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January 29, 2025

Court of Appeals
Sixth Appellate District
Bi-State Justice Building
100 North State Line Avenue #20
Texarkana, Texas 75501

Re: No. 06-24-00059-CV; *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*

To the Honorable Members of the Court of Appeals:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amici curiae* Texas Civil Justice League and Texans for Lawsuit Reform file this letter in the above-referenced cause in support of the Appellant Samsung Electronics Co., Ltd.

Statement of Interest

The Texas Civil Justice League ("TCJL") is a non-profit association of Texas businesses, health care providers, professional and trade associations, and individuals dedicated to maintaining a fair, stable, and predictable civil justice system. Texans for Lawsuit Reform (TLR) is a volunteer-led organization founded in 1994 to help foster and maintain a system that achieves fair, merits-based

resolution of civil disputes, in a quick and efficient manner, to encourage economic development and job creation in Texas for the benefit of all Texans. Thousands of individuals—living in towns and cities across Texas and representing virtually all of Texas's trades, businesses, and professions—support TLR's mission.

TCJL and TLR have long participated as *amici curiae* in matters that have a significant and pervasive impact on our collective membership and the Texas business climate. Our members have a fundamental interest in the consistent application of the principles of contract interpretation. The trial court in this case, in our view, failed to apply contract-interpretation principles when it submitted to the jury a question regarding the interpretation of a contract provision that the parties agreed was unambiguous, resulting in a "nuclear" $300 million verdict. From our perspective, *any* judgment of that magnitude warrants close scrutiny by the court of appeals to ensure that the trial court punctiliously followed the law.

But in addition to that, Texas enjoys a justly celebrated history of protecting freedom to contract and holding parties to the bargains they have made. In this case, however, the trial court allowed one of the parties to rewrite the contract *in trial*. If the trial court's actions in this case were to become the general rule, every contract could be submitted to a jury for interpretation whether it was "ambiguous" or not. The consequences of opening this particular Pandora's box would significantly

magnify the risk of doing business in this state, as the contracts upon which they rely to commit their resources to Texas would be opened up *ex post facto* to revision through litigation.[1]

This brief has been prepared in the ordinary course of our operations. No one has paid for the preparation of this brief.

Argument

As the Texas Supreme Court and this Court have repeatedly held, in construing the language of a contract, the "most important consideration" is the "agreement's plain, grammatical language." *Anadarko Petroleum Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex. 2002). A court must "determine, objectively, what an ordinary person using those words under the circumstances in which they are used would understand them to mean." *URI, Inc. v. Kleberg County*, 543 S.W.3d 755, 764 (Tex. 2018). The Supreme Court has held further that it "'read[s] contracts 'from a utilitarian standpoint bearing in mind the particular business activity sought

[1] It should be noted that the 88th Legislature enacted legislation establishing a new business court precisely for the purpose of avoiding what has happened in this case. If it had applied here, the statutory language and Rule 359, Texas Rules of Civil Procedure, would have required the trial court "to issue a written opinion . . . in connection with a dispositive ruling, on the request of a party."

to be served,' and *avoiding unreasonable constructions when possible and improper*." *Plains Expl. & Prod. Co.*, 473 S.W.3d at 305 (emphasis added).[2]

When faced with a question of contract interpretation, then, courts have a special duty to ascertain the intent of the parties from a close analysis of the text itself. Indeed, Texas law has long held that the trial court, not the jury, must determine the interpretation of an unambiguous contract as a matter of law. *City of Pinehurst v. Spooner Addition Water Co.*, 432 S.W.2d 515, 518 (Tex. 1968). Here the parties agreed that the contract provision at issue was unambiguous. The trial court, however, failed to conduct *any* analysis, much less the one demanded by Texas law. It compounded the error by refusing to make a ruling determining that the contract provision at issue was ambiguous or to explain its decision to punt to the jury without doing so. If the trial court had conducted the analysis, we believe it would have had no choice but to conclude that only one meaning—Samsung's interpretation—was "genuinely possible." But if the trial court really believed that "two or more meanings [were] genuinely possible after application of pertinent rules of interpretation" to the words on the paper, it should have said so in a written order. *Plains Expl. & Prod. Co. v. Torch Energy Advisors, Inc.*, 473 S.W.3d 296, 305 (Tex. 2015)(quoting *Reilly v. Rangers Mgmt., Inc.,* 727 S.W.2d 527, 530 (Tex. 1987)). But,

[2] We understand that the contract's choice of law provision calls for the application of New York law, but the rules of contract interpretation at issue are substantially the same in Texas.

as alluded to above, the trial court could not make this determination because it never applied the "pertinent rules of interpretation" in the first place.

The Supreme Court has further opined that "the term 'ambiguity' in Texas contract law connotes a greater degree of linguistic indeterminacy than it does in common practice." *Universal CIT Credit Corp. v. Daniel,* 243 S.W.2d 154, 157 (Tex. 1951). We take this to mean that a party arguing for the ambiguity of a contract provision bears a heavier burden to identify with precision the words and phrases that may be susceptible to equally reasonable constructions. Consequently, "[b]efore declaring a contract ambiguous, a court must seek to understand its objective meaning based on its plain language, but if the text alone is inconclusive, the court may consider any extrinsic circumstances that shed light on the objective meaning coveyed by the text." *Balandran v. Safeco. Ins. Co. of Am.,* 972 S.W.2d 738, 741 (Tex. 1998). Plainly, if the trial court *thought* that it could not determine the objective meaning of the contract from the plain text, it had a duty to consider "extrinsic circumstances." Nevertheless, it neither required KPN to show a "greater degree of linguistic determinacy" nor made any effort to determine "the objective meaning conveyed by the text."

Appellee asked for $600 million and got $300 million based on a dispute over the following language: "In the event that Samsung takes a license from a Patent Pool, KPN shall have the right, as an exception to the foregoing [covenant not to sue

and damages waiver], to receive the KPN share of any Patent Pool Payment made by Samsung to that Patent Pool during the term of the Agreement." From our standpoint, there is only one possible interpretation of this language, and that is Samsung's. KPN would have you believe that Samsung's settlement agreement with Sisvel International granting Samsung a license to several patents owned by Sisvel and its affiliate (as well as some owned by another entity called Wilus), constituted a "Patent Pool Payment." They contend that because Sisvel serves as administrator of a patent pool that also includes some KPN patents, the contract required Samsung to pay KPN a licensing fee for *Sisvel's* (and Wilus's) *patents*. There is no reasonable construction of the contract that dictates that result. Nothing in the contract prohibited Samsung from cutting a deal with Sisvel for a license without also paying KPN (and whoever else happens to have patents in the pool) a licensing fee. To put it another way, the disputed provision *on its face* simply has nothing to do with Samsung's acquisition of other patents by virtue of a separate dispute.

Nor does KPN's proposed interpretation make any sense "from a utilitarian standpoint bearing in mind the particular business activity sought to be served." Sophisticated parties do not expose themselves to contractual liability for hundreds of millions of dollars without being very explicit about the terms and conditions under which such liability might attach. It seems clear that the "business activity sought to be served" by the Samsung-KPN agreement was to settle a long-running

federal patent infringement case so that those companies could get on with the business of providing mobile communications to customers. In a business context, therefore, the "exception" to the covenant not to sue and damages waiver simply assured that during the term of the settlement agreement, Samsung would not acquire *any other KPN patents* without paying for them. From a "utilitarian" standpoint, this is the only reasonable construction possible, and the question never should have been put to the jury.

The trial court's neglect of its gatekeeping functions in contract litigation has reverberations far beyond this case. We recognize and appreciate that trial courts have to keep a lot of balls in the air without much assistance or support. We also understand that conducting the kind of analysis of the text of a disputed contract, much less making a carefully reasoned ruling in accordance with the law, requires a significant investment of time and resources on the court's part. Faced with two sophisticated, well-heeled parties with a difference of opinion, the trial court may well have simply decided to delegate the task to the jury on the assumption that, given the enormous financial stakes involved, the losing party would appeal in any event. Of course, we have no idea if this case played out in this way, but our point is that letting the trial court off the hook here could have the effect of letting trial courts off the hook everywhere.

This case cannot be permitted to become a blueprint for prolonging contract litigation that should be determined before trial as a matter of law. Only if the court conducts the proper analysis, finds that it cannot determine what the plain text objectively means, and issues a ruling explaining why the court could not make that determination should the question pass to the factfinder. Smart lawyers can conjure "ambiguity" from just about any text. Trial courts thus have to follow the "pertinent rules" and make the tough calls if contract interpretation is not to become a lawless and unpredictable free-for-all.

Conclusion and Prayer

TCJL and TLR respectfully request that this Court reverse the judgment of the trial court and render judgment for the Appellant.

Respectfully submitted,

/s/ George S. Christian

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CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,654 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ George S. Christian

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I hereby certify that a true and correct copy of the foregoing *amicus* letter was served on counsel of record by using the Court's CM/ECF system on the 29th day of January, 2025.

/s/ George S. Christian

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