2) Performing Duties in Interest of Climate Crisis Response

The State and local governments must devise necessary measures to help public institutions under Article 4 of the Act on the Management of Public Institutions (hereinafter, “**Public Institutions**”) to reduce greenhouse gases effectively (Article 4, Paragraph 5 of the Framework Act on Carbon Neutrality), and **Public Institutions must actively cooperate with policy measures implemented by the State and local governments for the transition to a carbon neutral society and endeavor to minimize impacts on the climate crisis in all kinds of activities, including the formulation and execution of budget, and selection and implementation of projects** (Article 5, Paragraph 1 of the Framework Act on Carbon Neutrality).

Meanwhile, items to be included in the public disclosure of management performance under Article 11 of the Act on the Management of Public Institutions include an item on the protection of environment. This entails an explicit reference to the institution’s own performance on greenhouse gas reduction, energy consumption, waste generation, water usage, the current status on violations of environmental laws and regulations, the current status of low-pollution vehicles, and records of purchasing green products, which are generally related to emissions from resources that are owned and managed by Public Institutions and indirect emissions from assets that are owned by Public Institutions.

However, when the scope of greenhouse gas emissions is expanded to the value chain, which encompasses other activities of Public Institutions in providing public services or activities carried out for the purpose of providing such services, as a whole, indirect emissions generated by public institutions are much greater than the emission amounts considered earlier.³ Unless Public Institutions make efforts to reduce those emissions, they ought to be deemed to have failed to properly perform their obligations under the Framework Act on Carbon Neutrality to “minimize impacts on the climate crisis” in “all kinds of activities.”

Therefore, Defendants, who operate the Service, have a duty to operate the Service in

³ Under the GHG Protocol Corporate Accounting and Reporting Standard (GHG Protocol), ① carbon generated directly from resources that are owned and managed by a company is referred to as Scope 1; ② carbon emissions from assets owned by corporations, as indirect carbon emissions caused by a company, are referred to as Scope 2; and ③ all indirect carbon emissions, excluding ②, are referred to as Scope 3.

compliance with both the Framework Act on Carbon Neutrality and the Act on the Management of Public Institutions.

3) Provisions of National Pension Act

When the Minister of Health and Welfare manages and operates the Fund through the purchase, sale, and lending of securities under Article 4 of the Financial Investment Services and Capital Markets Act, he or she may take into account environmental factors related to investment targets in order to achieve a long-term and stable increase in revenue (Article 102, Paragraph 4 of the National Pension Act). Furthermore, to maximize profits for the long-term financial stability of national pension, the Minister must manage and operate the Fund through the purchase, sale, and lending of securities under Article 4 of the Financial Investment Services Act in accordance with resolutions passed by the National Pension Fund Management Committee established under Article 103 (Article 102, Paragraph 2 of the National Pension Act).

The Minister of Health and Welfare delegates the task of managing and operating the Fund to the Service (Article 102, Paragraph 6 of the National Pension Act; Article 76, Subparagraph 1 of the Enforcement Decree of the National Pension Act). The NPSIM is established and operated by the Service for the operation of the Fund, with the Fund Director serving as the head of the NPSIM (Article 6 of the organizational rules of the Service), and the National Pension Research Institute is established and operated by the Service for conducting research on the Fund's investment strategies (Article 7 of the organizational rules of the Service).

The National Pension Fund Management Committee, which is established under Article 103 of the National Pension Act, made its “coal phase-out declaration” during its sixth meeting for 2021 on May 28, 2021. Recognizing the need to reduce carbon emissions, it deliberated and resolved to adopt the Plan for Introduction of Investment Restriction Strategy for National Pension Fund (Proposal). Then, during its second meeting on April 29, 2022, the committee deliberated and resolved to adopt the Amendments to National Pension Fund Operational Guidelines (Proposal). Therefore, the Fund must be managed and operated in accordance with the terms of these resolutions. In addition, all organizations and members related to the operation of the Fund, including the Service, must observe the matters prescribed in the National Pension Fund Operational Guidelines mentioned above (Article 1, Paragraph 3 of the

National Pension Fund Operational Guidelines; page 5 of the National Pension Fund Operational Guidelines).

Therefore, in managing and operating the Fund through the purchase, sale, and lending of securities, the Service must comply with the National Pension Fund Operational Guidelines deliberated and resolved by the National Pension Fund Management Committee. Regarding the role and responsibilities of the Service, the Guidelines require the Service to make decisions on investments, conduct research, and engage in *ex post facto* management for these purposes, as well as implement matters related to responsible investment and exercise of shareholders' rights (subparagraphs of Article 5, Paragraph 7 of the National Pension Fund Operational Guidelines; page 8 of the National Pension Fund Operational Guidelines). If the Service is to engage in "responsible investment," which considers environmental factors, (1) a process must be put in place whereby non-financial factors, including the environment, are considered alongside financial factors in the investment decision-making process; (2) in order to enhance the medium to long-term value of investee companies, responsible investment must be implemented through, *inter alia*, shareholder engagement; (3) when selecting and assessing entrusted managers, matters relating to responsible investment must be taken into account and the current status of implementation of responsible investment must be monitored; (4) in the process of engaging in responsible investment, investment targets must be guided to improve their environmental disclosure, and steps must be taken on matters such as proposals to improve the relevant system and guide transacting institutions to make use of environmental information; (5) in the interests of effective implementation of responsible investment, the necessary capability and expertise must be strengthened by working with, *inter alia*, international councils of institutional investors; and (6) the current status and direction of responsible investment made by the Fund must be disclosed in a transparent manner (Article 17, and National Pension Fund's Responsible Investment Principles 4-9 contained in Table 4 of the National Pension Fund Operational Guidelines; page 25 of the National Pension Fund Operational Guidelines).

In the operation of the Fund, fiduciary activities include the exercise of voting rights, private conversations regarding key management issues, and shareholder proposals (Article 4, Paragraph 2 of the Guidelines on Stewardship Activities of National Pension Fund). In principle, these activities are carried out through the deliberation and resolution of the investment committee established within the NPSIM (Article 5, Paragraph 1 of the same

Guidelines), and consideration of non-financial factors such as the environment is applicable to both direct management and entrusted management (Article 6, Paragraph 2 of the same Guidelines).

While the foregoing provisions of these Guidelines may seem to require fiduciary activities to be conducted only through the investment committee, the NPSIM, at the very least, must first formulate its goals regarding fiduciary activities before undergoing deliberation and resolution by the committee. Therefore, the NPSIM's own judgement inevitably precedes as the first step.

In accordance with this principle, the Fund is utilizing approximately KRW 62 trillion of domestic shares under direct management (equity investment made through in-house resources) and approximately KRW 63.4 trillion of domestic shares under entrusted management (indirect equity investment made through external asset managers) for responsible investment.

4) Sub-conclusion

In light of the provisions of the National Pension Act, the internal regulations of the Service, the Framework Act on Carbon Neutrality, and the Act on the Management of Public Institutions, as well as the Paris Agreement, to which the Republic of Korea is a signatory and therefore holds the force of law, Defendants, as the key executive officers of the Service, have a duty to operate the Fund to ensure that the operation of the Fund is consistent with the “coal phase-out declaration.”

4. Liability of Defendants for Breach of Obligation

A. General Theory

1) Obligations of Directors and Auditors

The provisions of the Civil Act regarding delegation applies *mutatis mutandis* to the relationship between the company and its directors, with directors owing a duty of care and due diligence (Article 382, Paragraph 2 of the Commercial Act; Article 681 of the Civil Act).

On the other hand, directors must perform their duties in good faith in the interests of the company in accordance with statutes and the articles of incorporation (Article 382-3 of the Commercial Act).

Under the common law tradition, directors owe fiduciary duties to the company, which are divided into the duty of care, requiring directors to exercise greater care in running the company, and the duty of loyalty, which prohibits directors from pursuing their own interests in running the company. However, given that the Supreme Court used the expression that a director's conduct was in "breach of his or her duty of care or duty of loyalty," it does not appear that this common law distinction has been recognized by the Supreme Court (see Supreme Court Decision 2001Da52407 dated June 14, 2002, etc.).

Meanwhile, since the provisions of Article 382 of the Commercial Act apply *mutatis mutandis* to auditors (Article 415 of the Commercial Act), the foregoing duty of care and due diligence owed by directors to the company must also be regarded as applicable to auditors.

2) Liability to Third Parties

Article 401 of the Commercial Act provides that "if a director has neglected his or her duties intentionally or through gross negligence, he or she shall be jointly and severally liable for damages suffered by a third party." In other words, if a director neglects his or her duties to the company, Article 401 would apply if a third party suffers damage as a result, even if the requirements for a direct tort are not satisfied in relation to that third party.

It is sufficient that the intention or gross negligence referred to in Article 401 of the Commercial Act exists in relation to the director's neglect of his or her duties to the company, and damage suffered by a third party includes both direct damage and indirect damage. In other words, cases where the company suffers damage first, resulting in economic damage to a third party, would be included, and the statute of limitations is ten years, as applied to general claims (see Supreme Court Decision 2004Da63354 dated December 22, 2006; Supreme Court Decision 2006Da82601 dated February 14, 2008, etc.).

In this case, the concept of neglect of duties by intention or gross negligence encompasses a violation of the law or the articles of incorporation and is understood to include subjective

criteria, not just mere outcomes.

In the case of auditors, if an auditor neglects any of his or her duties in bad faith or by gross negligence, he or she is jointly and severally liable for damages suffered by a third party (Article 414, Paragraph 2 of the Commercial Act). Therefore, if the auditor fails to properly perform his or her duty to monitor the status of execution of duties by directors and this results in damage to a third party, the auditor will be jointly and severally liable for that damage.

Additionally, in the case of representative directors, if, despite the existence of grounds for suspecting that the execution of duties by another director is unlawful, the representative director neglects it either intentionally or negligently in breach of his or her duty of oversight, he or she will be liable for damages caused thereby (see Supreme Court Decision 2017Da222368 dated November 11, 2021).

B. This Case

As considered earlier, it is acknowledged that the Service, and the NPSIM as an organization that is subordinate to it, have a duty as a Public Institution and as part thereof, respectively, to undertake all activities for the purpose of reducing greenhouse gases to mitigate climate change, and this is not necessarily limited to activities of reducing or regulating greenhouse gas emissions generated in the process of operating the Public Institution, which is the Service.

The existence of physical risks and transition risks arising from climate change is an indisputable fact, and the impact climate change risks have on financial markets has also reached the level of international consensus. Sufficient information regarding the financial risks of climate change has been made publicly available. Furthermore, a suitable investment restriction strategy was reported to the Service following the relevant research carried out in 2022. If, despite these factors, the directors make investment decisions without adequately considering these risks, the directors' liability to third parties under Article 401, as well as their liability to the company under Article 399 must be actively recognized.

In cases where directors are obligated to consider climate change risks or sustainability through explicit provisions, and even in cases where such obligations are not explicitly stated,

if such risks fall within the scope of matters that are perceivable by a reasonable person, and if these risks materialize and impact the company, this would lead to a finding the directors have breached their duty of due diligence or duty of care.

For example, just as the “hazardous nature of asbestos” or the “risk HIV (AIDS virus) infection through unsafe blood transfusion” gradually transitioned from knowledge not previously expected of a reasonable person to common knowledge, if, by going beyond such level of common sense, sources of law with considerable binding force, such as international treaties and domestic laws, have been established, the scope of obligations to be observed by directors, beyond mere awareness or consideration, should be considered as already established either at the time of the signing of the Paris Agreement or around 2020 when its implementation commenced.

The awareness described above does not vary according to individual directors’ specific degree of awareness or intelligence; rather, pursuant to the duty of care and due diligence, and as a matter separate from the awareness held by individual directors, if the awareness held by the society as a whole is heightened, then the obligation expected of directors would be correspondingly strengthened.

Even though the Fund, as the world’s third-largest pension fund, declared its coal phase-out policy on May 28, 2021, stating that, beginning with the coal phase-out declaration, it would not, from a risk management aspect and as a strategy for operating the Fund, invest in projects for the construction of new coal-fired power plants, whether domestic or overseas, and that it would formulate a phased implementation plan as the preparation phase for the application of the investment restriction strategy, the National Pension Fund Management Committee has yet to produce a concrete implementation plan following the research described above.

Moreover, even though it was declared in the foregoing declaration that investment would not be made in projects for the construction of new domestic and overseas coal-fired power plants, and accordingly, the NPSIM ought to have operated the Fund in line with this declaration, it has been impossible to verify whether this obligation has been properly fulfilled.

According to the Global Coal Exit List compiled by Urgewald, a German non-profit

organization, as of 2022, the Fund was found to still hold shares or bonds in various coal-related companies, including KEPCO, which appears to be engaged in coal-fired power generation, and POSCO, which processes steel using coal. Therefore, Defendants are required to answer for whether there have been any measures taken since the coal phase-out declaration of 2021, to cease new investments, gradually reduce investments in existing investment targets, or attempt to control revenue proportions within certain limits. Additionally, whether the Fund has voiced its concerns as a shareholder or, if a creditor, issued recommendations to investee companies. However, despite these obligations, it has been impossible to verify any measures taken by the Service.

As a matter of social norm, if the Service had commenced appropriate stewardship activities, it would have openly conducted its activities in general meetings of shareholders, etc. and publicized them extensively, as it did when it adopted the stewardship code to actively respond to corporate acts that damaged shareholder value and exercised its voting rights accordingly. However, no news has been forthcoming on any legal greenhouse gas reduction activities carried out under the Framework Act on Carbon Neutrality.

In particular, although the Service has a research and development body called the National Pension Research Institute, in addition to the NPSIM, it does not appear that the institute is properly conducting research that could be subject to the deliberations of the National Pension Fund Management Committee. Additionally, Defendant Tae-Hyun Kim, the chief executive officer of the Service and an *ex officio* member of the National Pension Fund Management Committee, has not been found to have given any instruction regarding such research or operation.

In connection with such acts or omissions of Defendants, on October 20, 2023, at the 2023 state audit carried out on the Service by the Health and Welfare Committee, In-Soon Nam, a member of the National Assembly, inquired about the actions taken in the two years after the decision to introduce an investment restriction strategy following the coal phase-out declaration. In response, Defendant Tae-Hyun Kim admitted that investments made by the Service have significantly damaged public health (asthma in young children and deaths caused by air pollution) and that the coal industry has become unprofitable as stranded assets. He then answered that, due to factors such as the Russia-Ukraine war, issues with the supply network, and KEPCO's financial difficulties, "no discussion has taken place to date." He was unable to

provide a clear response regarding the lack of any further discussion for over a year after the research was commissioned by the Service's National Pension Research Institute following the declarations on the introduction of investment restriction strategy and coal phase-out.

In fact, an analysis of the breakdown of investments made by the Service shows that the national pension's holdings of KEPCO bonds reached KRW 15.2 trillion in May 2023, which is a three-fold increase compared to its holdings of KEPCO bonds in 2018 (KRW 5.56 trillion). Even after its coal phase-out declaration, the Service is continuing to increase its investments in KEPCO, a company heavily reliant on coal-fired power generation, and it is difficult to justify such behavior on the part of the Service in light of its coal phase-out declaration and as well as from a business judgment perspective.

C. Sub-conclusion

Even though the coal industry is being identified as the main culprit not only of climate change but also of triggering a climate crisis, the national pension is continuing with active investment by investing approximately KRW 19 trillion into the coal industry in the period from 2007 to 2017.

In this situation, Defendant Won-Joo Seo, as the person in charge of the NPSIM, and Defendants Tae-Hyun Kim and Ji-Young Ryu, who are required to oversee the directors, including Defendant Won-Joo Seo, either neglected their respective duties as a director or auditor, or deliberately failed to act, thereby causing losses in the Fund's operation.

5. Damage Suffered by Plaintiffs and Causation

A. Group Which Suffered Financial Harm (Persons Insured by National Pension)

1) Concept of Stranded Asset and Why Carbon-emitting Companies Constitute Declining Industry

The term "stranded asset" is a figurative term used to refer to assets for which there is a significant risk of their value or price plummeting.

Pursuant to the Paris Agreement, state parties have a joint, global obligation to continuously reduce their carbon emissions by 2030, without any differentiation based on whether the carbon-emitting country is a developed country or any time limitation. Accordingly, the Republic of Korea has set its national medium and long-term greenhouse gas emission reduction targets to reduce national greenhouse gas emissions by 40% from 2018 levels by 2030 (see Article 8 of the Framework Act on Carbon Neutrality; Article 3, Paragraph 1 of the Enforcement Decree of the Framework Act on Carbon Neutrality).

In addition to decision-making on a national level, moves by major global pension funds or private investment institutions to reduce their investments in carbon-emitting companies by establishing investment scopes and criteria, and ultimately to withdraw their investments altogether are accelerating.

As indicated in the relevant research, which was commissioned and checked by the Service itself, (1) in the case of the coal-mining market, the demand in the medium to long-term is projected to experience a downward trend starting from the mid-2020s due to regulations by various national governments and a decline in the utilization rate of coal-fired power generation facilities, leading to an approximately 80% decline from current levels. Additionally, as for the price of coal, particularly thermal coal, which is linked to power supply, is also expected to drop rapidly, mirroring the demand trend, compared to metallurgical coal, which is linked to steel supply. (2) In the case of the coal-fired power generation market, the utilization rate of coal-fired power generation, with its high generation costs, and the price of electricity generated therefrom are both predicted to fall domestically and internationally by 2030, particularly in developed countries, in contrast to the competitive advantage secured by renewable energy.

Given this situation, industries whose primary business involves carbon emissions can unequivocally be labeled as “declining industries.” Consequently, any shares or bonds of companies that are operating in such declining industries would likewise depreciate and eventually become stranded.

Even though the Service is in a favorable environment, without the influence of other factors, to gradually reduce its investments in coal-related industries by establishing criteria for

investment restriction, inevitably leading to a decline in the rate of return on the funds tied to stranded assets, mirroring the decline in these industries.

This would ultimately cause the national pension's finances to deteriorate and create a situation where, despite collecting greater pension premiums from insured persons, the benefits would not increase, resulting in damage to the property of the insured persons.

2) Policies of Restricting Investments in Coal Industry Adopted by Foreign Pension Funds

The coal industry is criticized as a primary contributor to air pollution, and due to its impact on the environment, a “coal phase-out policy,” which entails the closure of coal-fired power plants, is actively being debated abroad. For example, many European countries, including Denmark, France, and Finland, have presented their goals of phasing out coal by around 2030 and are preparing legislative bills and formulating policies on that basis.

To take the New York State Common Retirement Fund—the third-largest pension fund in the United States—as an example, in an effort to remove fossil fuel-related investment portfolios, the fund intends to review the fossil fuel holdings of its investee companies and withdraw its investments by 2025 by focusing on companies with the highest risk. Furthermore,, it has announced plans to transition all of its investment portfolios to zero-carbon-related investments by 2040.

Also, Sweden's AP7, with assets approximately KRW 108.5 trillion , has declared that it will not invest in companies that are in breach of the Paris Agreement by adding them on a blacklist, and companies that mine fossil fuels, such as coal and oil sands, in the Arctic, as well as those involved in coal-fired power generation have been included on the blacklist, including KEPCO from the Republic of Korea.

In addition, the Netherlands' civil service pension fund (ABP), with assets approximately KRW 663.6 trillion, decided in October 2021 to reduce its investments in companies that fall within the fossil fuel industry and implemented in 2022, leading to a significant reduction in its investment in shares and bonds of coal-related companies, decreasing from approximately EUR 8.5 billion to approximately EUR 90 million. The remaining investments will also be

promptly liquidated or excluded from the portfolio upon maturity

3) Financial Loss That Will Be Caused by the Service's Investment in Stranded Industries in Which There Is Global Restriction on Investment

As seen above, considering both domestic and international contexts, coal-related industries can be categorized as declining or stranded industries themselves, and pensions funds worldwide are taking steps to limit investments in these industries to increase their profits and minimize losses. In contrast, the Service, despite its global scale, is exposing the Fund to risks by failing to even establish the criteria for investment restriction.

There is concern that these risks will accelerate the depletion rate of the Fund, which is expected to be exhausted by 2055 in any case. As part of the “reform” efforts aimed at averting such depletion, citizens, including Plaintiffs, may incur losses by bearing additional insurance premiums and experiencing delayed receipt of benefits.

4) Acceleration of Losses for National Pension Resulting from Rapidly Aging Population, etc. and Creation of Real Financial Risk

Meanwhile, investment in stranded industries such as those described above is creating serious risks to the financial soundness of the Fund, particularly given its interconnection with the rapidly aging population in the Republic of Korea.

In the press release published on December 21, 2023, the Service revealed that as of around June 2023, the number of national pension aged 100 or older had reached 174 as of around June 2023, and that this number has been steadily increasing over years, with 68 recipients in 2019, 101 in 2020, 114 in 2021, and 134 in 2022. According to the Future Population Projection (Medium) for 2020-2070 by Statistics Korea, the country is projected to enter a “super-aged society” by 2025, with the proportion accounted of the elderly population reaching 20%. By that time, all elderly individuals, who are members of the Service, become eligible recipients entitled to receive pensions from the Service without further paying pension premiums.

Due to such changes in the social environment with low birthrate and an aging population, under this population structure, the number of insured persons paying the premiums will fall

while the number of elderly population receiving pensions and the duration of pension payouts increase, leading to a faster depletion of the Fund than anticipated. In the Fifth National Pension Financial Projection, it was estimated that the pension fund would be depleted by 2055.

The Fund is formed with pension premiums, profits accrued from its operation, reserves, and surplus in the settlement of revenues and expenses of the Service as its financial resources (Article 101, Paragraph 2 of the National Pension Act). With a rapid decline expected in pension premiums due to a low birthrate and an aging population, unless there is a pension reform by the state, Plaintiffs' pension premiums can be preserved only through the normalization of profits from the Fund's operations and efficient investments.

In particular, as will be further explained, if Defendants' investment in stranded assets contributes to the continued operation of thermal power plants run by the investee companies and ends up infringing the health and lives of residents in the neighboring areas, this could in turn have a negative long-term impact on the expansion of the Fund by ultimately affecting those residents' ability to pay their national pension premiums. Moreover, compensation payments for such infringements on health and lives would also increase, which could also disrupt the stability of the Fund.

Thus, the harm arising from Defendants' investment in stranded assets, undertaken in contravention of the Guidelines, should not be underestimated merely as a management decision. Instead, it constitutes a significant unlawful act that causes serious hazard to the financial soundness of the national pension, and the resulting harm is becoming apparent.

5) Sub-conclusion

Thus, causation is established between the financial damage suffered by Plaintiffs and the breach of duties by the Defendants, who were involved in decisions to maintain or increase investment in companies that caused such damage and failed to monitor the same.

B. Group Which Suffered Damage to Health (Damage Caused by Coal-fired Power Plants)

As described above, all Plaintiffs are collectively suffering both financial damage due to

Defendants' unlawful acts of investment and, notably, health damage resulting from the coal industry activities occurring subsequent to these unlawful investments

1) Situation Concerning Health Damage

In the area where Sacheon-si, Gyeongsangnam-do, and Goseong-si, Gyeongsangnam-do converge, which is immediately adjacent to three of the Plaintiffs (hereinafter, **“Health Damage Plaintiffs”**) reside, lie Samcheonpo Thermal Power Plant Nos. 3, 4, 5 and 6, and Goseong Hai Thermal Power Plant Nos. 1 and 2, which are clustered together.

Coal-fired power plants such as those referred to above discharge substances that pollute the atmosphere, including sulfur dioxide, nitrogen oxides, and fine particulate matter. Prolonged exposure to sulfur dioxide can lead to illnesses such as pneumonia and asthma, while continuous exposure to nitrogen oxides can cause, *inter alia*, bronchitis and emphysema, and the majority of fine particulate matter can penetrate deep into the alveoli, triggering heart and respiratory diseases.

As of 2022, an examination of the maximum concentrations of sulfur dioxide and nitrogen oxides emitted by coal-fired power plants per hour, and that of fine particulate matter emitted every 24 hours, revealed high concentrations in areas such as those mentioned above, where a cluster of thermal power plants is located. This heightened concentration appears to result from the combined effects not only of the thermal power plants near Plaintiffs' residences mentioned above but also those located in Hadong-gun in western Gyeongnam and Yeosu-si in eastern Jeonnam.

In fact, instances of health damages, including asthma-related emergency treatment, new cases of asthma in children, absence from work, and death caused by the thermal power plants in Samcheonpo, Goseung Hai, Hadong, and Yeosu mentioned above, have been confirmed.

2) Causation Regarding Point That Emissions from Coal-fired Power Plants Are Consequence of Financial Decisions Made by Defendants

Of the asset groups under the carbon reporting and accounting standards for the financial industry proposed by the Partnership for Carbon Accounting Financials (PCAF), when

calculation is carried out in respect of shares and corporate bonds for which it is possible to identify the specific amount of investment made by the Service and the results are aggregated, “attribution factors” may be drawn. The attribution factors for the coal-fired power plants that are run by the power generation companies in which the Service has invested are 11.576% for Samcheonpo Thermal Power Plant, 3.349% for Goseong Hai Thermal Power Plant, 11.595% for Hadong Thermal Power Plant, and 11.485% for Yeosu Thermal Power Plant.

By multiplying the attribution factors for each coal-fired power plant by their respective annual air pollutant emissions, it is possible to calculate the annual average concentrations of sulfur dioxide, nitrogen oxides, fine particulate matter, etc. resulting from the investments made by the Fund as below. In this case as well, it is evident that the average concentrations in western Gyeongnam is higher than that in the other regions.

Since the operation of these coal-fired power plants involves the generation of electricity using heat generated by burning coal, if the profitability of coal-fired power plants declines to the point where they no longer generate electricity, this may naturally stimulate research and development into new and renewable energy rather than thermal power generation and promote the transition to alternative energy.

The Service’s NPSIM has the discretion to maintain, increase, decrease, or even withdraw its existing investment in operating the Fund, and even when increasing its investment, it has the flexibility to gradually limit the extent of such increase and decide on various investment directions to facilitate research and development in new and renewable energy and the transition of the power generation industry as mentioned above.

However, with respect to a company whose proportion of coal-related revenue is 30% to 50%, maintaining or increasing investment in such a company could likely contribute to an increase in its coal-related revenue. This would ultimately lead to an increase in the proportion of coal-related revenue, and the resulting increase in greenhouse gas emissions would in turn pose irrecoverable risks to the lives and health of residents who are living near the company’s premises, including Health Damage Plaintiffs. As explained earlier, it would be difficult to regard an increase in the proportion of a declining industry as beneficial for the company’s finances.

Furthermore, if the Service, instead of merely deciding on an investment, had the capability to actively expressing its intentions, exercise its voting rights as a shareholder, and issue recommendations as a creditor to reduce coal-related activities, but completely failed to do so, or at the very least neglected to prepare the agenda for such actions, then such an omission must be considered as having contributed to emissions from coal-fired power plants.

Above all, in a country like the Republic of Korea, where the stigma of government control has yet to completely dissipate, the Service, in a sense, is treated as a special shareholder or creditor in practice. Consequently, other shareholders or creditors, apart from the investee company, pay close attention to its every move. Therefore, if the Service failed to step forward and engage in activities that align with the coal phase-out declaration it had made, and instead maintained or increased its investment in the coal-related industries, this would have sent a positive signal about the coal-related industries to the investee company or other shareholders and creditors.

3) Sub-conclusion

Therefore, causation is established between the damage to health suffered by Plaintiffs and the breach of duties committed by Defendants, who were involved in decisions to maintain or increase the investment in companies that had caused such damage and failed to monitor the same.

C. Calculation of Damage

Defendants are jointly and severally liable to compensate Plaintiffs for the damages described above, and since the target date for achieving zero net carbon emission is 2050, payment of KRW 20,500,000 to each Plaintiff is hereby sought as a claim for part of the damages suffered.

6. Conclusion

Thus, Plaintiffs' claim has merit, and we ask the Court to accept Plaintiffs' claim.

February 22, 2024

TO the Seoul Central District Court