interests of corporations as well as the common interests of their shareholders. Therefore, the Supreme Court held that the warrants issuance in question is valid not from the perspective of whether the bidder is a green-mailer but from the procedural perspective of the special resolution by the general meeting.

The Supreme Court examined whether the purchase of the warrants held by the persons involved in X was adequate as defense tactics or not. Surely, it must be noted that the target corporations should make an effort to ensure the property of their shareholders when they take the measures to defend themselves from takeovers. However, if the extensive payment of the considerations to the bidders were allowed without any restrictions, it may inadequately encourage the "green-mail". I think that, under the specific condition of the approval of the defense tactics by the special resolution in the general meeting (more than 80% of all voting rights), the payment of the considerations to the bidders can be adequate.

This year, many Japanese corporations will have to decide whether they should introduce defense tactics and actually implement them in the general meeting. The target corporation should deliberately issue the warrants without charge as a defense tactics, considering the decision made in this case.

8. Labor Law

X v. Chief of Fujisawa Labor Office (Injury of Carpenter)
Supreme Court 1st P.B., June 28, 2007
Case No. (Gyo Hi) 145 of 2005
940 RODO HANREI 11

Summary:

Jyokoku appeal was dismissed.

The case where a carpenter who engages in carpentry offered by a construction company without having his own work place is not considered as a worker defined both by the Labor Standards Act and the Workers' Accident Compensation Insurance Law.

Reference:

Articles 9, 10, 11, and Paragraph 1 of Article 84 of the Labor Standards Act

Article 3 of the Workers' Accident Compensation Insurance Law

Fact:

X (Plaintiff, koso appellant and jokoku appellant) did not have his own work place and also did not employ others. X worked himself for a contractual job outsourced by a construction company. From March 1998, X worked for A, a construction company. A had an outsource contract ordered by B so that A would engage in interior decoration work for condominium construction. A requested carpenters, including X, to work for the interior decoration work and X worked for this. In November of 1998, when X worked for the interior decoration work, X accidentally received an injury to his fingers of his right hand by an electric circular saw (hereinafter called "the accident").

Based on the Workers' Accident Compensation Insurance Law (hereinafter called "the Insurance Law"), X claimed Y, Chief of Fujisawa Labor Office, (defendant, koso respondent and jokoku respondent), for medical treatment to the case injury and other benefits, proclaiming that the accident occurred during work.

But Y decided not to provide X with any benefit because Y concluded that X was not a worker defined as a worker to be protected by the Insurance Law. X did not agree with the decision made by the labor office. X claimed that Y should cancel and rectify the decision.

Yokohama District Court dismissed the plea of X. In regard to this, X claimed that X should be deemed to be a worker under the Insurance Law, and the District Court decided as follows. The Insurance Law does not define in writing what is a worker to be protected under the Insurance Law. On the other hand, the Labor Standards Act (hereinafter called "The Standards Act") stipulates that labor injury related benefits shall be provided when the job related accident happens and also that the employer would be indemnified for the obligation in case the benefits required by the Insurance Law were to be given to the injured worker. Considering this, the District Court said "The worker defined by the Insurance Law is

the same as the worker defined by the Standards Act." And also considering the worker stipulated in the Standards Act, the District Court said "it is appropriate to say that a worker is a person who supplies manpower under the direction of an employer and receives wages as a compensation for that manpower" as a result of the interpretation of Article 10 (about employer) and Article 11 (about wage). At the same time the District Court referred to the report titled" The Standard to define" a worker" under the Standards Act" presented by the private advisory committee of the (then) Minister of Labour called " the Labor Standard Law Study Team" on 19 December, 1985 (hereinafter, called "Report 85"), and another report that was for further study with specific examples on workers who engage in outsourced jobs in the construction industry which was promoted in accordance with Report 85 and was presented by the special task team under the committee on March 25, 1996 (hereinafter called "Report 96".) The District Court said that the framework of the decision made by Report 85 and Report 96 "has a rational reason" and "the decision to be made in the case should be concluded from the total consideration based on the framework presented by Report 85 and Report 96." As a result, the District Court judged that "X did not receive any specific instruction and supervision made by A" and said that "it is appropriate to say that the nature as a worker cannot be recognized." The District Court also said that "any factor to deny that X is an entity of business is not found", and that "it cannot be said that X is highly dependent on A, and any evidence to deny findings is not recognized." The District Court concluded that "X is not a worker defined as a worker in the Standards Act as well as the Insurance Law, and there is no illegal decision on the case made by Y based on the same reason as the District Court has."

X appealed but the Tokyo High Court dismissed the appeal. The High Court judged that labor defined by the Insurance Law is same as labor defined by the Standards Act and it said that judging from the definition of "labor" stipulated by Article 9 of the Standards Act, the basic standard to recognize X as a worker defined by the Insurance Law comprises "the Existence of use and subordination" and "the Existence of the relation of provision of manpower and payment of wages". The High Court concluded that X was not a worker defined by the Insurance Law as a result of consideration on factors of the court judge.

Court Decision:

The appeal was dismissed

The summary of the decision of the Supreme Court is as follows.

"X is not recognized to be under A as well as B that X provided manpower under either's direction." The payment made by A to X is "the payment for the completion of work and it is difficult to regard the payment as a compensation against the offer of manpower." Adding to that, considering the fact that X used his own tools and the degree of dependency of X to A, "it should be said that X is not is not applicable as a case of worker as defined by the Standards Act and the Insurance Law, either." Further, even if the fact that X received the allowance of a team head paid by A and other facts are considered, the decision made by the Supreme Court "is not affected" and the court acknowledged that "the decision made by the High Court is reasonable."

Editorial Note:

1. In this case, the Supreme Court does not present their own framework of judgment, unlike the District Court which states clearly that the standard formed by the two reports is adopted, but the High Court says one of the factors forming the standard is the "Existence of use and subordination." But the Supreme Court makes the decision in accordance with the specific fact to show that there is "direction and supervision" and "compensation against the offer of manpower." Also, the Supreme Court considers the ownership of machines and tools, the degree of dependency, and compensation, which the reports describe as "factors to identify the nature of a worker." Considering the attitude of the Supreme Court, in fact, the Court seems to use the same framework as the lower court to make the decision. In the leading case where the nature of the labor of a car driver who used his own car and got an injury with regard to the application of the Insurance Law was judged, X v. Chief of Yokohama Minami Labor Office (Asahi Shigyo), Supreme Court, 1st P.B., 28 November, 1996, 1589 Hanrei Jiho 136), the Supreme Court does not present any framework of judgment and does not use the phrase "existence of use and subordination."
2. In judgments of the nature of a worker, there seems to be room to have

more discussion on the positioning of each factor and the relations between factors of judgment. Next what fact can be evidence to show the existence of direction and supervision should also be clarified. On the other hand, there would be cases where the intention of the parties should be respected instead of the external objective situation and formality when the nature of a worker needs to be judged.

9. International Law and Organizations

The Republic of China v. Y et al.
Supreme Court 3rd P.B., March 27, 2007
Case No. (o) No. 685 of 1987
61 MINSHU 711; 1967 HANREI JIHO 91

Summary:

1. The name of the party as a plaintiff at the time of the filing of the first-instance trial in 1967, the "Republic of China", has changed to the "People's Republic of China" as a consequence of the signing of the Japan-China Joint Communique in 1972.
2. The extinction of the representative authority of the party immediately takes effect, if the fact is so explicit, without notification of it to the party.
3. With the effect of Japan's recognition of a new government of a foreign state in 1972, the diplomatic mission of the previous government of the same state lost the representative authority and the proceedings abated.
4. When the final appellate court quashes a judgment of prior instance by confirming the existence of a cause of abatement, which is an *ex officio* investigation of the court, an oral proceeding is not necessarily required.

Reference:

(Concerning 1) Part I, Chapter 3 of the Code of Civil Procedure (Parties), Article 133, para. 2, item 1 of the Code of Civil Procedure; (Concerning 2 and 3) Article 37 of the Code of Civil Procedure; (Concerning 2) Article 36, para. 1 of the Code of Civil Procedure; (Concerning 3 and 4) Article 124, para. 1, item 3 of the Code of Civil