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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE ETHAN P. SCHULMAN, JUDGE PRESIDING
DEPARTMENT NO. 302

MASOOD KHAN,

Plaintiff,

vs.



No. CGC-19-581129

THE GREENSPAN COMPANY, a
California corporation; GREENSPAN
ADJUSTERS INTERNATIONAL, INC., a
California corporation; ADJUSTERS
INTERNATIONAL/CALIFORNIA, INC., a
California corporation; ADJUSTERS
INTERNATIONAL PACIFIC
NORTHWEST, INC., a Washington
corporation; GORDON SCOTT, an
individual; CLAY GIBSON, an individual;
MARK FRATKIN, an individual; PAUL
MIGDAL, an individual; STEVE
SEVERAID, an individual; and DOES 1
through 10, inclusive,

Defendants.

_____ /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, OCTOBER 30, 2020

A P P E A R A N C E S (via Zoom)

For the Plaintiff:

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Plaintiff's

38 E-mail dated 4/30/2018, 3:05 p.m., Bates stamped 26
100101 and 102

39 An e-mail from Ms. Hassanpur to Tracy Maningas. 33 34
It's Bates stamped Greenspan 7 through 10.

1 October 30, 2020

1:34 a.m.

2 P R O C E E D I N G S

3 THE COURT: All right. This is the matter of Khan versus
4 the Greenspan Company. This is a video conference evidentiary
5 hearing.

6 At the time I've admitted the two counsel, who I
7 understand will be representing the parties. But if they're --
8 as you call witnesses, or if there are other counsel who you
9 wish to have admitted, just let me know; and I'll do my best to
10 manipulate the controls here.

11 But, with that, let me ask you to unmute yourselves,
12 counsel, and state your appearance for the record.

13 MR. PERETZ: Good afternoon, Your Honor. Yosef Peretz for
14 Plaintiff Masood Khan.

15 MS. FITZSIMMONS: Good afternoon, Your Honor. Marcie
16 Fitzsimmons on behalf of defendants.

17 Your Honor, if possible, could you please admit my
18 paralegal, Matthew Nolte, and my client, Ivo Labar.

19 THE COURT: To be clear, everybody who is participating
20 can hear and see the proceedings. I'm simply waiting to admit
21 so-called panelists who can be activated to be seen by the
22 Court.

23 MS. FITZSIMMONS: Thank you.

24 So if there are any other counsel who need to be in that
25 position, I'm happy to admit them at this time; otherwise I'll
26 keep everybody in their current status until they need to
27 actually appear and be heard.

28 MS. FITZSIMMONS: Thank you, Your Honor. Matthew Nolte is

1 my paralegal. So he will be sharing his screen with respect to
2 exhibits.

3 THE COURT: Okay. And he has been admitted at this point.

4 MS. FITZSIMMONS: Thank you.

5 THE COURT: Anybody else for either side?

6 MR. PERETZ: Yes, Your Honor -- I'm Sorry. Marcie, are
7 you done?

8 MS. FITZSIMMONS: Yes.

9 MR. PERETZ: Your Honor, I'd like to admit David
10 Garabaldi, who is an associate with my firm.

11 THE COURT: All right. Mr. Garabaldi is admitted.

12 Okay. So let me just go over a couple of the procedures
13 that we're going to follow in this video conference evidentiary
14 hearing.

15 I, of course, have been conducting law and motion hearings
16 for months now over Zoom. This evidentiary hearing, I will
17 confess, is the first time I've attempted to do something a
18 little bit more challenging;

19 So I trust that we will all work cooperatively and
20 overcome any technological obstacles that we may encounter.

21 I will ask everybody who is not speaking or expecting
22 imminently to speak to stay on mute so as to minimize
23 background noise.

24 When you do speak, the court reporter, who is reporting
25 the matter remotely, will be able to see who is speaking. But
26 I think, for purposes of a clear record, it would be helpful if
27 you would identify yourself when you speak.

28 Finally, please be considerate of the court reporter;

1 speak distinctly and clearly for her benefit, and hopefully
2 we'll get through this with some dispatch.

3 What I've indicated in the order that I previously issued
4 two days ago is that... all of the written declarations that
5 were previously filed, both in support of and in opposition to
6 the motion to compel arbitration, shall be deemed admitted,
7 subject to any evidentiary objections that have previously been
8 made.

9 And those declarations shall be considered, or shall serve
10 as each of the witness's direct testimony.

11 I want to assure counsel that I have now read all of those
12 declarations and all of the exhibits to those declarations;

13 I have also gone through, perhaps not every single page,
14 but I have certainly skimmed every one of the 37 exhibits that
15 have been prenumbered and submitted to me in advance.

16 The same rules apply here as would apply in a trial with
17 respect to the introduction and admission of documentary
18 evidence.

19 Please be careful, for purposes of the record, to refer to
20 documents by their prenumbered status, that is, you know,
21 "prenumber Exhibit Number 23", or whatever the case may be,
22 and -- so that when you're questioning the witness regarding a
23 particular exhibit, the record is clear as to which exhibit you
24 are referring to.

25 What else... I do want to talk with counsel, but we can do
26 this at the conclusion of the hearing, as to the schedule going
27 forward once the hearing has been completed.

28 And I may ask -- and then, finally, I guess I may ask for

1 your indulgence as we go here. I have -- because of the
2 difficulty of switching between screens, I have hard copies of
3 the declarations that we're talking about, but I may need a
4 moment or two to shuffle those pages, as well as the exhibits,
5 so please bear with me in that regard.

6 Um... that's it. So I guess... give me one second...

7 So before we get started, I guess I'd like to know from
8 counsel whether there are any preliminary matters that either
9 side would like me to address;

10 And then I also want to inquire about any stipulations or
11 agreements there may be with respect to the prenumbered
12 exhibits.

13 So, Mr. Peretz, why don't I start with you.

14 MR. PERETZ: Yes.

15 THE COURT: Any...

16 MR. PERETZ: I'm sorry?

17 THE COURT: Any preliminaries?

18 MR. PERETZ: Yes, Your Honor. Just as matter of
19 clarification, because this is, you know, an unusual process,
20 and also to do it, conduct it over Zoom is unusual.

21 So we have the declarations, which are admitted to
22 evidence, and they are marked as exhibits -- I mean, you know,
23 they have exhibits attached to them.

24 THE COURT: Right.

25 MR. PERETZ: And we also have a binder, virtual and
26 physical. I hope you have one physical with the exhibit
27 numbers.

28 My assumption is, and correct me if I'm wrong, if those

1 exhibits that are in the binder are already submitted as part
2 of the declarations, that then they're admitted into evidence;
3 we don't need to reestablish admissibility just because they
4 were marked again as part of the exhibit binder.

5 THE COURT: Well, I think that's right. However, I'm a
6 little concerned about the potential for confusion.

7 MR. PERETZ: (nods head).

8 THE COURT: And cross-reference. So let's just do our
9 best here.

10 MR. PERETZ: Yes.

11 THE COURT: I will tell you that the declarations that
12 I've printed out, to save some trees, do not include their
13 original exhibits;

14 They are, of course, on file with the Court.

15 But... I'd like to avoid a situation where we're asking a
16 witness, you're asking a witness, "is it true that Exhibit 37
17 is the same as Exhibit C to your declaration?" We're going to
18 get lost if we start doing that.

19 But I trust that you all have, as you've stipulated to, or
20 at least agreed upon the exhibit list, you've solved most, if
21 not all, of those problems.

22 MR. PERETZ: Sure. I -- and, you know, I think, for my
23 part, and I'm sure Ms. Fitzsimmons, for her part, we'll do our
24 best to identify what exhibits we're referring to at each time.
25 But at times it may be just more easy to refer to the exhibit
26 number of the declaration, just because we have that whole
27 document, rather than start doing cross references all the
28 time.

1 THE COURT: You know what then, give me one minute right
2 now...

3 What I'm doing, just for your edification, is I'm pulling
4 up the electronic docket for this case. And that will enable
5 me, I hope without too much difficulty, to be able to pull up,
6 on the Court's register of actions, the particular
7 declarations, including their exhibits that were -- that are
8 being referred to.

9 MR. PERETZ: Sure.

10 MS. FITZSIMMONS: And, Your Honor, I believe in the index
11 of the binder that we sent to you, when an exhibit is -- was an
12 exhibit to a declaration, I believe it's referenced in that
13 index.

14 THE COURT: That's correct. So that should be helpful.

15 MR. PERETZ: That's exactly it, Your Honor.

16 THE COURT: Okay, good.

17 MR. PERETZ: And I am -- I just want to thank counsel,
18 Ms. Fitzsimmons, they put together the virtual binders. I
19 don't want to take credit for that; so they did this work.

20 THE COURT: To be clear, I don't have an electronic
21 version of the binder, that I'm aware of. I have a hard copy
22 binder.

23 MS. FITZSIMMONS: That's right, Your Honor. We have sent
24 to Plaintiff's counsel an electronic version. We also have
25 one, so that if we need to share our screen with witnesses,
26 we're able to do so.

27 THE COURT: Excellent.

28 MR. PERETZ: And, Your Honor, if you want one, if you want

1 the electronic version, I'm sure we can provide it to you.

2 THE COURT: I... you know, in all candor, although there's
3 a great deal of material here, it's already pretty apparent to
4 me where the issues are and which are the key documents. This
5 is not United States versus IBM, by any means... or I suppose
6 the current equivalent would be Google or Amazon or something.

7 MR. PERETZ: Yeah.

8 THE COURT: What agreement, if any, have counsel reached
9 with respect to these pre-marked exhibits?

10 MR. PERETZ: Your Honor, we did not reach an agreement
11 per se; we didn't discuss it.

12 But I'm willing to stipulate that the entire binder be
13 part of the evidence, subject to evidentiary objections made,
14 either through the hearing today, or subsequent to the hearing,
15 just to facilitate the process.

16 THE COURT: Ms. Fitzsimmons.

17 MS. FITZSIMMONS: We would stipulate to the same, Your
18 Honor.

19 We don't anticipate that there are going to be objections
20 to any of the exhibits that are identified; however, I'd like
21 to reserve the ability to object if the need arises, but I'm
22 not anticipating that at this time.

23 THE COURT: All right. Well, to be clear, I'm hearing
24 something less than a full-throated agreement that all of these
25 exhibits actually be admitted into evidence. Is that the
26 agreement? Or -- because I heard both of you qualify what you
27 said, and appropriately so, perhaps...

28 MS. FITZSIMMONS: I --

1 THE COURT: My concern about the way you phrased it,
2 Mr. Peretz, is if you say, "subject to later evidentiary
3 objections," that creates a little bit of a problem.

4 If you're gonna... interrogate a witness about a document,
5 or your friend is, and then you later object that the document
6 is not admissible and I sustain that objection, then we'll have
7 wasted some time with the witness. And I can, frankly, see
8 that there are a couple of documents in here that I have
9 questions about their admissibility.

10 So... I don't want to tell you folks how to try this,
11 but -- but you both have qualified what you said a little bit.

12 What I'd like to ask you to do, if this is acceptable, is
13 as we get to documents, is either indicate that you -- there's
14 no objection to the authenticity, admissibility of the
15 document;

16 Or if there is an objection, state the objection and I'll
17 rule on it immediately, just as if we were in trial.

18 Otherwise I'm concerned that things get a little... muddy.

19 MS. FITZSIMMONS: That sounds reasonable, Your Honor.

20 THE COURT: Okay?

21 MR. PERETZ: No... yeah, agree, Your Honor; no...

22 THE COURT: Okay. All right. Any other preliminaries
23 before we jump right in here?

24 MS. FITZSIMMONS: Your Honor, the only issue that I think
25 we should probably address, is -- there was some back and
26 forth, a little bit on this, with -- I believe with your clerk.

27 We did not include in the binder documents that we intend
28 to use for -- possibly intend to use for impeachment purposes.

1 I understand Mr. Peretz objects to the use of anything for
2 impeachment purposes, but we take the position that under
3 Evidence Code §780, we're entitled to use such documents. And
4 if we do so, we would be able to provide the Court with copies
5 of those additional exhibits.

6 THE COURT: I'm -- I'm not gonna rule on that issue
7 immediately. I will say that I am dubious that... that will be
8 required, but -- and/or that it can be done within the time
9 limitations that I've established here. But let's cross that
10 bridge if and when we come to it.

11 MS. FITZSIMMONS: Okay.

12 THE COURT: Um... all right. Anything else?

13 MR. PERETZ: Nothing from our end, Your Honor.

14 MS. FITZSIMMONS: Nothing further, Your Honor.

15 THE COURT: All right. I will say, as I said in the
16 order, that I'm... you know, given the logical challenges of
17 getting through this, and the number of witnesses that you all
18 apparently plan on calling, I'm going to be disinclined to
19 allow redirect and recross.

20 But, again, I'm not making a blanket ruling on that at
21 this point; I'm going to exercise my discretion as of course
22 I'm entitled to do, and recognizing that, you know, unlike a
23 trial, where the trier of fact is a tabular rasa, I've already
24 reviewed all of the direct testimony and all of the exhibits;
25 so it's not as if I'm starting from ground zero on all of this.

26 I will also warn both of you that because this is, in
27 effect, a court trial, I reserve the right to ask questions of
28 the witness -- witnesses, after you have completed your

1 examinations.

2 If I'm unclear or something, or there's a clarification
3 that I wish in their testimony, of course I have the discretion
4 to do that too. I will try not to abuse that discretion
5 either.

6 You know, I think what would be helpful to me for planning
7 purposes finally is to hear from each of you who the witnesses
8 are whom you intend to call, and in what order. That will make
9 it easier for me to shuffle all of the documents that are
10 before me and to follow along, and also to track our timing.

11 So, Ms. Fitzsimmons, since you're going first, who are you
12 your witnesses gonna be, and in it what order.

13 MS. FITZSIMMONS: Yes, Your Honor. We plan to start with
14 Plaintiff;

15 We'll then do Ms. Pak;

16 And then Dr. Mohammed, if time is still available at that
17 point.

18 THE COURT: All right. And, Mr. Peretz.

19 MR. PERETZ: I intend to call, first of all,

20 Ms. Hassanpur;

21 And thereafter Mark Fratkin;

22 Thereafter Paul Migdal;

23 Thereafter Clay Gibson;

24 And thereafter the two experts, Mr. Stewart and
25 Mr. Leatha, I believe that's how you pronounce the name.

26 THE COURT: All right. Perhaps we should have talked
27 about this in advance, because this is the exact opposite of
28 what I thought I would hear from you all.

1 I anticipated, perhaps mistakenly, that each of you would
2 call your own witnesses in your own case.

3 MR. PERETZ: Oh (*nods head.*)

4 THE COURT: Rather than calling, in effect, the other
5 parties' witnesses.

6 I acknowledge that, you know, neither of you is presenting
7 direct testimony, but the line-up here is a little odd.

8 I'm not gonna stop you from doing it the way you want to
9 do it, but I suppose perhaps we should have talked about this
10 in advance, because it... it came out exactly opposite of what
11 I thought I was gonna hear.

12 MS. FITZSIMMONS: But, Your Honor, I think, at least from
13 my perspective, part of the confusion was that because -- I
14 understood Your Honor's order to be that we were not permitted
15 to direct examine witnesses who have provided declarations.
16 All of my direct testimony is by way of declarations.

17 And so that's why I'm --

18 THE COURT: Right.

19 MS. FITZSIMMONS: -- I'm crossing those three witnesses as
20 part of our case.

21 MR. PERETZ: Your Honor, I think we both were in the
22 same... erroneous assumption that our case in chief would
23 include those.

24 But to follow up on your comment, I do believe, Your
25 Honor, that the proceedings should be conducted in such way,
26 because it's a defense motion. That of course, I assume, that
27 the direct examination of the Defense would be the witnesses
28 that submitted declarations. So then I'll cross-examine those

1 witnesses.

2 And then it's going to follow that the Defense is going to
3 cross-examine my witnesses because I -- I will, you know,
4 present those two declarants as my witnesses.

5 That's my proposal in terms of order of examination.

6 THE COURT: You know -- I guess we should have spent more
7 time thinking about this and talking about it, and,
8 unfortunately, my workload didn't allow for that.

9 I'm not sure it really makes that much of a difference,
10 provided that we can get through all of these witnesses this
11 afternoon.

12 It's not as if anybody's going to be moving for non-suit;
13 It's not as if we're worried about a -- you know, first
14 and last impressions on an impressionable jury.

15 So... I'm really happy to do this any way you all want to
16 do it. And I don't know whether you had spoken to one another
17 in advance and talked the order of proof issue through, or you
18 both just kind of assumed the same thing, but... I'm not sure
19 it matters.

20 And I'm also willing -- I know that there are at least
21 some of the witnesses who are listening in. I'm also willing,
22 obviously, to modify the schedule and the order of proof to
23 accommodate any of their schedules.

24 So I'm kind of punting to counsel as to how you want to go
25 about this.

26 I will say there's one -- and this occurs to me that
27 there's one other preliminary here that we didn't address. In
28 the normal course, of course... *of course of course...*

1 witnesses would be excluded until they were called, but that is
2 a waivable rule.

3 And, under the circumstances here, where all of the direct
4 testimony is already in evidence, and all of the witnesses,
5 presumably, have had access to it already, at least
6 potentially, and there are no real mysteries as to what anybody
7 is going to testify to, I'm -- I'm willing to proceed in any
8 fashion that -- again, that both counsel are comfortable with.

9 If somebody insists on excluding witnesses, it's gonna add
10 some logistical problems because we'll need to remove them from
11 the Zoom conference, and then have them call back in at a
12 specified time. And it's gonna be hard to know what time
13 that's gonna be.

14 But -- so... Mr. Peretz, thoughts on either issue, the
15 order of proof issue;

16 And the presence of witness issue?

17 MR. PERETZ: Sure. And, Your Honor, I think this is all
18 the result of a combination of, you know, evidentiary hearings
19 on motions are not so common;

20 And coupled with the fact that we do it over Zoom.

21 So that's -- a combination of that, and -- but I think --
22 here's my take:

23 The direct testimony is already in, subject to objections
24 that were already made.

25 THE COURT: Right.

26 MR. PERETZ: I think we need to just proceed with
27 cross-examination. And since it's the Defense motion, I'm
28 entitled to cross-examine the witnesses.

1 And then... I intend to cross-examine the declarant. And
2 we also have identified what witness, Mark Fratkin. So we can
3 take him during our... opposition case, because he never
4 submitted a declaration.

5 THE COURT: I was gonna ask about that.

6 MR. PERETZ: Yes, he never submitted a declaration.

7 And then, once I examine him, then Ms. Fitzsimmons can
8 cross-examine my witnesses and, of course, have a redirect of
9 Mr. -- Mr. Fratkin.

10 Now, in terms of excluding witnesses --

11 THE COURT: Well, hang on --

12 MR. PERETZ: Sure.

13 THE COURT: Let me just pause and ask Ms. Fitzsimmons
14 whether she's comfortable with that approach.

15 MS. FITZSIMMONS: I am comfortable with that approach. I
16 would just -- and I'm also fine with keeping the witness -- the
17 witnesses don't need to be excluded, from my perspective. Most
18 of our witnesses are parties anyway, to the case.

19 I would just ask, however, that if it's all the same to
20 Mr. Peretz, that if you could call Mr. Stewart and Mr. Leatha,
21 our experts, earlier in your case, rather than having them kind
22 of sit around. Since they are paid experts, that would be much
23 appreciated. If you can't do that, then, you know, I'm not
24 going to make a big deal about it, but that would be a nice
25 courtesy to extend, if possible.

26 MR. PERETZ: Absolutely, I'll take it into account.

27 There's a few things that I need to establish before I call
28 them, but I'll do it as soon as I can.

1 THE COURT: All right. And --

2 MR. PERETZ: (*Inaudible.*)

3 THE COURT: Has in effect waived the right to ask that
4 witnesses be excluded until they're called I take it -- well,
5 do you agree with that? Mr. Peretz.

6 MR. PERETZ: Yes, so stipulated. Yes, I think it makes
7 sense.

8 THE COURT: All right. I guess the only modification,
9 then, I would suggest is that because you all are taking on a
10 considerable task here, given the number of witnesses, let's
11 leave Mr. Fratkin to the end, because if we run out of time, it
12 seems to me, at a minimum, the parties should be entitled to
13 cross-examine the declarants who have previously submitted
14 declarations. He's not on that list.

15 So that's my that's my ruling, okay?

16 MR. PERETZ: Okay.

17 THE COURT: So where do we come out?

18 MR. PERETZ: We come out that I think I call the witnesses
19 to be cross-examined. And the first one I had identified was
20 Ms. Hassanpur, I believe.

21 THE COURT: Good. The... find her on the list here...

22 MS. FITZSIMMONS: I...

23 THE COURT: Yeah.

24 MS. FITZSIMMONS: I'm sorry, Your Honor. I think I was
25 confused, because I thought I was -- as our case, I was still
26 entitled to cross-examine the Plaintiff as our first witness;
27 and that Mr. Peretz was going to be cross-examining
28 Ms. Hassanpur as part of -- as his first witness as part of his

1 case.

2 THE COURT: Okay. I... again, this was what I was thought
3 we -- this is what I was confused by. And it's because we
4 didn't talk it through properly.

5 There are two different ways of doing it, right?

6 Ms. Hassanpur was one of the witnesses who signed a
7 declaration, in fact, two declarations, if I recall correctly,
8 in support of the Defendants' position, that is, in opposition
9 to the motion to compel arbitration.

10 So we can either... put on the Defense witnesses now, and
11 allow the Plaintiff to cross-examine them on the theory that
12 that's the Defendants' case;

13 Or we can do it the other way around.

14 I'm happy to do it either way, but -- whichever way it is,
15 we gotta decide and get going here. It's already 2 o'clock.

16 MR. PERETZ: Your Honor, if I may be heard.

17 I think I should have the right to cross-examine the
18 Defense witnesses first because it's their motion, and
19 presumably they put forth their declarations;

20 And... then the proper order is for me to cross-examine
21 them.

22 THE COURT: I'm inclined to agree with that,
23 Ms. Fitzsimmons. It just seems to me that -- I mean what we're
24 doing here is, you are putting on your case.

25 You've already done that by putting in the declarations.
26 And we're allowing the Plaintiff to cross-examine your
27 declarants as part of your case.

28 MS. FITZSIMMONS: Yes.

1 THE COURT: The moment that Ms. Hassanpur is admitted and
2 called and sworn, her direct testimony will be deemed to have
3 been admitted. And that's part of the Defendants' case, and it
4 is, of course, the defendants' burden.

5 Does that make sense?

6 MS. FITZSIMMONS: That's fine, Your Honor.

7 THE COURT: Again, with my apologies, if I had had more
8 time, I suppose we might have held a pre-evidentiary management
9 conference of some sort and hashed all this through, but as it
10 is, we have to do it in real time.

11 So, Ms. Hassanpur, I'm going to admit you... And I see
12 you've been admitted.

13 I don't... have you activated your video because I don't
14 see you.

15 MS. FITZSIMMONS: There we are.

16 THE COURT: Okay.

17 So your witness, Mr. Peretz. But before you examine
18 Ms. Hassanpur, please raise your right hand and be sworn by the
19 clerk.

20 THE COURT: Good afternoon, Your Honor, Ms. Hassanpur.

21 RABIA KARIMI HASSANPUR

22 Called as a witness for the Defense, having been duly sworn,
23 testified as follows.

24 THE CLERK: Please state and spell your complete name for
25 the record.

26 THE WITNESS: Rabia Hassanpur. R-a-b-i-a, K-a-r-i-m-i,
27 H-a-s-s-a-n-p-u-r.

28 THE CLERK: Your witness, counsel.

1 MR. PERETZ: Thank you, Your Honor. May I proceed?

2 THE COURT: You may.

3

4

CROSS-EXAMINATION

5 BY MR. PERETZ:

6 Q. And, Ms. Hassanpur, good afternoon. My name is Yosef
7 Peretz. I represent Masood Khan in a lawsuit that he filed
8 against Greenspan and some principals of Greenspan.

9 And you had submitted a couple of declarations in support
10 of Greenspan's motion to compel arbitration.

11 And my first question, since this is a somewhat unusual
12 proceeding, can you see me on your screen?

13 A. Yes, sir.

14 Q. Okay. And -- because, you know, people have different
15 setups with screens. I want to make sure you see me when I'm
16 questioning.

17 The second comment I'm going to make, Ms. Hassanpur, is
18 that, on occasion, I'm going to place some documents on the
19 screen for you to review.

20 A. Uh-huh.

21 Q. And tell me, please, that -- let me know if you see them
22 or you don't see them; if you want me to scroll up and down
23 slower or faster; or if you want me to go back, just to make
24 sure that we have a streamlined process. Fair enough?

25 A. Yes.

26 Q. Okay. So, Ms. Hassanpur, you worked for Greenspan;
27 correct?

28 A. Yes, sir.

1 Q. And during what years did you work for them?

2 A. I started working at Greenspan January... 17th of 2017
3 until September, mid-September of 2018.

4 Q. Okay. So approximately a year-and-a-half or almost two
5 years?

6 A. Yes.

7 Q. And you weren't there in 2007; correct?

8 A. No, sir.

9 Q. Okay. Now, and -- you provided two declarations in this
10 matter?

11 A. Yes.

12 Q. You were contacted by Greenspan to provide these two
13 declarations; correct?

14 A. Yes, sir.

15 Q. And they were drafted by Greenspan or their attorneys; you
16 did not draft these declarations; correct?

17 A. Yes, sir.

18 Q. Okay. Now, your declaration includes various exhibits?

19 A. Uh-huh.

20 Q. Do you recall that?

21 A. Yes, sir.

22 Q. Okay. Now, you did not identify those exhibits yourself,
23 meaning you did not have them in your possession, but you
24 relied on Greenspan to provide you those documents; correct?

25 A. Yes, sir.

26 Q. So, for example, if you attached -- you attached an
27 acknowledgement form signed by Masood Khan. This document was
28 provided to you by Greenspan; correct?

1 A. Yes, sir.

2 Q. And it was an e-mail that was supposedly sent to you or
3 sent by you; you didn't have it in your possession but
4 Greenspan sent it to you. And you then provided testimony
5 about it; correct?

6 A. Yes, sir.

7 Q. Okay. So... I want to show you a couple of documents and
8 Exhibit 17 on the screen.

9 Do you see something on the screen that looks like a
10 document, handbook acknowledgement?

11 A. Yes, sir.

12 Q. Okay. So this handbook acknowledgement has a signature at
13 the bottom, which purports to be signature of Masood Khan; it
14 includes his name, Masood Khan. And there's a date, April
15 30th, 2018; correct? Do you see that?

16 A. Yes, sir.

17 Q. Okay. So, first of all, you never saw Masood Khan sign
18 this document; correct?

19 A. No, sir.

20 Q. Meaning I am correct you -- Masood Khan did not sign this
21 document in your presence?

22 A. No, he did not.

23 Q. Okay. And Masood Khan never told you, "I signed this
24 document, Exhibit 17"; correct?

25 A. Actually, he did. When I called him, asking about the
26 arbitration agreement, he said that he signed the handbook
27 acknowledgement and the arbitration agreement, and wasn't sure
28 why one was signed when I got it but the other was blank.

1 Q. Okay. And that's a conversation that happened when,
2 ma'am?

3 A. It was on the date that he sent the e-mail. I called him
4 immediately after I saw it to let him know that I received both
5 of the documents, that one of them were not signed.

6 Q. Okay. And when you say he sent the documents, you mean
7 you received the documents sent from the Konica scanner that
8 you had at Greenspan; correct?

9 A. Well -- would you mind rephrasing that? I apologize.

10 Q. You said when he sent the documents, you meant to say ---
11 strike that.

12 You said, when he sent the documents, that documents were
13 e-mailed to your Greenspan e-mail address; correct?

14 A. Yes.

15 Q. But they were sent to you from the e-mail address of the
16 Konica scanner that was at the office, not from Masood Khan's
17 Greenspan e-mail address; correct?

18 A. Yes.

19 Q. Okay. So you never received an e-mail from Masood Khan's
20 e-mail attaching the acknowledgement form; correct?

21 A. Yes.

22 Q. Okay. Now, when you received the acknowledgement form,
23 you did receive the first page of the arbitration agreement,
24 but the second page was blank; correct?

25 A. Yes.

26 Q. So you received the acknowledgement form that was... we
27 just showed that...

28 A. Yes.

1 Q. I'm sorry, one second... and that was a one-page; correct?

2 A. That's correct.

3 Q. And then you received the first page of the arbitration
4 agreement that has all the language; correct?

5 A. In addition to the second page, yes; that's correct.

6 Q. And then you received a blank page as the third page;
7 correct?

8 A. Yes, that's correct.

9 Q. Okay. And so I want to show you an mail... that I'll mark
10 as 38, Your Honor.

11 THE COURT: I thought we weren't going beyond the existing
12 exhibits.

13 MR. PERETZ: Well, they were separated, Your Honor; the
14 e-mail was separated from the agreement. And I want to see --
15 I want to show them as one sequence.

16 THE COURT: Is this already in evidence somewhere attached
17 to somebody's declaration?

18 MR. PERETZ: Yes, it's attached to her declaration, Your
19 Honor. I can show that.

20 THE COURT: Okay. No, that's fine. Go ahead. I've seen
21 these scanner e-mails, if you will.

22 MR. PERETZ: Yeah, exactly.

23 So that's marked 38, just for the sake of these
24 proceedings, Your Honor, so we have some clarity of what it is.
25 And we'll submit that.

26 THE COURT: All right. So, identify it for the record as
27 a three-paged document and provide a detailed description, if
28 you would, please.

1 MR. PERETZ: Sure. It's a three-paged document that
2 begins with an e-mail dated 4/30/2018, 3:05 p.m. It's Bates
3 stamped. That's gonna be easier, because it's Bates stamped...
4 sorry. My... 100101 and 102, okay?

5 THE COURT: Yep.

6 *(Whereupon, the above-mentioned item was marked as Exhibit*
7 *38 for identification.)*

8 BY MR. PERETZ:

9 Q. So, Ms. Hassanpur, do you see -- you see Exhibit 38 on the
10 screen?

11 A. Yes, sir.

12 Q. Okay. And that includes an e-mail to you addressed to you
13 from the Konica scanner; correct?

14 A. That's correct.

15 Q. And it has an attachment that ends with the numbers
16 4030.pdf; correct?

17 A. That's correct.

18 Q. And you received that from the scanner; correct?

19 A. That's correct.

20 Q. Now, you never saw Masood Khan scan and e-mail that
21 document; correct?

22 A. No, I did not.

23 Q. You didn't see him, for example, standing by the scanner
24 scanning it and sending it to you, correct; you never saw that?

25 A. It is correct that I did not see Masood Khan scan and send
26 that document.

27 Q. And you don't know, ma'am, who scanned this document and
28 sent it to you; correct?

1 A. That is correct.

2 Q. Okay. Now, this document here was attached to your
3 declaration and, as you have testified earlier, Greenspan
4 provided it to you; correct?

5 A. That is correct.

6 Q. Now, this document is incomplete because it also included
7 a blank page at the end; correct?

8 A. ... I apologize. Could you please reword your question.

9 Q. Sure. If you see this document, it includes e-mail cover
10 page that has the metadata that has the date and time and the
11 attachment; correct?

12 A. That is correct.

13 Q. And then -- and then it's the attachment itself; correct?

14 A. That's correct.

15 Q. And then that attachment that you received included three
16 pages:

17 The handbook acknowledgement;

18 The mandatory mediation and binding arbitration agreement,
19 the first dates; correct?

20 A. That's correct.

21 Q. And it also included a third page that was blank; correct?

22 A. In the first instance, that is correct.

23 Q. Okay.

24 A. I did receive the e-mail as the first page;

25 The second page was the handbook acknowledgement, which
26 was signed;

27 The page after that was the information regarding the
28 arbitration agreement, which was just information;

1 And the third page -- or the final page was the
2 arbitration agreement that provided for -- an area for the
3 signature.

4 The first time that I received the e-mail, it was blank.

5 Q. Okay. And the first time that you received that e-mail,
6 we can establish that was April 30th, 2018, around 3:05 p.m.;
7 correct?

8 A. Before I confirm that, I actually have it in front of me
9 attached to my declaration. Would you mind if I reviewed that
10 and then confirmed it with you?

11 MR. PERETZ: Your Honor, if that's acceptable. I can put
12 the declaration on the screen, either way.

13 THE COURT: It seems to me it might be faster to just let
14 Ms. Hassanpur take a look at her declaration. We all know what
15 she as looking at, so...

16 MR. PERETZ: Sure, no problem.

17 THE WITNESS: Thank you.

18 I have it all here organized. I promise I'll be quick. I
19 just want to confirm the time.

20 MR. PERETZ: Sure. Go ahead.

21 THE WITNESS: Yes, sir; that's correct.

22 BY MR. PERETZ:

23 Q. Okay. Cool.

24 So you received three pages. And you don't know why the
25 e-mail that was provided to you and ultimately was attached to
26 the declaration doesn't include the blank page; correct? You
27 don't know that because it was provided to you by Greenspan;
28 correct?

1 MS. FITZSIMMONS: Argumentative and compound.

2 THE WITNESS: So before I...

3 THE COURT: I'm also having -- hang on.

4 So when an objection is made, Ms. Hassanpur -- I know this
5 all seems probably very formal and maybe a little bit strange,
6 but when an objection is made, you need -- the witness needs to
7 wait to allow me to rule.

8 I'm gonna sustain the objection. Please rephrase,
9 Mr. Peretz. It was confusing and I got lost in the question,
10 frankly, so I suspect the witness did too.

11 MR. PERETZ: You know, I got caught in myself, I agree. I
12 was about to withdraw the question, but you guys...

13 THE COURT: Okay.

14 BY MR. PERETZ:

15 Q. Okay. Ms. Hassanpur, let me ask you again:

16 Your recollection that you received a document from the
17 scanner that included two -- (*inaudible.*)

18 THE WITNESS: I can't hear you, sir.

19 THE COURT: Whoever is not speaking now, please do mute
20 yourself so that we can avoid background noise.

21 THE COURT: All right. Try again, Mr. Peretz.

22 MR. PERETZ: Sure. Third time's a charm, Ms. Hassanpur.

23 BY MR. PERETZ:

24 Q. So your recollection, Ms. Hassanpur, that when you
25 received this April 30th, e-mail, the attachment included three
26 pages:

27 The acknowledgement;

28 The first page of the arbitration agreement;

1 And a blank page; correct?

2 A. That is correct.

3 Q. Now, your declaration, the attachment, does not include
4 the blank page; correct?

5 A. Again, I will have to refer to my declaration to ensure
6 that, but if you'll give me one moment.

7 Q. Please.

8 A. Sir, when you're referring to my declaration, are you
9 referring to the initial declaration with the supplementary
10 declaration?

11 Q. The initial, ma'am; the one you submitted on September
12 2nd.

13 A. Okay. Just one moment, please.

14 THE COURT: September 15th; right?

15 THE WITNESS: Yes, that's right; it was September 15th
16 that it was submitted;

17 It was signed August 24th. I see that...

18 Are you referring to the exhibit with all three documents?

19 BY MR. PERETZ:

20 Q. I'm sorry. I actually -- give me a second, just so we
21 have some clarity...

22 A. Sure.

23 Q. I'm sorry. I meant to say -- actually, it is attached as
24 Exhibit A to your supplemental declaration, the one that you
25 signed on October 2nd.

26 A. So, in order for me to accurately answer your question,
27 sir, I think it would be helpful if you rephrase your question
28 and you present the document you're referring to. I apologize

1 for any inconvenience this may cause you.

2 Q. Absolutely. That's not a problem at all. And let me
3 share it... you see your supplemental declaration on the
4 screen, ma'am?

5 A. Yes, sir; I do see that.

6 THE COURT: One second. What I see is the original
7 declaration on the screen.

8 MR. PERETZ: I think it's the supplemental, Your Honor.

9 THE COURT: No, the original one was filed September 15th;
10 The supplemental was filed October 5th.

11 MR. PERETZ: Yes. I'm referring to the supplemental who
12 was -- that was filed on October 5th.

13 THE COURT: That's not what's on the screen.

14 MR. PERETZ: Ah, it's in my screen -- thank you, Your
15 Honor. Again, it's on my screen and I apologize. I'll fix
16 that...

17 It's on the screen now, the supplemental one.

18 THE COURT: No.

19 THE WITNESS: I can see the supplemental declaration.

20 MR. PERETZ: Your Honor, I think the problem is on your
21 end, not our end.

22 THE COURT: All right. Give me a second... Okay. All
23 right. I was -- go ahead. Sorry.

24 BY MR. PERETZ:

25 Q. Okay. No problem. So, Ms. Hassanpur, do you see the
26 supplemental declaration on the screen?

27 A. Yes, sir, I do.

28 Q. Okay. And I am referring -- you attached the e-mail you

1 received, that's 3:05 -- at 3:05 on April 30th, as Exhibit 3
2 (ph). Do you see that in paragraph 4?

3 A. Yes, I do.

4 Q. Okay. And if we go to Exhibit A... that's Exhibit A. It
5 includes the cover e-mail; correct?

6 A. That's correct.

7 Q. And it includes the first page of the handbook
8 acknowledgement; correct?

9 A. That's correct.

10 Q. And it includes the first page of the arbitration
11 agreement; correct?

12 A. That's correct.

13 Q. And that's it. So it's missing the blank page; correct?

14 A. Yes, that's correct; it is missing the blank page in this.

15 Q. Thank you.

16 Now, you then forwarded this e-mail to another employee of
17 Greenspan; correct?

18 A. Yes, that's correct.

19 Q. And her name was Tracy... Manning -- Maningas; correct?

20 A. That's correct.

21 Q. M-a-n-i-n-g-a-s.

22 I'd like to mark as Exhibit 39, Greenspan Bates stamped 7
23 through 10.

24 MS. FITZSIMMONS: I believe this is already an exhibit
25 that we provided to the Court.

26 THE COURT: Can you identify it by number?

27 MS. FITZSIMMONS: Um...

28 THE COURT: I remember seeing it. That helps.

1 MR. PERETZ: Yeah, it's Exhibit 10, Your Honor. I'm sorry
2 to jump in.

3 THE COURT: All right. So we won't mark this as exhibit
4 39; we'll mark it -- we'll recognize it as prenumbered Exhibit
5 Number 10.

6 MR. PERETZ: No, Your Honor, I would like to mark it
7 because it's different than Exhibit 10. I looking at Exhibit
8 10 and it's not identical.

9 THE COURT: All right. Well, then, if you're marking a
10 new exhibit -- I mean this is exactly what I hoped to avoid.
11 But if you're marking a new exhibit, identify it for the record
12 so that we can clearly understand it.

13 MR. PERETZ: Sure. I'm marking as exhibit 38...

14 THE COURT: 39.

15 MR. PERETZ: 39, yes, Your Honor, an e-mail from
16 Ms. Hassanpur to Tracy Maningas. It's Bates stamped *Greenspan*
17 7 through 10.

18 *(Whereupon, the above-mentioned item was marked as Exhibit*
19 *39 for identification.)*

20 MR. PERETZ: Now, may I proceed, Your Honor?

21 THE COURT: Please.

22 BY MR. PERETZ:

23 Q. Do you see it on the screen an e-mail from Tracy Maningas
24 to yourself?

25 A. No, sir. I see an e-mail from myself to Tracy Maningas.

26 Q. Yes. That's what I meant to say. I apologize.

27 Do you say the e-mail from yourself to Ms. Maningas. Do
28 you see that?

1 A. Yes, sir; I do see that.

2 Q. It has -- just to make sure we're looking at the same
3 thing, it has a number at the bottom-right corner and it ends
4 with 007; correct?

5 A. That is correct.

6 Q. Okay. Now, you essentially forwarded the same PDF that
7 ends with 4030 to Mr. Maningas; right?

8 A. I forwarded the same PDF that ends in 4030 to
9 Ms. Maningas; yes, that is correct.

10 Q. Now, I'm scrolling down the document, and this forward
11 does include the blank page as the last one, page 10; correct?

12 A. That is correct.

13 Q. Okay. Now, you don't -- Your Honor, I'll move to admit
14 this document in evidence.

15 THE COURT: Any objection, Ms. Fitzsimmons?

16 MS. FITZSIMMONS: No objection.

17 THE COURT: All right. Exhibit 39 is admitted.

18 *(Whereupon, Exhibit Number 39, previously marked for*
19 *identification, was admitted into evidence.)*

20 BY MR. PERETZ:

21 Q. And you don't know why the e-mail that you supposedly
22 received from the Konica scanner was missing the blank page;
23 correct?

24 MS. FITZSIMMONS: Lacks foundation; misstates evidence.

25 THE COURT: Overruled;

26 THE WITNESS: Sir, could you please repeat your question?

27 MR. PERETZ: Sure.

28 BY MR. PERETZ:

1 Q. Exhibit A to your supplemental declaration is missing the
2 blank page. And you don't know why it's missing the blank page
3 because you are not the one who pulled this document from
4 Greenspan's server; correct?

5 A. Yes, that is correct.

6 Q. You assumed that that was the e-mail, the complete copy of
7 the e-mail because it was provided to you by Greenspan when you
8 signed your declaration; correct?

9 A. ...

10 MS. FITZSIMMONS: Vague, ambiguous.

11 THE WITNESS: I only... oh, sorry.

12 THE COURT: I'm sorry. What was the objection?

13 MS. FITZSIMMONS: Vague and ambiguous.

14 THE COURT: Overruled; you may answer.

15 THE WITNESS: Sir, I think I would need further
16 clarification, because when you use the word *assumed* that it
17 was the e-mail, you are suggesting that I didn't recognize this
18 e-mail.

19 I did not see, in the form you just showed me, the final
20 page that was blank. But the e-mail forwarded to Tracy
21 Maningas with the initial pages, I do recognize. So I'm unsure
22 of how to answer your question. Could you please reword it?

23 BY MR. PERETZ:

24 Q. Sure. You signed the declaration, and what you received
25 as Exhibit A, and I'm referring to your supplemental
26 declaration, did not include the blank page. And you don't
27 know why because you did not access Greenspan's server; it
28 was provided --

1 A. That is correct.

2 Q. That's provided to you by Greenspan; correct?

3 A. That's correct, *(nods head.)*

4 Q. Thank you.

5 Now, you then --

6 THE COURT: May I -- Mr. Peretz, I'm just going to take
7 the privilege to interject a question here.

8 MR. PERETZ: Sure.

9 THE COURT: Who was Ms. Maningas? What was her position
10 with the company at the time?

11 THE WITNESS: Your Honor, she was my H.R. assistant who
12 filed all the documents for me.

13 THE COURT: And what was the purpose of your sending or
14 forwarding to her the handbook acknowledgement, signed handbook
15 acknowledgement contained in Exhibit 39?

16 THE WITNESS: Your Honor, everyone who gave me the hard
17 copy of the acknowledgement, I went ahead and scanned into
18 their electronic file, and filed into their hard copy file.

19 Anyone who e-mailed me the acknowledgement, I forwarded to
20 my H.R. assistant, Tracy Maningas. And she scanned it into the
21 electronic file, and then printed it and put it into their hard
22 copy file.

23 THE COURT: Okay. So she was administering the process
24 here for you -- or assisting you in administering the filing
25 and file process for these things?

26 THE WITNESS: Yes, Your Honor, *assisting* is the better
27 word, as I was doing it as well.

28 THE COURT: Right. Okay.

1 Thank you for accommodating the interruption, Mr. Peretz.

2 MR. PERETZ: Thank you, Your Honor.

3 BY MR. PERETZ:

4 Q. Ms. Hassanpur, and then after that... after you received
5 the blank page, you had the conversation -- you called Masood
6 and you told him, *I did not receive the... the arbitration*
7 *agreement signed; correct?*

8 A. No, sir. Initially when I didn't get it, I e-mailed
9 Mr. Khan, to let him know that I got the handbook, signed
10 handbook form, but I did not receive the signed arbitration
11 agreement; it was just -- it was the arbitration agreement
12 blank.

13 I e-mailed him first. And then I called his cell phone
14 and let him know, and what he was...

15 Q. Okay. And what did he say in return; what's your
16 recollection?

17 A. I remember him saying, "Oh that's weird. Okay. I'll send
18 it to you again."

19 Q. That's it; that's what he said?

20 A. Yes, yes, sir.

21 Q. He didn't say, "I'm gonna send you the arbitration
22 agreement"; he said, "I'll send it again"?

23 A. Yes, sir.

24 Q. Okay. Now, I know it's a little difficult, but do you
25 have a recollection if the signature that you see on the page
26 is the one that you saw back in 2018?

27 THE COURT: Which page are we talking about? Let's be
28 very careful here, because this is the central issue in the

1 case.

2 MR. PERETZ: Absolutely. I'll mark -- I'll go back to
3 Exhibit 17, ma'am. And I'll share it...

4 Do you see that acknowledgement page?

5 A. Yes, sir, I do.

6 Q. Okay. Do you have a recollection, like, do you have an
7 independent memory that those were the signatures that you saw
8 in the e-mail?

9 A. Yes, sir, I do. I distinctly -- yes, sir, I do. I
10 distinctly remember that it was odd to me that his signature
11 and printed name were very similar. And I do recall this
12 specific signature with the April 30th date and the slash. I
13 do recall.

14 Q. Did you see other signature of Masood Khan before or
15 after?

16 A. I have seen past employee handbook signatures from
17 Mr. Khan. They looked slightly different, from what I recall.
18 So when I saw this signature initially, I thought it was
19 odd. But because he confirmed to me that he sent it and that
20 he was planning on sending the arbitration agreement, I didn't
21 think much of it.

22 Q. Okay. Thank you.

23 Now, let's talk about what happened the next thing, May
24 1st, okay?

25 A. Okay.

26 Q. May 1st, you never talked to Masood on May 1st; correct?

27 A. I hesitate to confirm or deny that because I can't
28 remember every minute of my day on May 1st; however, if you'll

1 give me a moment, I'll review my declaration where I confirmed
2 the day that I spoke to him, and I'll answer your question.

3 Q. But before you do that, I want to ask you, from your
4 memory, do you have a recollection speaking with Masood Khan on
5 May 1st, 2018?

6 A. ... May I have 60 seconds to think about this?

7 THE COURT: As much time as you need.

8 MR. PERETZ: Yes.

9 THE COURT: Within reason, *ha ha*.

10 THE WITNESS: It's not exactly... oh, apologize. That's
11 my clock.

12 It's not exactly recent.

13 I remember calling him on the day that I got the signed
14 handbook agreement, which was April 30th;

15 I do not recall, from memory, if I spoke to him on May
16 1st.

17 BY MR. PERETZ:

18 Q. Okay. Do you recall seeing him at the office on May 1st?

19 A. Sir, I apologize. I don't mean to be difficult, but it's
20 really hard for me to recall every moment of my day on May 1st,
21 because I see all -- like, the employees constantly. So I
22 wouldn't, in good conscience, be able to tell you yes or no to
23 that question.

24 Q. Sure. As you sit here today, you don't have a
25 recollection, one way or the other, if you saw him or you
26 didn't see him on May 1st at the office; correct?

27 A. That is correct.

28 Q. And as you sit here today, you don't know, one way or the

1 other, if he was or wasn't at the office; correct?

2 A. I would not know.

3 Q. Okay. Now, you received -- on May 1st, you received from
4 the Konica e-mail the signed acknowledgement form and the
5 signed arbitration agreement; correct?

6 A. That is correct.

7 Q. And as you sit here today, you don't have any recollection
8 of Masood Khan confirming that he sent those to you; correct?

9 A. ... I have recollection of him confirming that he sent me
10 the signed acknowledgement of the handbook agreement, because
11 when I spoke to him on the 30th of April, 2018, he confirmed
12 that to me;

13 He then went on to say he was not sure why the other form
14 was blank and that he would send it to me.

15 So your question, maybe if you could clarify it, maybe I
16 can answer it more accurately.

17 Q. Absolutely. Let me just be crystal clear with you. And I
18 want to refer to your declaration, and I'll put it on the
19 screen so it's -- it's more... easy...

20 THE COURT: And is this the original or the supplemental
21 declaration?

22 MR. PERETZ: I want to make sure before I make the
23 statement, Your Honor.

24 THE COURT: Okay. Fair enough.

25 MR. PERETZ: Okay. The original declaration. And I'm
26 referring to Exhibit C. And I'll post it on the screen...
27 okay.

28 This is Exhibit C to your original declaration. And this

1 is the May 1st e-mail, correct, that you received to Konica --
2 I'm sorry.

3 This is the e-mail you sent Masood. And you said, "I got
4 it. Thank you, Masood," exclamation mark. Do you see that?

5 A. Yes, sir; that is that e-mail.

6 Q. And what you received was an e-mail from the Konica
7 scanner from May 1st at 4:17 p.m.; correct?

8 A. ...

9 Q. Do you see it on the screen?

10 A. That is correct.

11 Q. And that includes the signed acknowledgement form?

12 A. Uh-huh.

13 Q. And signed arbitration agreement; correct?

14 A. That's correct.

15 Q. And my question was, after you received this e-mail, you
16 never talked to Masood. And he acknowledged to you over the
17 phone or in person, that he sent you these documents; correct?

18 A. That is correct. I assumed because when you sign into
19 send an e-mail from the Konica machine, you use your user name
20 and password, that the e-mail I received with his signature
21 that I was expecting from him was the correct one.

22 Q. Okay. Now, if he used the Konica machine and you get an
23 e-mail from the Konica machine, you actually don't know who
24 sent it; correct?

25 A. To log into the Konica machine and be able to send your
26 e-mail, or your scan, or your fax, you have to use your
27 employee e-mail and password that you use to log into your
28 computer. This is to prevent employees sending each other

1 e-mails or files without it being their own.

2 So it was my assumption that him sending it was him,
3 because he would have to log in using his employee e-mail and
4 password.

5 And no, I did not follow up with him to confirm that it
6 was in fact him who sent me the e-mail that he told me he was
7 gonna send with the signature. He said that he was going to
8 send it.

9 Q. But any employee at Greenspan could have logged to the
10 Konica machine and send you this document, not just Masood
11 Khan; correct?

12 A. That's unfortunately not correct, sir. You -- every
13 employee has a profile; so every employee at the company needs
14 to log in with their user name and password in order to be able
15 to send an e-mail from the scanner.

16 So maybe I'm misunderstanding your question. If you
17 wouldn't mind, could you please rephrase it.

18 Q. Sure. If you look at the screen, you see that e-mail from
19 the Konica machine from May 1st; correct? Do you see that?

20 A. Yes, sir, I see that.

21 Q. There is no indication from this e-mail that Masood Khan
22 sent this e-mail as any other employee of Greenspan attached to
23 the Konica machine; correct?

24 A. That is correct.

25 Q. So it could be, for example, that another employee of
26 Greenspan used their code and scanned that document and send it
27 to you; correct?

28 THE WITNESS: I...

1 MS. FITZSIMMONS: Calls for speculation.

2 THE COURT: Sustained.

3 I get the point, Mr. Peretz.

4 MR. PERETZ: Okay.

5 THE WITNESS: Yeah, I don't feel comfortable assuming,
6 sir.

7 MR. PERETZ: Your Honor -- Ms. Hassanpur, you don't need
8 to respond because the judge says you don't need to, okay?

9 BY MR. PERETZ:

10 Q. And then after receiving this document, you never had any
11 discussions with Masood about arbitration agreements and
12 whether he signed it or not; correct?

13 A. That's correct.

14 Q. Now, after you sent this e-mail to Masood that said, "I
15 received -- "thank you," this e-mail that... one second, let me
16 get there...

17 "Got it. Thank you, Masood." Do you see that?

18 A. Yes, I see that.

19 Q. Never received an e-mail back from him; correct?

20 A. Not to my recollection, no.

21 MR. PERETZ: Okay. I have no further questions, Your
22 Honor.

23 THE COURT: All right. Ms. Fitzsimmons, is there anything
24 you need to cover on redirect?

25 MS. FITZSIMMONS: Yes, Your Honor. I'd just like to ask a
26 few follow-up questions, if I may.

27 THE COURT: As an aside, this is our first witness out of,
28 I think I counted seven, and we've taken forty minutes.

1 I strongly suspect we're not gonna meet our time limit
2 here this afternoon, but let's keep going and see if we can see
3 what we can do. And we can talk about scheduling later.

4 MS. FITZSIMMONS: Thank you, Your Honor.

5
6 REDIRECT EXAMINATION

7 BY MS. FITZSIMMONS:

8 Q. Ms. Hassanpur, when you spoke with Mr. Khan over the phone
9 on April 30th, did he tell you that he wasn't going to sign the
10 arbitration agreement or anything like that?

11 A. No, ma'am.

12 Q. Did he express any concerns to you during that phone call
13 at all about signing the arbitration agreement?

14 A. Not to my recollection, no.

15 Q. Did Mr. Khan ever express concerns to you, as the H.R.
16 person at Greenspan, that -- with respect to the arbitration
17 agreement?

18 A. No, ma'am.

19 Q. Okay. After you received the signed arbitration
20 agreement, you, I believe, testified that you forwarded it to
21 your assistant; is that correct?

22 A. That's correct.

23 Q. Can we pull up Exhibit 12, please, Matt. This is the
24 Court's Exhibit 12...

25 Is this an e-mail that you sent on May 3rd, 2018?

26 A. Ma'am, could you please scroll down on the e-mail, so I
27 can see the actual date of the e-mail to confirm. I believe it
28 is but I want to confirm...

1 Yes, that's correct.

2 Q. And it appears that you sent this to Gordon Scott, Paul
3 Migdal, and Clay Gibson; is that correct?

4 A. That is correct.

5 Q. And what was your purpose of sending this e-mail to them?

6 A. It was to confirm that we have had all employees, with the
7 exception of one, sign the arbitration agreement, as well as
8 the employee handbook acknowledgement.

9 Q. And is the one employee who had not yet signed it, was
10 that Mr. Khan?

11 A. No, ma'am; that was Mark Fratkin.

12 Q. Okay. And could you please scroll down to the next page
13 of this exhibit, Matt. Thank you.

14 And what is this page?

15 A. This was a spreadsheet that I was keeping to keep track of
16 all of the employees who had submitted their handbook and
17 arbitration agreements, the signed copies.

18 Q. And did you place the X's that are on this spreadsheet
19 when you were keeping track?

20 A. Yes, I did.

21 Q. And so you placed an X next to Masood Khan's name?

22 A. Yes, ma'am, I did.

23 Q. And why did you do that?

24 A. Because he submitted the signed arbitration and signed
25 handbook agreement.

26 Q. And why is it that you were keeping such careful track of
27 who was submitting their signed arbitration agreements?

28 A. I... I was keeping really good track of them because I had

1 sent multiple e-mails to the whole company, letting them know
2 that their continued employment at Greenspan was contingent on
3 them signing both the handbook -- the signed handbook
4 acknowledgement, as well as the agreement to the arbitration
5 agreement.

6 Q. And, if you recall, how long after this May 2018 time
7 frame did Mr. Khan remain employed at the company?

8 A. Mr. Khan was employed until I left for my current
9 position, as far as I know.

10 MS. FITZSIMMONS: Okay. Thank you very much.

11 I have no further questions.

12 THE COURT: Okay. Any recross, Mr. Peretz?

13 MR. PERETZ: Yes. Quickly.

14 RECCROSS-EXAMINATION

15 BY MR. PERETZ:

16 Q. On the same Exhibit 12, that's the e-mail to the
17 principals of Greenspan. Gordon Scott, Paul Migdal, and Clay
18 Gibson were principals at Greenspan at that time; correct?

19 A. That's not correct exactly. I believe Mr. Gibson was not
20 a principal at the company as far as I recall.

21 Q. What have was his position at that time?

22 A. He was the chief operating officer.

23 Q. Okay. You never shared that list with Masood Khan;
24 correct?

25 A. No, sir. That was a list I kept -- sorry.

26 That was a list I kept for myself and I shared with my
27 assistant and my manager, who was Mr. Gibson.

28 Q. And neither of the three individuals that actually

1 received the e-mail told you, *hey, we shared it with Masood*
2 *Khan*, or anything to that effect; correct?

3 A. Not to -- I'm sorry. I'm confused by the question.

4 Q. Neither of the three individuals that you shared that list
5 with them, Gordon Scott, Paul Migdal, Clay Gibson, ever tell
6 you that they shared it with Masood Khan?

7 A. Not to my recollection, no (*shakes head.*)

8 Q. Okay. Did any of them, Gordon Scott, Paul Migdal, Clay
9 Gibson ever tell you that Masood Khan acknowledged that he
10 signed the arbitration agreement?

11 A. ... I'm so sorry. I don't understand your question.

12 Q. Sure. Did any of these three individual tell you ever --
13 ever tell you, *hey, Masood Khan told us he signed the*
14 *arbitration agreement*, or something to that effect?

15 A. Not that I recall.

16 MR. PERETZ: I have no further questions, Your Honor.

17 THE COURT: Anything else, Ms. Fitzsimmons?

18 MS. FITZSIMMONS: No, Your Honor.

19 THE COURT: Okay. Ms. Hassanpur, thank you for your
20 assistance and your patience. And you're excused, unless you
21 have nothing better to do, *ha*.

22 THE WITNESS: No. Thank you very much. I appreciate it.

23 MS. FITZSIMMONS: Thank you.

24 THE COURT: All right. Next witness please?

25 MR. PERETZ: The -- bearing in mind that we want to
26 streamline the process, I'd like to call the forensic expert,
27 Brandon Leatha.

28 THE COURT: All right. Let me admit Mr. Leatha, if I'm...

1 pronouncing his name correctly.

2 Mr. Leatha, I'm going to ask you please to unmute.

3 MR. LEATHA: Can you hear me?

4 THE COURT: We can now, Mr. Leatha.

5 MR. LEATHA: Oh, okay. Thank you.

6 THE COURT: Welcome. I was about to comment that you were
7 an uncharacteristically quiet expert witness but...

8 Would you please raise your right hand, and I'll ask the
9 clerk to swear you.

10 BRANDON LEATHA,

11 Called as a witness for the Defense, having been duly sworn,

12 testified as follows:

13 THE CLERK: Please state and spell your complete name for
14 the record.

15 THE WITNESS: Brandon Leatha, B-r-a-n-d-o-n, L-e-a-t-h-a.

16 THE CLERK: Your witness, counsel.

17 MR. PERETZ: Thank you.

18 CROSS-EXAMINATION

19 BY MR. PERETZ:

20 Q. Mr. Leatha, my name is Yosef Peretz. I represent Masood
21 Khan in this litigation. And I have a few questions about your
22 testimony in this matter, okay?

23 A. Okay. Thank you.

24 Q. Okay. So this is conducted via Zoom. And can you see me?

25 A. Yes, I can.

26 Q. Okay. You're an I.T. professional; so that's probably
27 easier for you. But I may show you and I will show you a few
28 documents on the screen. By all means, if you don't follow me,

1 if what looks on your screen doesn't appear what I'm talking
2 about, please assert yourself. I want to make sure that we're
3 literally on the same page, okay?

4 A. Okay.

5 Q. And you were designated as an expert witness on behalf of
6 Greenspan; correct?

7 A. That is correct.

8 Q. Did you work for them before?

9 A. I... yes, I have provided services to Greenspan since
10 earlier this year.

11 Q. Okay. And you were paid for these services; correct?

12 A. Yes, correct.

13 Q. And you were referred to them by Ivo Labar, their counsel;
14 correct?

15 A. That's correct.

16 Q. And you worked for a long time with Ivo Labar -- or on his
17 behalf, his clients; correct?

18 THE COURT: Would you spell that name for the record,
19 please.

20 MR. PERETZ: Ivo, I-v-o; Labar, L-a-v-a-r, I believe.

21 THE COURT: Thank you.

22 THE WITNESS: I believe it is Labar.

23 MS. FITZSIMMONS: L-a-b-a-r.

24 MR. PERETZ: Lab, yes. Not v as in victor but b as in
25 boy.

26 BY MR. PERETZ:

27 Q. Do you have my question in mind, Mr. Leatha?

28 A. I -- yes, I have worked for Mr. Labar in the past.

1 Q. For how many years approximately?

2 A. Um... that's difficult to say. I have worked for his firm
3 in the past for approximately three or four years.

4 Q. Okay. Thank you.

5 And you were paid for these services on all these
6 occasions; correct?

7 A. That is correct.

8 Q. Okay. And you were paid for your services in this matter
9 now; correct?

10 A. That is correct.

11 Q. Okay. Now, did you, as part of your engagement in this
12 matter, did you examine the e-mail -- did you examine the
13 e-mail sent from the Konica scanner?

14 A. I... I did examine e-mails from the Konica scanner, and
15 specifically those that you used as exhibits in Ms. Hassanpur's
16 deposition; yes, I examined those.

17 Q. Well, did you e-mail the actual scanner, or did you e-mail
18 a server? What did you exactly examine?

19 A. I examined e-mail that was collected from Greenspan. And
20 those e-mails included those that were sent from the Konica
21 scanner.

22 Q. Sure. But you never examined the actual scanner to
23 examine what e-mails were saved on this scanner; correct?

24 A. That is correct; I did not examine the scanner.

25 Q. So you examined a essentially secondary source. Somebody
26 provided you with a secondary source of e-mails that were
27 supposedly sent by the scanner; correct?

28 A. No, I don't believe that is correct.

1 The scanner itself is not an e-mail server. The scanner
2 would send an e-mail through -- it would be configured to send
3 an e-mail through Greenspan's servers. And so I examined those
4 e-mails that were maintained and collected from Greenspan's
5 e-mail servers.

6 Q. Are those e-mails also saved on the Konica scanner?

7 A. I have not examined the scanner; I have reviewed manuals.
8 And, again, the e-mail itself is sent to the server. And
9 typically something like that would not be maintained or
10 retained by that device.

11 Q. But you never -- you never examined the scanner to find
12 out that, one way or the other; correct?

13 A. That is correct.

14 Q. Okay. Now, the e-mails are sent through Greenspan's
15 scanner. So was it your understanding that the principals at
16 Greenspan had access to those -- to their servers, to the
17 e-mail exchange server?

18 A. That is not something that I looked into; so I don't have
19 an opinion one way or another on that.

20 Q. So you don't know, for example, if Gordon Scott, or Mark
21 Fratkin have access to the e-mail exchange server, including
22 e-mail accounts of other employees at the company; correct?

23 A. That is not something I examined; correct.

24 Q. You don't know one way or the other; correct?

25 A. Correct.

26 Q. Okay. Now, if one is sending -- is receiving an e-mail,
27 and that person forwards that e-mail, and that e-mail includes
28 an attachment, all the pages of the attachments are going to be

1 forwarded, not just a part of it; correct?

2 A. If the e-mail is directly forwarded, and that original
3 e-mail did have an attachment, the same attachment, including
4 all pages, would have been forwarded; correct.

5 Q. Okay. So I want to show you an e-mail... that I marked as
6 Exhibit 38...

7 THE COURT: Mr. Peretz, I'm -- I apologize, but I'm going
8 to interrupt at this point before you go on to the specifics,
9 because I'd like to get a little bit of a better picture more
10 generally about what Mr. Leatha did and how he did it, if I
11 may.

12 MR. PERETZ: Sure. Absolutely, Your Honor.

13 THE COURT: All right. So, Mr. Leatha, you say in
14 paragraph 10 of your declaration, which was filed with the
15 Court on October 5, that you reviewed Ms. Hassanpur's e-mails
16 from the time period in question.

17 And my question for you is -- and you said a moment ago
18 that you examined e-mails that were collected from Greenspan,
19 including those that were sent from this Konica scanner through
20 Greenspan's e-mail servers.

21 My question for you is: How did you go about collecting
22 Ms. Hassanpur's e-mails from the time period in question? Who
23 did that? Did you do that? Or somebody on your staff do that?
24 Or was that done for you by Greenspan?

25 What time period are we talking about?

26 And what was the process?

27 I know it's a very broad question, but I'd like you to
28 fill it in a bit for us, if you wouldn't mind.

1 THE WITNESS: Yes, that's okay, sir, Your Honor.

2 So for the e-mails themselves, I was asked to assist with
3 the collection of information for this matter.

4 I had direct communications, both e-mail and phone
5 meetings, with Greenspan I.T., information technology team;

6 And learned about how their e-mail systems were
7 configured;

8 And guided them in the collection of those e-mails
9 directly from the server.

10 Those collections would occur on a custodial basis. So a
11 mailbox would be pulled, for example, for Mr. Khan;

12 That mailbox would be saved to a PST file;

13 And then that PST file was something that was delivered to
14 me. And I was able to examine the result of that.

15 THE COURT: And what is it specifically that you asked
16 Greenspan's I.T. staff to collect and provide to you when you,
17 as you say, reviewed Ms. Hassanpur's e-mails from the time
18 period in question? What did you ask them to collect for your
19 review?

20 THE WITNESS: So directly from Ms. Hassanpur, I do not
21 believe that her e-mail was collected at the same time as
22 Mr. Khan's when I spoke with Greenspan and I.T. And so those
23 communications were more general or broad in nature, describing
24 that if a custodian's mailbox needed to be collected, I
25 discussed with them how best to do that;

26 Ensure that there's a chain of custody process;

27 And to provide those on hard drive, so they can be
28 examined.

1 In regards to Ms. Hassanpur's e-mail, I examined her
2 mailbox, which had been collected in a -- an application called
3 Relativity. And that's something that Greenspan's counsel had
4 contracted with to have the e-mail hosted so they can review and
5 produce those documents;

6 I gained access to that same system;

7 Reviewed those documents in Relativity;

8 And ran searches on Ms. Hassanpur's e-mail to look for
9 those e-mails sent or received from the Konica scanner, and
10 specifically for the documents that we've heard about today,
11 the -- the PDF scans of Mr. Khan's handbook and arbitration
12 agreement.

13 THE COURT: Were the instructions though -- I'm just
14 trying to understand this process.

15 THE WITNESS: Right.

16 THE COURT: Were the instructions that you gave or that
17 you understood were given to retrieve Ms. Hassanpur's entire
18 e-mail box, or her e-mail box for a particular period of time,
19 or her e-mail box -- in other words, in a in-box, out-box
20 deleted e-mails, drafts. I mean was it everything or some
21 sub-set? And for what period of time?

22 THE WITNESS: And -- I will need to respond I did not have
23 any specific communications about Ms. Hassanpur's e-mail.

24 The initial communications that I had were to collect
25 entire mailboxes with no limiting criteria for those custodians
26 that had been identified.

27 I was then --

28 THE COURT: Who was that?

1 THE WITNESS: I don't have that list in front of me. I do
2 recall that Mr. Khan was one of the initial custodians.

3 I think there were maybe ten to fifteen different mail
4 boxes that were extracted at that time. And I have not
5 reviewed my records to see if Ms. Hassanpur was in that initial
6 pull.

7 Again, that the instructions that were to pull entire
8 mailboxes. And that would include in-box, sent items, any
9 foldered items, drafts, anything within that mail box.

10 THE COURT: Okay. Mr. Peretz, again, thank you for the
11 indulgence of letting me -- I'm just trying to follow along in
12 a logical manner and had those foundational questions.

13 MR. PERETZ: Sure. And I'll follow up on your
14 foundational questions, Your Honor, if it I may.

15 BY MR. PERETZ:

16 Q. So, Mr. Leatha, you never examined, yourself, the servers
17 of Greenspan or any electronic depository of documents;
18 correct?

19 A. Well, to answer the first part of the question, I did not
20 examine Greenspan's e-mail servers directly; that is correct.

21 I did examine the extracted, native e-mails in original
22 e-mail format, that were extracted from certain mailboxes. And
23 I did examine those, and not just printouts but actual
24 Outlook-based e-mail from those servers.

25 Q. Yeah, but you examined what was provided to you, but you
26 had no control of what was provided to you and what was not
27 provided to you; correct?

28 A. Well, I was involved in the process to define what was to

1 be pulled, because of my background in collecting and
2 preserving evidence for litigation matters.

3 That was why I was engaged to assist Greenspan I.T., to
4 make sure that it was done in a complete process;

5 That it was tracked;

6 That there was a chain of custody form created;

7 And then I received the result of that;

8 And the results of those were uploaded into the discovery
9 platform that I mentioned earlier, which is called Relativity.

10 Q. Sure. But you never -- you gave instructions but you
11 never went to the servers themselves and collected the records;
12 correct?

13 A. That is correct.

14 Q. And the person whom you asked to collect the records was
15 Alex Poulsen?

16 A. That is correct.

17 Q. And he's the I.T. person at Greenspan for many years;
18 correct?

19 A. I -- I don't have his background. I do know that at the
20 time that I communicated with him, he was an I.T. employee at
21 Greenspan.

22 Q. Okay. And why didn't you go to the servers themselves and
23 pulled all the in-boxes; why didn't you do it yourself?

24 A. There are various reasons. To be honest with you, it is
25 very common for me to oversee a process, working with I.T., who
26 has the familiarity with those servers, and defining what is
27 the process, how it's tracked, and ensuring that it is done in
28 a complete way. That is very common.

1 So I don't always travel to a location to do the
2 extraction myself.

3 Q. Sure. Now, you collected those e-mails in 2020, after
4 this motion was filed; correct?

5 A. The e-mail collection occurred in early March of 2020.

6 Q. Sure. And you can't tell us, one way or the other, before
7 those in-boxes were sent to you, if e-mails were deleted from
8 them; correct?

9 A. Yes, that is -- well, if there were deleted items in those
10 mailboxes at the time of the collection, they would have been
11 collected as well. But I -- I do not have knowledge of what
12 occurred before the collection process.

13 Q. But, sir, if they were deleted from the deleted items
14 folder, you wouldn't know that; correct?

15 A. There is a small exception to that but, in general, that
16 is correct. And I'll just briefly explain that an item can be
17 deleted into the deleted items folder;

18 It can be subsequently deleted from the deleted items
19 folder; so the user can no longer see it. But it still can be
20 recovered from the server.

21 The settings on that recoverable item varies. Typically
22 it's about two weeks.

23 Again, this is not something that I've looked into in
24 detail; I'm just stating from general knowledge that's how
25 Microsoft Exchange works.

26 Q. So if an e-mail was deleted, let's say, in 2018, and was
27 deleted from the deleted folder, there is a way to recover that
28 within two weeks of that, but not in 2020; correct?

1 A. Generally that is correct. And I have not examined
2 Greenspan's specific settings, but that's typically between two
3 weeks and a month is a typical deleted item's retention policy.

4 Q. And you don't know -- you don't know if Greenspan have any
5 backups or any way that they saved e-mails from the past other
6 than what you were provided; correct?

7 A. Uh... no. I know that Greenspan does have various backup
8 programs in place. It's not something that I've been asked to
9 examine, but I am aware of systems which protect data for
10 backup reasons and for disaster recovery reasons.

11 Again, I've had no reason to examine those in detail; and
12 so at this time I have not done that.

13 Q. Sure. Now, there is a way to go and manipulate an e-mail,
14 remove one attachment and put, instead, a different attachment;
15 correct?

16 A. I -- I'm not sure I follow.

17 Q. Sure. Let's say -- let me rephrase the question.

18 I sent an e-mail in 2018;

19 And that e-mail included an attachment. Are you with me?

20 A. Yes.

21 Q. There is a way to remove that attachment and include
22 another attachment instead; correct?

23 A. Well, it is theoretically possible to change or alter
24 e-mails in a system, but that also impacts the metadata related
25 to those records. And that alteration that -- if occurred as
26 you're describing, that would be something that we could
27 examine and identify in those e-mails.

28 Q. Okay. Now, let's go to exhibit -- what we marked as

1 Exhibit 38...

2 And do you see it on the screen an e-mail that has April
3 30th, 2018, 3:05 p.m.?

4 A. Yes, I see this.

5 Q. So that's one of the e-mails that you examined; correct?

6 A. That is correct.

7 Q. And I'll represent to you that it was attached to the
8 declaration of Ms. Hassanpur. And you provided that to counsel
9 as the e-mail from April 30th, 2018, 3:05 p.m.; correct?

10 A. Yes, I believe this was the same e-mail that I have as an
11 exhibit in my declaration.

12 Q. Sure. Now, this e-mail includes the e-mail cover, and
13 then it includes two pages. It includes a page of a handbook
14 acknowledgement;

15 And a page of mandatory mediation and binding arbitration
16 agreement; correct?

17 A. That's what I see here, yes.

18 Q. And that's it; there's no other page other than these two
19 pages attached to that specific e-mail; correct?

20 A. Well, I will represent that I see this as a printout.
21 It's been Bates marked. And the two separate electronic
22 records are combined into one printout. So this is not a
23 native e-mail as you would examine in an e-mail server.

24 Q. So do you know if indeed this handbook acknowledgement and
25 mandatory arbitration agreement were in fact attached to this
26 e-mail, to the first page? Do you even know that?

27 A. Yes, I examined that e-mail in native format, so as it
28 would reside before it was printed out. And that e-mail did

1 have an attachment, and the attachment was three pages:

2 The two that you've displayed;

3 As well as blank page that that was at the end.

4 Q. One second, sir...

5 THE COURT: While you're thinking Mr. Peretz, if I may,
6 I'm going to shoehorn another question in.

7 MR. PERETZ: Please.

8 THE COURT: Mr. Leatha, in your examination of
9 Ms. Hassanpur's e-mail, or for that matter, in your examination
10 generally of the e-mail boxes, were there other e-mails that
11 you saw that were sent from that same -- or appear to have been
12 sent from that same Konica scanner machine?

13 THE WITNESS: Yes, Your Honor; there were many instances
14 of e-mails sent from more than one Konica scanner, but there
15 were others that had the same -- same e-mail address and same
16 internal metadata, which would indicate they were sent from
17 that same scanner.

18 THE COURT: Now, you were present and presumably heard
19 Ms. Hassanpur testify that in order to utilize that scanner, a
20 user would have to punch in his or her own employee user name
21 and password.

22 I understand that you haven't examined the scanner itself,
23 but, in general, from your knowledge of the technology here, is
24 there any way that... is that information, if you know,
25 typically saved in the metadata associated with a particular
26 scanned and e-mailed document?

27 In other words, is there a way of looking at either the
28 e-mail itself, or the memory of the scanner, or something else

1 and determine, okay, this is this employee who utilized the
2 scanner to send this particular e-mail?

3 THE WITNESS: So I'll answer that in two parts.

4 So in the e-mail itself, I was not able to identify any
5 metadata which would describe the user that initiated the
6 sending of that e-mail.

7 In the attachment, which was a PDF file, again, there was
8 no metadata which would describe the user that was operating
9 the scanner at that time.

10 However, there was metadata that showed the make and model
11 of the scanner itself, and had some other information related
12 to the timing and the creation and whatnot.

13 In terms of examining the scanner, it is possible that
14 that information about the user that was logged in at the same
15 time as the sending of that e-mail, that it is possible if that
16 is there.

17 Again, I did not examine the scanner itself. And, you
18 know, with scanners, those are often things that are upgraded
19 and replaced over time; so I don't...

20 And, secondly, logs are not always infinite; sometimes
21 log-in information like that may be temporal and roll off at a
22 certain time period.

23 But, again, I did not examine the specific scanner. We
24 may be able to learn more information if that were to be done.

25 THE COURT: All right. Thank you.

26 BY MR. PERETZ:

27 Q. And, Mr. Leatha, you don't know if there was indeed a user
28 name and a password used to send an e-mail from the Konica

1 scanner; correct?

2 A. I have only heard that from Mrs. -- Ms. Hassanpur's
3 testimony; I do not have independent knowledge of that.

4 Q. Okay. And as you sit here today, if I go back to exhibit
5 38, you can't tell who sent it from the scanner; correct? And
6 I'll show it to you just so you keep it in mind, this e-mail...

7 You can't tell who sent the e-mail from the scanner to
8 Rabia Hassanpur on April 30th, 2018, 3:05?

9 A. That is correct; I do not know who initiated the scan in
10 the sending of that e-mail.

11 Q. And you don't know if it -- you don't know who had access
12 to that scanner, and whether all employees or some employees
13 were able to send from that scanner, because you never examined
14 the scanner; correct?

15 A. That's correct.

16 Q. Okay. And the notion that there's a user I.D. and
17 password to use the scanner is information that you learned
18 from Ms. Hassanpur; correct?

19 A. ... It -- I -- yes, the details related to that I learned
20 today? Again, I didn't examine the scanner; so I don't have
21 the background on that.

22 Q. Sure. Did you have any discussions with Mark Fratkin from
23 Greenspan as part of your engagement?

24 A. No, I did not.

25 Q. Your engagement -- you mostly spoke with Mark, the I.T.
26 person?

27 A. Uh -- Alex Poulsen.

28 Q. Alex Poulsen?

1 A. That's correct.

2 Q. Okay. Did you ask Alex if he knew if there was an I.D. --
3 a user I.D. and password used for the scanner?

4 A. I did not.

5 MR. PERETZ: I have no further questions, Your Honor.

6 THE COURT: Ms. Fitzsimmons, would you like brief
7 redirect?

8 MS. FITZSIMMONS: Yes, Your Honor; I just have a few
9 questions.

10 THE COURT: All right. Go ahead.

11

12 REDIRECT EXAMINATION.

13 BY MS. FITZSIMMONS:

14 Q. Mr. Leatha, you talked about something called the *chain of*
15 *custody*. Can you just explain briefly what you mean by that?

16 A. Yes, there is a document that Mr. Poulsen initiated, which
17 described the data that he was extracting;

18 The date and time that he did it;

19 And the fact that he shipped that evidence, details about
20 the method of shipment. I believe there was UPS tracking
21 information, as well;

22 And then I signed that same chain of custody form at the
23 time of receipt.

24 It's a very common practice in initiating preservation of
25 evidence for a litigation matter.

26 Q. Was there anything unusual at all that you saw in the
27 chain of custody when you received the data associated with
28 this case?

1 A. No, nothing unusual.

2 Q. Now, Mr. Peretz asked you some questions about this
3 exhibit, this e-mail that we have up on the screen right now,
4 from April 30th, 3:05 p.m.

5 And my question to you is, how do we know that the
6 attachments to this -- and, Mr. Peretz, if you would, just
7 scroll down for me, since you've got control of this particular
8 document, I would appreciate that...

9 How do we know that the attachment to this document --

10 MR. PERETZ: Do you want me to put it up or...

11 MS. FITZSIMMONS: Yes, it was up. If you wouldn't mind
12 just indulging me and just scrolling to the next page.

13 MR. PERETZ: I apologize...

14 MS. FITZSIMMONS: Okay. Thank you.

15 MR. PERETZ: Is this --

16 MS. FITZSIMMONS: Yes.

17 BY MS. FITZSIMMONS:

18 Q. How do we know that this handbook acknowledgement, and if
19 you can just scroll down, Mr. Peretz, so that we can see the
20 signature on there...

21 How do you know that was the actual attachment to that
22 May -- to that April 30th e-mail from 3:05 p.m.?

23 A. The process from the point where the evidence is first
24 preserved and the chain of custody is initiated is tracked all
25 the way through to the production of a record like this.

26 And the purpose of applying a Bates number on the
27 lower-right corner is so that it can be tracked through that
28 process.

1 And so I could then look at this document and track back
2 to its native format in the Relativity review application, and
3 see the native form of this and examine that. And that's
4 exactly what I did.

5 Q. Okay. Did you conclude that this version of the signed
6 employee handbook was in fact attached and sent to an e-mail,
7 to Ms. Hassanpur on April 30th, at 3:05 p.m.?

8 A. The -- an attachment that looked the same as this except
9 for it had an additional blank page at the end. I did confirm
10 that that three-paged attachment was included with the e-mail,
11 as shown here.

12 Q. Okay. And then -- Matt, if you could pull up Exhibit 11
13 for us, please?

14 And did you reach any conclusions about whether or not
15 Ms. Hassanpur received a signed arbitration agreement with
16 Masood Khan's name on it on May 1st, 2018?

17 MR. PERETZ: Out of scope, Your Honor.

18 MS. FITZSIMMONS: It's within his declaration.

19 THE COURT: I'll allow it.

20 THE WITNESS: Yes, I did find and examined the April 30th
21 e-mail, which was a three-paged attachment with the last page
22 being blank;

23 And then subsequently a May 1st attachment -- e-mail and
24 attachment, which had the same first two pages but a completed
25 and signed third page, which was a signed arbitration
26 agreement.

27 Q. Did Ms. Hassanpur receive any other documents from the
28 Konica scanner during that April 30th and May 1st, 2018 time

1 frame?

2 MR. PERETZ: Calls for speculation.

3 THE COURT: Overruled.

4 THE WITNESS: In the e-mails that I --

5 THE COURT: You may answer.

6 Of the documents that you examined, did she receive any
7 other e-mails in those two days from that same scanner?

8 THE WITNESS: Your Honor, yes. I'm sorry. There were no
9 other attachments or e-mails sent from that scanner on either
10 April 30th or May 1st. These were the only documents and
11 e-mails from that scanner that I was -- that I found in
12 Ms. Hassanpur's mailbox.

13 BY MS. FITZSIMMONS:

14 Q. And, Matt, can you scroll down to the last page of this
15 particular exhibit, that's showing the signed... Thank you.

16 So what degree of certainty are you that this document,
17 this signed arbitration agreement, is the same document that
18 was attached to the e-mail to Ms. Hassanpur on May 1st, 2018?

19 A. Sitting here, looking at this today, it looks like the
20 exact same document that I examined; so I would say it is a
21 high level of certainty.

22 I've looked in detail at this, both in the printed format
23 that I see here, as well as in the native format that was
24 extracted from the Greenspan servers, and they appear to be the
25 same document.

26 MS. FITZSIMMONS: Thank you. I have no further questions.

27 THE COURT: Any recross, Mr. Peretz?

28 MR. PERETZ: Yes. Just pull up...

REXCROSS-EXAMINATION

1
2
3 BY MR. PERETZ:

4 Q. You talked about a chain of custody document. Do you
5 remember that?

6 A. Yes.

7 Q. That's a written document that you had received from Alex
8 Poulsen?

9 A. Yes. It was a printed document that I received with the
10 evidence. And I counter-signed and provided that, as well.

11 Q. Okay. Now, and -- either than having Alex Poulsen provide
12 this document, did you take any other steps to ensure that
13 chain of custody?

14 A. Well, I had phone communications with Mr. Poulsen;
15 I had e-mail communications with Mr. Poulsen, and the
16 chain of custody;

17 Mr. Poulsen described the steps that he look to extract
18 the documents;

19 He... and shall I say e-mail? He described the volume of
20 e-mail, in terms of the byte count. It was a very large amount
21 of e-mail.

22 And that was also tracked and detailed in spreadsheets, as
23 we instructed him to.

24 And so, you know, there was more than just the chain of
25 custody form; it was an extensive process, and very standard in
26 the process of collecting evidence, as I do in many matters.

27 Q. Sure. And did you examine who from Greenspan had access
28 to in-boxes of the employees' e-mails, as part of your

1 assignment?

2 A. I did not.

3 Q. Do you know if the principals of Greenspan had access to
4 in-boxes of other employees?

5 A. I'm not aware one way or another.

6 Q. Do you know if Mark Fratkin had access to in-box of other
7 employees?

8 A. I do not know.

9 Q. Do you know if Mark Fratkin sent e-mails using accounts of
10 other employees?

11 A. I... that is not something I examined as part of this
12 matter; however, I have read some of the pleadings in this
13 matter and seen that that is an allegation.

14 Q. But you didn't look into that; correct?

15 A. I did not.

16 MR. PERETZ: Okay. I have no further questions, Your
17 Honor.

18 THE COURT: All right. Mr. Leatha, thank you very much.

19 THE WITNESS: All right. Thank you, Your Honor.

20 THE COURT: Let's go off the record for just a moment, and
21 let me ask the court reporter, in the first instance, we've
22 been going nearly two hours, it's 3:25 or so, what's -- the
23 level of your, madam reporter, of your endurance at this point.

24 *(Off-the-record discussion.)*

25 THE COURT: All right. So what we're gonna do, then, is
26 we'll go off the record for ten minutes, for the benefit of the
27 reporter, and resume as 3:35, period.

28 *(Short break taken.)*

1 THE COURT: All right. So we're back on the record.

2 Both counsel are present and there remain a number of
3 witnesses who are attendees on this video conference.

4 As I understand it, both counsel have agreed to excuse the
5 two handwriting experts, Dr. Mohammed and Mr. Stewart, and to
6 submit the issues based solely on their written declarations.

7 Is that correct, both counsel?

8 MS. FITZSIMMONS: It is, Your Honor. We have some
9 objections that we could perhaps make at a different time to
10 the supplemental declaration of Dr. Mohammed, with respect to
11 some of the... you know, hearsay and other evidence that was
12 submitted regarding Mr. Stewart.

13 THE COURT: All right. Well, we'll put that on the list
14 of things we're going to have to deal with going forward.

15 So, Mr. Stewart and Dr. Mohammed, you are, of course,
16 welcome to remain on the line and watch. This is a public
17 proceeding. But you are excused as witnesses.

18 MS. FITZSIMMONS: And you're off the clock, ha.

19 MR. PERETZ: I wanted add, Dr. Mohammed, you're off the
20 clock but please join, if you wish.

21 THE COURT: All right. With that said, where are we going
22 from here? Mr. Peretz.

23 MR. PERETZ: Yes. I'd like to call Paul Migdal to
24 testify.

25 THE COURT: All right. Give me a moment to find
26 Mr. Migdal's declaration...

27 MR. PERETZ: *(Sneezes.)*

28 THE COURT: Bless you...

1 MR. PERETZ: Thank you.

2 THE COURT: I assume Mr. Migdal uses the screen name *Paul*.
3 I am admitting him...

4 Mr. Migdal, can you hear me?

5 THE WITNESS: I can, Your Honor.

6 THE COURT: Welcome, sir. May I ask the clerk to swear
7 Mr. Migdal.

8 THE CLERK: Yes, Your Honor.

9 PAUL MARTIN MIGDAL,
10 Called as a witness for the Defense, having been duly sworn,
11 testified as follows:

12 THE CLERK: Please state and spell your complete name for
13 the record.

14 THE WITNESS: Paul, P-a-u-l; Martin, M-a-r-t-i-n; Migdal,
15 M-i-g-d-a-l.

16 THE COURT: Mr. Peretz.

17 MR. PERETZ: Yes. Thank you.

18 CROSS-EXAMINATION

19 BY MR. PERETZ:

20 Q. Mr. Migdal, good afternoon. There's some echo... it's not
21 from me... okay.

22 One, one two three... I think we're good.

23 May I proceed, Your Honor?

24 THE COURT: You may.

25 BY MR. PERETZ:

26 Q. Okay. Good afternoon, counselor. As you know, I
27 represent Masood Khan in this arbitration -- in this
28 litigation.

1 There's still echo, Your Honor.

2 THE COURT: It is. I'm gonna mute myself, but I don't
3 know if that's gonna do much good, because there's no noise on
4 this end.

5 BY MR. PERETZ:

6 Q. Mr. Migdal?

7 A. Yes.

8 Q. Sorry. We're just checking if there's echo that is on.

9 THE CLERK: It usually happens if there's somebody on both
10 video and phone.

11 MR. PERETZ: I am not; I'm the same as I was before.
12 So... this is off.

13 I'll it continue, Your Honor.

14 BY MR. PERETZ:

15 Q. Mr. Migdal, how long have you been with Greenspan now?

16 A. Since 1995.

17 Q. And you worked with Masood Khan since he joined Greenspan;
18 correct?

19 A. That is correct.

20 Q. And he was not the assistant general counsel at the
21 beginning; that title was provided him to in 2016; correct?

22 A. *(Nods head)* The title was conferred in 2016; that's
23 correct.

24 Q. Okay. As part of your work, employees of Greenspan are
25 provided with e-mail addresses that they can use; right?

26 A. That's correct.

27 Q. Now, as a principal -- you're also a principal of
28 Greenspan; correct?

1 A. I don't know what you mean by *principal*.

2 Q. Are you an officer?

3 A. Yes, I'm an officer.

4 Q. Okay. And do you have access to e-mail in-boxes of other
5 employees?

6 A. No, I don't know, because I've never used them.

7 Q. Okay. Do you know if Mark Fratkin has access to e-mail
8 in-boxes of other employees?

9 MS. FITZSIMMONS: Calls for speculation.

10 You're muted, Your Honor.

11 THE COURT: All right. The objection is overruled.

12 If you know, sir, does Mr -- or did Mr. Fratkin have
13 access to the e-mail boxes of other employees of Greenspan?

14 THE WITNESS: Yes, he did.

15 BY MR. PERETZ:

16 Q. And is it true, Mr. Migdal, that Mr. Fratkin sent and
17 received e-mails as if he -- he is other employees of the
18 company?

19 A. I'm sorry. I don't understand your question.

20 Q. Sure. Up until Mr. Khan left the company, okay, up until
21 that time, is it true that Mr. Fratkin sent e-mails as if he's
22 sending -- as if he's other employees of the company?

23 A. He has sent e-mails, for example, on by behalf, but I have
24 known about them in advance.

25 He told me what he intended to send, or confirmed that I
26 wanted something sent, that he would send it over my signature.
27 And I think he did that also with permission of other
28 employees.

1 Q. And those e-mail included a signature block of that
2 employee and not his; correct?

3 A. That's correct.

4 Q. And is it true that Mr. Fratkin also sent e-mails using
5 the e-mail address of other employees?

6 A. I think... you already asked that, and I think I answered
7 it.

8 Q. Sure. Maybe I should clarify that. Your e-mail
9 address -- what is your e-mail address at Greenspan?

10 A. *Paul@Greenspan-AI.com.*

11 Q. Is it true that Mr. Fratkin used your e-mail,
12 *Paul@Greenspan* to send those e-mails?

13 A. What e-mails?

14 Q. To send e-mails on your behalf?

15 A. Yes, but with my advanced knowledge and permission.

16 Q. Sure. So in those instances, he would use your e-mail
17 address and send an e-mail to others; correct?

18 A. Correct.

19 Q. And you believed that he did it with other employees;
20 correct?

21 A. Correct, with their permission.

22 MR. PERETZ: Move to strike, Your Honor.

23 THE WITNESS: You asked me what I believed.

24 THE COURT: Denied. I have the answer in mind. Go ahead.

25 BY MR. PERETZ:

26 Q. Good.

27 Mr. Migdal, did Mr. Fratkin send e-mails from Masood
28 Khan's e-mail address?

1 A. To the best of my knowledge, he did.

2 Q. And he firmly had the capability of doing that; correct?

3 A. That's correct.

4 THE COURT: How do you know that, sir?

5 THE WITNESS: Well, I've seen some e-mails and exchange of
6 e-mail between Masood and Mark Fratkin, where Masood has asked
7 Mr. Fratkin to please send out information on his behalf.

8 MR. PERETZ: Your Honor, may I proceed, or do you want me
9 to wait?

10 THE COURT: No, I'm... sorry. I -- since you aren't in a
11 question, but I'll try not to interrupt too much. Go ahead.

12 BY MR. PERETZ:

13 Q. Okay. So my next question.

14 Now, Mr. Migdal also had the ability to delete e-mails
15 from in-boxes of other employees; correct?

16 MS. FITZSIMMONS: Calls for speculation.

17 THE COURT: Well, wait. You asked did Mr. Migdal have
18 that ability? Do you mean did Mr. Fratkin have that ability?

19 MR. PERETZ: I apologize; yeah, I misspoke. Let me start
20 again.

21 BY MR. PERETZ:

22 Q. Mr. Migdal, is it true that Mr. Fratkin also had the
23 ability to delete e-mail from other employees' e-mail boxes?

24 A. I don't know.

25 MS. FITZSIMMONS: Calls for speculation.

26 THE COURT: Well, we have the answer; the answer is "I
27 don't know."

28 BY MR. PERETZ:

1 Q. Mr. Migdal, is it true that Mr. Fratkin had full access to
2 your e-mail in-box?

3 MS. FITZSIMMONS: Calls for speculation.

4 THE COURT: If you know.

5 THE WITNESS: I don't know.

6 BY MR. PERETZ:

7 Q. And, Mr. Migdal... I want to show you a document that is
8 marked as Exhibit 17. And I'll put it on the screen. It's a
9 handbook acknowledgement, with signature Masood Khan.

10 Do you see that?

11 A. I do.

12 Q. When did you see this document for the first time?

13 A. To the best of my recollection, it was an exhibit on some
14 of the pleadings in this action.

15 Q. Okay. You've never seen this document prior to the --
16 prior to this litigation; correct?

17 A. That's correct.

18 Q. Now, you worked with Masood for how many years?

19 A. Oh, since he began employment with Greenspan until his
20 abrupt resignation... I'm trying to recall when he went to work
21 with us. I think it was the year 2005.

22 So I worked with him through 2005 through 2018.

23 Q. And you had the cordial and good relationship with him;
24 correct?

25 A. Very.

26 Q. Okay. Did you see his signature prior to this litigation?

27 A. ... I don't specifically recall.

28 Q. Can you tell if this signature that appear on Exhibit 17

1 is Masood Khan's signature?

2 A. I don't know.

3 Q. You don't know one way or the other?

4 A. I don't know one way or the other.

5 Q. Sure. Now, when the arbitration --- strike that.

6 Let me mark -- let me show you Exhibit 18, sir...

7 And, again, what I'm going to do is share it on the
8 screen...

9 This is the mandatory mediation and binding arbitration
10 agreement. Do you see that?

11 A. I do.

12 Q. Do you see the signatures which appeared to be the
13 signature of Masood Khan on this document?

14 A. I do.

15 Q. Okay. When did you see this document for the first time?

16 A. Again, as part of the pleadings in this action.

17 Q. Okay. And prior to -- strike that.

18 Did you ever discuss with Mr. Khan the fact that he signed
19 this arbitration agreement?

20 MS. FITZSIMMONS: I'm just going to object only if this
21 involves attorney-client privileged communication. But if it
22 does not, then feel free to answer it.

23 THE WITNESS: Would you repeat the question?

24 BY MR. PERETZ:

25 Q. Sure. I showed you a document which was marked as Exhibit
26 18. And my question to you... did Mr. Khan acknowledge to you
27 that he signed this arbitration agreement?

28 A. No, he did not.

1 Q. Is it true, sir, that you had discussions with Mr. Khan
2 about this arb -- about the arbitration agreement that
3 Greenspan asked its employees to sign, when the arbitration
4 agreement was sent to the employees in or around April of 2018?

5 MS. FITZSIMMONS: Vague and ambiguous, and potentially
6 calls for attorney-client communication.

7 THE COURT: I -- all right. I apologize. It's getting
8 late on a Friday afternoon.

9 Mr. Peretz, I got lost in the question. If I may ask you
10 to rephrase it. That's my shortcoming but please do restate
11 it.

12 THE WITNESS: I didn't understand it either, Your Honor.

13 MR. PERETZ: Your Honor, you're kind enough but I think it
14 was my shortcoming. But I'll rephrase regardless.

15 BY MR. PERETZ:

16 Q. Mr. Migdal, the arbitration agreement at issue, the one
17 that appears on the screen as Exhibit 18, was a form -- a form
18 of Greenspan that was sent to all employees around April of
19 2018; correct?

20 A. Correct.

21 Q. During that time, did you have discussions with Mr. Khan
22 about this agreement?

23 A. The... to the best of my recollection, we did have a
24 conversation or two about it.

25 Q. Okay. During this conversation, did he -- is it true that
26 he told you that he's not going to sign this arbitration
27 agreement?

28 A. Absolutely not.

1 Q. I want to show you a different document that was marked as
2 Exhibit 1...

3 THE COURT: Exhibit 1?

4 MR. PERETZ: Yes, Your Honor.

5 This is a handbook acknowledgement form, receipt and
6 acknowledgement form. Do you see that?

7 A. Yes.

8 Q. And it has a date January 9th -- excuse me, September 1,
9 2007. Do you see that?

10 A. I do.

11 Q. Did you ever see this document?

12 A. Part of the pleadings.

13 Q. Okay. You've never seen it before; correct?

14 A. Pardon?

15 Q. You've never seen it before the pleadings in this action?

16 A. No, I have not.

17 Q. Okay. Is it true that you never discussed with Masood
18 Khan the fact that he signed or didn't sign this receipt and
19 acknowledgement form, Exhibit 1?

20 A. I don't recall any discussion about this exhibit.

21 Q. Okay. Well, when you had discussions with Mr. Khan in or
22 around April of 2018, did you have discussions with him whether
23 he should or shouldn't sign the arbitration agreement?

24 A. The discussion that we had was that the handbook was being
25 revised, and that there was an arbitration clause that had
26 tightened up from prior editions. And that everybody, as a
27 condition of employment, had to sign it. And that I was going
28 to sign it as soon as I received it.

1 Q. Okay. What was Mr. Khan's response to that?

2 A. I... don't recall but I do know he did not say he was not
3 going to sign it.

4 Q. But, as you sit here today, you don't recall what he said
5 in response?

6 A. No, I don't.

7 Q. Did he express any hesitations?

8 A. Not to me, ever.

9 MR. PERETZ: Okay. I have no further questions.

10 THE COURT: Ms. Fitzsimmons?

11 MS. FITZSIMMONS: Yes, I do have a few questions.

12 REDIRECT EXAMINATION

13 BY MS. FITZSIMMONS:

14 Q. Have you ever become aware that Mr. Fratkin sent any
15 e-mails on behalf of somebody else at Greenspan without their
16 consent?

17 MR. PERETZ: Objection; calls for speculation, and
18 overbroad.

19 THE COURT: Overruled; you may answer.

20 THE WITNESS: No, I am not aware of any such sendings.

21 BY MS. FITZSIMMONS:

22 Q. And when you testified earlier that you were aware that
23 Mr. Fratkin, with other People's consent, would sometimes send
24 e-mails on behalf of those individuals, were those e-mails sent
25 from a particular e-mail address, like a general account, or
26 was it from Mr. Fratkin's account, or from somebody else's
27 account, if you know?

28 MR. PERETZ: Compound.

1 THE COURT: You can answer.

2 THE WITNESS: I'm not sure from which account.

3 BY MS. FITZSIMMONS:

4 Q. Okay. Did Mr. Khan ever complain to you or raise any
5 concerns with you about that 2007 arbitration agreement?

6 A. Never.

7 Q. Is that the type of thing you think you would remember if
8 he did raise those concerns with you?

9 A. Absolutely.

10 MR. PERETZ: Objection; calls for speculation.

11 THE COURT: Sustained; the answer is stricken.

12 BY MS. FITZSIMMONS:

13 Q. Did Mr. Khan ever express concerns to you about not
14 understanding the 2018 arbitration agreement?

15 A. Never.

16 Q. And as associate general counsel, would you expect that if
17 Mr. Khan had concerns about understanding the 2018 arbitration
18 agreement, that he would bring those concerns to you?

19 A. Absolutely.

20 MR. PERETZ: Objection; argumentative, calls for
21 speculation.

22 THE COURT: Let me -- all right. The objection is
23 sustained.

24 Let me just understanding something.

25 Mr. Migdal, your current title is general counsel?

26 THE WITNESS: Executive vice president general counsel;
27 yes, Your Honor.

28 THE COURT: And in 2018, were you -- were those the same

1 positions that you occupied at that time.

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Did Mr. Khan, who became, I think you've
4 testified, assistant general counsel in 2016, did he report to
5 you?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And you were a two-man general counsel's
8 office; is that correct?

9 THE WITNESS: Well, Your Honor, we had another attorney,
10 Tim Larsen, who was also a public adjuster.

11 We have -- we also had a woman by the name of Kathleen
12 Defever, who also had a law degree. But basically it was
13 Masood and I that were operating there as counsel for the
14 corporation.

15 THE COURT: All right. Let me just ask one more
16 clarifying question, if I may. This, again, may be my
17 attention span.

18 I thought you said at the outset that you've been working
19 for Greenspan, which we haven't defined here because of a
20 number of different entities...

21 THE WITNESS: *Ha*, yes.

22 THE COURT: Since 1995. Your declaration says you worked
23 for Greenspan since 2003.

24 THE WITNESS: ... Yes, Your Honor. And that's because
25 there have been different entities.

26 I had left my law firm in Los Angeles in 1995, and joined
27 the Greenspan Company in Los Angeles;

28 I worked there as a public adjuster from 1995 to 2002;

1 In 2002, I relocated to San Francisco, where the separate
2 entity was formed, which is called -- the entity now is the
3 Greenspan Company... slash Adjusters International. It's a
4 separate corporation.

5 THE COURT: Okay. All right. Thank you. I just wanted
6 to clear that up.

7 Now, I'm not sure whom I interrupted and where we were.

8 MS. FITZSIMMONS: Thank you, Your Honor. It was me that
9 was proceeding.

10 BY MS. FITZSIMMONS:

11 Q. Let me -- let me have Matt pull up Exhibit 2 or you. I
12 just want to go back to one item...

13 And if you could just take a look at this e-mail, and,
14 Matt, if you can scroll up so we can see the *from* and the *to*
15 line?

16 Does this refresh your recollection at all -- or let me
17 just ask you: Is this the type of e-mail that you were
18 testifying about that you were aware that Mr. Fratkin would
19 sometimes send on behalf of other people at the company?

20 A. Yes, that's exactly what I was referencing.

21 Q. And so does this refresh your recollection at all as to
22 what account those e-mails would come from?

23 A. It would come from this account, Greenspan AI.

24 Q. Okay. Now, did -- thank you, Matt.

25 Did Mr. Khan ever tell you, or say anything to you at all
26 indicating that he wasn't going to sign the arbitration
27 agreement in 2018?

28 A. He never said he was not going to sign it. And he never

1 complained about it, never gave any indication he was going to
2 do anything other than sign it.

3 Q. As general counsel and as Mr. Khan's supervisor in that
4 capacity, if Mr. Khan had concerns that somebody was forging
5 his names on documents, would you expect him to tell you that?

6 A. Absolutely.

7 MR. PERETZ: Calls for speculation, lack of foundation.

8 THE COURT: Overruled; it'll be admitted and given the
9 weight that its entitled to.

10 THE WITNESS: Yes, I would.

11 BY MS. FITZSIMMONS:

12 Q. Did Mr. Khan ever tell you that he had concerns that
13 somebody was forging his signature or his name on documents?

14 A. No, he never did.

15 MS. FITZSIMMONS: Okay. I have no further questions.

16 Thank you.

17 MR. PERETZ: I have no further questions, Your Honor.

18 THE COURT: Mr. Migdal, I'm reluctant to let you go
19 without asking you more questions.

20 THE WITNESS: *Ha ha*, yes.

21 THE COURT: What is this Greenspan AI account?

22 THE WITNESS: Okay.

23 THE COURT: What is that account;

24 Who has access to it -- I'm asking you three questions
25 here, and I -- if I were a lawyer, there would be an objection
26 but -- but I'm not. I'm the judge, so I can do this.

27 THE WITNESS: Yes.

28 THE COURT: What is that account?

1 Who has access to it?

2 And if someone responds to an e-mail sent from that
3 account, where does it go? And who has access to it when it
4 comes back, the response?

5 THE WITNESS: Okay. That appears to be the general
6 account that I know Mr. Fratkin would have access to it. I'm
7 not sure whether I do because I've never used it. I'm not sure
8 whether anybody else does.

9 But, for example, I may be out in the field; I may be at a
10 client's place. And I would call Mark and say, *Mark, listen, I*
11 *need a document, or, I need a contract sent out, or, I need a*
12 *brochure.* Whatever I or anybody else might need in the field,
13 we would call Mark and Mark would send it out to the clients.

14 And, for example, say, *here is the document.* I would have
15 given him instructions as to who to send it to and what I
16 needed.

17 If there was a response that came back, he might
18 immediately let me know what the response is, or send me the
19 response so that I could pick up the ball and go from there.

20 THE COURT: So, if I understand correctly, you don't know
21 whether you personally had access to this account?

22 THE WITNESS: I don't know, Your Honor.

23 THE COURT: Okay.

24 THE WITNESS: I've never used it because I never found a
25 need personally to use it. I would call Mark.

26 THE COURT: Did you have access to it? Did it show up on
27 your computer screen as a box that you could click on and
28 access?

1 THE WITNESS: You know, I don't know; I never looked for
2 it.

3 THE COURT: Okay. All right.

4 And, to your knowledge -- well, do you have any knowledge
5 about anybody else other than Mr. Fratkin who had access to
6 that general e-mail account, GreenspanAI?

7 THE WITNESS: No, I don't.

8 THE COURT: Okay. All right. I've abused my privilege
9 enough. I think before that sparks any more questions we
10 better excuse you.

11 MR. PERETZ: Your Honor, it did spark --

12 THE COURT: I'm sorry?

13 MR. PERETZ: It does spark questions so...

14 THE COURT: Okay.

15 MR. PERETZ: I attempted not to but...

16 THE COURT: Go ahead.

17 MR. PERETZ: I couldn't help myself.

18 THE COURT: Quick follow-up.

19 RECROSS-EXAMINATION

20 BY MR. PERETZ:

21 Q. Mr. Migdal, you had an assistant at all times. The name
22 was Chad Freeman; correct?

23 A. I'm sorry. Chad Freeman?

24 Q. Yes, that was your assistant?

25 A. No, not my assistant.

26 Q. Who was your assistant?

27 A. Well, I shared an assistant with Masood. Dinh Pak was --
28 helped me, assisted me;

1 Before that it was Luzmaritza Suarez, who assisted;
2 Maricris Lacap assisted.

3 Q. And you could have used them to send e-mails on your
4 behalf; you didn't have to use Mark; correct?

5 A. Oh, yes.

6 Q. And, in fact, Mark was the only one who had access to this
7 general e-mail address of Greenspan; correct?

8 A. I --

9 MS. FITZSIMMONS: Calls for speculation.

10 THE COURT: You may answer. I think you've answered it
11 already, but go ahead and answer it again.

12 THE WITNESS: I said I don't know.

13 MR. PERETZ: I have no further questions, Your Honor.

14 THE COURT: Ms. Fitzsimmons, no follow-up?

15 MS. FITZSIMMONS: No follow up.

16 THE COURT: All right. Thank you very much, Mr. Migdal.

17 MS. FITZSIMMONS: Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. Who is next in the time that's
20 remaining to us?

21 MR. PERETZ: Okay. There aren't many left. Mr. Gibson,
22 Your Honor.

23 THE COURT: I'm sorry?

24 MR. PERETZ: Mr. Gibson.

25 THE COURT: All right. Let me admit Mr. Gibson...

26 And give me a moment, if you would, to get his declaration
27 in front of me.

28 MR. PERETZ: Sure.

1 Mr. Gibson, if you would unmute yourself, please.

2 MR. GIBSON: Sorry, Your Honor.

3 THE COURT: No problem. And I'll ask the clerk, please to
4 swear Mr. Gibson.

5 Please raise your right hand, sir.

6 JAMES CLAYTON GIBSON

7 Called as a witness for the Defense, having been duly sworn,
8 testified as follows:

9 THE CLERK: Please state and spell your complete name for
10 the record.

11 THE WITNESS: James Clayton Gibson, J-a-m-e-s; Clayton,
12 C-l-a-y-t-o-n; Gibson, G-i-b-s-o-n.

13 THE COURT: Your witness, counsel.

14 MR. PERETZ: Thank you.

15 CROSS-EXAMINATION

16 BY MR. PERETZ:

17 Q. Thank you, Mr. Gibson. My name is Yosef Peretz. And I
18 represent Masood Khan.

19 Mr. Gibson, when did you start working for Greenspan?

20 A. 2008.

21 Q. And what was your first position?

22 A. Public adjuster.

23 Q. And what's your current position?

24 A. Chief operating officer.

25 Q. When did you become the chief operating officer?

26 A. Uh... I became... director of operations in 2016;
27 Chief operating officer in 2017.

28 Q. Okay. Did you ever have access to Mr. Khan's personnel

1 file at Greenspan?

2 A. Yes.

3 Q. When did you start having access to his personnel file?

4 A. So it would have been 2016.

5 Q. Okay. And where was Mr. Khan's personnel file kept?

6 A. Located in our H.R. specialist office.

7 Q. Okay. And you gave a declaration; correct?

8 A. Correct.

9 Q. And... did you ever have a discussion with Mr. Khan about
10 signing an arbitration agreement?

11 A. Not that I recall.

12 Q. Did you ever have a discussion with Mr. Khan about signing
13 an acknowledgement form of a handbook?

14 A. Not that I recall.

15 Q. Okay. So I want to show you a declaration, sir, and it's
16 on the screen. Do you see that?

17 A. Yes.

18 Q. As chief operating officer, number 5 reads the following:

19 "As chief operating officer, I am aware that
20 Defendants have a previous arbitration agreement
21 from 2007, as well as previous employee handbooks
22 and policies.

23 "On September 1st, 2007, Plaintiff signed an
24 acknowledgement and receipt of the 2007 handbook,
25 which included an acknowledgement of the agreement
26 to submit employment disputes to arbitration."

27 Do you see that?

28 A. Correct.

1 Q. Now, you weren't... you didn't -- you didn't work for
2 Greenspan in 2007; correct?

3 A. Correct.

4 Q. So you have no direct knowledge of whether Mr. Khan signed
5 or did not sign an arbitration agreement or acknowledgement
6 form in 2007; correct?

7 A. Correct.

8 Q. Okay. And no one ever told you that Mr. Khan signed or
9 did not sign a receipt and acknowledgement form of the handbook
10 in 2007; correct?

11 A. It was not discussed until, you know, this legal issue
12 came up.

13 Q. (*Nods head.*) So up until the time that Mr. Khan left the
14 company, no one told you, one way or the other, whether he
15 signed a receipt and acknowledgement of a handbook; correct?

16 A. Are you talking about the 2007, or are you talking about
17 the subsequent 2018?

18 Q. Let's start with that 2007.

19 A. I never discussed the 2007 agreement with anyone.

20 Q. Did you discuss the 2018 with anyone?

21 A. Not specifically to Masood Khan, but I was tracking
22 whether or not all of our employees signed -- you know, I had
23 given direction to Ms. Hassanpur, and I was to be notified if
24 anyone did not sign.

25 Q. Sure. Taking you back to paragraph 5 of your declaration.
26 Now, you didn't draft this declaration; correct?

27 A. Correct.

28 Q. Okay. You say here:

1 "As chief operating officer, I am aware that
2 Defendants had a previous arbitration agreement from
3 2007."

4 Did you ever see it?

5 A. Once this legal issue came up, I became aware of it.

6 Q. Meaning legal issue in this case?

7 A. Correct.

8 Q. Okay. Did you see it? Did you see the 2007 arbitration
9 agreement?

10 A. I saw the document that was attached to my statement.

11 Q. Sure. That's not an arbitration agreement; that's a
12 receipt and acknowledgement. You see, "receipt and
13 acknowledgement"? Do you see that?

14 A. I do.

15 Q. Did you see a 2007 arbitration agreement, ever?

16 A. I have not reviewed it, the 2007 arbitration agreement.

17 Q. Okay. And when you say here, "on September 1st, 2007,
18 Plaintiff signed the acknowledgement and receipt of the 2007
19 handbook," you only rely on the document that you attached to
20 this -- to your declaration; correct?

21 A. Correct.

22 Q. You don't know who signed it; correct?

23 A. Correct.

24 Q. Do you recognize the signature here as Masood's signature?

25 A. I am not an expert in Masood's signature.

26 Q. Have you ever --

27 A. I have no reason to... to question.

28 Q. Where did you get this document from?

1 A. I believe it came out of his personnel file.

2 Q. And who found it there?

3 A. I believe it was our H.R. person at the time -- sorry. I
4 guess it would be our H.R. person at this time.

5 Q. And who is that?

6 A. Her name is Pallavi Gupta.

7 Q. Can you spell that, please, for the...

8 A. G-u-p-t-a.

9 Q. Okay. And as you sit here today, you don't recall any
10 conversation you had with Masood Khan about an arbitration
11 agreement in 2018?

12 A. No.

13 Q. I am correct, yes?

14 A. You are correct.

15 MR. PERETZ: I have no further questions, Your Honor.

16 THE COURT: Ms. Fitzsimmons?

17 MS. FITZSIMMONS: Yep, I have a few questions.

18

19 REDIRECT EXAMINATION

20 BY MS. FITZSIMMONS:

21 Q. Hi, Mr. Gibson.

22 A. Hello.

23 Q. How long have you known Mr. Khan?

24 A. Since 1992 or '93 approximately.

25 Q. And how closely did you work with Mr. Khan during the time
26 that he was at Greenspan?

27 A. Oh, we were pairs. And then, later on, we, you know, I
28 dealt with him in a supervisory nature.

1 Q. Okay. Did you sign Mr. Khan's name on any arbitration
2 agreements?

3 A. No.

4 Q. Did you sign Mr. Khan's name on an employment
5 acknowledgement form?

6 A. No.

7 Q. Did Mr. Khan ever communicate to you at any time that he
8 was reluctant or hesitant or had concerns about signing the
9 arbitration agreement?

10 A. No.

11 Q. During the time that Mr. Khan was employed at Greenspan,
12 did you have any reason to believe that Mr. Khan had not signed
13 the arbitration agreement?

14 A. No.

15 MR. PERETZ: Calls for speculation, lacks foundation.

16 THE COURT: Overruled; you may answer.

17 THE WITNESS: No.

18 BY MS. FITZSIMMONS:

19 Q. Is that the type of thing that, as C.O.O., it would have
20 been brought to your attention?

21 A. When Masood was unhappy, he was very vocal; I mean he was
22 not a shy person. So if he thought something was going on
23 or -- there's something he didn't want to participate in, he
24 would have complained vigorously.

25 Q. And you testified that you were notified as to who was
26 signing off on the arbitration agreements; is that correct?

27 A. Correct.

28 Q. And why is it that you were being notified of that?

1 A. Because everyone in the company had to decide it as a
2 contingency upon continued employment.

3 Q. Did Mr. Khan continue his employment after April 30th,
4 2018?

5 A. Yes, he did.

6 MS. FITZSIMMONS: I have no further questions. Thank you.

7 THE COURT: Anything else, Mr. Peretz?

8 MR. PERETZ: No -- no, subject to if you have any
9 questions, I reserve my right to follow, *ha*.

10 THE COURT: Well, I should have learned my lesson by now
11 but I haven't.

12 Mr. Gibson, if I may, I'm going to ask you a couple quick
13 follow-up questions.

14 You said that you dealt with Mr. Khan in a supervisory
15 capacity. When was that? Did he report to you at some point
16 and, if so, when?

17 THE WITNESS: I was director of client services from
18 2015ish to 2016, which technically meant that I was supervising
19 the adjusters;

20 And then when I became chief operating officer, then
21 pretty much everything on the operations side of the company,
22 you know, everyone essentially reports to me, so...

23 THE COURT: Did that include the H.R. department?

24 THE WITNESS: Correct.

25 THE COURT: Okay. So we've seen evidence and heard
26 testimony to the effect that the new employee handbook and
27 arbitration that were put into place in the spring of 2018,
28 that all employees of the company were required to sign both of

1 those documents -- or an acknowledgement at least of receipt of
2 the first, and to sign the arbitration agreement as a condition
3 of their continued employment.

4 Is that accurate --

5 THE WITNESS: Correct.

6 THE COURT: -- to your knowledge?

7 THE WITNESS: Yes, sir.

8 THE COURT: Was that a process that you, as the C.O.O. at
9 the time, were overseeing in any capacity?

10 THE WITNESS: Uh... I was working with our H.R., you know,
11 person to make sure that it was executed.

12 And we made the announcement, you know, via e-mail, and
13 rolled out, you know -- and then basically rolled out the
14 announcement. So everyone in the company knew what was going
15 on.

16 THE COURT: Was that Ms. Hassanpur, the H.R. person that
17 you're referring to?

18 THE WITNESS: Yes.

19 THE COURT: Okay. And did she report to you at the time,
20 in the spring of 2018?

21 THE WITNESS: Yes.

22 THE COURT: Was she keeping you apprised of who had and
23 who had not signed or acknowledged receipt of these two
24 documents that we've been talking about?

25 THE WITNESS: Uh... yeah. Basically she would notify us.
26 Every couple of weeks she'd send an updated version of the
27 spreadsheet --

28 THE COURT: Oh, so you saw versions of that spreadsheet,

1 indicating which employees had and had not signed the
2 agreement?

3 THE WITNESS: Yes.

4 THE COURT: Okay. All right. Did that spark any interest
5 on counsel's part, or can we let Mr. Gibson go?

6 MR. PERETZ: No.

7 MS. FITZSIMMONS: No further questions.

8 MR. PERETZ: Not of -- not on my part, Your Honor.

9 THE COURT: All right. Mr. Gibson, thank you for your
10 time and your patience, sir.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: All right.

13 THE COURT: Um... it is 4:24. Let's go off the record and
14 talk about where we go from here...

15 *(Off-the-record discussion.)*

16 THE COURT: All right. We'll see you all Tuesday at 1:30.

17 The only other thing I would add is, if I recall
18 correctly, the... motion, that is, the motion to compel
19 arbitration, lest we have forgotten about it already, that
20 brought us all here, is back on my calendar on Wednesday
21 morning.

22 It seems to me pretty obvious that... that I won't be
23 prepared to give you a ruling by Wednesday. So -- we should
24 probably kick that off a week or two, but we can talk about
25 that next week.

26 I'm a -- well, let me ask this. The -- you know, the
27 threshold issue that this hearing is convened to address is
28 whether there is an enforceable arbitration agreement.

1 There are other issues that had been raised in connection
2 with the motion to compel arbitration. And it may be that one
3 or the other of you would like an opportunity either to address
4 those other issues;

5 Or, conceivably, to address an argument in effect... in
6 lieu of closing argument, if you will, the evidence that's been
7 presented here.

8 So if that assumption is correct, when you would all like
9 to do that?

10 MR. PERETZ: Just a point of clarification, Your Honor.

11 You're mentioning we have two other motions at the same
12 time.

13 THE COURT: The motions to see seal; right?

14 MR. PERETZ: Yes, seal. And there's a motion to stay.

15 I assume you're only talking about the motion to compel
16 arbitration at this point.

17 THE COURT: Well, I... I mean my benefit -- it's gonna be
18 most efficient to address them all at once. Unless there's
19 some -- compelling reason for me to address something, you
20 know, one of them earlier, I'd rather do it all at once.

21 MR. PERETZ: No, absolutely. I didn't mean to say that.

22 My question is if we want to do some sort of closing brief
23 or closing argument, I assume you meant only on the arbitration
24 agreement and not the other --

25 THE COURT: Correct.

26 MR. PERETZ: Okay. I think if -- if possible, I would
27 like to submit a closing brief, if that's your preference.

28 THE COURT: All right. So the idea being that Tuesday, at

1 1:30, we complete the evidentiary hearing;

2 The parties, then, have some period of time to file a
3 closing brief, in lieu of -- in lieu of closing argument, in
4 other words, summarizing what you believe the evidence has
5 shown, and what I should find based on the evidence presented
6 at the evidentiary hearing;

7 And then sometime thereafter, I would hold a hearing on
8 the motion to compel, and the two -- and the seal motion and
9 the motion to stay.

10 Is that the way we should go at this?

11 MS. FITZSIMMONS: I'm not opposed to doing it that way,
12 Your Honor, but we would then need to leave time to get the
13 transcripts from the evidentiary hearing, to allow us to brief
14 it.

15 But I'm also not opposed to an agreement that we waive
16 closing briefs. It doesn't seem like an overly complex issue
17 that's at issue before the evidentiary hearing; so I would --
18 you know, I think we could also just argue it, as needed, at
19 the hearing, to -- you know, in the interests of time but...

20 Whatever Your Honor prefers, we would be amenable to.

21 MR. PERETZ: Can we ask the court reporter how long does
22 it take her...

23 *(Off-the-record discussion.)*

24 THE COURT: Okay. So, we're back on the record, after an
25 informal discussion with counsel.

26 We have reached the following decisions.

27 The evidentiary hearing is not concluded. It will resume
28 on Tuesday, November 3, Election Day at 1:30 p.m., via video

1 conference.

2 And there are three remaining witnesses, including the
3 Plaintiff, Mr. Khan, to be examined at that time. And the
4 hearing will be concluded by Tuesday afternoon;

5 By Friday, November 13, each party is to submit to me,
6 preferably electronically to the *contest* e-mail address,
7 proposed statements of decision, comprising the factual
8 findings that that party would like the Court to make, based on
9 the evidence presented at the evidentiary hearing and with
10 appropriate citations to the transcript of the hearing, which
11 the court reporter will endeavor to provide you all with;

12 Finally, on Thursday, November 19, at 9:30 a.m., the Court
13 will hold hearings on the motion to compel arbitration and the
14 other two calendared motions, and will endeavor to circulate
15 tentative rulings in the normal fashion, the afternoon before
16 that hearing, Wednesday the 18th.

17 Did I get everything right?

18 MR. PERETZ: I believe so. Your Honor.

19 THE COURT: Okay.

20 MS. FITZSIMMONS: Yes.

21 THE COURT: All right. Thank you, both, very much.

22 I wish everybody who's on the line, whether they are
23 visible to me or -- audible to me or not, a relaxing and safe
24 and healthy weekend. And look forward to seeing you all on
25 this Zoom link on Tuesday afternoon.

26 MS. FITZSIMMONS: Thank you, Your Honor.

27 MR. PERETZ: Have a great weekend.

28 THE COURT: Thank you. (4:40 p.m.)

1 STATE of CALIFORNIA)
)
 2 COUNTY of SAN FRANCISCO)


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 6
 7 I, MARIA ANTONIA TORREANO, DO HEREBY CERTIFY:

8 That the foregoing is a full, true and correct transcript
 9 of the testimony given and proceedings hereinbefore entitled;

10 That it is a full, true and correct transcript of the
 11 evidence offered and received, acts and statements of the
 12 court, also all objections of counsel and all matters to which
 13 the same relate;

14 That I reported the same in stenotype to the best of my
 15 ability, being the duly-appointed, qualified and official
 16 stenographic reporter of said court, and thereafter had the
 17 same transcribed, as herein appears.
 18

19 DATE: November 2, 2020
 20

21
 22 
 23 _____
 24 Maria A. Torreano, CSR, CRR, RMR, CCRR
 Certificate No. 8600

25 Government Code §69954(d): "Any court, party or person who has
 26 purchased a transcript may, without paying a further fee to the
 27 reporter, reproduce a copy or portion thereof as an exhibit
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